Chapter One: Introduction to Human Rights Law

Nature and Definition of Human Rights

- Human rights are those rights that **attach to all persons equally, by virtue of their humanity,** irrespective of race, nationality, or membership of any particular social group.
- Thus it belong to an individual as a consequence of being human.
- The concept of human rights is based on the belief that every human being is entitled to enjoy her/his rights without discrimination.
- Human rights differ from other rights **in two respects**.

Firstly, they are characterised by being:

- Inherent in all human beings by virtue of their humanity alone (they do not have, *e.g.*, to be purchased or to be granted);
- Inalienable (within qualified legal boundaries); and
- Equally applicable to all.

Secondly, the main duties deriving from human rights fall on states and their authorities or agents, **not on individuals**.

WHY Human Right?

- The Very idea of basic rights originated from the need to protect the individual against the (arbitrary) use of state power.
- Thus attention was therefore initially focused on those rights which oblige governments to refrain from certain actions.
- As human rights are viewed as a precondition for leading a dignified human existence, they serve as a guide and touchstone for legislation.
- They have a bearing olso on relations between individuals themselves too.
- The individual-state relationship is known as the 'vertical effect' and while individual –individual is known as 'horizontal effect'.
- This is to mean that, while the primary purpose of human rights is to establish rules for relations between the individual and the state, several of these rights can also have implications for relations among individuals.

- This so-called ‘horizontal effect’ implies, among other things, that a government not only has an obligation to refrain from violating human rights, but also has a duty to protect the individual from infringements by other individuals.

For instances, the right to life thus means that the government must strive to protect people against homicide by their fellow human beings.

Historical Development
Pre World War II Developments

- The origins of human rights may be found both in Greek philosophy and the various world religions.
- In the Age of Enlightenment (18th century) the concept of human rights emerged as an explicit category.
- Man/woman came to be seen as an autonomous individual, endowed by nature with certain inalienable fundamental rights that could be invoked against a government and should be safeguarded by it.

➢ The *Magna Charta Libertatum* of 1215,

➢ *the Golden Bull* of Hungary (1222),

➢ the English *Bill of Rights* of 1689 and etc

These documents specified rights, which could be claimed in the light of particular circumstances (*e.g*. threats to the freedom of religion), **but**

1. they did not yet contain an all-embracing philosophical concept of individual liberty.

2. Freedoms were often seen as rights conferred upon individuals or groups **by virtue of their rank or status**

- **In the centuries after the Middle Ages**, the concept of liberty became gradually **separated from status and came to be seen not as a privilege** but as a right of all human beings.
- Spanish theologists and jurists played a prominent role in this context.

  The work **of Francisco de Vitoria** (1486-1546) and Bartolomé de las Casas (1474-1566) should be highlighted.
- These two men laid the (doctrinal) foundation for the recognition of freedom and dignity of all humans by defending the personal rights of the indigenous peoples inhabiting the territories colonised by the Spanish Crown.
- The Enlightenment was decisive in the development of human rights concepts. The ideas of **Hugo Grotius** (1583-1645), one of the fathers of modern international law, of Samuel von Pufendorf (1632-1694), and **of John Locke** (1632-1704) attracted much interest in Europe in the 18th century.

- Locke, for instance, developed a comprehensive concept of natural rights; his list of rights consisting of life, liberty and property. Jean-Jacques Rousseau (1712-1778) elaborated the concept under which the sovereign derived his powers and the citizens their rights from a social contract.
- The term human rights appeared for the first time in the **French *Déclaration*** (1789), later in American Declaration of Independence (July 1776).
- It was based on the assumption that all human beings are equal.
- It also referred to certain inalienable rights, such as the right to life, liberty and the pursuit of happiness.

- Later on Taking into account the principle of equality as contained in the French Declaration of 1789, several constitutions drafted in Europe around 1800 not only contained classic rights, but also included articles which assigned responsibilities to the government in the fields of employment, welfare, public health, and education.
- Social rights of this kind were also expressly included in the Mexican Constitution of 1917, the Constitution of the Soviet Union of 1918, and the German Constitution of 1919

Post World War II Developments

- The atrocities of World War II put an end to the traditional view that **states have full liberty to decide the treatment of their own citizens.**
- The signing of the Charter of the United Nations (UN) on 26 June 1945 brought human rights within the sphere of international law. Less than two years later, **the UN Commission on Human Rights (UNCHR**),which was established early in 1946, submitted a draft **Universal Declaration of Human Rights (UDHR**).
- Since the 1950s, the UDHR has been backed up by a large number of international conventions. The most significant of these conventions are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).
- These two Covenants, together with the UDHR, form the International Bill of Human Rights.
- At the same time, many supervisory mechanisms have been created, including those responsible for monitoring compliance with the two Covenants.

- Human rights have also been receiving more and more attention at the regional level.
- For example, in the European, the Inter-American and the African context, standards and supervisory mechanisms have been developed have already had a significant impact on human rights compliance in the respective continents, and promise to contribute to compliance in the future.

Classification of Human Rights

- The term ‘human rights’, is used to denote a broad spectrum of rights ranging from the right to life to the right to a cultural identity.
- These rights can be ordered and specified in different ways. At the international level, a distinction has sometimes been made between

1. civil and political rights, on the one hand, and economic, social and cultural rights on the other.
2. **Classic Rights (**the non-intervention of the state (negative obligation), **Social Rights(** those rights’ requiring active intervention on the part of the state). Classfying human rights in terms of negative and positive ovligations may have its own defects for a certain right may involve both negative and positive obligations for its effective realization. Classic rights, such as civil and political rights, often require considerable investment by the state. The state does not merely have the obligation to respect these rights, but must also guarantee that people can effectively enjoy them. Hence, the right to a fair trial, for instance, requires well-trained judges, prosecutors, lawyers and police officers, as well as administrative support. Another example is the organisation of elections, which also entails high costs.

3. **Fundamental And Basic Rights :** Fundemental rights are include those rights which are basic to normal life,while basic rights are those basic to real life and ablosulte.Fundemantal rights are may vary from country to country while basic rights had universal recognition.

4. ***Individual and collective rights:*** The fundamental purpose of human rights is the protection and development of the individual (individual rights), some of these rights are also exercised by people in groups (collective rights). **For instances,** Freedom of association and assembly, freedom of religion, the freedom to form or join a trade union, and the right to self-determination

5. ***First(***civil and political rights) ***, second(***economic, social and cultural rights) ***and third generation rights(***the right to development, the right to peace and the right to a clean environment)***:*** The division of human rights into three generations was first proposed by **Karel Vasak** at the International Institute of Human Rights in **Strasbourg**.

- His division follows the principles of ***Liberté, Égalité*** **and** ***Fraternité*** of the French Revolution

- Although human rights have been classified in a number of different manners it is important to note that international human rights law stresses that **all human rights are universal, indivisible and interrelated**

Sources of Human Rights Law

- The sources of IHRL may include the following:-

a) **International conventions, whether general or particular**: Treaties signed among the state is the primary sources of IHRL. 'covenant', 'convention' and 'protocol' are major sources of IHRL.

Human rights treaties have been adopted at the universal level or regional level.

b) **International custom** : It is general practice that had a broad consensus in terms of content and applicability and accepted as law.

- Customary law is binding on all states (except those that may have objected to it during its formation), whether or not they have ratified any relevant treaty.
- Many scholars argue that some standards laid down in UDHR have become part of customary international law as a result of subsequent practice; therefore they would be binding upon all states.
- No opposition made by state during its adoption and ratification. Inaddition many states had inculcate the provisions of UDHR in laws.

- In addition the Human Rights Committee in its General Comment 24 (1994) has summed up the rights which can be assumed to belong to this part of international law which is binding on all states, irrespective of whether they have ratified relevant conventions, and to which no reservations are allowed ,which include, *the right to engage in slavery, to torture, to subject persons to cruel, inhuman or degrading treatment or punishment, to arbitrarily deprive persons of their lives, to arbitrarily arrest and detain persons, to deny freedom of thought, conscience and religion, to presume a person guilty unless he proves his innocence, to execute pregnant women and children, to permit the advocacy of national, racial or religious hatred, to deny to persons of marriageable age the right to marry, or to deny to minorities the right to enjoy their own culture, profess their own religion, or use their own language.*

c) The general principles of law: General principles of law play two important roles: on the one hand, they provide guidelines for judges, in particular, in deciding in individual cases; on the other hand, they limit the discretionary power of judges and of members of the executive in their decisions in individual cases. A clear example is the **principle of proportionality**, which is important for human rights supervisory mechanisms in assessing whether interference with a human right may be justified.

d) Subsidiary means for the determination of rules of law: judicial decisions of some regional and national courts and also teachings of the most highly qualified publicists(such as Amnesty International and the International Commission of Jurists)

Chapter Two: Human Rights Systems :(Substantive Rights, Institutions and Procedures)

The Universal System: The UN System

A. The UN Charter: The Charter's primary aim was

1. To save succeeding generation from the scourge of war and
2. To ensure the maintenance of international peace and security.

- ✓ Within such broad and ambitious objectives, a respect for human rights and fundamental freedoms hold a pivotal place in charter.
- ✓ In other words the United Nations granted respect for human rights the status of one of the fundamental purposes of the organization. Look at (Paragraph 3 of the preamble, Article 1(3), Articles 55 and 56, Article 76(C), Article 13(1)(b), Article 62(2) and (3), and Article 68).
- ✓ When we look at these provisions of the charter *human rights are ranked not an* ad hoc, but of a long-term and constant objective of the United Nations.
- ✓ They set out in the charter as *as one prerequisite for ensuring international peace and security, friendly relations among nations, welfare of peoples and other socioeconomic objectives.*
- ✓ Both the number and the scope of human rights provisions in the UN Charter is prima facie quite impressive in itself when the UN Charters is contrasted with the Covenant of the League of Nations, which was entirely silent on human rights issues.
- ✓ In spite of these efforts however, *the Charter has not adequately addressed the problem of colonialism. Further more While the Charter refers throughout its text to the concept of human rights and fundamental freedoms, their definition is missing, nor does the Charter make any mention of the machinery to be used to secure their observance.*

B. The UDHR

- The task of preparing a declaration was given to the Commission on Human Rights which consists of a drafting committee of eight members chaired by Mrs. Eleanor Roosevelt.
- In 1948 the Commission adopted the draft Declaration and submitted it through the Economic and Social Council to the General Assembly.
- After lengthy discussions, at the Chaillot Palace in Paris, the Declaration was adopted on 10 December 1948.
- The Preamble to the Declaration is significant for several reasons.

1). It refers to the concepts of inherent human dignity and the inalienable nature of human rights as the philosophical sources of the Declaration and inspirations for further development of human rights.(para 1)

2). It announces the advent of a world in which human beings shall enjoy freedom of speech belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people(para 2

3). It set out the rights and freedoms contained in the Declaration as a common standard of achievement for all peoples and nations.

- The operative part of the Declaration can be divided into three groups of provisions.
- The **first group** (Article 1) contains an affirmation of the philosophical foundations of human rights by saying that human beings are born free and equal in dignity and rights.
- They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.
- The **second group** of provisions proclaims a number of *general principles* which include the principle of equality and non-discrimination (Article 2) and others.
- The principles plays a fundamental role in the whole of human rights law.
- The **third group is it Substantive** part. Substantivly rights in the Declaration contains civil and political rights(in Articles 3 to 21) as well as economic, social and cultural rights(22-27).
- The Declaration has established the very first international catalogue of human rights as a common standard of achievement for all peoples and all nations.
- This model catalogue may thus be said to play also the role of the first definition of human rights, the definition which is missing from the UN Charter
- *It opened the way for what may be regarded as the codification and progressive development of human rights in international law.*
- All in all, UDHR is one of the best legal instruments on human rights ever adopted.

C. The Covenants on Civil a political and Economic,social and Cultural Rights

- After the adoption of the Universal Declaration, the Commission on Human Rights embased on the second part of “the Bill of Human Rights” namely the development of norm that were undisputedly binding on those states that choose to adhere to them. .I.e. ICCPR and ICSECR and its two optional protocols(Bill of rights).
- As of January 2001, 146 states are parties to the Covenant on Civil and Political rights and 142 states to the covenant on Economic, Social and Cultural Rights.

ICCPR

- It contains 53 articles, of which 27 are of a normative character and the left are more procedural nature.
- It has optional protocol establishing a procedure for individual complaints, and a second optional protocol, adopted in 1989 aiming at the abolition of the death penalty.
- As of January 2001, 98 states are parties to the first protocol and 45 states to the second.
- Pursuant to Article 28 of the Covenant, a Human Rights Committee is established, consisting of 18 members, who are nominated and elected by states but who serve in their individual capacity.
- Its mandate is
- ✓ To consider the reports that all states parties are under a duty to submit regularly to the committee,
- ✓ to consider interstate complaint and
- ✓ to deal with the individual complaints that may come before it under the first optional protocol .

ICESCR

- It consists of 31 articles, of which the first 15 are of a normative character and the last 16 of a more procedural nature.
- In its normative articles it sets out many of the fundamentals for the well being and prosperity of an individual.
- Each state party is under an obligation to undertake steps "to the maximum of its available resources with a view to achieving progressively the full realization of the rights recognized in the present covenant, by all appropriate means, including particularly the adaption of legislative measures.
- Much debate had been held on the difficulties to enforce and measure to what extent a state party is fulfilling its obligation under the Covenant. However, several fundamental principles apply, e.g. the important principle of non-discrimination.
- The covenant on Economic, Social and Cultural Rights do not make provision for the establishment of a separate treaty body. ECOSOC) originally; the ECOSOC delegated this work to a special group of government experts. However, in 1985, the ECOSOC decided to instead create the Committee on Economic, Social and Cultural Rights, a body composed of eighteen members,

D The International Convention on the Elimination of All Forms of Racial Discrimination

- It entered into force after having been adopted in 1965 by the General Assembly.
- As of January 2001 has 156 states parties,
- It was the first United Nations human rights instrument outside the provisions on Human Rights in the Charter that established an international monitoring system, including a procedure for individual complaints.
- The convention was essentially the work of the General Assembly itself, in consolation with various other bodies.
- It contains 25 articles, of which the first seven articles are of a normative character.
- The Convention sets out a number of detailed prohibitions and obligations to prevent discrimination based on the grounds of race, color, descent, or national or ethnic origin. States are under an obligation to criminalize dissemination of ideas based on racial superiority and hatred and participation in racial organizations or activities.
- A Committee on the Elimination of Racial Discrimination (CERD), consisting of 18 independent experts created by the states parties after being nominated by such states parties, examines and comments on reports submitted by the parties

E The Convention on the Elimination of Discrimination against Women

- The commission on the status of women was established in the early days of the United Nations, in 1943. In 1967, the General Assembly adopted the Declaration on the Elimination of Discrimination Against Women (CEDAW).
- This was a reaction based on a growing concern that additional means for promoting and protecting equal enjoyment of human rights by women is necessary.
- In 1974 the Commission began drafting a convention. The Convention was adopted by the General Assembly in 1979, which is entered into force in 1981, and has as of January 2001 165 states parties.
- The Convention consists of 30 Articles, of which the first 16 are of a normative character.
- It identifies many areas where there have been a notorious discrimination against women; for example in regard to political and civil rights, economic rights and employment. It calls for equal rights for women, regardless of their marital status. It calls for national legislation to ban discrimination.
- It allows for temporary special measures to accelerate the achievement of equality between men and women.
- The Convention establishes a Committee on the Elimination of Discrimination Against Women consisting of 23 members nominated and elected by states parties but serving in their personal capacity.

F. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

- On 10 December, 1984, another major step was taken when the General Assembly adopted the Convention Against Torture on Other Cruel, Inhuman or Degrading Treatment or Punishment, which entered into force in 1987.
- The Convention has, as of January 2001, 122 states parties
- The Convention provides for a definition of torture in its first article, which includes intentional acts for certain enumerated reasons which causes severe pain or suffering of physical or mental nature for a persons, “When such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public, official or other person acting in an official capacity.
- The Convention establishes a committee Against Torture, consisting of ten members, nominated and elected by states parties but serving in their personal capacity

G. The Convention of the Right of the Child

- The Convention was adopted by the General Assembly in 1989, and entered into force in 1990. It soon received unprecedented support and achieved unique political commitments.
- The Convention on the Rights of the Child is the first specific Human Rights treaty that has achieved an almost Universal adherence.
- As of January 2001 it has 190 states parties and only the United States and Somalia have failed to accede to the Convention. The Convention consists of 54 articles, of which the first 42 are of a normative character.
- The Convention is all encompassing and sets up a holistic approach where civil, political, economic, social and cultural rights are included, all being of importance for safeguarding the dignity of the child and a harmonious development of his personality.

- Four general principles have guided the authors of the Convention, and later been highlighted by the committee on the Rights in the General Guidelines as the core message of the Convention.
- Firstly, the principle of the full and equal value of children and that each child shall enjoy the rights set out in the convention without discrimination (Article 2 and 4 of the Convention.)
- Secondly, the principle that in all actions concerning children the best interest of the child shall be the primarily consideration (Article 3 of the Convention).
- Thirdly, the principle of the right to life does not only entail the right to be protected against being killed but a right to survival and development (Article 6 of the Convention).
- Fourthly, the principle that children, who are capable of forming their own views, shall also have the right to participate and express their views, which shall be duly respected (Article 12 of the Convention).
- The Convention establishes **a Committee on the Rights of the Child**, originally composed of 10 members, but which the states parties in 1995, decided should be enlarged to 18 members.

Reservations and Declarations

- Although it is desirable that states become party to a convention unconditionally, this is often not the case.
- A state may, by formulating reservations, declarations and interpretative statements, seek to limit its domestic application beyond what is permissible under the limitations.
- These deliberate acts may enable a state to participate in a multilateral treaty that it would otherwise be unable or unwilling to participate in.

Reservation

- A reservation is a statement made by a state by which it purports to **exclude** or **alter the legal effect of certain provisions** of a treaty in their application to that state.
- In other words it **seeks to exclude or modify the legal effect** of the treaty's provisions in their application to the state author.
- A state may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:

  (a) The reservation is prohibited by the treaty;

  (b) The treaty provides that only specified reservations, which do not include the reservation in question, may be made; or

  (c) In cases not falling under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

- Reservations often reflect an admission (oppossition) that the country in question *cannot, or will not, bring its conduct up to international standards*

- The effectiveness of a reservation is dependent on its acceptance by other states parties.
- **That is** any other state party may object to it, Unless expressly permitted by a treaty.
- As a rule, a reservation is considered accepted by another state party if that state party has raised **no objection** within twelve months after it has been notified of the reservation (Article 20(5)VCLT).
- Meanwhile, the UN Commission on Human Rights has also stated that reservations should be formulated 'as precisely and narrowly as possible (Resolution 1998/9).
- Thus reservations may thus **not be general**, but must refer to a **particular provision of the covenant and indicate in precise terms its scope in relation thereto.**
- **But is also true that,** General reservations may be encouraged other states to follow suit, and thereby reduce the ability of the state making the reservation to complain when other states make similar reservations.

Declarations

- Some conventions **allow or even require** states parties to make declarations concerning **the extent** to which they are bound by a certain provision. Such statements may relate to the competence of a supervisory mechanism.
- This type of declaration, as provided by the instruments, does not pose major problems.
- **interpretative declarations is** whereby the state party to a treaty indicates merely how it interprets a particular article.
- It seeks **only to clarify the meaning or scope of the treaty provisions**. (i accept the treaty but if it means---- and not include .....)
- Such interpretative declarations may raise certain problems in international law as to their differentiation with reservations.
- One of the major differences between a ‘reservation’ and an ‘interpretative declaration’ lies in the author’s purpose in making that declaration.

Restrictions and Derogation

Restriction

- Conventions and other instruments may contain a number of restrictions or limitations to the rights they stipulate.
- It is only few rights and freedoms are 'absolute'.
- At the same time, such restrictions must be used only to establish the proper limits of the protected right and **not as an excuse for undermining the right itself or destroying it altogether**.
- In general, there must be a **proportionate relationship** between the restriction of the right as such and the reason for the restriction.
- The reasons of limitation to rights guaranted might be the rights of others, by the security of all, and by the just demands of the general(common) welfare, Public morality ,national security in a democratic society'.
- But for a few rights, such as freedom from torture or slavery, no limitations have been formulated.

- Any limitation must comply with the **following minimum requirements**:

- It must not be interpreted so as to jeopardise the essence of the right concerned;
- It must be interpreted strictly in the light and context of the particular right;
- It must be prescribed by law and be compatible with the object and purpose of the instrument;
- It must be based on a law;
- It must be **necessary**; there must be a pressing social need, assessed on a case-by-case basis. The limitation be useful is in itself not sufficient; it must be consistent with other protected rights.
- The restriction must be justified by the protection of a strictly limited set of well-defined public interests(national security, public safety, public order (*ordre public*), the protection of health or morals, and the protection of the rights and freedoms of others.

- Thus, any restriction on the enjoyment of the rights enshrined in human rights instruments must be legally established, non-discriminatory, proportional, compatible with the nature of the rights, and designed to further the general welfare.
- Finally, it is also important to stress that the burden falls upon states parties to prove that a limitation imposed upon the enjoyment of the rights is legitimate.

Derogations

- Some human rights instruments allow states to take measures derogating temporarily from some of their obligations.
- Derogating measures must be of an exceptional and temporary nature.
- The rationale for derogation provisions is to strike a balance between the sovereign right of a government to maintain peace and order during public emergencies, and the protection of the rights of the individual from abuse by the state.
- Thus, the state is allowed to **suspend t**he exercise of some rights when necessary to deal with an emergency situation . *e.g.*, derogation of the right to peaceful assembly

When derogation measures are allowed, such derogations have **to meet several criteria**:

- ✓ There must be a war or general state of emergency threatening the life of the nation;
- ✓ The state of emergency must be officially proclaimed;
- ✓ Measures may not go beyond the extent strictly required by the situation;
- ✓ Measures may not be inconsistent with other obligations under international law; and
- ✓ Measures may not be discriminatory solely on grounds of race, colour, sex, language, religion or social origin.
- ❑ A state availing itself of the right of derogation must **immediately provide justification** for its decision to proclaim a state of emergency and also for **any specific measure** based on such a proclamation.

- However, Article 4(2) of ICCPR, Article 15(2) of ECHR and Article 27(2) of ACHR), a number of rights can **under no circumstances be limited or derogated from.**
- Such rights are often called ***notstandsfest*** - a German term - and include the right to life, freedom from slavery, torture and imprisonment for debt, the principle of legality in the field of criminal law, freedom of thought, conscience and religion and the right to juridical personality.
- The Human Rights Committee, in its General Comment 29 sets out in detail the conditions that must be met in order to derogate from the rights contained in the ICCPR and refers in length to those rights which are not derogable.

Institutions and Procedures

- The numerous human rights conventions under the framework of the United Nations and the regional systems in Africa, the Americas and Europe have led to the creation of a wide range of mechanisms for monitoring compliance with the standards agreed upon.
- There are **two distinctive** types of supervisory mechanism:

a) **Treaty-based mechanism**: supervisory mechanisms enshrined in legally binding human rights instruments or conventions. *e.g.*, the Human Rights Committee and the Committee on the Rights of the Child. The African Commission and future Court on Human and Peoples' Rights, the European Court and commission of Human Rights and the Inter-American Court and Commission of Human Rights are also treaty bodies.

- ✓ The treaty-based procedures are the mechanisms established within the context of a specific human rights treaty.
- ✓ The Convention on the Elimination of All Forms of Racial Discrimination (1965) was **the first** human rights treaty of universal application to provide for a mechanism of supervision.

a) **Non-treaty- based mechanisms**: supervisory mechanisms not based on legally binding human rights treaty obligations.

- ✓ Under the UN framework, the non-treaty-based mechanisms are referred to as 'charter-based' mechanisms,
- ✓ This type of mechanism is based on **the constitution or charter of an intergovernmental human rights forum**, or on decisions taken by the assembly or a representative body of the forum in question. The European Commission against Racism and Intolerance under the Council of Europe is also an example of a regional non-treaty based mechanism.

- The various supervisory procedures established in human rights treaties can be divided into four main groups:

1). Reporting procedures: States parties to them are obliged to report periodically to a supervisory body on the implementation at the domestic level of the treaty in question.

- ✓ They submitt reports on the measures they have adopted which give effect to the rights recognised in the treaty and on the progress made in the enjoyment of those rights.
- ✓ The report is analysed by the relevant supervisory body, which comments on the report and may request the state concerned to furnish more information.
- ✓ The treaty bodies also receive information on a country's human rights situation from other sources, including non-governmental organisations, UN agencies, other intergovernmental organisations, academic institutions, and the press.
- ✓ These reports are mostly used to reports aimed at counter balancing the information submitted by the state.
- ✓ Based on this dialogue, the Committees decide on their concerns and recommendations to the state concerned, referred to as 'concluding observation.
- ✓ All UN human rights conventions contain a reporting procedure: Article 16 of ICESCR, Article 40 of ICCPR, Article 9 of CERD, Article 19 CAT, Article 44 of CRC, Article 18 of CEDAW and Article 73 of CMW

2). **Inter-state complaint procedure**: Some human rights instruments allow states parties to initiate a procedure against another state party, which is considered not to be fulfilling its obligations under the instrument. E.g Article 41 of ICCPR; Article 21 of CAT; Article 11 of CERD set a possiblity.

- ✓ In most cases, such a complaint may only be submitted if both the claimant and the defendant state have recognised the competence of the supervisory body to receive this type of complaint.
- ✓ In practice, inter-state complaint mechanisms are seldom used.

3). **Individual complaint procedure:** In order for an individual to bring a case/communication/petition under a human rights convention, the following requirements have to be met:

a) the alleged violating state must have ratified the convention invoked by the individual;

b) the rights allegedly violated must be covered by the convention concerned; and

c) proceedings before the relevant body may only be initiated after all domestic remedies have been exhausted.

- ✓ At the UN level, individual complaint mechanisms are found under five conventions: in the First Optional Protocol to the ICCPR; Article 22 of CAT; Optional Protocol to the CEDAW; Article 14 of CERD and Article 77 of CMW.

- ✓ The two major stages in any case are known as the '**admissibility' stage and the 'merits' stage**.
- ✓ The 'admissibility' of a case refers to the formal requirements that the complaint must satisfy before the relevant committee can consider its substance.
- ✓ The 'merits' of the case are the substance, on the basis of which the committee decides whether or not the rights under a treaty have been violated.
- ✓ **Procedurally the flow is as follows;** individual complaint----state response---individual comments---decision by concerned committe.
- ✓ There is no appeal against committees' decisions.
- ✓ When a committee decides that the state party has violated a right, or rights, enshrined in the treaty, it invites the state party to supply information within a given time limit on the steps it has taken to give effect to the committee's findings.

4). Inquiries and other procedures: The supervisory bodies may also initiate a visit *in loco* to gather information, or do so as part of a regular visit-programme.

- ✓ One example of a visit-programme - an enquiry – and *in loco* visits procedure - is that set out in Articles 126 and 132 of the Third Geneva Convention (1949), and the provision in Article 143 of the Fourth Geneva Convention providing for on-site visits to places of internment or detention.
- ✓ Mention should also be made of the International Fact-Finding Commission established under Article 90 of Protocol I to the Geneva Conventions.

Non-treaty Based (Charter Based) Mechanisms

A). International Court of Justice (ICJ)

- ✓ It is the principal judicial organ of the UN.
- ✓ All member states of the United Nations are ipso facto parties to the statue of the court.
- ✓ The jurisdiction of the court in all legal disputes concerning:

  (a) the interpretation of a treaty;

  (b)any fact which, if established, would constitute a breach of an international obligation; and

  (c) the nature or extent of the reparation to be made for the breach of an international obligation.

In Addition

- The General Assembly or the Security Council may request the court to give an advisory opinion on any legal question
- Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the court on legal questions arising within the scope of their activities.
- A number of human rights instruments contain provisions where by any dispute between the contracting states relating to the interpretation, application or fulfillment of the instrument may be submitted to the Court at the request of any of the parties to the dispute.
- Thus, with power within its jurisdiction and advisory opinion the ICJ are used to monitor state compliances to its international obligations.

B. Security Council: Under the charter of the United Nations member states have conferred on the Security Council primary responsibility for the maintenance of international peace and security.

- ✓ To shoulder this responsibility, It may investigate any dispute, or any situation which might leads to international friction or give rise to a dispute.
- ✓ When the Security Council determines the **existence of any threat** to the peace, breach of peace, or act of aggression, it may make **recommendations, or decide what measures** shall be taken to maintain or restore international peace and security measures which the security council may initially take include complete or partial interruption of economic relations and of rail, sea, air postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations. If such measures would be, or prove to be, inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.
- ✓ The Security Council has dealt with several human rights problems, including massive and repeated violations in South Africa, Somalia, Haiti, Yugoslavia, and Rwanda; the situation in the occupied Arab territories; the instances of hostage and abduction.

c). United Nations General Assembly: One of the functions of the United Nations General Assembly is to intiate studies and make recommendations for the purpose of 'assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, languages or religion.

- The General Assembly has established a number of subsidiary organs which are concerned with human rights. This include:-

- ✓ The International Law Commission: whose object is the promotion of the progressive development of international law and its codification.
- ✓ The Office of the United Nations High Commissioner for Refugees, which provides protection and assistance for refugees and other displaced persons.
- ✓ The Special Committee on Declaration, or the 'Committee 24', whose principal function is to monitor the implementation of the Declaration on the Granting Independence to Colonial Countries and Peoples.
- ✓ Committee on the Exercise of the Inalienable Rights of the Palestinian People,

D). Economic and Social Council : is authorized by the charter of the United Nations to make recommendations for the purpose of promoting respect for, and observance of human rights and fundamental freedoms for all.

E. UN Human Rights Council : The Commission on Human Rights is the principal functional organ of the United Nations concerned with human rights.

- ✓ It consists of fifty-three members-all-states-who are elected from time to time by ECOSOC.
- ✓ it is this body that drafted the UDHR, the ICCPR and ICESR, and all the principal human rights instruments.

F. International Lab-our Organizations (ILO)

- The ILO as a specialized agency of the UN system has long been concerned with labor rights.
- It has developed several complicated procedures for monitoring state behavior in the area of labor rights

Regional Human Rights systems

- **The European Human Rights System:** In May 1948, 800 prominent members of the various sectors of the European Community drawn from nineteen European states(politicians, lawyers and those active in wartime resistance movements) met in The Hague, under the auspices of the International Committee of Movements for European Unity, to demonstrate their support for the cause of Europeans Unity.
- The immediate consequence of the Hague Congress was the creation, one year later of the Council of Europe Comprising two principal organs, a Committee of Ministers and a Parliamentary Assembly.
- Twelve states signed the EHCR in Rome on 4 November 1950. It entered into force in September 1953, and has now been ratified by all member states.

- **The Inter-American Human Rights System:** The Charter of the Organization of American States (OAS) was singed on 30 April 1948 at the Ninth International Conference of American States convened in Bogota. The Charter enters into force on 13 December 1951.
- In 1959, in Santiago, the fifth meeting of consultation of ministers of foreign affairs adopted a resolution creating the Inter-American Commission on Human Rights. In 1965, the Commission was authorized to examine and report on communication submitted to it, thereby initiating an individual petition system.
- In 1970, the protocol of Buenos Aires which amended the Charter changes the status of the commission from an 'autonomous entity' into one of the principal organs of the OAS.
- **The African Human Rights System:** The other regional human rights instrument is the African Charter on Human and Peoples' Rights (ACHPR).
- The draft prepared by African experts was considered at two sessions of the conference of OAU Ministers of Justice held in Gambia in 1980 and 1981.
- In June 1981, the ACHPR was unanimously adopted at the Nairobi Assembly of Heads of states and Government of the OAU.
- It became operative in October 1986, and an African Commission began functioning on 2 November 1987.
- In 1998, the thirty-fourth summit of Head of State and Government of the OAU adopted a protocol to the ACHPR for the establishment of an African Court on Human and People's Rights

- **The Arab and Asian Human Rights Systems:** The Arab and Asian states have not yet created regional human rights regimes, but some steps have been taken in that direction.
- In 1968, the Council of the Arab League adopted a resolution relating to the creation of a Permanent Arab Commission on Human Rights.
- On September 15, 1994, the League of Arab States approved an Arab Charter on human Rights building on earlier texts adopted by regional non-governmental organizations and inter-governmental organizations.
- The Charter has not yet entered into force.
- It requires acceptance by seven states before it comes into force. As of January 1, 1998, only Egypt had ratified the Charter. Iraq signed it on February 5, 1996.

- **In Asia**, despite efforts by NGOs and the U.N., governments in the region have been unwilling in general to ratify global human rights instruments, or create a regional human rights system.
- As of March 1998, for instance, 27 states in the region, including virtually all Pacific Island States, had not signed or ratified either the UN Covenants or the Torture Convention.
- The vastness of geographical scope of the region, the vast differences in culture, language, political ideology and economic development among nations

Chapter three: Systems of Protection for Vulnerable Groups

- There are particular groups who, for various reasons, are weak and vulnerable and consequently require special protection for the equal and effective enjoyment of their human rights.
- Often human rights instruments set out additional guarantees for persons belonging to these groups; *i.e.,* the Committee on Economic, Social and Cultural Rights has repeatedly stressed that the ICESCR is a vehicle for the protection of vulnerable groups within society, requiring states (parties) to extend **special protective measures** to them and ensure some degree of **priority consideration**, even where in the face of severe resource constraints.
- These group include:-1) women and girls; 2) children; 3) refugees; 4) internally displaced persons; 5) stateless persons; 6) national minorities; 7) indigenous peoples; 8) migrant workers; 9) disabled persons; 10) elderly persons; 11) HIV positive persons and AIDS victim

Women's rights

- Women are subject to discrimination in all **stages of life**; in income, education, health and participation in society and they are particularly vulnerable to specific violations such as gender-based violence, trafficking and sex discrimination.
- Various international bodies have been established with the aim of eradicating policies, actions and norms that perpetuate discrimination against women and violate women's human rights.**For instances**, the UN Charter and the International Bill of Human Rights (see *e.g.* Article 3 of ICESCR and Article 3 of ICCPR) proclaim equal rights for men and women and ban discrimination on the grounds of sex.
- In addition to these instruments. the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949), the UN Convention on the Political Rights of Women (1952) and the UN Convention on the Nationality of Married Women (1957). Furthermore, the Rome Statute of the International Criminal Court (1998) Article 7 establishes that rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation and other forms of sexual violence are each to be considered a crime against humanity.

- In addition to this general instruments, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW is one of the most important instruments for the protection of women

- This Convention sets out **internationally accepted principles and measures** to achieve equal rights for women everywhere

- ✓ It sets out equal rights for women, regardless of their marital status, in all fields - political, economic, social, cultural and civil and calls for national legislation banning discrimination.
- ✓ It allows for temporary special measures ('affirmative action') to accelerate the achievement of equality in practice between men and women (Article 4), and actions to modify social and cultural patterns that perpetuate discrimination (Article 5).
- ✓ requir Other measures aim at equal rights for women in political and public life (Article 7);
- ✓ equal access to education and equal choice of curricula (Article 10);
- ✓ non-discrimination in employment and pay (Article 11); and
- ✓ guarantees of job security in the event of marriage and maternity (Article 11).
- ✓ call for non-discriminatory health services for women, including services related to family planning, and equal legal capacity to that of men.

States Parties agree that all contracts and other private instruments that restrict the legal capacity of women'shall be deemed null and void' (Article 15).

Special attention is given to the problems of rural women (Article 14).

- ❑ However, the effectiveness of the Convention in promoting the rights it contains is **significantly undermined by the numerous reservations** made by States Parties.
- ❑ Most reservations aim to preserve religious and national institutions that are contrary to the rights guaranteed and many are obviously incompatible with the object and purpose of the Convention
- On 6 October 1999, the General Assembly adopted an Optional Protocol to the CEDAW, which entered into force in 2000.
- The Protocol establishes a procedure that allows individual women, or groups of women, to submit claims of violations of rights protected under the Convention to the CEDAW Committee.
- In July 2004, only 60 out 177 states had ratified the Optional Protocol.

Supervision

- The CEDAW establishes the Committee on the Elimination of Discrimination Against Women to oversee the implementation of the rights it guarantees.
- This is done principally by examining reports submitted by states parties, but in 1999, an optional protocol expanded the powers of the Committee to include competence to receive individual complaints.
- The Optional Protocol also establishes a distinctive feature: an inquiry procedure that allows the Committee to initiate investigations into suspected grave or systematic violations by a state party of the rights contained in the Convention.
- In this regard the Committee can carry out visits to the country in question.
- The Committee has contributed significantly to the interpretation of the obligations imposed by the Convention through its General Recommendations which have dealt with **several issues** of utmost importance for women like violence against women, equal renumeration for work of equal value,female curcumstaion and etc.
- The committe didnot recieved and intertained individual complaints so far.

The rights of the child

- Every child has the right to grow to adulthood in health, peace and dignity.
- Ensuring the rights of children to health, nutrition, education, and social, emotional and cognitive development is imperative for every country and entails obligations for every government.
- **Due to thier attachment to thier mother and hence women** are still primary care-givers for children, so ensuring women's rights is positively linked to children's enjoyment of human rights.
- There are different legal instruments in relation to the protection of the rights of children which include:- a Declaration on the Rights of the Child by leage of nation(1924), UNGA Declaration on the Rights of the Child(1959)and the Convention on the Rights of the Child (CRC) on 20 November 1989.

❑ **Four general principles** have guided the authors of the Convention(art.1)

✓ The principle of non-discrimination (Article 2);

✓ The best interests of the child (Article 3);

✓ The right to life, survival and development (Article 6); and

✓ Respect for the views of the child (Article 12).

- Underpinning the CRC are **three core concepts**; protection, provision and participation:

A) protection against, *e.g.*, violence, abuse, neglect, maltreatment or exploitation (Article 19);

B) provision of, *e.g.*, name and nationality (Article 7), social security, adequate standard of living and education (Articles 26 to 28);

C) participation through the right of a child to express its views, to freedom of thought and to freedom of association (Articles 12 to 15).

- It is the first instrument to specifically grant child rights and **protection as autonomous human beings**.

- However, Some international instruments contain more protective clauses than the CRC. For instance, Article 32 CRC regarding child labour does not explicitly define a minimum age for admission to employment.
- ILO 138 stipulates that the minimum age for admission to employment or work shall not be less than 15 years and that developing countries may initially specify a minimum age of 14 years.
- Similarly, while the CRC forbids recruitment of children below 15 years for the armed forces, Article 77 of Protocol I to the Geneva Conventions of 1949, affords superior protection as regards recruitment of children between 15 and 17 years of age.

- **Two optional protocols** to the CRC were adopted by the UNGA in 2000.
- The first Optional Protocol to the CRC, on the Involvement of Children in Armed Conflict aims raising the minimum age of individuals taking part in armed conflict to 18 and includes a unique provision stipulating that non-state forces should not recruit persons under 18.
- The Second Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography stipulates. Here the states have to ensure that certain acts against children are criminalised, and that states are obliged to prosecute or extradite offenders under their jurisdiction.
- Regional human rights instruments have also set for the protection of children's rights in thier different legal instruments.

Supervision

- The CRC establishes the Committee(10 members) on the Rights of the Child to supervise the progress made by the states parties in achieving the realisation of their obligations contained in the Convention, hence individual compliants mechanisms.
- The Committee also adopts General Comments for the interpretation of the rights contained in the CRC after assessing state reports.
- A mention should be made of the United Nations Children's Fund **(UNICEF),** one of the key organisations concerned with children's rights.
- UNICEF was created in 1946 with aim of providing European children facing famine and disease with food, clothing and health care.
- The organisation focuses on improving the child's environment, the improvement of primary health care, water supply, nutrition, education and community development.

Minority protection regime
The rights of indigenous people

- There is no all agreeable definition of Indeginous people so far . But Mr Martinez Cobo, the rapporteur of the Sub-Commission, defined indeginous people that consists the following important elements.
- ✓ Indigenous peoples have **a strong affinity with the land they live on**. Their environment is essential for their survival as a **cultural entity**; it is decisive for their **social and cultural conditions**;
- ✓ They are **not dominant** in their present national society, usually they have little if any influence on state policy;
- ✓ They generally **speak their own language** and have common cultural qualities; and
- ✓ Their political/organisational structure is generally of a **decentralised nature.**
- Some estimated 5,000 indigenous peoples comprising around 300 million persons live in more than 70 countries from the Arctic to the Amazon.
- The Mayas in Guatemala, the Inuit in Canada, the Masai in Tanzania, and the Naga in India are good examples of these people.

- The first international standard on indigenous populations was ILO in 1957.
- Since the 1970s, the United Nations has been involved in initiatives, frequently in co-operation with the ILO and the OAS, concerning the development of specific standards for the protection of indigenous peoples.
- In 1982, the UN Working Group on Indigenous Populations was created.
- One of its commitments was the drafting of a Declaration on the Rights of Indigenous Populations, which was adopted by the Sub-Commission in August **1994**.
- The draft Declaration consists of 45 articles, including the definition.
- As of July 2004, there was still no consensus on a draft text; indigenous peoples and governments differ on issues related to the right to self-determination, collective rights and the exclusive right to use natural resources that guarnted by the draft declaration to these group of people.

Supervision

- At the UN treaty-based level, the Human Rights Committee has been called upon several times by indigenous persons to decide on possible infringements of their human rights.
- Three charter-based bodies have been **established to** deal with issues relating to indigenous peoples at the UN:

a) **The Special Rapporteur** on the Situation of Human Rights and Fundamental Freedoms of Indigenous People. For instance, In 2001, the UN Commission on Human Rights appointed a Special Rapporteur **Rodolfo Stavenhagen**, from Mexico, on the Situation of the Human Rights and Fundamental Freedoms of Indigenous People, in response to the growing international concern regarding the marginalization and discrimination against indigenous people worldwide (Resolution 2001/57).

✓ The Special Rapporteur has under his mandate addressed a wide range of human rights issues.

✓ He has, for instance, formulated a proposal for a definition of indigenous peoples, and addressed the role of intergovernmental and non-governmental organisations, the elimination of discrimination, and basic human rights principles, as well as special areas of action in fields such as health, housing, education, language, culture and etc.

b) the **Working Group** on Indigenous Populations: Working Group on Indigenous Populations has a two-fold mandate:

I) to **review developments** pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous peoples; and

2) to give attention to the evolution of international standards concerning indigenous rights.

This in addition to facilitating and encouraging dialogue between governments and indigenous peoples,

c) the **Permanent Forum on Indigenous Issues**: it serves as an advisory body to the Economic and Social Council, with a mandate to discuss indigenous issues relating to economic and social development, culture, the environment, education, health and human rights

Protection of disabled persons

- Persons with disablities are **mostly excluded** from participation in society and denied their human rights.
- Discrimination against the disabled can take many forms, ranging from limited educational opportunities to more subtle forms, such as s**egregation and isolation** because of physical and social barriers.
- The effects of discrimination are most clearly felt in the sphere of **economic, social and cultural rights,** in the fields of, for instance, housing, employment, transport, cultural life and access to public services.
- International human rights instruments protect the rights of persons with disabilities through the **principles of equality and non-discrimination.**
- **While UDHR expresely refered disabled persons,ICCPR and ICESCR are silent about the rights of these gropus of people even thougght some of thier articles has relevence for protection their rights.**
- Several international and regional human rights instruments contain specific provisions concerning persons with disabilities. **For instances,** the African Charter of Human and Peoples' Rights stipulates Article (18(4)), CRC(Article 23), The revised European Social Charter(15).

- **Two international conventions dealing directly with the rights of disabled persons have been drafted**.
- 1). Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities 1999).
- It is the only **regional convention of its kind in the world**.
- 2). ILO 159 concerning Vocational Rehabilitation and Employment (Disabled Persons) (1983).
- Specific non-binding instruments have also been adopted at the international level addressing the rights of disabled persons. These instruments include the Declaration of the Rights of Mentally Retarded Persons , the Declaration on the Rights of Disabled Persons ,the World Programme of Action concerning Disabled Persons and etc.

Supervision

- In 1994, the position of **Special Rapporteur** on Disability of the United Nations Commission for Social Development was established.
- The task of the Special Rapporteur is to monitor implementation of the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities and to advance the status of people with disabilities throughout the world.
- Furthermore, under the auspices of the UN, the **Division for Social Policy and Development** of the United Nations Secretariat is the focal point on matters relating to disability.
- It deals, *inter alia,* with the promotion, monitoring and evaluation of the implementation of the World Programme of Action and the Standard Rules.
- It prepares publications, promotes national and international programmes and works closely with and supports governments and NGOs in the field of disability.
- In 1982, **World Programme of Action** concerning Disabled Persons (WPA) was adopted by the General Assembly.
- The WPA emphasises the need to approach disability from a human rights perspective and that persons with disabilities should not be treated in isolation, but within the context of normal community services.
- In order to provide a time frame for the implementation of the World Programme of Action, the General Assembly proclaimed 1983-1992 the United Nations Decade of Disabled Persons

Elderly Persons

- As the world's population ages and the traditional role of the family as the main support of older people weakens, the elderly are increasingly vulnerable to abuse and various forms of negative stereotyping and discrimination. For instancers, In developing countries with limited social security systems, the emigration of the younger members has left the elderly, traditionally cared for by members of their families, to fend for themselves.
- The rights stipulated for the elderly in international instruments stem from the **principles of dignity and non-discrimination.**
- Neither the UDHR nor its derivatives, the ICCPR and ICESCR , contain **any explicit reference to older persons**, but many provisions of these instruments are of direct relevance to ensuring equal opportunities and the full participation of the elderly.However, ICESCR Committee expressly addresses the economic, social and cultural rights of older persons in **General Comment No. 6.**
- Three regional human rights instruments expressly mention older persons as a group in need of special protection.African Charter(18(5), The Revised European Social Charter(23) and Protocol San Salvador(17)

- **No convention expressly dealing with the rights of the elderly has been adopted** - as in the case of women and children - a number of steps towards the improvement of the lives of older persons have been taken under the auspices of the United Nations.For instances, the Vienna International Plan of Action on Ageing(1982), the United Nations Principles for Older Persons(1991), Proclamation on Ageing(1992), A Second International Plan of Action on Ageing(2002).

❑ This plan includes a number of central themes setting out goals, objectives and commitments.

These include:

(a) The full realisation of all human rights and fundamental freedoms of all older persons;

b) The achievement of secure ageing;

c) Empowerment of older persons;

d) Provision of opportunities for individual development;

e) Ensuring the full enjoyment of all human rights, and the elimination of all forms of violence and discrimination against older persons;

f) Gender equality among older persons;

g) Recognition of the importance of families;

h) Provision of health care, support and social protection for older persons; and

k) Recognition of the situation of ageing indigenous persons

Supervision

- Several supervisory bodies are progressively developing the application of their respective instruments to afford protection to this group and now concluding observations frequently offer recommendations on the protection of elderly persons. For example, the Concluding Observations of the ICESCR on Jamaica E/2002/22 (2001); CEDAW Committee on Iceland A/57/38 (2002) and CERD Committee on Iraq CERD/C/304/Add. 28 (1997)).
- Plus the UN Commission for Social Development is responsible for follow-up and appraisal of the implementation of the 2002 International Plan of Action on Ageing.

Refugees

- The followings documents can be considred as cornerstone documents for protections of refuge erights.

✓ The UDHR,

✓ The 1950 UNHCR(the Office of the United Nations High Commissioner for Refugees)

✓ The 1951 UN Convention Relating to the Status of Refugees and

✓ The 1967 Protocol(the Protocol relating to the Status of Refugees).

❑ While the international community has generally responded swiftly and generously to refugee crises in the past 50 years, some worrying trends are emerging.

❑ Current refugee movements frequently take the form of mass exoduses rather than individual flights and many of today's refugees do not fit the definition contained in the 1951 Convention.

- According to this convention a refugee is someone who has a **well-founded fear of persecution because of his/her ,**Race ,
  Religion ,Nationality ,Membership in a particular group, or Political opinion and
  Is outside his/her country of origins; and unable or unwilling to avail him/herself of the protection of that country, or to return there, for fear of persecution.

- In general, asylum will not be granted if the person concerned can enjoy protection elsewhere.
- However, there can be situations in which it would be inhumane to return someone who does not fulfil the criteria for refugee status under the Refugee Convention. This can be the result of general circumstances in the country of origin such as, for example, war and hunger, the risk of torture or cruel, inhuman or degrading treatment or punishment upon return.
- Granting of asylum may therefore imply both admission as refugee on the basis of the 1951 Convention and permission to stay on humanitarian grounds.
- The 1951 Convention specifies who is a refugee and what rights a refugee has, once she/he has been recognised as such. In Article 33, the principle of *non-refoulement* is established.
- This principle forbids states to expel or return a refugee, in any manner whatsoever, to the frontiers of territories where his/her life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion.
- The *non-refoulement* principle also encompasses non-rejection at the border and can oblige a state to accept a person on its territory.

- The 1951 Convention also includes ‘exclusion clauses’, which stem from the understanding that the commission of some types of crimes justifies the exclusion of the perpetrators from the benefits of refugee status.

The 1951 Convention does not apply to persons with regard to whom there are ‘serious reasons’ for considering they have committed the following crimes:

a) Crimes against peace, war crimes and crimes against humanity;

b) Serious non-political acts; and

c) Acts contrary to the purposes and principles of the United Nations.

- The 1951 Convention Relating to the Status of Refugees, as amended by the 1967 Protocol Relating to the Status of Refugees, is the most important international instrument protecting the rights of refugees.
- It says,Refuge is *[A]ny person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.*
- In addition to international and regional refugee conventions, international human rights law and international humanitarian law play a significant role in guaranteeing international protection of refugees.E.g ICCPR(7),CAT(3),CRC,Fourt Geneve Convention(44)

Supervision

- Both the 1951 Convention (Article 35) and its 1967 Protocol (Article II) bestow upon UNHCR responsibility for supervising implementation by states.
- UNHCR was created to provide international protection to refugees and to find durable solutions to refugee problems.
- These functions include:

1) securing legal and practical protection to refugees with and through governments,

2). overseeing the mobilisation and co-ordination of resources for the well-being and survival of refugees and

3). encouraging conditions in conflict zones that will allow refugees to return voluntarily to their countries of origin.

In addition to providing protection to refugees, UNHCR's mandate has been expanded to include persons in refugee-like situations, internally displaced persons, stateless persons, and returnees (refugees who have returned to their own countries).

- UNHCR seeks **long-term and durable solutions to refugee problems** by helping refugees return voluntarily to their home countries if the situation allows it; monitoring the treatment and promoting the reintegration of returnees after repatriation has taken place; helping refugees integrate in their countries of asylum and resettling refugees to third countries when needed.

Stateless person

- A stateless person is the person who is **not considered a national of any state under operation of its law**.
- Statelessness occurs for many different reasons.

✓ May be because of extended stay abroad or

✓ because of marriage or dissolution of marriage to a person of a different nationality.

✓ In the case of children, if they are born to stateless persons or refugees, or in some cases out of wedlock, they may be denied citizenship.

✓ faulty administrative practices, such as excessive fees or the failure to be notified of registration or other obligations.

✓ Governments may change their nationality laws and deny certain groups nationality under the new laws in order to marginalise them or to facilitate their expulsion from the state's territory.

✓ The transfer of territory or sovereignty or the disintegration and formation of new states may leave thousands of people stateless or with disputed claims of citizenship.

- The disintegration of several states, the rise of ethnic consciousness in many parts of the world and the fear of large-scale population movements involving stateless persons at the end of the Cold War led to a profound change in international relations and forced the issue of statelessness onto the agenda of the international community
- Nationality and citizenship provide a legal basis for the exercise of many human rights.
- Persons without a nationality are in many countries denied numerous human rights that citizens take for granted, like access to schools and medical care, ownership of property, marriage and foundation of a family and enjoyment of legal protection

Supervision

- Similar to the situation of IDPs, there is today **no specific body that deals with the problem of statelessness.**
- **UNHCR** was provisionally asked to assume the responsibilities.
- The High Commissioner's Executive Committee and the UN General Assembly to adopt and endorse the Conclusion on the Prevention and Reduction of Statelessness and the Protection of Stateless Persons (Resolution 50/152). In addition, UNHCR was requested to 'actively promoteTo this end, UNHCR has taken a number of practical steps to strengthen its efforts with regard to stateless persons. It has appointed a legal expert on the problem of statelessness, and has actively assisted governments in the preparation and implementation of nationality legislation while encouraging them to accede to the 1954 and 1961 statelessness conventions.

Migrant workers

- Traditionally, poverty and the inability to earn a decent living are major reasons behind migration from one country to another, as well as war, civil strife, insecurity and persecution arising from discrimination. But migrant workers and their families frequently find themselves in situations of vulnerability in their host countries, in part due to their living and working outside of their state of origin.
- Migrant workers often face discrimination in terms of employment: exclusion from certain jobs, difficulty in access to vocational training and contracts that are inferior to those of nationals.
- Historically, the rights of migrant workers have fallen under general diplomatic protection, based on the international law governing the treatment of non-nationals.
- In 1990, the UNGA adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Familis.
- The Convention does not create new rights for migrants, but aims at guaranteeing equality of treatment and the same working conditions for migrants and nationals, as well as guaranteeing the rights of migrants to maintain ties to their countries of origin. milies .

Supervision

- The International Convention on the Protection of **the Rights of All Migrant Workers and Members of Their Families provides for the establishment of a Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families**
- In 1997, the UN Commission on Human Rights established the Working Group of Intergovernmental Experts on the Human Rights of Migrants with a mandate to gather all relevant information on the obstacles existing to the effective and full protection of the human rights of migrants, and to elaborate recommendations to strengthen the promotion, protection and implementation of the human rights of migrants.
- In 1999 the Commission appointed a Special Rapporteur on the human rights of migrants, to examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of migrants, including obstacles and difficulties for the return of migrants who are non-documented or in an irregular situation

HIV Positive Persons and AIDS Victims

- HIV positive persons and AIDS victims are often subject to violations of many rights; some economic and social such as work-related rights and access to health care facilities, but also in relation to the enjoyment of civil rights, such as the right to privacy and freedom of movement.
- The key human rights principles essential for effective protection of people with HIV/AIDS are to be found in existing international instruments, such as the ICESCR; ICCPR; CEDAW; CAT; CERD; and the CRC

Chapter Four: Culture, Globalization and Human Rights

Universal Human Rights and Cultural Relativism

- ✓ How can universal human rights exist in a culturally diverse world?
- ✓ As the international community becomes increasingly integrated, how can cultural diversity and integrity be respected? Is a global culture inevitable?
- ✓ If so, is the world ready for it?
- ✓ How could a global culture emerge based on and guided by human dignity and tolerance?

These are some of the issues, concerns and questions underlying the debate over universal human rights and cultural relativism.

Cultural relativism

- Cultural relativism is the assertion that human values, far from being universal, vary a great deal according to different cultural perspectives.
- Some would apply this relativism to the promotion, protection, interpretation and application of human rights which could be interpreted differently within different cultural, ethnic and religious traditions.
- According to this view, human rights are culturally relative rather than universal.
- This relativism would pose a dangerous threat to the effectiveness of international law and the international system of human rights that has been painstakingly constructed over the decades.
- If cultural tradition alone governs State's compliance with international standards, then widespread disregard, abuse and violation of human rights would be given legitimacy

- Accordingly, the promotion and protection of human rights perceived as culturally relative would only be subject to State discretion, rather than international legal imperative.
- By rejecting or disregarding their legal obligation to promote and protect universal human rights, States advocating cultural relativism could raise their own cultural norms and particularities **above international law and standards**.

Universal Human Rights and International Law

- Human rights are emphasized among the purposes of the United Nations as proclaimed in its Charter, which states that human rights are "for all without distinction".
- Accordingly Human rights are the natural-born rights for every human being, universally. They are not privileges.
- The Charter and other subsequent covenants and conventions further commits the all Member and signatory States to action promoting "universal respect for, and observance of, human rights and fundamental freedoms.
- The universal nature of human rights is literally written into the title of the UDHR. Its Preamble proclaims the Declaration as a "**common standard** of achievement for all peoples and all nations".

- Furthermore the Vienna Declaration and programme of Action of 1993 continues to reinforce the universality of human rights, stating, "All human rights are universal, indivisible and interdependent and interrelated".
- This means that political, civil, cultural, economic and social human rights are to be seen in their entirety. One cannot pick and choose which rights to promote and protect. They are all of equal value and apply to everyone.
- According to this declaration "the universal nature" of all human rights and fundamental freedoms is "beyond question".
- It is clearly stated that the **obligation of States** is to promote universal respect for, and observance of, human rights.
- **Not selective, not relative, but universal respect**, observance and protection, **regardless of particular cultural perspectives**

- To deny human rights on the grounds of cultural distinction is discriminatory.
- PPL of Non-discrimination protects individuals and groups against the denial and violation of their human rights on any grounds including culture.
- If a State dismisses universal human rights on the basis of cultural relativism, then rights would be denied to the persons living under that State's authority.
- The denial or abuse of human rights is wrong, regardless of the violator's culture.

Human Rights, Cultural Integrity and Diversity

- Universal human rights do not impose one cultural standard, rather one legal standard of minimum protection necessary for human dignity.
- As a legal standard adopted through the United Nations, universal human rights represent the hard-won consensus of the international community, not the cultural imperialism of any particular region or set of traditions.
- Like most areas of international law, universal human rights are a modern achievement, new to all cultures.
- Human rights are neither representative of, nor oriented towards, one culture to the exclusion of others.
- Universal human rights reflect the dynamic, coordinated efforts of the international community to achieve and advance a common standard and international system of law to protect human dignity.

Inherent Flexibility

- universal human rights emerge with sufficient flexibility to respect and protect cultural diversity and integrity.
- The flexibility of human rights to be relevant to diverse cultures is facilitated by the **establishment of minimum standards** and the incorporation of cultural rights.
- States have maximum room for cultural variation without diluting or compromising the minimum standards of human rights established by law.
- These minimum standards are in fact quite high , requiring from the State a very high level of performance in the field of human rights.
- The Vienna Declaration provides explicit consideration for culture in human rights promotion and protection, stating that "the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind".

- Human rights which **relate to cultural diversity and integrity** encompass a wide range of protections, including: the right to cultural participation; the right to enjoy the arts; conservation, development and diffusion of culture; protection of cultural heritage; freedom for creative activity; protection of persons belonging to ethnic, religious or linguistic minorities; freedom of assembly and association; the right to education; freedom of thought, conscience or religion; freedom of opinion and expression; and the principle of non-discrimination.

Cultural Rights

- Every human being has the right to culture, including the right to enjoy and develop cultural life and identity. Cultural rights, however, are not unlimited. The right to culture is limited at the point at which it infringes another human right.
- This means that cultural rights cannot be invoked or interpreted in such a way as to justify any act leading to the denial or violation of other human rights and fundamental freedoms.
- As such, claiming cultural relativism as an excuse to violate or deny human rights is an abuse of the right to culture.
- In now a days, cultural rights do not justify torture, murder, genocide, discrimination on grounds of sex, race, language or religion, or violation of any of the other universal human rights and fundamental freedoms established in international law. Any attempts to justify such violations on the basis of culture have no validity under international law.

A Cultural Context

- Traditional cultures should be approached and recognized as partners to promote greater respect for and observance of human rights if they are in line the minimum standard.
- Drawing on such compatible practices and common values from traditional cultures would enhance and advance human rights promotion and protection.
- This insight would enable human rights advocacy to assert the cultural relevance, as well as the legal obligation, of universal human rights in diverse cultural contexts.
- Recognition and appreciation of particular cultural contexts would serve to facilitate, rather than reduce, human rights respect and observance.
- Working in this way with particular cultures inherently recognizes cultural integrity and diversity, without compromising or diluting the unquestionably universal standard of human rights

Globalization, Development and Human Rights

- The relation between globalization, development and human rights raises policy and legal questions. One such question is whether globalization of market-oriented economic system is essential for development and protection of human rights?
- Human rights have become an integral part of the process of globalization in many ways.
- However it tends to intensifies impoverishment by increasing the poverty, insecurity, fragmentation of society and thus violates human rights and human dignity of millions of people.

- To curb these effects ,**the Preamble of the Declaration of the Right to Development, adopted by the UN General Assembly in 1986**, describes "development as a comprehensive economic, social, cultural and political process that aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of resulting benefits".
- Furthermore, the 1990 **UN Global Consultation on the Right to Development** as a Human Right, stated that the right to development is an inalienable human right with the human being as the central subject to the right and that all the aspects of the right to development set forth in the Declaration of the Right to Development are indivisible and interdependent, and these include civil, political, economic, social, and cultural rights.
- It was further maintained that the right to development is the right of individuals, groups and peoples to participate in, contribute to, and enjoy continuous economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.
- A development strategy that disregards or interferes with human rights is the very negation of development.
- **However the global integration of the structures, processes, and ideologies produce injustice, oppression, exploitation and mal-development in society**. The systematic integration of the forces that are dominant in the globalization process intensifies human rights violations.

Development Aid and Human Rights

- The General Assembly has, by consensus resolutions, called for such development aid to reach 0.7 per cent of the GNP of developed countries. Actually less than half of that target has been attained. For example, the United States gives only less than 0.2 per cent, instead of 0.7 per cent.
- Overseas Development Aid (ODA) presents debatable issues from the perspective of human rights.
- Donor countries tend to emphasize their narrow concepts of human rights as a prerequisite to sanction development assistance.
- They also emphasize the pragmatic political fact that aid is not likely to be provided if the beneficiary states violated basic human rights.

Trade and Human Rights

- Global trade is being liberalized and opened up in this era of globalization.
- Even though A UN Commission on Transnational Corporations attempt to draft Code of Conduct that requiring transnational corporations to respect human rights and fundamental freedoms in the countries where they operate, it has failed
- The TNCs which have **gained strength** in the post-globalization era is the main actor in several developed countries in formulating new foreign policies to shape a new global order that at the end of the day violate human rights .
- A few hundred corporate giants, many of them bigger than most sovereign nations are engaging in d/t business activities that violate HR directly or indirectly.
- By acquiring earth-spanning technologies, by developing products that can be produced anywhere and sold everywhere, by spreading credit around the world, and by connecting global channels of communication that can penetrate any village or neighborhood, these institutions we normally think of as economic rather than political.
- private rather than public, are becoming the world empires of the twenty-first century.

Impact of Globalization on Human Rights

- With the expansion of trade, market, foreign investment, developing countries have seen the gaps among themselves widen.
- The imperative to liberalize has demanded a shrinking of state involvement in national life, producing a wave of privatization, cutting jobs, slashing health, education and food subsidies, etc. affecting the poor people in society.
- In many cases, liberalization has been accompanied by greater inequality and people are left trapped in utter poverty.
- The Human Development Report of 1997 revealed that poor countries and poor people too often find their interests neglected as a result of globalization.

CHAPTER FIVE: RESPONSES TO GRAVE VIOLATION OF HUMAN RIGHTS

- ✓ Amnesty International has commented that ‘the twentieth century was perhaps the bloodiest in history.
- ✓ Millions of people were victims of genocide, crimes against humanity, war crimes, torture, extra judicial executions and "disappearances.“For instances,
- ❖ Government forces massacred more than half a million civilians in Indonesia in the mid-1960s in an attempt to suppress communism.
- ❖ Estimates of people killed by the Khmer Rouge regime of Pol Pot in Cambodia vary between 300,000 and 2,000,000.
- ❖ During the rule of Id Amin in Uganda from 1972-1978, more than 250,000 people were killed.
- ❖ In 1994 between 500,000 & 1,000,000 people were killed in the government-directed genocide in Rwanda
- ✓ The systematic & gross violations committed by State officials as an instrument of achieving some policy or by non-state actors like rebel groups in case of civil war
- ✓ Thus it is clear that human rights cannot be realized without having an effective mechanism of dealing with such systematic & gross violations
- ✓ The 21st century is also witnessing similar cruelties and injustices
- There two responses :

1.**National responses -Transitional Justice and**

2.International responses

National responses -Transitional Justice

- It is an accepted principle that violations of rights Including systematic & gross violations shall first be addressed at national level.
- Thus, the perpetrators of such violations/crimes shall be brought to justice at national level.
- The international system of addressing such violations becomes relevant if the domestic system is unable/unwilling to provide remedies.
- The question of addressing such violation at national level doesn't arise unless there is some sorts of transitions. Thus the need is addressed through what is usually referred to as transitional justice.
- Transitional justice broadly signify the mechanisms by which societies in transition deal with past violations.
- It thus represents the various modalities of addressing past violations.

The three main needs that arise in societies in transition are the following:

1) The need for justice. Victims of violations or their relatives and the society at large need to see the perpetrators of the violations are brought to justice.

   It is thus necessary that transitional justice should provide a mechanism by which this need may be satisfied.

2). The need to know the truth. The society in general, and victims or relatives in particular, wants to know who among its members did participate in the violations.

- ✓ As the past violations were committed systematically & grossly, the society, even victims/relatives, may not know all that happened & all the perpetrators & the degree of their participation.
- ✓ Thus, the need to know *who did what & why* is one of the basic issues that may arise at the time of transition.
- ✓ It is claimed that knowing the truth about the past is crucial to build a viable, rights-respecting & democratic society as well as to ensure that violations wouldn't happen again

3. The need for conciliation. There is a general understanding that one groups of the society are victims while others are perpetrators or vice versa. This and other factors are likely to cultivate among members of the society a mentality of suspicion, mistrust & even animosity. A society desirous of moving forward should therefore address this mentality.

- ✓ Society should have a mechanism of reconciling its divided members & building trust, confidence & mutual respect among its members

The modalities of transitional Justice

- ✓ There are certain modalities of transitional justice that are well known & well utilized by different socialites.

a) **Prosecution**: it involves the apprehension of perpetrators, the gathering of evidence, and the filing of criminal charges, judicial hearing and decision according to the law.

- ✓ The main concern here is to maintain the rule of law, international obligation and moral duty to the victim.
- ✓ The duty to prosecute, particularly, exists in relation to grave breaches of IHRL and IHL like War crimes, the crime of genocide, crimes against humanity
- ✓ The rule of law thus requires that no person is exempt from the law.
- ✓ Thus it is a mechanism of fighting impunity.

b). Truth & reconciliation. The main priority of this modality is to reveal truths about the past, create conciliation, and achieve a successful transition.

- ✓ Usually, the commission/authorized organ seeks & documents the truth about the past by this procedure. Members of the society are encouraged to come forward and speak their stories. Thus, both victims/relatives & perpetrators give their statements and such other information relating to the past.

c) **Amnesty. Is** refers to an official act, usually through law, prospectively barring prosecutions of a class of persons for a particular set of actions or events.

- ✓ Amnesties can be blanket or partial; they may be official, with, for example, the passing of a law, or de facto, where a state simply does not prosecute.
- ✓ It is important to keep **two points** in mind. First, these mechanisms are not exhaustive. Other mechanisms may include offering reparations to victims of State-sponsored violence, reforming institutions like the police & the courts, & removing perpetrators from positions of power (lustration). Secondly, they are not exclusive of each other. States may use a combination of these mechanisms to attain the desired goal.
- ✓ A number of factors may influence society's choice including the availability of resources, the relative strength & weakness of the outgoing regime & the incumbent regime, political willingness, & many others.

2. International Responses

- The international response is premised on the conviction that such violations constitutes crimes against the whole nations/international community, and results from the inadequacy/ non-existence of national responses.
- Thus, certain crimes do constitute international crimes for which the perpetrators are held individually responsible.
- The mechanism by which international law ensures that has taken different forms. These include:

(1) the recognition & application of the principle of universal jurisdiction,

(2) prosecution and trial by *ad hoc* international tribunal, and

(3) prosecution & trial by a permanent international tribunal called the International Criminal Court.

1. Application of the principle of Universal Jurisdiction.

- ✓ It is classically defined as ‘a legal principle allowing or requiring a State to bring criminal proceedings irrespective of the location of the crime and the nationality of the perpetrator or the victim’.
- This principle is said to derogate from the ordinary rules of criminal jurisdiction requiring a territorial or personal link with the crime, the perpetrator or the victim.
- The rationale behind it is broader: ‘ it is based on the notion that **first certain crimes are so harmful to international interests** that states are entitled- and even obliged to bring proceedings against the perpetrator, regardless of the crime and the nationality of the perpetrator or the victim’,**second,** no safe havens must be available for those who committed them.
- Universal jurisdiction allows for the trial of international crimes committed by anybody, anywhere in the world.
- There are offences recognized by international law as punishable by any country. These are (i) piracy, (ii) slavery, (iii) war crimes, (iv), crimes against peace, (v) crimes against humanity, (vi) genocide, and (vii) torture. *Eichmann Case* in 1961, the *Demanjuk Case* in 1985, and more recently the *Pinochet Case* in 1999 and the *Butare Four* Case in 2001 are a good examples

- The recognition of universal jurisdiction by the state as a principle is not sufficient to make it an operative legal norm.
- There are basically three necessary steps to get the principle of universal jurisdiction working:

1). the existence of a specific ground for universal jurisdiction,

2).a sufficiently clear definition of the offence & its constitutive elements, and

3). National means of enforcement allowing the national judiciary to exercise their jurisdiction over these crimes.

- ❑ If one of these steps is lacking, then the principle will most probably just remain a pious wish.
- ❑ In practical terms, the gap between the existence of the principle and its implementation remains quite wide.
- ❑ Irrespective of its limited application, the principle of universal jurisdiction provides a mechanism by which the international community responds to some systematic violations of rights that constitute international crimes.

2.Prosecution and trial by *Ad hoc* tribunal

- These tribunals have specific/limited jurisdiction over crimes listed under the instrument creating the tribunal.
- The first among these tribunals is the International Military Tribunal at Nuremberg established by the London Agreement of August 1945. Many Nazi officials were prosecuted before this tribunal.
- Other ad hoc tribunal includes the International Criminal Tribunal for the former Yugoslavia & for Rwanda (ICTY & ICTR respectively).
- The Statutes establishing these tribunals set out the crimes that fall with in the jurisdiction of each tribunal.
- These are ad hoc tribunal established to address certain crimes committed in certain geographic location or during specific period
- These tribunals are established pursuant to the Decision of the UN Security Council

3. The procedure under the ICC

- It is established pursuant to the Rome Statute of the International Criminal Court, which was adopted at a diplomatic conference in Rome, on 17 July 1998.
- The Statute entered in to force on 1 July 2002 and the Court is now fully functional at its seat in The Hague.
- The Rome Statute provides for the creation of a permanent international criminal court to prosecute people accused of genocide, crimes against humanity and war crimes.
- The court functions as complementary organ. Thus, the Rome Statute embodies the principle of complemntarity.
- The principle of complementarity can be defined as a functional principle aimed at granting jurisdiction to a subsidiary body when the main body fails to exercise its primary function.
- Thus, the ICC has jurisdiction over the stated international crimes when States are **unable or unwilling to prosecute** these crimes at national level. By so doing it makes sure those that committed grave crimes are brought to justice & contributes to the fight against impunity.