

**INTERNATIONAL HUMAN RIGHTS MOVEMENTS AND
PROTECTION OF WOMEN'S RIGHTS**



**THESIS SUBMITTED TO THE COCHIN UNIVERSITY OF SCIENCE
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BY

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UNDER THE SUPERVISION OF

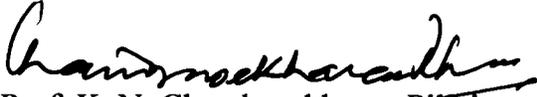
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CERTIFICATE

Certified that to the best of my knowledge this thesis entitled “International Human Rights Movements and Protection of Women’s Rights” is the record of bonafide research work carried out by Smt. Lovely Paulose in the School of Legal Studies, Cochin University of Science and Technology, under my supervision. This thesis, or any part thereof, has not been submitted elsewhere for any other degree.

Cochin,
July, 2004


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DECLARATION

I hereby declare that the Thesis, “International Human Rights Movements and Protection of Women’s Rights” is the record of original research work carried out by me and it has not previously formed the basis for the award of any degree, diploma, fellowship or other similar title or recognition.

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PREFACE

Human rights are those rights, which have inherent in a human person by virtue of his birth as a human being. These rights are highly essential to protect the dignity and worth of the human person and hence to be ensured by the State authorities. They are universal and therefore called Universal Human Rights. Human rights of women constitute the integral and indivisible part of Universal Human Rights.

The principle of equality before law and prohibition of discrimination constitutes the essence of rule of law and fundamental freedoms. Attainment of equality of status and protection of human rights of women are implicit in all the international instruments dealing with human rights.

After the Second World War the international community as a whole was concerned with the protection of human rights especially of women. The international instruments on human rights cast an obligation on the Member States to incorporate the norms into the domestic law.

This thesis is an attempt to explore the problems faced by Indian Women and to examine the ways in which the human rights of women could be better protected in the light of international movements with special reference to national legislation and judicial decisions.

The evolution of human rights from early period to Universal Declaration of Human Rights, 1948 is traced in the first chapter. The second chapter deals with the evolution of human rights in India. The evolution of fundamental rights and directive principles and the role played by the Indian Judiciary in enforcing the human rights enumerated in various international instruments dealing with human rights are also dealt with in this chapter. The rights guaranteed to women under the various international documents have been dealt with in the third chapter.

It is noticed that the international documents have had their impact in India leading to creation of machinery for protection of human rights. Organised violations of women's rights such as prostitution, devadasi system, domestic violence, sexual harassment at workplaces, the evil of dowry, female infanticide etc. have been analysed in the light of existing laws and decisional jurisprudence in the fourth chapter. The fifth chapter analyses the decisions and consensus that emerged from the world conferences on women and their impact on the Indian Society and Judiciary. The constitutional provisions and legislative provisions protecting the rights of women have been critically examined in the sixth chapter. Chapter seven deals with various mechanisms evolved to protect the human rights of women. The eighth chapter contains conclusions and suggestions.

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CHAPTER 1

EVOLUTION OF HUMAN RIGHTS

Rights that inhere in a human being by virtue of his birth as a human being are human rights. Human rights do not depend for their existence on the legal and moral practices of different communities.¹ It is not the particular privilege conferred or granted upon a man by the State but something that due to him or owned by him by reason of his birth. Human Rights are based on mankind's increasing demand for a civilized life in which the inherent dignity of each human being is well respected and protected.² These rights are essential for the spiritual, physical and moral development of the individual. They are associated with the dignity of the individual and it is the enjoyment of these rights that makes a human being worthy of human dignity.

Authors have defined human rights differently. Human right is explained as something due to a person in a social context because he is a human being.³ According to R.J. Vincent human rights are the rights that everyone equally has by virtue of his very humanity and also by virtue of his being grounded in an appeal to our human nature.⁴

¹ Tim Dunne and Nicholas J. Wheeler, "Introduction: Human Rights and Fifty Years' Crisis", in Tim Dunne and Nicholas J. Wheeler (Eds.), *Human Rights in Global Politics*, Press Syndicate of the University of Cambridge, United Kingdom (1999), p.4.

² Justice Anand, "Justice, N.D. Krishna Rao Memorial Lecture 1997", (1997) 7 S.C.C. Jour. 11.

³ Tibor R. Machan, *Human Rights and Human Liberties, A Radical Reconsideration of the American Political Tradition*, Nelson Hall Company, Chicago (1975), p.51.

⁴ R.J. Vincent, *Human Rights and International Relations*, Cambridge University Press, (1986), p.13.

D.D. Basu defined human rights as those rights, which every individual must have against the State or public authority by virtue of his being a member of the human family irrespective of any other considerations.⁵

These rights are inalienable because the enlightened conscience of the community would not permit the surrender of them by any person on his own volition.⁶ These are essential for the development of a human being, to preserve his personality and dignity without which he is reduced to the level of animals. Human rights are not rights which derive from a particular State; they are rights which belong to a man simply because he is a man.⁷ So human rights are the natural, inherent and inalienable rights without which a man cannot exist, and are positive obligations on the part of the State. It is universal, do not differ with geography, history, culture, economic system or stage of development, gender, race, class or status and are to be protected by the State.

The struggle to preserve, protect and promote human rights is as old as human civilization.⁸ The origin and development of human rights can be traced to the very beginning of life in the society. In primitive societies man had a number of limitless freedoms, but in an organized society these freedoms have no meaning because the limitless freedom of some people must have resulted in the miserable suppression of the freedom of another class of people. For

⁵ D.D. Basu, *Human Rights in Constitutional Law*, Prentice hall of India Pvt. Ltd., New Delhi (1994), p.5.

⁶ Dr. D.S. Bajwa, *Human Rights in India, Implementation and Violations*, Anmol publications, New Delhi (1995), p.2.

⁷ Maurice & Crantson, *Human Rights Today*, P.C. Manaktala and Sons Pvt. Ltd., Bombay (1962), p.16.

⁸ Abdul Rahman *et al. Perspectives on Human Rights*, Manale publications, New Delhi (1999), p.50.

example, in a feudal society only the rulers, the nobility and the clergy have freedoms and rights, other people have only burdens and duties.

During the 17th and the 18th centuries thoughtful men all over the world became aware of their rights and they began to fight for their rights against feudal despotism.⁹ This movement was augmented by the industrial revolution in Europe.¹⁰ People began to recognize the existence of a higher law. The higher law in the society was termed as 'Jus Naturale' by the Romans and 'Lex Naturales' by the medieval Christian thinkers and was christened as Natural Law by modern Jurists.¹¹ This was Dharma for the ancient Hindus. Modern jurists name it as Natural Law. The basis of natural law is man's natural inclination to right reason that is in accordance with nature, unalterable and eternal.¹² He has a natural tendency to do what according to his reason he considers to be right and wrong. This human instinct is the basis to judge the law. Recognition of natural law leads to the recognition of natural rights as something that belong to all men at all times and were claimed to be inherent, inalienable, immutable and essential to the very existence of human nature. In the modern context such rights or groups of individual rights whether positive or negative, justiciable or non-justiciable are termed as human rights. The rapid industrialization and the demands for higher standards of living need

⁹ Mr. Justice M. Kalju, "The Significance of Human Rights and its Correlation with Judicial Functioning", A.I.R. 2003 Jour. 228.

¹⁰ *ibid.*

¹¹ D.K. Bhat, "Human Rights and Gender Issues: A Socio-Legal Perspective", XXVII (1) Indian Bar Review 24 (2000).

¹² Jerome J. Shstack "The Philosophic Foundations of Human Rights" in Robert Mc Corquodale (Ed.) *International Library of Essays in Law and Legal Theory, Second Series, Human Rights*, Dartmouth Publishing Company, England (2003) p.206.

co-operation and interdependence with other nations and this interdependence of the modern world has made concern for human rights a major international fact.¹³

The Magna Carta of 1215 was the first document dealing with human rights. When the King violated the laws of England his subjects forced him to sign the Magna Carta, which is otherwise known as the Charter of Liberty.¹⁴ It contains a number of rights of the individual. Under this a person can be prosecuted or punished only according to a procedure prescribed by law. The citizen has the right to own and use property free of excessive taxes and property could be taken away from him only through a process of law. The Magna Carta dealt with the established principle of the due process and equality before law and it upheld the dignity and worth of the individual and even prohibited the King from violating the basic rights and freedoms.

In spite of Magna Carta, the rights of the people were violated frequently and the struggle for the rights continued. Edward Coke filed the Petition of Rights before the Parliament in 1628. Later the Bill of Rights was enacted as a statute by the Parliament and it became part of the positive law of England.

Various scholars criticised the natural law theory. To Bentham real rights come from real laws and from imaginary laws like natural law only imaginary rights come. According to him only positive law is real law and

¹³ Moses Moskowitz, *Human Rights and World Order*, Oceana publications, New York (1958), p.88.

¹⁴ T.S. Batra, *Human Rights a Critique*. B.V. Gupta, New Delhi, (1979), p.34.

natural law is not at all law.¹⁵ Thomas Hobbes and John Locke two eminent Political Philosophers of England were of opinion that while living in a state of nature according to natural law of right reason where everyone start enforcing the rights with no authority to control, difficulty and confusion might be created. Hence they advocated the people to live under a common superior or government by surrendering some of their rights with an expectation to protect their rights by the government. Locke believed that the natural rights surrendered to the government are only those rights, which can be exercised collectively for the welfare of the society. The individual retains all other natural rights. These reserved rights constituted the individual's basic liberties. They pertained to human beings by nature and could not therefore be surrendered or controlled or denied by the State.¹⁶ When the State fails to protect these rights or violates these rights there is tendency on the part of the people to resist.

Locke's idea of limited government has become part of the Bill of Rights of 1689.¹⁷ The Habeas Corpus Act and the Bill of Rights were the results of the civil war and the peaceful revolution of the 17th century. The Habeas Corpus Act was enacted for the purpose of protecting the personal liberty of the people. It could be said that the Bill of Right of 1689 was a document consolidating the human rights and liberties of the people.¹⁸

¹⁵ Maurice & Crantson, *Human Rights Today*, *op. cit.* at p.24.

¹⁶ Douglas Hodgson, *Individual Duty within a Human Rights Discourse*, Ashgate Publishing Limited, England (2003) p.16.

¹⁷ T.S. Batra, *Human Rights a Critique*, *op. cit.* at p.36.

¹⁸ *ibid.*

The Bill of Rights proclaimed that all men were free and independent. It also proclaimed that certain rights inherent in man by virtue of his being a human person such as right to life and liberty and the means to lead a happy life by acquiring and possessing property cannot be deprived of by the State. Apart from this, the Bill of rights assured the supremacy of the Parliament, the right to free election, freedom of speech, the right to bail, freedom from cruel and unusual punishment and the right to trial by jury etc.¹⁹ The Bill of Rights had a great influence throughout the world.

As the people of France were suffering under Louis XIV the events in England greatly influenced them.²⁰ The theory of social contract propounded by Rousseau influenced the nations and as a result came the American Declaration of Independence and the French Declaration of Rights of Man in 1789.²¹ In 1791 ten amendments to the Constitution were passed by the congress and it was known as the Bill of Rights. Later this formed part of the Constitution of the United States of America.

These amendments reflect human rights of the people. They include freedom of religion, freedom of speech and press, the right to peaceful assembly and the right to petition the government for redressal of grievances, the right to bear arms, right against unreasonable search and seizure, right

¹⁹ Veena Pany Pandey, *International Perspectives on Human Rights*, Mohit Publication, New Delhi (1999), p.6.

²⁰ *id.* at p.37.

²¹ *ibid.*

and Citizen guaranteed to all persons freedom of religion, freedom of expression, right of the accused person to be presumed innocent till his guilt is proved etc. More political rights were added in 1793.

Apart from these documents, the increasing struggle for the preservation of peace and freedom from all parts of the country and the pronouncement by various philosophers and politicians influenced the evolution of human rights. But the real development started only during the 19th and the 20th century.

It is normally the exclusive duty of the individual State to see that the rights of its citizens are not violated. It is the State's duty to respect, protect and promote the human rights of its citizens. Other States cannot interfere in matters exclusively within the domestic jurisdiction of the State. But in a situation where there is constant violation of human rights and the condition of the people in a particular State is miserable, the peace-loving nations interfere and decide to lay down an international standard for the behavior of the States for the protection of human rights and for preservation of peace in the society. In States where slavery was in force and the conditions of the slaves were miserable, intervention of the other nations is desirable to abolish slavery and slave trade. The abolition of slavery is the first international measure for the protection of human rights. By the treaty of Paris in 1814 the British and French governments agreed to co-operate in the suppression of traffic in slaves.²⁵ At the Brussels conference in 1890 the Anti-Slavery Act was passed

²⁵ Veena Pany Pandey, *International Perspectives on Human Rights*, op. cit., p.17.

and ratified by 18 States. The Act not only condemned slavery and slave trade but also included measures for implementation.²⁶ Abolition of slavery and slave trade led to the recognition of the basic rights to dignity and equality of all human beings at international levels.

Another important development in the field of human rights is the evolution of humanitarian law of warfare. It is based on the principle that the wounded or sick persons are to be treated in the same way as the soldiers of that particular nation.²⁷ In the Geneva Convention of 1864, there was a requirement that the wounded or sick soldiers, whatever their nationality, may be respected and cared for. The Hague Convention of 1899 and 1907 also established humanitarian rules of warfare.²⁸ It was revised again in the Geneva Convention of 1927 in the light of the experiences of the 1st World War. In fact evolution of humanitarian law contributed to the evolution of human rights.

The present day human rights movements owe a lot to the experiences of human misery and devastation brought out by the world wars. The conditions of the people during the regime of Nazi leaders in Germany were miserable and there was a total suppression and negation of human rights and human values. Hence it was realised by the nations that international peace and security could be maintained only through the restoration of the freedom of the

²⁶ *id.* at p.18.

²⁷ *id.* at p.19.

²⁸ *id.* at p.21.

people.²⁹ At the end of the World War I, the Allied and Associated powers and Germany signed the treaty of peace on 28th June 1919. This dealt with a number of political, legal and humanitarian issues and it was one of the most significant instruments dealing with human rights protection. The object of the peace treaty was to respect the rights of the minorities residing in their territory with regard to equality of civil and political rights and the protection of life and liberty. The League of Nations was an international organisation established after World War I to provide peace and security and to facilitate human co-operation. It shows international concern to human dignity and rights.

According to the treaty, there shall not be any discrimination in admission to matters of public employment on the ground of race, language or religion and it also recognised the right of the minorities to establish and manage charitable, religious or educational institution to conserve their language and religion. But the League of Nations could not do much because it was mainly concerned with the rights of the minorities and was not available to majority groups, whose rights were violated by the State that bound itself by the treaty. The other drawback of the treaty was that it did not bind States other than those against whom the particular treaty was binding.

Article 23 of the League of Nations relates to the fair and human conditions of labour for men and children and also envisaged the establishment of International Labour Organisation to attain that objective. The International

²⁹ Dr. H.O. Agarwal, *Implementation of Human Rights Covenants with Special Reference to India*, Kitab Mahal, Allahabad (1983), p.3.

Labour Organisation was established in 1919. The main object of the organisation was to ensure social justice and gave due respect to human rights and dignity of every individual without any discrimination on the ground of race, sex, place of birth and the promotion and protection of human rights.

In 1944 delegates to the International Labour Conference adopted the Declaration of Philadelphia, which affirmed that Labour is not a commodity, that freedom of expression and association are essential to the progress and that poverty causes danger to the prosperity.

The aims and purposes of the International Labour Organisation contained in the preamble and other articles were restated in the Philadelphia Declaration 1944. The Philadelphia Convention states that all human beings irrespective of race, creed or sex have the right to pursue both their material well being and other spiritual development in conditions of freedom and dignity, of economic security and equal opportunity. Several Labour Conventions protecting and promoting the human rights were passed to promote the object of the International Labour Organisation.

The bitter experience of the Second World War also created a need among the nations for introducing new concepts into international law in order to prevent the recurrence of such events in the future. It was again realised by the Nations that protection of human rights was an essential condition for the

maintenance of peace and security in the world.³⁰ It has also been recognized that States cannot be trusted to treat their citizens properly and humanity has considerable interest in the treatment of people by the governments irrespective of their places.³¹ As a result new intergovernmental organisations such as United Nations, the European Council and the Organisation of American States were established.

The President of the United States of America and the Prime Minister of Great Britain in a Joint Declaration known as Atlantic Charter concluded on 12th August 1941 proclaimed four freedoms. The freedoms include the right of the individuals to choose their government and the right to live with freedom from fear and want.³²

In the year 1944, the governments of the Union of Soviet Socialist Republic, the United Kingdom and United States met at Dumbarton Oaks and envisaged that United Nations should facilitate solutions for international, economic, social and humanitarian problem and promote respect for fundamental freedoms, marked the first agreement among nations to promote and observe human rights and freedom.³³

The Dumbarton Oaks proposals led to the establishment of an international organization, the United Nations with the signing of the U.N.

³⁰ T.S. Batra, *Human Rights Today*, *op. cit.*, p.3.

³¹ David Feldman, *Civil Liberties and Human Rights in England and Wales* Oxford University Press, New York (1993), p.36.

³² Gaius Ezejiolor, *Protection of Human Rights under the Law*, Butterworths, London (1964), p.54.

³³ James Avery Joyce, *Human Rights International Documents*, Oceana Publications, New York (1978), p.134.

Charter, in 1945 adopted at San Francisco on June 1945, with the objective of the protection and maintenance of international peace and security.³⁴ It was the first agreement among the nations to promote and observe human rights and fundamental freedom for all.³⁵ The Charter itself gave a formal and authoritative expression to the human rights movement that began at the end of second war. Since its birth in 1945, the United Nation has served as a vital institutional spur to the development of the movement, as well as serving as a major forum for many-sided debates about it.³⁶

The U.N. Charter gave due recognition and respect for human rights and its role for promoting international peace and security. One of the purposes that the Charter spells out is the achievement of international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.³⁷ The Charter opens with the words “We the peoples of the United Nations determined to reaffirm faith in human rights, in the dignity and worth of human, in the equal right of men and women and of Nations large and small have resolved to combine our efforts to accomplish these aims.” The change of the opening word from the “High contracting parties” from the covenant of the League of Nations to “We the peoples of the United Nations” denotes a great human advancement expressing the will of the peoples of the world.

³⁴ Leant M. Goodrich, *The United Nations*, London Institute of World Affairs, London (1960), p.29.

³⁵ Developing Human Rights Jurisprudence, Judicial Colloquium in Bangalore (1988), p.96.

³⁶ Henry J. Steiner & Philip Alston, *International Human Rights in context, Law, Politics and Morals*, Oxford University Press, New York (1996), 118.

³⁷ N.R. Sharma, *Human Rights in the World*, Pointer Publishers, Jaipur (1999), p.4.

The General Assembly should initiate studies and make recommendations regarding the realisation of human rights for all.³⁸ It provides that United Nations shall promote universal respect for and observance of human rights.³⁹ The United Nations Charter casts an obligation on the part of the Member States to take measures for the protection and promotion of human rights.⁴⁰ Article 68 of the Charter provides that the economic and social council shall set up a commission for promotion and protection of human rights charged with the task of submitting reports to the council concerning international bill of rights, guarantee of equality against discrimination on the ground of sex, race, language or religion. The principal task of the commission is the preparation of the draft of Bill of Rights. A drafting Committee for the framing of International Bill of Rights was constituted under the chairmanship of Eleanor Roosevelt.⁴¹ There were differences of opinion among the nations as to the nature of the Bill of Rights. Some favoured a binding convention and others for a declaration of Bill of Rights. Ultimately the General Assembly on the 10th of December 1948 adopted the Universal Declaration of Human Rights. The preamble to the Universal Declaration of Human Rights, 1948 emphasizes that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. Some rights mentioned in the

³⁸ U.N. Charter Article 13(1).

³⁹ *id.* at Article 55.

⁴⁰ *id.* at Article 56.

⁴¹ David Cashman Coyle, *The United Nations and How it Works*, Columbia University Press, New York (1966), p.79.

Declaration require immediate binding obligations on the part of the States and are termed as Civil and Political rights and other require possible future obligations according to the available resources of the country and are termed as social, economic and cultural rights. Majority of the United Nations agreed that civil and political rights were inter-linked and inter-dependent to social, economic and cultural rights. Thus the Human Right Commission was given a direction to include both the above rights in the covenant. Consequently the two covenants were drafted.

The Universal Declaration of Human Rights 1948 can be regarded as the embodiment of common standard to be adopted for achievement of human rights. It sets forth the fundamental liberties and rights common to all people on earth.⁴² It is not a legally binding instrument, but it casts obligation on the Member States to incorporate its provisions into their national constitutions and laws. Apart from the preamble, the Universal Declaration consists of 30 Articles. Article 1-21 deals with the traditional civil and political rights such as right to life, liberty and security of person, effective remedy before competent tribunals for acts violating human rights, to be presumed innocent until proved guilty, freedom of movement, right to nationality, right to property, freedom of thought, conscience and religion, freedom of opinion and expression, right to peaceful assembly and association, right to take part in the government of a country, right to access to public services in his country etc. It condemns

⁴² Ketan Thakkar, *Human Rights and the Law. National and Global Perspectives*, Snow White Publications, Mumbai (1997), p.4.

slavery, torture and inhuman and degrading treatment, arbitrary arrest etc. Right to marry, right to privacy etc., are also guaranteed in the Declaration.

Articles 22 to 27 are concerned with the social economic and cultural rights. They declare that everyone has a right to social security, to work under just and favourable conditions, to join trade unions for the protection of interests, to rest and leisure, to adequate standard of living, to education, to participate in the cultural life of the community etc. According to Article 28 everyone is entitled to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realised.

The rights mentioned in Articles 2 to 21 of the Universal Declaration impose negative obligation on the part of the States not to interfere with the rights and these rights are called first generation rights. The rights mentioned in Articles 22-27 impose a positive obligation and they are called second-generation rights. Rights mentioned in Article 28 consist of collective rights and are termed as third generation rights.⁴³

As the Universal Declaration is not having legally binding force the General Assembly decided to adopt two separate instruments dealing with civil and political rights and social, economic and cultural rights and in 1966 it adopted two covenants; International Covenant on Civil and Political Rights, 1966, International Covenant on Economic, Social and Cultural Rights 1966, and Optional Protocol to International Covenant on Civil and Political Rights.

⁴³ Dr. Paramjith S. Jaswal & Dr. Nisha Jaswal, *Human Rights in India*, APH Publishing Corporation, Mumbai, (1996), p.11.

The International Covenant on Social, Economic and Cultural Rights came into force on January 5th 1975 and the other covenant with its protocol on 23rd March 1976. The two covenants with the Universal Declaration on Human Rights constitute the International Bill of Rights. Apart from these there are so many regional conventions for the purpose of giving recognition, respect, protection and promotion of human rights.

The International Covenant on Civil and Political Rights consists of 53 Articles, which are divided into 6 parts. Part I & II deal with the contents and definitions of various rights and freedoms the other three parts deal with the procedure for implementation.

Article 1. refers to the right to the people to self-determination. Part II casts an obligation on the part of the States to take necessary steps to incorporate the provisions of the Covenant in their domestic laws and to adopt legislative or other measures to the effective implementation of the rights recognised in the Covenant. The State Parties have to ensure equal rights of men and women to the enjoyment of all civil and political rights.

Part III of the Covenant deals with specific rights of individuals and obligations on the part of the State Parties. It includes right to life, freedom from inhuman or degrading treatment, freedom from slavery, servitude and forced labour, the right to liberty and security of a person and to be free from arbitrary arrest and detention, the treatment of a person deprived of their

liberty, freedom of movement, the right to fair trial, non-retroactive application of criminal law, the right to privacy, right to family, home or correspondence and freedom from attacks on honor and reputation, freedom of thought, conscience and religion, freedom of opinion and expression, the right of peaceful assembly and freedom of association, the right relating to marriage and family protection, the right of the child, the right to take part in the conduct of public affairs, the right to vote and the right to be elected.

The International Covenant on Economic, Social and Cultural Rights, 1966 consists of 31 Articles, divided into 5 parts. Part I deals with the right of the people to self-determination. Part II deals with the obligation of the State Parties to take necessary measures for the realisation of the rights. Part III enumerates the rights of the individual.

The right of individual includes the right of work, the right to just and favourable conditions of work, trade union rights, right to social security, rights relating to motherhood and childhood, marriage and family. It also includes the right to adequate food and clothing, housing, standards of living and right to freedom from hunger, the right to health and right to education.

Part IV contains the procedure for implementation. Article 16 to 25 provide for a system of submission of periodic reports by State parties concerning the measures taken by them for implementation of various provisions to the Economic and Social Council. The Council will consider

these reports and give advice or help to the concerned State in the matter of social and economic development.

The Covenant does not envisage an obligation on the States to give effect to its provisions immediately. But the States have to take steps progressively for implementation of the various rights guaranteed. From the above analysis it is clear that implementation mechanism under the two covenants are not satisfactory or effective.

The Council of Europe in 1950 made a binding declaration for adoption of Universal Declaration of Human Rights and the European Convention on Human Rights came into force in 1953. It is a unique organization, which brought all the European countries under one umbrella for the protection of human rights and the fundamental freedoms.⁴⁴

This is the first international human rights instrument with an effective implementation mechanism. The instrument not only contains platitudes or expressing aspirations but incorporated compulsive provisions also. It established a commission to receive and examine complaints about the infringement of rights by the State Parties. A court was also set up to adjudicate complaints and to interpret the provisions of the Commission. A Committee of Ministers of the European Council was also established. It also recognises the right of individual to enforce his right against the sovereign. It provides for the submission of all complaints relating to the violations of human rights to the

⁴⁴ Dr. Syed Maswood, "Protection of Human Rights under the European Commission: Need for European Model in South Asia under SAARC", A.I.R., 2002 Jour. 114.

Human Rights Commission and the Commission after verification could bring the matter before the European Court of Human Rights. The verdict of the Court is binding on the respondent State. It has also far reaching effect on the inter-relationship among the States.

The Organisation of Latin American States adopted the American Convention on Human Rights, 1969, which came into force on 18th June 1978. It provides that Human Rights are inviolable and made the obligations of the convention binding on the participating States. The convention has been divided into three parts. Part I deals with the right to be protected and promoted and Part II deals with means of protection of Human Rights. Part III deals with general provisions regarding signature, ratification etc.

The preamble of the Convention recognised that the essential rights of man are not derived from one being a national of a State but are based upon the attributes of human personality and therefore entitled to protection through Convention and through incorporation of the norms of the Convention in domestic laws of the American States.

The State Parties to the Convention undertake to respect these rights and freedoms to all persons without any discrimination as to race, sex, language, religion, birth or any other social conditions. The Member States are under an obligation to incorporate these provisions into their domestic laws.⁴⁵

⁴⁵ American Convention on Human Rights, 1969 Article 11.

Part I of the Convention deals with civil and political rights such as right to life, right to human treatment, freedom from slavery, right to personal liberty, right to a fair trial, freedom from ex-post-facto law, right to compensation, right to privacy, freedom of conscience and religion, freedom of thought and expression, right to reply, right to assembly, freedom of association, right to family etc. Part III deals with economic, social and cultural rights.

The mechanisms for implementation of the human rights are (1) the Inter American Commission on Human Rights and (2) Inter American Court on Human Rights. Any person or group of persons or any non-governmental organisation may lodge petition before the Commission for violation of the Convention against his own State or any other States. But only State Parties and Commission shall have the right to submit a case to the court. If the court finds violation of human rights guaranteed under the Convention it shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated and also rule that fair compensation be paid to the injured. The decision of the court is final and not subject to appeal.

The Organisation of African Unity, an official body of all African States in 1981 adopted the African Charter on Human Rights and Peoples Rights, which entered into force in 1986. The main object set out in the preamble is the establishment of bodies to promote and protect human rights, especially freedom, equality, justice and dignity. The Charter was primarily dedicated to

