



## Udhr, Iccpr And Icescr: Pillars of global human rights law

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### Abstract

The Universal Declaration of the Human Rights Covenants were considered as a pillar stone to existence of modern human rights law in the world. After signing it on 10<sup>th</sup> December, 1948 has seen a radical changes in domain of human rights law. After signing the document there we had seen many colonial countries have changed their attitude towards their colonial angle and started granting of independence to majority of the countries in which the Britain, French, Spanish colonial power has come to an end. The journey of human rights law had not stopped by mere signing of the UDHR it is continued in 1966 by signing of two more important covenants concerning the civil, political, social and economic rights. If we go historical perspectives it was in 1215 A.D. the Magna Carta document was signed which today also considered as the first initiation on absolute monarchy, foundation for rule of law not only in England but also in many countries. Again, in 1689 we have seen coming into force of Bill of Rights which established Parliamentary supremacy and providing of certain civil liberties to its citizens, the journey continued thereon.

My paper deals with development of modern human rights law with different covenants and their origin and evolution and its effect on development of human rights law and it specifically focuses on the Covenants of Declaration of Human Rights of 1948, the Covenant of Civil and Political Rights of 1966 and the Covenant of Economic Social and Cultural Rights of 1966.

**Keywords:** Human rights, covenants, supremacy, legality, declaration, committee, social, cultural, economic rights

### Introduction

The Universal Declaration of Human Rights magnimous document which was signed soon after end of the World War II and after advent of the United Nations Organisation. The Commission on Human Rights in 1947, while considering the preliminary draft of an International Bill of Human Rights prepared by the Drafting Committee, decided to draw up a separate Covenant which would be a covenant on such specific rights as would lend themselves to binding legal obligations. The document was to be known as the International Covenant on Human Rights. In order to prepare it, a Working Group was established which prepared a draft covenant consisting of twenty-seven articles divided into three parts. The first part described the obligations of States which adhered to the Covenant; the second part defined some of the rights and freedoms listed in the draft declaration in more precise terms, and the third part described how accession to the covenant would be effected and how amendments would come into force. The draft covenant was forwarded to the respective governments for their comments in January, 1948.

The Drafting Committee re-drafted the draft covenant at its second session was held in 1948. However, it was not examined by the Constitution. The Commission in 1949 completed the draft of most of the articles of the proposed Covenant on Human Rights. It also decided to submit it to the Governments for their observations and after having received the answers and comments of the Governments, it would be presented to the Economic and Social Council for submission to the General Assembly in 1950. In the meantime, a proposal was made in the Commission by Australia, the Soviet Union and Yugoslavia for the inclusion in the Covenant of Articles on Economic, Social and Cultural Rights <sup>[1]</sup>. However, the Commission decided to limit the Covenant to certain essential civil freedoms, but

agreed at the same time to consider in future for the preparation of an additional Covenant on measures dealing with Economic, Social, Cultural and other categories of Human Rights.

### Preparation of the Drafts of the Two Covenants

In 1950, the General Assembly recommended the inclusion of the Economic, Social and Cultural Rights in the Covenant. Accordingly, the Commission in its 1951 session proceeded to draft the Articles on Economic, Social and Cultural Rights. When the draft was being considered by the Economic and Social Council, a number of objections were raised by many countries regarding the inclusion of both categories of rights in one Covenant. The argument advanced by them was that the Economic, Social and Cultural Rights are different in nature and they are secondary rights. It was a misunderstanding which was further spread by a terminology that grouped these rights into different 'generation'. The Economic and Social Rights were meant for second generation. Later, in 1952, the General Assembly, on the recommendation of the Economic and Social Council, decided that the two Covenants shall be drawn up and directed to the Commission on Human Rights to prepare two drafts, one dealing with civil and political rights, and the other with economic, social and cultural rights. However, it was stated that each Covenant should contain as many of the provisions as possible 'to stress the unity of the aim in view'.

The Commission completed the preparation of the drafts of the two covenants by the year 1954 and presented them to the Economic and Social Council, which, after due consideration submitted the same to the General Assembly. The Assembly assigned consideration of the question to its Third Committee (Social, Humanitarian and Cultural) which worked intermittently on the drafts during twelve years. An

annotated text of the Commission's drafts, taking into account of the observations made, was distributed to the governments. Numerous amendments or additions to the Articles were considered during that period. The text of each Article was thoroughly discussed and vigorously scrutinised. Discussions also concerned the observations of the specialised agencies and of the non-governmental organisations. In addition, the Third Committee also considered the working papers on specific aspects of the texts.

#### **Adoption of the Two Covenants:**

On the recommendation of the Third Committee, the General Assembly on 16<sup>th</sup> December 1966 adopted the two Covenants: International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights. It also adopted an Optional Protocol to the International Covenant on Civil and Political Rights. The General assembly on 15<sup>th</sup> December, 1989 adopted the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of Death Penalty. The Second Optional Protocol came into force on 11<sup>th</sup> July, 1991 in accordance with Article 8 Para 1. With the adoption of the two Covenants and two Optional Protocols, the United Nations completed the task of formulating the International Standard of Human Rights of the individuals. They, along with the Universal Declaration of Human Rights, are regarded to have constituted the International Bill of Human Rights. Thus, the United Nations fulfilled one of its main objectives, which it cherished in 1947.

The two Covenants were open for signature on 19<sup>th</sup> December, 1966. Each required thirty-five ratifications or accessions before coming into force. The First Optional Protocol, subject to entry into force of the Covenant on Civil and Political Rights, required ten instruments of ratification or accession. Accordingly, the Covenant on Economic, Social and Cultural Rights, and the Covenant on Civil and Political Rights came into force on 03<sup>rd</sup> January, 1976 and 23<sup>rd</sup> March, 1976 respectively. The First Optional Protocol came into force on 23<sup>rd</sup> March 1976. Presently, while the Covenant on Economic, Social and Cultural Rights has 173 State parties, the Covenant on Civil and Political Rights has 175 State parties. The First Optional Protocol had 92 parties by the end of 1998 and the same increased to 116 State parties as of July 2024 and 35 signatories.

#### **Covenant on Civil and Political Rights:**

The Covenant on Civil and Political Rights consists of fifty three articles and is divided into six parts. While in Parts I, II and III various rights and freedoms are enumerated, the other three parts are devoted with implementation procedures for effective realisation of these rights along with final clauses. Article 1 which refers to the right of people to self-determination states that all peoples have the right to freely determine their political status and pursue their economic, social and cultural development and may, for their own ends, freely dispose of their natural wealth and resource without prejudice to any obligations arising out of international economic co-operation, based upon the principles of mutual benefit and international law. The Article 1 further states that in no case may people be deprived of their own means of subsistence, and that the States Parties shall promote the realisation of the right of self-determination and shall respect that right. The Covenant

on Economic, Social and Cultural Rights also stipulated the above provisions in toto under Article 1. Part II stipulated rights and obligations of the States Parties to the Covenant. It included the obligations of the States to take necessary steps to incorporate the provisions of the Covenant in the domestic laws and to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the Covenant. The States Parties undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights.

#### **Substantive Rights**

The Part III deals with the specific rights of the individuals and the obligations of the States Parties.

1. The Right to Life (Article. 6).
2. Freedom from Inhuman or Degrading Treatment (Article. 7).
3. Freedom from Slavery, Servitude and Forced Labour (Article. 8).
4. Right to Liberty and Security (Article. 9).
5. Right of Detenu to be treated with Humanity (Article. 10).
6. Freedom from Imprisonment for Inability to Fulfil a Contractual Obligation (Article. 11).
7. Freedom of Movement and to Choose his Residence (Article. 12).
8. Freedom of Aliens from Arbitrary Expulsion (Article. 13).
9. Right to a Fair Trial (Article. 14).
10. Non-retroactive Application of Criminal Law (Article. 15).
11. Right to Recognition as a Person Before the Law (Article. 16).
12. Right to Privacy, Family, Home or Correspondence (Article. 17).
13. Freedom of Thought, Conscience and Religion (Article. 18).
14. Freedom of Opinion and Expression (Article. 19).
15. Prohibition of Propaganda of War (Article. 20).
16. Right of Peaceful assembly (Article. 21).
17. Freedom of Association (Article. 22).
18. Right to Marry and Find a Family (Article. 23).
19. Rights of the Child (Article. 24).
20. Right to take part in the Conduct of Public Affairs, to Vote and to be Elected (Article. 25).
21. Equality Before the Law (Article. 26).
22. Rights of Minorities (Article. 27).

The above rights set forth in the Covenant are not absolute and are subject to certain limitations. While the formulation of the limitations differed insofar as details are concerned, from Article to Article, it could be said that by and large the Covenant provided that rights should not be subjected to any restrictions except those which were provided by law, necessary to protect national security, public order, public health or morals or the rights and freedoms of others.

#### **Civil and Political Rights in Emergency**

The Covenant made provisions under Article 4 relating to public emergency which threatens the life of the nation. Para 1 of the above Article lays down that the States Parties to the Covenant may take measures derogating from their obligations under the Covenant to the extent strictly required by the exigencies of the situations. Thus, the

declaration of emergency permits a State to suspend Human Rights. However, the restrictions must be provided by law and applied solely for the purpose for which they have been provided. Further, they should not give rise to any discrimination on the grounds of race, sex, colour, language, religion or social conditions. The scope and ambit of judicial review and judicial independence must be ensured at all times. The Covenant under Para 2 of Article 4 provided that there are certain rights in respect of which no derogation can be made. For instance, there cannot be any derogation in the:

1. Right to Life (Article. 6);
2. Freedom from Inhuman and Degrading Treatment (Article. 7);
3. Freedom from Slavery, Slave Trade (Article. 8 Para. 1) and Servitude (Article. 8 Para. 2);
4. Freedom from Imprisonment for Inability to Fulfil a Contractual Obligation (Article. 11);
5. Non-retroactive Application of Criminal Law (Article. 15);
6. Right to Recognition as a Person before the Law (Article. 16); and
7. 7.The Freedom of Thought, Conscience and Religion (Article. 18).

The above rights are non-suspendable rights as they have been identified as 'Core of essential Human Rights'. In this context, it may be stated that the concept of an essential core cannot be static. It is dynamic in nature and therefore, certain additional rights may be included with the passage of time in the list of non-suspendable rights. Any State Party to the Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the Covenant through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and the reasons by which it was actuated. A further communication shall be made through the same intermediary, on the date on which it terminates such derogation.

### **Implementation Procedure**

The Part IV of the Covenant laid down the procedure for the implementation. A provision was made for the establishment of the Human Rights Committee which is the monitoring body under the Covenant.

### **Covenant on Economic, Social and Cultural Rights**

The International Covenant on Economic, Social and Cultural Rights is composed of 31 Articles which are divided into five parts. Part. I deals with the rights of peoples to self-determination as provided in Article. I of the Covenant on Civil and Political Rights. Other Rights of the individuals are enumerated in Part. III of the Covenant which include the following rights:

1. Right to Work (Article. 6);
2. Right to Just and Favourable Conditions of Work (Article. 7);
3. Right to Form and Join Trade Unions (Article. 8);
4. Right to Social Security (Article. 9);
5. Right relating to Motherhood and Childhood, Marriage and the Family (Article. 10);
6. Right to Adequate Food, Clothing, Housing and Standard of Living and Freedom from Hunger (Article. 11);
7. Right to Physical and Mental Health (Article. 12);

8. Right to Education including a plan for implementing compulsory Primary Education (Article. 13);
9. Right relating to Science and Culture.

The Part. II of the Covenant laid down the undertakings of the States Parties to the Covenant. Article. II provided that each States Party undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the Covenant by all appropriate means including particularly the adoption of legislative measures. It appears from the above provision that the States are not under an obligation to abide by the provisions of the Covenant immediately, i.e., from the date of ratification of the Covenant. Thus, the Covenant has set the standard which the States Parties are required to achieve in future. Its provisions shall be implemented progressively by the States depending on the resources available to them. The importance of the Covenants lies in the fact that they recognised the inherent dignity and of the equal and inalienable rights of all members of the human family which is the foundation of freedom, justice and peace in the World. It is an obligation of the States to provide these rights to the individuals as they derive from the inherent dignity of the human person; and also because they are essential for the development of one's personality.

### **Universal Declaration and the two Covenants:**

The key stone of the Covenants was the Universal Declaration of Human Rights of 1948. The two Covenants in general elaborated the rights set forth in the Declaration. However, there are exceptions. Many rights set forth in the Declaration are not reflected in either of the Covenants such as the right of everyone to own property alone as well as in association with others, and the prohibition of arbitrary deprivation of property; the right of everyone to seek and to enjoy in other countries asylum from prosecution; the right of everyone to a nationality and the right not to be arbitrarily deprived of one's nationality. The Covenant on Civil and Political Rights, however, affirms the right of every child to acquire nationality. On the other hand, the Covenants recognised some rights which are not listed in the Declaration such as right of peoples to self-determination and their right to dispose of their natural wealth and resources.

Although certain rights set forth in the Covenants are different from that of the Declaration, it was desirable to maintain the uniformity in the Declaration and the Covenants as they both contain the basic and inalienable rights of the human beings and also because both the instruments were adopted under the auspices of the United Nations Organisation. The Universal Declaration, the two Covenants and the two Optional Protocols to the International Covenant on Civil and Political Rights is referred to International Bill of Human Rights.

### **Relationship between the two covenants**

There is a close relationship between the two Covenants which have enumerated various civil and political rights and economic, social and cultural rights. It is evident from the fact that Preamble and Articles. 1, 2, 3 and 5 are virtually identical in both the Covenants. Preamble of both the Covenants discern that these rights derive from the inherent

dignity of human beings. Article. 1 of each Covenant affirms that all peoples have the right to self-determination and by virtue of that right, they are free to determine their political status and pursue their economic, social and cultural development. While Article. 2 in both the Covenants re affirms the principle of non-discrimination, Article. 3 stresses that States should ensure the equal right of men and women to the enjoyment of all human rights. Article. 5 of both the Covenants provides safeguard against the destruction or undue limitations of any human rights and fundamental freedoms.

Their relationship was recognised by the International Conference on Human Rights which was held in Tehran in 1968. It declared in the final proclamation that: "Since Human Rights and Fundamental Freedoms are indivisible, the full realisation of civil and political right without the enjoyment of economic, social and cultural rights is impossible. The General assembly in 1977 reiterated in a resolution which stated 'All Human Rights and Fundamental Freedoms are indivisible and inter-dependent and equal attention and protection of civil and political and economic, social and cultural rights'. The resolution also stated that 'full realisation of civil and political rights without, the enjoyment of economic, social and cultural rights is impossible. Civil and political rights are the means to the social and economic power of the people. The Vienna Conference on Human Rights held in 1993 in Vienna recognised under Para. I that the World Conference on Human Rights reaffirms the solemn commitment of all States to fulfil their obligations to promote universal respect for, and observance and protection of, all Human Rights and Fundamental Freedoms for all... Under Para.5, the Declaration stipulated that all Human Rights are universal, indivisible and interdependent and inter-related. The international community must treat Human Rights globally in a fair and equal manner, on the same footing and with the same emphasis. It is desirable, therefore, that the States should give equal emphasis to the rights stipulated in both the Covenants in view of their inter-dependence.

### **Criticism of the Covenants**

The two Covenants have been criticised by the author on different grounds which are as follows:

It has been asserted that Human Rights cannot be universal in character. They differ from one State to another depending upon the dissimilar economic, social and political conditions of the States. According to them, the rights of individuals of developed, developing and least developed countries cannot be identical. But this aspect has not been taken into consideration by the drafters of the Covenants.

It is submitted that Human Rights can neither be different for Eastern and Western countries nor can they be different for developed countries and Third World Countries. Human Rights are colour blind and direction blind. They know neither right nor left, but only the human. The universality and indivisibility of Human Rights have come to be particularly emphasised recently. It is human dignity which gives substance to Human Rights. Human beings carry human dignity wherever they are and whatever the circumstances may be. Human rights therefore are not place and time relative. Further, there cannot be several categories of the rights of human beings because they all are equal, and the rights mentioned in the Covenants are universal and are inherent in them by virtue of their human beings. If certain

rights cannot be made available to the individuals of some countries, particularly, those which are not economically and politically sound because of their other problems which by nature are more serious and acute and which require immediate attention; it does not mean that the individuals of such countries are not capable or competent of possessing them. It should be the endeavour of such States to make them available when the conditions allow them to do so. They might be undesirable and irrelevant for some countries at present, but the object for the respect of Human Rights has been laid down before them by the adoption of the Covenants, and their desire and attitude would certainly result in the observance of Human Rights in accordance with the provisions of the two Covenants.

The two Covenants are criticised sometimes on the ground that there are certain glaring omissions therein. One of these grounds is the provision to recognise and protect the property rights. Neither of the Covenants protected property rights. It is to be noted that the omission appears to be intentional. Had it been included, the Socialist States would have not agreed to their conclusion. It is, therefore, submitted that failure to include the protection of property rights does not in any way make undesirable or unimportant those rights which have been proclaimed.

Other grounds on which the Covenants are criticised are the provisions regarding the self-determination in both the Covenants and the limitations on freedom to speech as evident from Articles 17, 19 and 20 of the Covenant on Civil and Political Rights. But these criticisms do not carry much importance. These criticisms are made mainly because of the different systems of law, and also because of different ideologies and policies of the governments of the States. In fact, there is much of substantial benefit in the Covenants and they can help to ensure human dignity, worth and freedom throughout the World. Although the Covenants lay down universal human rights, they are yet to be considered as having acquired universal scope, in view of the trend of their ratification. They have become an important tool in the struggle to enforce human rights in the world. Those States which have not ratified or acceded to the Covenants are not legally bound by the Covenants' provisions; however, they have definitely improved their human rights records. The Covenants, no doubt, will be binding on third States when they acquire the status of the customary rule of International Law.

Although at present the provisions of the Covenants have not acquired the status of the customary rule of International Law, some of the provisions may be regarded as binding on all the States, irrespective of the ratification, by virtue of their being the general principles of law which is also a source of International Law. In other words, certain rights, because of their common appearance in the Constitution of different States, are represented in the Covenants as recognition of obligation by States. A study made on the basis of the Constitutions of France, China, the Soviet Union and the United States reveals that certain rights stipulated in the Covenant on Civil and Political Rights, such as, the right of self-determination; right to freedom of thought, conscience and religion; right to freedom of expression, orally or in writing or in print; the right of peaceful assembly; the right to freedom of association with others; the right to vote; the right to security of the person and the right to inviolability of one's property have become the general principles of law. Besides them, certain rights

stipulated in the Covenants such as the right to fundamental equality, the right to non-discrimination, the right of the State to modify or suspend certain rights without giving certain circumstances and proper notification, and the right to a fair and public hearing when a criminal charge is involved may be found in one form or another in the above Constitutions and are open to a greater range of interpretation and application.

However, as long as all the provisions of the Covenants do not acquire the character of customary rule of international law, or they do not acquire the status of general principles of international law, they shall be binding only on those States which are parties to them. The rights mentioned therein shall be available to all the human beings of such States only. It implies that an individual's human rights or fundamental freedoms are subjected to the Will of the State. Thus, by becoming a party to the Covenants, a State recognises that there were limits on its power over its peoples.

### **Implementation of the Covenants**

The two Covenants contained measures of implementation as well. Initially, it was to be a separate document, but later they were included in the Covenants themselves. The system of implementation is different in two Covenants which are as follows:

#### **Covenant on Civil and Political Rights**

The implementation procedure under the Covenant on Civil and Political Rights is carried on by the Human Rights Committee consisting of eighteen members. The members of the Committee are required to be of 'high moral character' and to have 'recognised competence' in the field of human rights. Consideration is given to the usefulness of the participation of some members having 'legal experience'. The members serve in their personal capacity. The Committee is composed of the nationals of the States Parties to the Covenant. The members of the Committee are elected by secret ballot from a list of persons possessing the above qualifications. In the election of the Committee, consideration is given to equitable geographical distribution and to the representation of the different forms of civilisation as well as of the principle legal systems. The Committee does not include more than one national of the same State. The members of the Committee are elected for a term of four years. They are eligible for re-election if re-nominated. The term of half of the first members, i.e., nine members elected during the first election expires at the end of two years. The names of such members are chosen by lot by the Chairman of the meeting.

In accordance with the above provisions, thirty-eight States Parties to the Covenant met for the first time on 20<sup>th</sup> September, 1976. They elected eighteen members of the Committee whose term began from 01<sup>st</sup> January, 1977. The Committee carries out the implementation of the human rights stipulated in the Covenants in four different ways which are as follows:

1. The Reporting Procedure;
2. Inter-State Communications System;
3. Conciliation Procedure; and
4. Individual Communications System.

**1. The Reporting Procedure:** In accordance with Para I of Article. 40, the States Parties 'undertake to submit reports on the measures they have adopted which give

effect to the rights recognised therein and on the progress made in the enjoyment of those rights'. The States Parties are required to submit their reports within one year of the entry into force of the Covenant, and thereafter, whenever the Committee so requests. Reports shall be submitted to the Committee for consideration. The report shall indicate the factors and difficulties, if any, affecting the implementation of the provisions. The Committee shall study the reports and shall transmit the reports and such general comments as it may consider appropriate to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties.

**2. Purpose of the Reporting System:** The purpose of the reporting system is to obtain the necessary information as to the implementation of the provisions of the Covenant by the member States. It is to be noted that a similar reporting system was also provided in the International Convention on the Elimination of All Forms of Racial Discrimination of 1966. The reporting system enables the Committee to develop a dialogue with each State Party in regard to the implementation of the Covenant. In order to fulfil the purpose, the representative of the State whose report is being considered is permitted to be present at the meeting of the Committee. Although such personal representation is not contemplated by the Covenant, Rule. 68 permits a representative to participate in the meeting.

**3. General Guidelines regarding the Contents of the Report:** The Committee at its Second Session held at Geneva from 11<sup>th</sup> to 31<sup>st</sup> August, 1977 adopted general guidelines concerning the forms and contents of the reports submitted by States Parties. It was decided that the reports should be divided into two parts. In the first part, the reports are required to present briefly 'the general legal framework within which civil and political rights are protected' in a country. The report should lay down whether any of the rights referred to the Covenant are protected either by the Constitution or by a separate 'Bill of Rights' and, if so, what provisions have been made therein for derogations and in what circumstances. The report should also include whether the provisions of the Covenant can be invoked before the courts, other tribunals or administrative authorities, and directly enforceable by them; and what judicial, administrative or other competent authorities have jurisdiction affecting human rights. The report should describe what remedies are available to the individual, who claims that any of his right has been violated, and what other measures have been taken by the State to ensure the implementation of the provisions of the Covenant.

In the Second part, the reports are required to prescribe the legislative, administrative or other measures in force in regard to each right; and any restrictions or limitations; even of a temporary nature, imposed by law or practice in any other manner, on the enjoyment of the right by persons within the jurisdiction of the State; and provide any other information on the progress made in the enjoyment of the right. The reports should be accompanied by the copies of

the related legislative and other texts. In addition to the report, any additional information or any significant new development in a country in regard to the rights referred to in the Covenant could be sent to the Committee.

The above guidelines were made to ensure that reports were presented in a uniform manner. It would enable the Committee to obtain a complete picture of the situation in each State as to the implementation of the rights recognised by the Covenant. The Committee was of the view that if the guidelines shall be properly applied by the States Parties to the Covenant, the Committee would be able to develop a constructive dialogue with each State Party in regard to implementation of the Covenant, and thereby, contribute to mutual understanding and peaceful and friendly relations among nations in accordance with the provisions of the U.N. Charter. Those States which had submitted their initial reports before they received the guidelines were informed that the Committee left it to their discretion to prepare any revised report or additional information they might wish to send to the Committee.

**Attitude of States Towards Submitting Reports:** In the past, the attitude of many States Parties to the Covenant has not been enthusiastic in submitting the reports to the Committee. It is evident from the fact that at the end of 1977, thirty-eight States were required to submit the reports but the Committee received only twenty-three reports by July, 1978. Some of the States sent their reports after the reminders were served to them. A few States such as Lebanon, Rwanda and Uruguay did not send their reports by October, 1980 even after the reminders sent by the Committee. The submission of reports by the States Parties in time is an obligation of States under the provisions of the Covenant. They are required to perform their obligations in good faith. No reason including the provisions of their internal law can be invoked as justification for its failure to perform a treaty. In case of failure to perform an obligation undertaken in accordance with the provisions of the Covenant, the Committee in its report on its activities may mention their names which is submitted to the General Assembly of the United Nations through the Economic and Social Council. Further, the Committee may publish a separate document on overdue reports. It should highlight State-by-State the worst transgressors. It should be sent to meetings of States Parties with requests for action. It should be sent to all other human rights mechanism, such as, the special rapporteurs and the High Commissioner for Human Rights who should be asked to raise the subject before the contacts with State representatives or while on country visits. The consequence would be that international public opinion would be considerably adverse against each States. The Committee at its Tenth Session debated as to what measures should be taken to encourage States Parties to submit their report in time. A number of suggestions were made. Specifically, it was suggested that the Committee should strengthen its approach in dealing with long overdue States. The suggestion for providing assistance in preparing the reports to such States, if requested, was also made. The suggestion was also made for listing the names of those States whose reports have been longest over due in the report of the Committee to the General Assembly so that the latter may call upon the States to comply with their obligation under Article. 40 of the Covenant. However, nothing was finalised. In the Eleventh Session held in October, 1980 it was decided that it would consider at its

next session questions relating to initial reports which were due in 1977 and 1978 but which had not yet been received by the Committee. The States concerned would receive invitations to attend the Committee meetings wherein matters related to these overdue reports would be discussed. However, in the Twelfth Session the matter was not considered.

It is also significant to note that some of the States that sent reports to the Committee did not contain the required information. For instance, the Committee found that the information contained in the reports and the answers were incomplete in the report sent by Chile. The report was found 'insufficient'. The report of Kenya was found 'inadequate and too brief' to meet the demands of the Committee. Similarly, the report of Tanzania was also regarded by some members of the Committee as inadequate and not sufficiently comprehensive. The report of Mali was also found by some members as incomprehensive. They suggested that Mali submit its second report, since the first report did not include comments on the difficulties the country had in implementing the Covenant or details on application of human rights in practice. If the necessary information is not supplied to the Committee by the States, the very purpose of the reporting system is likely to be forfeited. The success of the reporting system depends largely upon the co-operation of the States Parties.

**Criticism:** The Reporting Procedure suffers from a number of defects which are as follows:

The Committee, in the past has not been able to consider all the reports in-hand in one session. Those reports which are not considered in a session are postponed for consideration in the next session. For instance, at the beginning of the Second Session it had eleven reports in hand but it considered only six reports. Consideration of other five reports was postponed. Similarly, at the beginning of the Third Session, it had twenty-three reports in hand, but the Committee examined only fourteen reports. The nine other reports were considered in Fourth and Fifth Sessions. Even at present, a number of reports submitted by the States Parties are considered in subsequent years. It is submitted that there should not be any delay in the examination of the reports. All of them should be examined in its immediate next session. If the Committee considers that it cannot be done in two or three weeks session, the duration of the session may be extended or additional session may be held to cope up with the work. The prompt and active consideration of reports would make the States Parties alert and active in the implementation of the Covenant.

Under the Covenant there is no provision for ascertaining the correctness of the contents of the report. This very weakness is likely to lead the States to conceal any matter which they do not wish to disclose while submitting the report to the Committee. The consequences were that the reports of a few States were found neither complete nor correct in some respects. The compliance by the States under the reporting system is therefore sporadic and inconsistent.

The Committee is required to transmit its reports and such general comments as it may consider appropriate to the States Parties. However, no such 'general comments' have been transmitted to the States in the first four years of its work. It was only in the Eleventh Session, the Committee after having examined initial reports received from thirty-six

States Parties agreed on principles that reports of States Parties submitted to the Committee would guide its members in formulating general comments on States report. It was desirable on its part to have made the general comments on the reports earlier. The delay in making such comments to the States has unnecessarily prolonged the promotion of human rights.

The utility of the reporting system depends much upon the quality of the reports submitted by the States Parties, and the amount of control which is exercised over the reports of the States concerned. Control can be exercised by the examination of the report through experts, an ensuing discussion by an international agency, by publicity given to a violation of contractual obligation and by the right of the controlling international organ to make recommendations to the States in cases of serious shortcomings. Although the system is not likely to be very effective, it would indeed be a sort of indirect international supervision over the States Parties as far as the human rights activities is concerned. Through the reporting system, the Committee keeps an eye over the development in each State regarding human rights provisions. The system would also be helpful in publicising the human rights issues of the States Parties before the World-community.

The Human Rights Committee is an independent body. It does not form part of the United Nations, though it is serviced by the UN Secretariat. States Parties are required to co-operate with the Committee in performing their obligations, so that Committee may discharge its functions adequately. The Committee in its supervisory capacity has been entrusted with the important responsibility of affirming, developing and strengthening the basic standards of human rights law. It is hoped that the Committee would perform its functions effectively in order to promote and protect human rights.

### **Inter-State Communications System**

The violation of human rights provisions by one State is the concern of the whole world. If the provisions of the Covenant are not given effect by a State, other States Parties may make complaints regarding the violations before the Human Rights Committee. However, the Covenant has preferred to use the word 'communications' instead of 'complaints'.

#### **1. Procedure for Making Communications:**

Article. 41 of the Covenant lays down the procedure for making communications. The first is the bilateral negotiations between the States concerned. If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant it may bring the attention of that State Party. The communication should be made in writing. The receiving State, within three months after the receipt of the communication shall communicate the sending State an explanation or any other statement in writing clarifying the matter. The explanation or the statement should include to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter. If the matter is not adjusted to the satisfaction of both the States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State has the right to refer the matter to the Human Rights Committee, by giving notice to the Committee and to other State. The above provision shows that reference to the

Human Rights Committee shall always be preceded by the communication by one State Party to another State Party which has not given effect to the provisions of the Covenant. However, there is a great limitation in making a communication to the Committee. The communications shall be received and considered by the Committee only if it is submitted by a State Party which has made a 'declaration' recognising in regard to itself the competence of the Committee. Such a declaration may be made by a State Party to the present Covenant at any time stating that it recognises the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Thus the inter-State communication system is optional under the provisions of the Covenant. It is to be noted that, on this point, the Covenant differs from the European Convention on Human Rights, which lays down under Article. 24 that any High Contracting Party may refer to the Commission...any alleged breach of the Convention by another High Contracting Party. Acceptance of this procedure follows automatically from ratification of the Convention.

If any communication is received by the Committee, it examines only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognised principles of International Law. The communication is examined by the Committee in a closed meeting. The committee while considering any matter may call upon the parties to supply any relevant information. The States Parties concerned have the right to be represented when the meeting is being considered by the Committee. They also have the right to make submissions orally or in writing or in both. The committee makes available its good offices to the States Parties concerned with a view to friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognised in the Covenant.

In every such matter, the Committee is required to make a report within twelve month's time from the date of receipt of notice given by a State Party. If a solution is reached, the Committee shall confine its report to a brief statement of the facts, and of the solution reached. If the Committee fails to reach on any solution, its report is confined to a brief statement of the facts. The written submissions, and record of the oral submissions made by the States Parties concerned are also attached to the report. In both the cases, the report is communicated to the States Parties concerned.

The acceptance of the Inter-State communication procedure is mandatory. It shall apply only to those States which have expressly accepted it. The system was to come into force when ten States Parties to the present Covenant have made declarations to this effect. The declarations made by the States are deposited with the Secretary-General of the United Nations who is required to transmit copies thereof to the other States Parties. A declaration so made may be withdrawn by the States Parties at any time by notifications to the Secretary-General. The effect of the notification of the withdrawal of the declaration would be that no further communication by any State Party shall be received unless the State Party concerned has made a new declaration. However, the withdrawal of the declaration shall not prejudice the consideration of any matter which is the subject of a communication already transmitted.

The Inter-State Communication System came into force on 28<sup>th</sup> March, 1979 when ten States opted for the system. By

the end of May 1990, twenty-four States made the declarations. It is to be noted that, normally, States are not willing to accept the Inter-State Communication System. This attitude of the States was perhaps known while the Covenant was being drafted. That is why the System was made optional. Had it been made compulsory, the Covenant might have not been ratified by the number of States which have presently done so. In other words, it can be said that the acceptance of the system has been made optional to get the maximum ratification.

A question arises as to why the complaint procedure has been laid down in the Covenant specifically when a party to a multilateral treaty always has a right to make complain if the other party fails to implement the treaty. This right has been recognised in general in all the multilateral treaties. Article. 60(3)(b) of the Vienna Convention on the Law of Treaties of 1969 lays down that the 'violation of a provision essential to the accomplishment of the object or purpose of the treaty, constitutes a material breach of a treaty'. If a material breach of a multilateral treaty is committed by one of the parties, the other parties by unanimous agreement may suspend the operation of the treaty in whole or in part or terminate it either in the relations between themselves and the defaulting States, or as between all the parties as per Article. 60(2)(a) of the Vienna Convention. It means that even in the absence of the specific complaint system, a State could not only make complaint against other States but it could also invoke suspension or termination of the operation of the Covenant. However, whether this right can be exercised by a party in situations in which specific complaint procedure has been set up is a difficult question to answer. Perhaps, the specific provision for making Inter-State Communication was made in order to remove doubts, which would have existed in its absence because the Vienna Convention on the Law of Treaties which has settled the position in this regard was adopted in 1969, i.e., after the adoption of the Covenant.

### Criticism

The Inter-State Communications System is not free from certain glaring weaknesses which are as follows:

1. The declaration once made by a State can be subsequently withdrawn. If the system comes into force after having been opted by the required number of States, and subsequently if the declaration is withdrawn by a State resulting in the fall of number of required declarations, whether it would continue to remain in force, or would cease to continue is not clear from the provisions of the Covenant. The provision for the withdrawal of the declaration once made, has weakened the Inter-State Communication System.
2. The system is not likely to be effective in view of the fact that normally a State does not like to make complaints of other States particularly where the relationship between them is friendly, because of the fact that it amounts to an interference of a State in the domestic affairs of another State. Further, a State does not care much about the protection of human rights in another country unless the interest of the State making the complaint is directly invoked. There always exists a possibility of worsening the relationship between the two States if a complaint is made by one State against the other. On the other hand, a State is only too likely to use such a machinery against a State with which its

current relations are unfriendly. The logic is clear from the experiences of the International Labour Organisation which provides a machinery for making complaints. In a period of first fifty years only two complaints were made. The reasons which motivated them to do so were political.

3. Procedure for the examination of the communications is also time consuming. The Committee has no power to determine or decide the matter. There is no provision for a binding decision on the question whether a violation has occurred. The procedure is aimed essentially at conciliation and friendly settlement. If this fails, no other means can be adopted to protect the human rights. The Committee simply confines its report to a brief statement of the facts, to which the submissions of the parties will be attached. Further, there is no provision for the withdrawal of a communication once the same has been made by a State. If a communication has been made by a State, and it later comes to its knowledge that the facts underlying the communication are inaccurate, then the same cannot be withdrawn by the State. These weaknesses show that the system is not likely to be utilised by the States making the declarations. However, the system is likely to put a deterrent effect on the States Parties making the declaration. There would always be a fear in the mind of such States that the system might be utilised by other States if they fail to protect the human rights in accordance with the provisions of the Covenant.

**Conciliation Procedure:** The conciliation procedure is adopted by the Human Rights Committee in those cases of Inter-State Communications where a matter referred to it is not resolved to the satisfaction of the States Parties concerned. In such cases, the Committee may appoint an ad-hoc Conciliation Commission with the prior consent of the States Parties concerned with a view to an amicable solution of the matter on the basis of a respect for the Covenant. The Commission shall consist of five members acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on the composition of the Commission, the members of the Commission concerning whom agreement has not been reached, shall be elected by a two-thirds majority vote of the Committee from among its members. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned or of a State not party to the present Covenant or of a State Party which has not made a declaration under Article. 41. The Commission shall elect its own Chairman and adopt its own rules of procedure. The meeting of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. Meetings may be held at other places also as per the discretion of the Commission in consultation with the Secretary-General of the United Nations and the States Parties concerned.

The main function of the Commission as aforesaid, is to make its good offices available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the Covenant, if a matter referred to the Committee in accordance with Article. 41 is not resolved to the satisfaction of the States Parties concerned. The Commission does so on the basis of the matter supplied

to it by the Committee. The latter is required to make available to the former all the information received and collected by it. The Commission may also call upon the States Parties to submit relevant information other than those submitted to the Committee. After considering the matter, the Commission shall submit a report to the Chairman of the Committee for communication to the States Parties concerned. The Commission shall not take more than twelve months in considering the matter. If the Commission is unable to complete the consideration of the matter within twelve months, it shall continue its report to a brief statement of the status of its consideration of the matter.

If an amicable solution to the matter on the basis of respect for human rights as recognised in the Covenant is reached, it shall confine its report to a brief statement of the facts and of the solution reached. If a solution is not reached, the report of the Commission shall embody its finding on all questions of fact relevant to the issues between the States Parties concerned, as well as its 'views' on the possibilities of amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned. In such cases, the States Parties are required to notify the Chairman within three months of the receipt of the report whether or not they accept the contents of the report of the Commission. The above provisions show that the functions of the Commission is restricted only to those matters which are referred under Article. 41 of the Covenant, i.e., in the Inter-State Communications System. Since the system has not been utilised by those States Parties which have made declarations for the recognition of the competence of the Committee to receive and consider communications, the question of conciliation does not arise. It is submitted that even if the Inter-State Communications System is utilised and if the ad hoc Conciliation Commission is established to resolve the dispute, the system for the protection of human rights is not effective. After the matter is examined by the Commission, it gives its 'view' to the parties. The parties are at liberty to accept or reject the views submitted by the Commission and the same are not binding on the parties. The question is that if a State Party rejects the 'views', what remedy would be available to the aggrieved State? The Covenant does not lay down any provision for such contingencies. It is one of the major defects of the conciliation system.

**Individual's Communications System:** Individuals have also been given a right to make petitions before the Human Rights Committee against the State violating any of the rights provided in the Covenant on Civil and Political Rights. However, the right does not find place in the Covenant itself. It is provided in the Optional Protocol to the Covenant on Civil and Political Rights. Although the Universal Declaration of Human Rights did not lay down as to individual's right to make petitions, the General Assembly in 1948 in a resolution had expressed that the right of petition is an essential right of human beings. Thereafter, many drafts on International Bill of Rights presented to the Commission on Human Rights contained the right of individuals and group of individuals to make petitions for the redressal of their grievances. Later, when the Draft Covenant was being considered by the Third Committee of the General Assembly, a proposal was made by the Netherlands for the inclusion of another optional

clause, like Inter-State communications, relating to the communications by individuals. But in view of the criticism made by many States, the Third Committee accepted the Lebanese proposal which laid down that the right be embodied in a separate protocol to be annexed to the Covenant.

The right of individual's petition is not unknown to the international organisations. It is even recognised by the Charter of the United Nations under Article. 87 of the Charter which gives to the Trusteeship Council the right 'to accept petitions and examine them in consultation with the administering authority'. It is also basic to the European Convention on Human Rights which provided that the Commission may receive petitions from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by a State, provided the State concerning which a petition is made has declared that it recognises the competence of the Commission to receive such petitions. Further, the Convention on the Elimination of All Forms of Racial Discrimination of 1966 also provides for an individual to make petitions before the Committee in accordance with the procedure laid down under Article. 14. Later, Article. 22 of the Convention against Torture and other Cruel, Inhuman, Degrading Treatment or Punishment of 1984 and Article. 75 of the International Convention on the Protection of All Migrant Workers and Members of their Families of 1990 also provided a system for the individual's petition. Article. 3 of the Protocol Instituting a Conciliation and Good Offices Commission to the Convention against Discrimination in Education also laid down a similar provision.

The Optional Protocol to the Covenant on Civil and Political Rights was adopted separately by the General Assembly on 16<sup>th</sup> December, 1966 along with the two Covenants. However, thirty-eight States, including India abstained when the text was approved. Presently, ninety-two States are Parties to the Protocol.

**Competence of the Human Rights Committee:** Any State which becomes a Party to the Protocol thereby recognises the competence of the Human Rights Committee 'to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant'. It means that an organisation or a political party cannot make a petition to the Committee. Further, the individual within the territory of the Contracting States enjoy the rights stipulated by the Protocol. The Protocol under Article. 1 expressly laid down that no communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a party to the Protocol.

The Human Rights Committee to which the petitions are submitted under the Optional Protocol is the same Committee consisting of eighteen members provided for in Article. 28 of the Covenant on Civil and Political Rights. It means while discharging its functions under the Optional Protocol, the composition of the Committee would not be limited to the members elected by the States Parties to the Protocol. Thus, it is quite possible that many members of the Committee might be nationals of those States which are not parties to the Protocol, and which are in principle against accepting the Optional Protocol. However, this is not likely to affect the working of the Committee because members of the Committee are appointed in their personal

capacity. They are expected to consider the individual's communications independently, in personal capacity, even if the States to which they are nationals oppose them on principles. They are expected to show their 'high moral character' in discharging the functions assigned to them.

The Committee is empowered to consider only those communications from an individual which are not being examined under another procedure of international investigation or settlement. However, the above shall not apply where the application of the remedies is unreasonably prolonged. It may be noted that the above provision has the effect of placing the Human Rights Committee in the position of a Court of Appeal in relation to Europe and America where regional system exists for the protection of human rights. There has been a reaction against this situation when the Council of Europe recommended to its members that they should ratify the Protocol with a reservation excluding the jurisdiction of the Human Rights Committee whenever the same matter has been examined under a competing procedure. All European States Parties to the Protocol except Netherlands have made this reservation. The result is that very few cases involving European countries reach the Human Rights Committee.

The Protocol also gives a right to any State Party to denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect after three months from the date of receipt of the notification by the Secretary-General. However, the denunciation shall be without prejudice to the continued application of the provision of the Protocol to any communication submitted to it before the effective date of denunciation.

**Procedure for Making Communications:** The procedure for submitting the communications is also laid down in the Protocol. For instance, the communications should be submitted in writing all available domestic remedies should have been exhausted and the same matter is not being examined under another procedure of international investigation or settlement. Communications should not be anonymous, abusive or incompatible with the provisions of the Covenant. Such communications shall be rejected as inadmissible. If the communications are free from the above limitations they are accepted as admissible. The above procedure shows that a communication may be admitted on the basis of the information supplied by the person making the communication.

Once any such communication is admitted by the Committee for consideration, it brings to the attention of the State Party who is alleged to have violated any provision of the Covenant. Such State is required to submit written explanations or statements to the Committee clarifying the matter and the remedy, if any, that may have been taken by the State within a period of six months. The Committee considers communications received under the Protocol in the light of all written information made available to it by the individual and by the State Party concerned. The above procedure shows that before any communication made by an individual is considered by the Committee, it takes information from the State against which the complaint has been made. A question arises as to whether the Committee would consider the matter if the State fails to respond to the Committee within the stipulated period. It appears that the failure on the part of the State in this regard due to any

reason howsoever compelling it may be, would not prevent the Committee from scrutinizing the complaint of violation. The Committee may hold closed meetings while examining communications from the individuals.

**Views of the Committee:** The Committee after consideration of the communications is required to forward its 'views' to the State Party concerned and to the individual. It is to be noted that the expression 'views' was deliberately preferred by the General assembly to the terms recommendations and suggestions. It means the Committee is not empowered to give its decision or judgment. The Committee is not empowered even to monitor the implementation of its 'views'. The Committee admits in its Report of 1983 that 'the Committee has no executive power enabling it to enforce its 'views' '. A question arises as to what would be the value of its 'views' when it is not binding on the State concerned or when it is not enforceable. A summary of the Committee's activities under the present Protocol is included in its annual report, which is forwarded to the General Assembly through the Economic and Social Council. The annual report is discussed at length every year in the Third Committee of the General Assembly before being presented to the Assembly itself. The effect of the above procedure would be that public opinion, which plays a greater role on the international plane at present, would be adverse to the State violating the provisions of the Covenant. All the States would come to know that a particular State has not given effect to the provisions of the treaty to which it is a party.

The Optional Protocol came into force on 23<sup>rd</sup> March, 1976 after it was ratified or acceded by the required number of States, i.e., ten States. Once a State has ratified or acceded the Protocol, it extends to all parts of federal States without any limitations or exceptions. Since the enforcement of the Protocol, the Committee has examined a number of communications, a few of them are as follows:

**Communication by Ambrosini:** The first case was considered by the Human Rights Committee during the Seventh Session, which was held from 30<sup>th</sup> July to 17<sup>th</sup> August, 1979. The communication was submitted by the Uruguayan national residing in Mexico, on her own behalf as well as on behalf of her husband, her step-father, and her mother. She alleged that she was detained in Uruguay from 25<sup>th</sup> April to 03<sup>rd</sup> May, 1975 and was subjected to psychological torture. She stated that she was released on 03<sup>rd</sup> May, 1975 without being brought before a Judge. She also claimed that her husband was detained on 03<sup>rd</sup> April, 1975, and immediately thereafter subjected to various forms of torture, and her step-father was arrested on 22<sup>nd</sup> October, 1975 and was held incommunicado until his detention was made known in January, 1976, and that her mother was arrested on 20<sup>th</sup> January, 1976 without any assistance to subversive association, an offence which carried a penalty of two to eight years imprisonment. The Committee, acting under Article. 5(4) of the Optional Protocol to the Covenant on Civil and Political Rights, took the 'view' after ascertaining the facts that the State Party was under an obligation to take immediate steps to ensure strict observance of the Covenant provisions, and to provide effective remedies to the victims.

**Communication by Eduardo Dente Santullo Valcada:** Another case that was considered by the Committee was

that of Eduardo Dente Santullo Valcada, a Uruguayan national residing in Mexico, in its Eighth Session, held from 15<sup>th</sup> October to 26<sup>th</sup> October, 1979. In the communication he stated that on 08<sup>th</sup> September, 1976 he was arrested in Montevideo and was taken to the Headquarters of the Investigation and Intelligence Department where he was accused of receiving the clandestine newspaper Carta. He was hooded and forced to stay for three days in an unnatural position. He was also punched, kicked and insulted and there were threats to torture his wife and two children. It was only on 05<sup>th</sup> November that the military court informed him that, in the absence of any reasonable grounds for charging him with an offence, he could go free. He further stated that during the period of detention he did not have access to a legal Counsel nor was there the possibility of applying for habeas corpus. Taking into account all written information made available to it by Valcada as well as that received from the State Party concerned, the Committee decided that the State Party had adduced no evidence that his allegation of ill-treatment had been duly investigated. The Committee also concluded that the State Party had failed to show that it had ensured to the person concerned, the protection required by the Covenant.

**Communication by Ana Maria Garcia Lanza de Netto:**

Another case considered by the Committee in its Ninth Session which was held from 17<sup>th</sup> March to 03<sup>rd</sup> April, 1980 was that of a Uruguayan national residing in Mexico. The case was submitted initially by Ana Maria Garcia Lanza de Netto on behalf of her aunt and her uncle who later joined as submitting parties. In her letter dated 20<sup>th</sup> February, 1977 Netto claimed that her uncle was arrested on 01<sup>st</sup> February, 1976 in Montevideo by the occupants of an army vehicle and that until the end of September of that year his family had been unable to locate him. She claimed that he was detained at various places, including the naval air base at Laguna del Sauce in the Department of Maldenada and that during that period of initial detention he had to be admitted to the Central Hospital of the Armed Forces four times. Regarding her aunt, she stated that she was arrested, shortly after her husband's arrest, by army personnel and neither her family nor friends were aware of her place of detention until later in 1976. The government of Uruguay objected to the admissibility of the communication by stating that the same matter was being examined by the Inter-American Commission on Human Rights, and that the alleged victims had not exhausted all available domestic remedies. On 01<sup>st</sup> February, 1978, the Committee rejected the objection and decided that the communication was admissible. On 18<sup>th</sup> April, 1979, the Committee stated that the Government of Uruguay had submitted no evidence regarding the nature of the political activities in which Beatriz (aunt) and Alcides Lanza (uncle) were alleged to have been engaged, which led to their arrest, detention and trial, and that information by the State Party that they were charged with subversive association was not in itself sufficient. The Committee was therefore unable to conclude on the information before it that the arrest, detention and trial of aunt and uncle of Netto were justified on any of the grounds mentioned in Article. 19 (3) of the covenant..

The Committee stated that it had noted with satisfaction that the victims had been released. It was of the view, however, that the State Party was under an obligation to provide them with effective remedies, including compensation for the

violations which they had suffered and to take steps to ensure that similar violations would not occur in the future.

**Implementation of the Covenant on Economic, Social and Cultural Rights:** The machinery for the implementation of economic and social rights is a local and national issue. It is in the national parliaments that essential legislation has to be adopted, while at the local and national levels administrative and other machinery must be built to protect and enhance these rights. The States Parties to the Covenant do not undertake to ensure the rights set forth in it immediately, like the parties to the Covenant on Civil and Political Rights. They simply commit themselves to take steps, individually and through international assistance and co-operation to the maximum extent of their available resources, to achieve progressively the full realisation of the rights recognised in the Covenant.

**1. Reporting System:** The Covenant provided reporting system for the implementation of the provisions. Article. 16 of the Covenant stated that the States Parties undertake to submit reports to the Secretary-General of the United Nations who shall transmit copies to the Economic and Social Council for consideration and to the concerned specialised agencies. The Economic and Social Council may transmit the reports submitted by the States to the Commission on Human Rights for study and general recommendations or as appropriate for information. The reports are required to mention the measures which they have adopted, and the progress made in achieving the observance of the rights recognised therein. They are also required to indicate factors and responsibilities affecting the degree of fulfilment of obligations under the present Covenant. The reports shall be furnished in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the Covenant after consultation with the States Parties and the specialised agencies concerned

The States Parties to the Covenant and the specialised agencies concerned may submit comments to the Economic and Social Council on any general recommendation or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein. The Council may submit from time to time to the General Assembly the reports with recommendations of a general nature and a summary of the information received from the States Parties to the Covenant and the specialised agencies.

**2. Committee on Economic, Social and Cultural Rights:** The Economic and Social Council established a Committee on Economic, Social and Cultural Rights in 1985. The Committee is composed of 18 internationally recognised experts in the relevant fields. The members are elected by the Economic and Social Council through secret ballot from a list of persons nominated by States Parties to the Covenant. The members are human rights experts serving in their personal capacity. The Committee is charged with monitoring its implementation. It considers the reports submitted by States Parties and submits its report to the Economic and Social Council.

The Committee also makes general comments on a number of topics so that steps may be taken by the States to realise the objects of the Covenant. For instance, in 1998 Session, the Committee made general comments on the role of the National Human Rights Institutions in the protection of economic, social and cultural rights and domestic application of the Covenant. Thus, the implementation machinery is confined only to the reporting system to protect the economic, social and cultural rights. The reporting system is the one with which the international community has had the most successful experience. It is eminently suited to the implementation of economic, social and cultural rights as the experience of the specialised agencies particularly that of the International Labour Organisation (ILO) has shown. It was rightly considered that, since the rights contained in the Covenant can only be realised progressively and usually imply some positive action by the States Parties, it would be neither reasonable nor feasible to grant any right to complain to an international organ that a State Party is not living up to its treaty obligations in respect of them. The reporting system is useful because it helps to elicit the kind of information which is necessary to organise the technical and other assistance which will help governments to implement these rights. Article. 23 of the Covenant which is a part and parcel of the reporting system recognises the responsibility of the international community to render such assistance.

The above analysis shows that the implementation procedure under the two Covenants is not very effective. In the Covenant on Civil and Political Rights, the Inter-States Communications System as provided under Article. 41 has not been utilised by the States who have made the declarations. The conciliation procedure is also of no use because the system is utilised only in the Inter-State Communication System. It is to be noted that the Inter-State Communication System is not likely to be very effective because States normally do not make complaints of other States before the Committee for the violation of Human Rights. If it is done at all, the possibility of increase in international tension and conflict cannot be ruled out. The individual's communication system under the Optional Protocol is also not expected to serve any useful purpose for the international protection of human rights in view of the fact that only ninety-two States have so far ratified or acceded to the Protocol. The system of admissibility of petitions is so rigorous that a number of petitions are rejected. Out of 236 communications submitted to the Human Rights Committee since 1977 to 1987, 110 were declared inadmissible, discontinued, suspended or withdrawn. During the years 1990-1997 roughly fifty percent of the petitions submitted have been declared inadmissible. Moreover, under the system, the Committee after examining the communication, simply gives its 'views' which are not binding on the States. Thus, the powers of the Committee in such matters are very limited. It is not unrealistic to say that the system is farce. It cannot give any relief to the aggrieved persons. The only other implementation procedure which, at present, is being carried on under the provisions of the Covenant is the reporting system. Majority of the States of international community did not agree to go beyond this, probably because State's interests are very much at stake in these matters, but, even the reporting system is hardly effective due to many weaknesses.

In the Covenant on Economic, Social and Cultural Rights, there is no procedure for implementation other than the reporting system which is again not likely to bring any positive result in protecting the rights provided therein. Moreover, the rights stipulated therein are not obligatory on the States Parties. The States Parties undertake to respect and to ensure the human rights mentioned therein. It may be concluded that although the Covenants have recognised the rights to the individuals there is virtually no effective machinery for implementing them.

**Suggestions for Effective Implementation:** The stipulation of the rights in the Covenants alone is not enough. They themselves cannot serve any useful purpose. At present, there is a wide gap between the 'promise and performance' because of the absence of an effective international implementation machinery. Amnesty International reports have very often laid down that human rights are violated in a number of States. Further, assault on human dignity sometimes on a massive scale is a cause for deep anxiety. The international protection of individuals against the States is very much required because States should no longer be entrusted as their guardian in litem. In the law of human rights, the individuals and the State constitute the two opposing subjects of rights and duties. While the former has rights, the latter has a duty to protect them. International Law has a function to see that duties are performed by the States against the individuals. The effectiveness of the measures in matters of human rights is inextricably linked to the attitude of the States. It is the responsibility of each State to ensure respect for human rights within its jurisdiction. In some countries, especially in those which are referred to as developing countries or the least developed countries, the problem of protecting human rights is quite different. They are fighting for providing basic necessities of life to their people because of their poor economic conditions. How can a State think of providing civil and political rights to its people unless food, shelter and clothing are made available? No doubt, it is the responsibility of the States themselves to make every possible effort to make available the basic necessities of life. But to speak of human rights without speaking of developmental issues or the new international economic order, it is precisely being partial and taking sides. It would not serve the cause of promoting the full enjoyment of human rights. The co-operation of other States especially those of developed States is much needed. It is in their interest to eradicate poverty and hunger as their existence anywhere may constitute danger to prosperity everywhere. Their efforts are also needed to meet the challenge in view of its close relationship with the maintenance of international peace and security. Although developing countries give a call to establish a New International Economic Order, it has not been suitably responded by the developed countries. The United Nations System has also failed considerably to put the solution envisaged in the New International Economic Order into effect. It has posed a threat to the idea of economic betterment and also of greater human dignity, security, justice and equality. The forces of confrontation and tension amongst the States have prevented the arrival at a conclusion that is agreeable to all. It again shows that the developed countries have different approach towards the term 'human rights'. While they might be serious as to the respect of human dignity and honour for the people of their own States, but, they are not concerned for those human beings who are living across the border.

The future of the promotion of human rights on international level is therefore grim. It is likely to remain so, as long as the attitude of the States of developed countries towards the developing countries is not changed. The proper progress has, of course, been made. Various meetings, conferences, and seminars have been organised where speakers have at length advocated the need for protection of global human rights, but in reality, things are quite different. Millions of people are still deprived of the basic necessities of life due to extremely bad economic and social conditions. What the affluent States and their people who are advocating for the cause of human rights outside as well as inside the United Nations is doing for them is totally insignificant. What is needed on their part is the realisation of the conditions of those who are deprived of these basic necessities. They are required to realise that mankind is one and human beings are equal and must enjoy at least the minimum of rights and freedoms.

**International Judicial System:** A judicial procedure to protect the violation of human rights should be available to the individuals who are the victims of the violation of human rights. International judicial enforcement is an essential condition for an effective protection of human rights precisely because the rights of the individuals form the counterpart of, and as such are opposed to the duties of the State. The judicial enforcement system has a potency to afford the individual's protection against the State. If the States Parties violate the provisions of the Covenants, remedy should be available to the victims for the protection against violations in such a way, that adequate relief may be given. Rights without remedies are meaningless. International Court of Justice has jurisdiction to decide the cases of States only. Article. 34(1) of the Statute of the Court stipulates that only States may be parties in cases before the Court. It means individuals have no access to the Court. Neither the Statute nor the Rules of the Court permits the individuals to file a petition before the Court unless it is sponsored by the States. It is suggested that the victims of the violation of human rights provided in the Covenants be given a right to file a petition before an international tribunal when all the available remedies have been invoked and exhausted in the matter. A proposal to this effect was made as early as in 1947, before the Commission on Human Rights, and a Working Group was appointed to prepare a report on the measures of implementation on human rights. The Group proposed an idea that an international tribunal should be empowered to give binding decisions on cases of the violation of human rights, but the idea was not accepted by the Commission on the ground that it would violate the sovereignty of States and it would affect the relationship of individuals with the States. When human rights were violated in Rwanda, an ad hoc International Tribunal was appointed in 1994 by the Security Council to prosecute persons responsible for genocide and other violations of International Humanitarian Law committed in Rwanda and Rwandan citizens responsible for genocide in neighbouring States. However, the system for appointment of ad hoc tribunals for specific cases of violation of human rights is not an effective judicial system. There should be one consolidated body to deal with all human rights cases, preferably under the name of International Court of Human Rights. The suggestion for the creation of such a Court was given by the Australian delegate before the Commission on

Human Rights in 1947, but the suggestion was severely criticised by the delegate of the USSR on the ground that any action creating a Court which would stand higher than the separate governments and their citizens would inevitably lead to the destruction of the governments. The suggestion was later modified by Australia by stating that the International Court of Human Rights should have jurisdiction over all disputes arising out of the interpretation of the Covenants on Human Rights or in any treaty or Convention referred to it by any party to the Covenant or by the Commission on Human Rights. However, no such Court could be established.

International cooperation is therefore required to achieve and accomplish social and economic justice, from which stability and peace flow. The developed States have a share to meet the problems of developing countries in as much as it relates to the maintenance of peace and security. They have an obligation – moral, economic and international, to provide development assistance to these countries.

The International Criminal Court drafted by the International Law Commission and adopted under the auspices of the United Nations on 17<sup>th</sup> July, 1998 is likely to serve useful purpose for curbing serious human rights violation. The Rome Statute of the Court, under Article. 5 lays down that the Court shall have jurisdiction to decide the most serious crimes, i.e., The crime of genocide; Crimes against humanity, war crimes and the crime of aggression.

The crimes against humanity includes a number of crimes under Article. 7 of the Statute which lays down that, the 'crimes against humanity' means murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation or any other form of sexual violence of comparable gravity, persecution against any identifiable group or collectively on political, racial, national, ethnic, cultural, religious, or gender, enforced disappearance or persons, the crime of apartheid or other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health. Thus, the jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court itself shall satisfy that it has jurisdiction in any case brought before it. Thus, the Court may, on its own motion, shall determine the admissibility of a case. The Court therefore shall have jurisdiction over natural persons. A person who commits a crime shall be individually responsible for the crime. The Court when established shall be an effective instrument for curbing the core human rights violation if most of the States become parties to the Statute.

### **Conclusion**

The efforts made in the past to protect the human rights at international level have not been very promising. The effective protection of human rights is possible only when a new look is given to the meaning of the concept of sovereignty and the expression – 'human rights'. As far as human rights is concerned, its meaning is quite different under different political systems. The Communist States affirm that protection be granted to the human beings by the States themselves. There is hardly any need for the introduction of international measures for its violations. The

creation of an international machinery would be an invasion on domestic jurisdiction and sovereignty of a State. However, the Western approach is different, which is clear from the fact that they have successfully created regional agencies for the protection of human rights. As long as the States continue to differ on the basic concept of human rights, the implementation of the provisions of the Covenants is not likely to be successful. What is needed is that, a political climate is created in such a way so that the gap between the two views may be minimised. An effective procedure for the protection of human rights would mean substantial change in the distribution of power between member States and the United Nations, and within member States between active decision makers and the individual human beings. It would further mean that the member States should agree themselves for the curtailment of national sovereignty to some extent. If the States are serious for the promotion and protection of human rights, it is quiet essential to provide remedy at international level. As long as some device is not found out, the States would continue to misuse their machinery against the individuals of their own. The device which was cherished in the Charter would remain a dream. The paper progress and the adoption of the Universal Declaration and the two International Covenants, holding of seminars and conferences would be deemed simply an illusion.

It may be stated that in order to protect human rights effectively, the meaning of the concept of sovereignty has to be given a new look. There is a profound gap between principle and practice. It is true that treaties and declarations articulate noble ideas and the minds behind the drafting of the same are very enthusiastic and positive in creating a better world, however, inconsistent and toothless enforcement reveals systematic weaknesses. In view of the lack of enthusiasm and zeal on the part of the States, and also because of the different political systems and concepts of society, it appears utopian to talk about the protection of human dignity and honour for all the human beings of the international community. Until and unless the States commit to genuine accountability, human rights, more particularly Universal human rights will remain aspirational and idealistic, rather than being realised and true.

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