FREEDOM OF PRESS AND EXPRESSION UNDER INTERNATIONAL LAW

JUSTICE SULTAN HOSSAIN KHAN

The right to know and freedom of information and expression are inalienable mechanism of a free democracy and democratic society and for that purpose the press have more access to information a democratic goverment may function in full view, and wrong doing will be minimised and the functioning of the government will be more transparent.

Here we may quote the famous words of Raudolph Hearst :

> "When free discussion is denied, hardening of the arteries of democracy has set in, free institutions are but a lifeless form, and the death of the republic is at hand".

The freedom of press and expression which means absence of interference within the municipal area or within the state is not an absolute one, it is subject to limitation and exceptions as acknowledged in constitutions of several modern democratic countries. The growth and development of representative democracies is interwined with free press since the functioning of a democratic goverment. A democratic political society or goverment which functions on the consent and support of the people

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acts on the opinion of the people based on free debate and dissemination of their views and opinions. It is necessary that widest flow or dissemination of information and opinion should be ensured for functioning of a responsible government of a democratic state. But as said earlier there is also a need for regulating and controlling this freedom for better enjoyment of the freedom. Without a sense of responsibility a free press may become an instrument of injustice.

As I have said in the decision of the High Court Division of Supreme Court of Bangladesh reported in 34 *Dhaka Law Report* page 190 (High Court) (popularly known as *Observer* case) that :

> "The great objects of the Government are the welfare of the people which it governs and the pretection of the life, liberty and property of the individual citizen. To this end a consitutional system is evolved under which powers of govrnment are limited and thereby operate as a bulwark of liverty for protection of private rights. These rights are protected by constitutional guarnatees and they are called fundamental rights because these cannot be transgressed, limited or violated by any organ of the State. These provisions in the Constitution for protection of the rights have been made for individual citizens including the makers thereof for the times when they will have no power to make them. The fundamental rights should be regarded as inviolable but subject to the other constitutional provisions."

The rights of man expressed in international instrument, claim credibility only through dissemination of

undiluted information among the nations. In this regard Article 19 of the Universal Declation of Human Rights, 1948, reads as follows :

Article 19 : "Everyone shall have the right to freedom of opinion and expression. This right shall include freedom to hold opinions without interference and to seek, receive and import information and ideas by any means regardless of frontiers."

Article 19 of the International Covenant on Civil and Political Rights, 1966, runs thus:

"1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; This right shall include freedom to seek, receive and import information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice..."

Article 20 of the Covenant reads as follows :

"1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that caustitutes incitement to discrimination of hostility or violence shall be prohibited by law."

The rights of man, expressed in international covenants, claim credibility only through follow of information across the border of the nations of the world. It is inevitable that none of the fundamental freedoms enshrined in Universal Declaration and other instruments would be heard to be availed of without either acceptance by the respective states or support of world opinion for acceptance by the states. Each nation which is a member state of the United Nations,

each country committed to uphold the international instruments regarding flow of, and access to information to its citizens regardless of international border, must accept the obligation to allow flow of information and opinion both in word and out ward.

But if the laws and governments of each country prohibit fact discovery, genocides shall never come to light, never shall the perils of chemical hazards, nuclear deals and other calamities, shake the unawary people and barn magnitude of the catastrophe that may be fall on them. The consciousness of the human race will never dawn unless the informational smog is cleared to open a clean sky of free information. We have seen, in the name of territorial integrity of soveregn states socalled free democracies state terrorism and genocide are perpetrated upon one section of people by the states killing them as enemies of the state and full information about these activities are suppressed. Every attempt is made to suppress information about suppression and sub-version of basic human rights, right to life and right to property. What happens and happened in some Latin American countries, in Israel, in Bosnia and Kashmir is systematically covered up.

The media has a challenging duty to inform the world opinion whereever human rights are in peril, when free flow of information is stiflied and when secrecy in the name of security of the state becomes the part of the state-craft to freeze the investigation by the press, democracy is but a sham and hollow institution. On the other hand, when press lords and political mafias strangle freelance journalists who are not afraid of death or detention order to bring to light truth which may enhance the cause of the oppressed, human freedoms suffer from short of bredth.

The mandates of United Nations and the world bodies upon the states to ensure freedom of press and expression are ignored or violated by several states but the United Nations or the affected population have little remedy to correct the violations.

The monopoly control of dissemination of information and communication by the state is itself a danger to the democracy of information. Racist regimes, authoritarian rulers and one party governments, often silence dissidence or at least regulate the circulation of information.

Likewise, dominant cultural groups may impose upon weaker communities manipulated information which may result in suppression or cultural and ethnic demonetisation of minorities. Notwithstanding any international covenants, declarations, conventions and other instruments protective and promotive of human rights, they can all be emasculated by control of the media, enforced official secrecy and other methodology. Freedom of information must, therefore, be reconciled with ethical standards and respect for cultural identities, watch dogged by judicial sentinels or international mechanisms like the Human Rights Committee. Implementation machinery alone makes international instruments a reality. The broad trend is in this direction but journey is far from the destination.

Thus, the rights of men, of women, of children, of prisoners, of handicapped persons, of youths and other categories have found expression in international documents and regional declarations. In short, a world jurisprudence, rooted in better human values and evolving standards of human decency and dignity, enlivens the consciousness of the human species as a whole, even though judicially enforceable rights largely depend upon

incorporation by sovereign States of these principles in their *corpus juris*. This progressive trend needs supportive know-how and feed-back. The organs of the United Nations and a host of voluntary agencies, or bodies like world watch, have been mobilising planetary public opinion in support of human rights and remedial processes, helped by informational exchanges.

A free information culture and a realistic structure for the future, incorporating therein constitutional informational justice is high on the agenda of every democratic nation though it has experienced the dangers and disasters of a sound-proof, light-proof system of government, and 'hand off' cult of authoritarianism. Moreover, the tradition of official secrecy, compounded by the personality cult of the rulers in third world countries cussioned by terrorism and communal violence have made it easy to govern by enforced silence. Democracy in long slumber with a quasi-feuhrer and shivsena type communal hysteria has made a challenge to free flow of information in many countries. A suppressive system, with disinformation and misinformation methodology *vis-a-vis* the people, has been created by press censorship in several countries and electronic media monopoly by powerful group has rendered free information a captive in their hands. The suffocation of freedoms can be relieved not by phoney slogans of power to the people, but by the oxygen of legislated right of the people to all official information so as to make government by the people a transperant process. Moreover, fundamental freedoms are necessary conditions and instruments for the citizens of a country to rise to their full cultural stature and to maximise the human resources of the nation. So the state, a cullective representative of the people, must facilitate the easy unfoldment of the full personality of every

member. Therefore, the state, by its very foundation bound, must give as much access to all information in its reach or reservoirs so as to serve the popular purpose of making the citizen a better, more instructed and capable person. Freedom of information, the right to know and the facilities to receive, must be assured by all countries subject to universally accepted exceptions and exclusions. Free information, blockaded by whatever be the *alibi*, is bad save where the state's survival is in imminent peril. For, once you refuse the right to know even if your motive be good, you diminish the personhood. A caution from John Stuart Mill is:

"A state which dwarfs its men, in order that they may be more docile instruments in its hands even for beneficial purposes—will find that with small men no great thing can really be accomplished."

DEMOCRACY AND HUMAN RIGHTS UNDER RULE OF LAW AND INDEPENDENT JUDICIARY

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INTRODUCTION

The philosopy and the political concepts of Democracy, Human Rights, Rule of Law and Independence of judiciary are intimately related and inseparately connected as complemetary to each other and are to be moralised, co-ordinated and suitably adjusted so as to balance the competing rights and freedom of those who comprise the society. The basic formulation of the principles underlying these concepts has to be translated into actuality in the life of the people in adaptation with the growth of the changing world so that every citizen may look to the future in which each may realise his full potential and lead a free life in a free society which is essential for civilised and peaceful existence of the society.

It would be audacious on my part to make any attempt to theorise on the most important and burning political philosophy of Democracy, Rule of Law, Human Rights and the role of independent judiciary. But when, we speak about these concepts, our thought naturally turn to the Rights of the people in the political sense of the term namely

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Freedom, the fundamental rights and the basic human rights. An attempt will, however, be made in this article to investigate and analyse the propositions to show their relation and the gap between the ideal and real with a summary of the position in the national and international perspectives drawing general conclusion incorporating humble suggestions.

DEMOCRACY AND FREEDOM

Roconciliation of the freedom of the citizen with the authority of the state has been the recurring problem of civilization throughout the ages. The struggle for freedom against arbitrary power and unjust laws has always been to secure self-goverment, which lie at the foundation of democratic society.[1] The vital force which preserves and develop this democratic life is the force of freedom, because "a state is free only because its citizens are free."[2] But, since the standard of freedom is designed by and found in the state for its actualisation,[3] regulatory use of law being the condition of freedom[4] and since the individual finds his true self in the service of the state, he can in the case of disobedience be forced to be free. In a welfare state justly imposed law is not necessarily the enemy of everyone's freedom but a safeguard for sustaining freedom, because "freedom for the pike is death for the minnos:"5 Equality, equal opportunity and equal enjoyment of rights by all are the infrastructural foundation of democratic society.

The principles of democracy and majority rule should however, be moralised and carefully examined. No doubt, the closer the judgment of the people approximate unanimity, the greater the degree of consent secured for any action or policy. But does the principle of majority

decision determining the governmental policy solely by counting of votes demand that we abandon all qualitative judgement in fovour of a quantitative method? In my opinion it would be dangerous to do so. In that event it will be indistinguishable from tyranny of a mojority which, as our own history tells us, is sometimes no less cruel or unjust indeed, may be more so, than tyranny of a single individual. What is demanded by the democratic form of government is not submission to the will of the majority but rather submission to the reasoned judgment of the majority. Ambition usurps and compulsion repudiates the rule of reason and the call of justice. We are obligated to submit to the decision of the majority not because it represents a numerically superior will, but because it represents the best judgment of the society on the principle that the judgment of many is likely to be superior to that of the few.[6] As Aristotle said: "For the many when they meet together, may very likely be better than the few good. Hence the many are better judges than a single man for some understand one part, some another, and among them they understand the whole."

Moreover, discussion and deliberations in a democracy are a continuous process and no decision is regarded as irrevocable as it always remains open for the minority to become the majority through the instrument of persuation. The democratic process is designed to determine, by popular discussion and decision, the choice of the best means to achieve the common good. While the finest pages of history bear witness to the glory of freedom, it cannot be gainsaid that the nosecounting method which is unavoidable in a democracy has very serious shortcomings, particularly in underdeveloped countries suffering from poverty and illiteracy. It is a reflection on the drawbacks on democracy

that the happiest periods, which civilized man has known have been under bening and enlightened rulers who were not elected on the basis of adult franchise. But despite all its shortcoming, democracy is and ramains, as Sir Winston Churchill has so aptly put it, the least unsatisfactory of all forms of government. History has proved and more so in our country that the alternatives to Democracy—Monarchy Oligarchy, Dictatorship, Martial Law— are so horrifying that we should count our blessing in a democracy rather than be frustrated by its darkside. In the memorable words of the great American Jurist, Justice Frankfuter, "Democracy is always a becoming goal, not a safe harbour. For freedom is an unremitting endeavour, never a final achievement." That is why it has been so aptly said that eternal vigilance is he price of liberty.[7]

It may, however, be noted that democracy and freedom are not synonymous. Today the word democracy has come to be identified in the developing countries merely with adult franchise irrespective of ignorant and illiterate i.e. the right to be governed by the elected representatives of the people. Democracy in this sense is quite different from freedom. You may have democracy without freedom and freedom without democracy. There are several totalitarian states which are democratic in the sense that their rulers are elected by the people and which actually use the word "Democratic" in the very name of their state. But their political set-up is characterised by the very negation of freedom as they allow only one party to function and do not permit the right to dissent.

The elected representatives under living democracy are not entitled to ignore or abrogate the basic human freedom as an expression of "the democratic will of the people" since such claim is the very foundation of all fascist and

totalitarian government. A government which does not recognise inalienable human freedoms and holds the lives, liberty and property of its citizens subject at all times to the absolute and unlimited control, is after all but a despotism. It is a despotism of the many, of the majority, if you choose to call it so, but it is nontheless a despotism. Democracy may be defined as the dwelling place which man has built for the spirit of liberty. A democracy in which the spirit of liberty does not reside is a morgue. But the dilema of democracy is the inter-action between liberty on the one hand and the burden of obligation and responsibility on the other. The necessity arises of legal resposibilities to prevent liberty from degenerating into licence. No virtue is absolute, not even freedom. One man's freedom fighter is another man's terrorist. It is true that eternal vigilence is the price of liberty. But it is also true in even a deeper sense, that eternal responsibility is also part of the price of liberty. Excessive authority without liberty in intolerable; but excessive liberty without authority and responsibility soon becomes equally intolerable. Hence the need to reconcile and strike a balance between authority of the state and rights of citizen. It is aptly said that the greatest statesmen is he who can strike the balance between the authority and responsibility of the state on the one hand and the rights and freedom of the individual on the other. The problem of law and order situation arising out of the conflicts between the state authority and individual rights is basically one of the abuse or misuse of power at the seat of power at the executive level. So corruption of power is the worst form and mother of all corruptions. According to Lord Acton, all power corrupts and absolute power corrupts absolutely. Evey monopoly of power destroys the participant unity of all groups that democracy pledges. Democracy aims to control

the power and affords protection from the abuse of power and it aims how we are governed rather than who governs. Democracy is the parameter of state power for the preservation and protection of universal human rights of today under the Rule of Law.

RULE OF LAW TODAY

By Rule of Law as unerstood today in its broadest connotation we mean rule by law and not by man i.e. government of laws and not of man. It means that the exercise of power of Government shall be conditioned by law and that the citizens shall not be exposed to arbitrary will of the ruler i.e. both the rulers and the ruled are subject to laws. So, a nation's dignity depends upon its respect for the rule of law. Thus the question of law being the rudimentary, the first priciple or element in a human society, before we proceed to elaborate the term "Rule of Law," a word may be said about the importance and characteristics of law that shall rule the society.

Law, in the modern legal sense i.e. human law which offers a body of rules to regulate human life in action, is nothing but a set of rules regulating the conduct and relationship of the members of a society, enforceable under the sanction of the state and is, in essence, the foundation of such society nay the index and foundation of civilization. It took its birth with the birth of man and has grown with the growth of the society, its function being always to regulate the conduct of human affairs. Every law assumes and presupposes a certain end or purpose i.e. general welfare, and lays down the rule of action by which that end or purpose is to be reached. The term law is technically applied in modern society only to such rules as are enforced

by the coercive power of the state. But trully speaking 'law' bears reference to the query: what should be the conduct of man in his individual and collective life"? This query presents itself to us innumerable matters conncected therewith. Hence its reply covers a very wide range of topics than what the term 'law' technically signifies. It includes entire scheme of moral, social, economic and political guidance and the very spirit and objectives of law are dependent on that scheme. There are two aspects of this issue— one is with regard to the law itself, its nature, capability and characteristics and the other is with regard to social environment and psychological attitude of the people. The law that shall rule the society must bear certain characteristics viz, it should be acceptable to human conscience, be capable of establishing peace and security, should inspire people to protect human liberty, lay down a basis of economic and social life, its objective being only to persue the course of justice.

A complete analysis of the idea of law, therefore, involves an analysis of the ethical element of justice involved in it which emphasises the idea that law and justice are synonymous terms. The rule of law and justice is, to be distinguished from the rule of wisdom based on the doctrine of laissez faire, which has practically given place to the rule of justice giving every man his due share what he deserves by maintianing on equilibrum between the rules of wisdom and the rules of justice in order to secure and promote the welfare of the entire community because society stands on justice which consist, in treating like cases alike and meeting out fair and equal treatment to all alike. But it may be observed that law and justice cannot be regarded as synonymous if the law is bad. If the law gives unreasonably restricted fundamental rights or no

fundamental rights the decision based on that law cannot be just and no amount of independence of judiciary in the absence of good law will render any good to the standard of justice. We may make a closer look at law and justice manning a system of values since the state is an agency of human purpose seeking to maintain a legal order embracing political, economic and social structure of a state.

It is true, without law there is no order and without order men are lost not knowning where they go not knowing what they do. Where the law ends tyranny begins. For resistance of tyranny and oppression, for establisment of social order or upholding scales of truth and justice, and for maintaining peace and tranquility, the importance of law cannot be over emphasised. It is the gateway of social liberty and sentinel against any attack on human rights. It is due to this importance of law in a society the oppressed people all over the world have been cherishing the hopes and raising full throated slogans for establishment of the Rule of Law.

When we talk of Rule of Law we attach a special signifcance to this term. So it should be made absolutely clear to us what we really mean by rule of law. It does not mean the rule of the society of unjust or oppressive laws although enjoying sanction from the formal sources of authority but it presupposes some golden principles evolved through trials and sacrifies of human society which contribute to the achievement or real justice. It means the supremacy of law, not of man, equality of all persons in the eye of law, and absence of any arbitrary power on the part of the government. The Rule of Law today depends on the provisions of law made by the legislature of adequate safeguards against abuse of power by the executive according to te propositions formulated by international Commission of Jurists an requires, on the one hand, the

existence of and executive with sufficient power and resources to discharge its funtions with efficiencey and integrity and, on the other, the existence of a legisature elected by democractic process and not subject, either in the manner of its election or otherwise, to manipulation by the executive. To implement the above principles it is essential that the powers of legislature be fixed by constitutional provisions[8] and that the juidiciary be vested with the power of judicial control over executive acts and the power of judicial review of legislative enactment.[9]

JUDICIAL INDEPENENCE AND ACCOUNTABILITY

The judiciary occupies a very important position in the political system of a country. In a modern democracy, parliamentary or presidential, the executive and the legislature whether joint or separate are co-ordinate, but the judiciary in either case is independent from interference in its function both from the legislature and the executive, and is closely associated with other two organs of government as well as with the rights and duties o' the governed. According to the resolution of International Commission of Jurists and the Universal Declaration on the Independent of Justice unanimously held at Montreal in 1983, an independence judiciary is an indispensable requisite of a free society under the Rule of Law.

The ultimate protection of an idividual in a society governed by Rule of Law depends upon the existencs of an enlightened and independent judiciary and upon adequate provisions for the speedy and effective administration of justice. Although duty of the judge is not to make law but to apply and thus the function of the judge begins where the function of the legislature ends, the judiciary has to play a

very important role in making case law by way of interpretation of ambiguous statutory provisions and enunciating principles of law which are more important and weighty in dimension and which are translated into the fact of recognised and enforced law. We may quote here a seminal observation of a political personality like Roosvelt: "The chief law makers in our country may be and often are the judges because they are final seat of authority. Every time they interpret the contract, property, vested rights, due process of law, liberty, they necessarily enact into law a part of a system of social philosophy and as such interpretation is fundamental, they give direction to all law making, and we shall owe most to those judges who hold a twentieth century economic and social philosophy." So the role of judiciary will not merely be legal interpretation but to serve as social engineering.[10]

The existence of the impartial and independent judiciary is the prerequisite of the administration of justice which is the solemn purpose of judiciary. Rule of Law is the only safeguard for sustaining democracy and the democratic order in the society. Without Rule of Law democracy would generate into mobocracy and without the independence of judiciary the very concept of the Rule of Law would be turned into mockery. The judiciary, therefore, is not a mere instrument of conflict resolution but a citadel of justice where the values of the nation are preserved, protected and expressed. An independent judiciary in preserving and protecting human rights serve as a barometer of national values.[11]

It seems necessary to say a few words about judicial acountability. There are many forms of judicial accountability which may be classified into Legal accountability, Public accountability and informal and social control. Judicial

independence implies freedom from interference by the executive or legislature with the exercise of the judicial function but that does not mean that the judges are entitled to act in an arbitrary manner. It is not independent of the law and constitution nor of accountability of the people in the final analysis as a court. Public accountability of the courts and judges is a necessary derivative of the value of public confidence in the court. The importance of public confidence in the court is well reflected in the oft quoted slogan that 'Justice should not only be done, but must also manifestly and abundantly be seen to have been done.'[12] It is also reflected in the rather strict tests applied for self-disqualification for bias. The tradition of the Bench go even further to the extent of strict requirement of the law of self-disqualification.[13] Here we should remember the twin maxim: 'Justice delayed is justice denied and justice hurried is justice buried.' The reconciliation of stability with flexibility is a perennial problem for any legal system and so law to be workable must be dynamic. The judge must be given a certain amount of discretion but the degree within which he should exercise his discretion is a question for which no fixed rules can be laid down. Objective and right reason should shape his decision.

It is also important to be aware of the dangers which lie in undue popular pressure on judges. Excessive popular pressure and irresponsible journalism, might put the judges in an unbearable position and is likely to threaten the independence of the judges who very often have to act against popular wishes and to protect dissenters and members of minority group. Evidently, there is a continuous tension between judicial independence and public accountability of judges in a democracy. The tension should be reconceled by a careful exercise of wisdom and good

judgement so that the proper balance between those very importan principles be maintained. Political leaders, academic critics and press writers should be aware of the dangers which excessive public pressures pose to judicial independence and impartiality. Public criticism should be directed at all aspects of the administration of justice including judicial conduct, judicial appointment, court procedure and court management but not to interefere with the effectiveness of public scrutiny of judges and courts.

HUMAN RIGHTS

Man is born with certain inherent rights which are inalienable by any law or constitution. Aristotle is credited with being the first philosoper to have broached the subject. Except for slaves the state is to him "a cmmunity of equal directed towards the best possible life." The theory of Rights of Man or Human Rights received the most humane and just treatment in the hands of Islam. Fifteen hundred years back Islam was the first to recognise and proclaim to the world the basic and most fundamental of all human rights, the unity and brotherhood of entire human family and particularly the equality of man in the eyes of Allah, irrespective of caste, creed, religion, sex or colour and total absence of discrimination in any form whatsoever. These were not merely proclaimed but ordained by the Holy Quran. Speaking at the International Seminar on Human Rights organised by Columbia University in New York in 1986, the former Prime Minister of Ireland and an eminent jurist San Mocbride, who won the Noble Prize for peace, said:"

> " It is sheer ignorance which has led the enemies of Islam to attack and blemish the name of Islam, Muslims and the Islamic form of Government. Koranic

prescription of human rights is undoubtedly more meaningful and constructive than the charter of human rights." [14]

The school of natural law flourishing in Europe in he 17th & 18th century, developed the nation further in the context of western nation-state.

Human Rights, However, were first codified in the famous French Declaration of the Rights of Man and Citizen of 1789 proclaiming liberty, equality and fraternity as cherished human values recognised and protected as natural rights of a citizen.. The English Bill of Rights passed in 1869 listed several procedural rights but fell far short of fundamental human rights. Then came the American Bill of Rights in 1879 which remains another landmark in the evolution of the concept of human rights. The charter of the United Nations signed on 26 June, 1945, re-affirmed faith in fundamental human rights, in the dignity and worth of human person. Article 55 of the charter proides that the U. N. Shall promote universal respect for and observance of human rights and fundamental freedoms for all "while under Article 56 all members pledged themselves to take joint and separate action for achievement of the purpose set forth in Article 55."

Then came the universal Declaration of Human Rights as first global attempt to define and codify humn rights, adopted by the U. N. on 10 December 1948, which is the basic international pronouncement recognising a set of thirty inalienable and inviolable rights of all members of the human family and is now universally recognised as the Magna Carta of all mankind. But this Declaration of Human Rights does not have the force of law. It is not a treaty but an internationally endorsed statement of principles. Three

decades after the provisions and ideals of the charter and Universal Declaration have now been much more specific and obligatory in three instruments of great significance: (1) The International Covenant on Economic, Social and Cultural Rights, (2) The International Covenant on Civil and Political Rights, and (3) The Optional Protocol to the latter Covenant all coming into force in 1976. After ratification by individual nations the International Bill of Human Rights," which includes the said Covenants and Protocol, has become a reality taking on the force of International Law.

As to implemetation of these Covenants, two distinct methods of implementation have been provided in the form of 'Human Rights Committee' to deal with civil and political Right and 'Social and Economic Council' for realisation of economic, social and cultural rights in collaboration with the ratifying states. Although with the adoption of the Universal Declaration by the General Assembly without a dissenting vote a global consensus has been achieved, it is rather unfortunate that only about one hundred member states out of 179 have till December 1991 signed the Covenants and a great majority of the third world countries have not yet ratified the same. It is understandable that these countries suffer from a paucity of logistics which do not allow them at the moment to guarantee such an exhaustive bundle of economic, social and cultural rights to their poeple all at a time. But their reticence to ratify the covenant on civil and political rights is hardly understandable, since it is for the purpose of those very rights that these countries embarked upon struggle for independence, often bloody ones. Perhaps because of absence of an organised public opinion these rights remain suspended and of abolished in many of the Third World Countries. It is also a matter of regret that large number of

countries should have been oblivious to the international human rights norms embodied in the Convention on the Rights of the Child and the Convention against torture.

Today human rights have become a subject of animated discussion not only at the international level but also in national jurisdiction. Every country whether developed or developing, expresses concern for promotion and realisation of human rights but the approach varies on account of differing socio-economic conditions and cultural traditions and values. The U. N. has evolved a series of international instruments over last forty years laying down a normative regime of human rights comprising social, economic, civil and political rights which have become central pillars of the international political and legal order. The legal embodiment of this new international order is to be found in various instruments which are the law-making multilateral human rights treaties. The membership of the human family entails acceptance of and adherance explicitly to those instruments, which established that order, to comply with their obligations and to take part in their operations as well as in the work of their supervisory organs.

Spread of awareness of the rights and developing an attitude of acceptance thereof by the member countries and their citizens is the challenging task which must now be undertaken in order that we may have a peaceful world to live in where the bond of fraternity and understanding may unite the human race and the Universal Declaration of human righs gets transformed from a mere written code of conduct into living human conduct of everyone everywhere.

CONCLUSION

The democratic ideal is essentially a moral concept and should be approached by means which are themselves democraic. The essential value of democracy, therefore, lies in the means that we adopt, the way in which we persue our personal development and our social progress in the governance of our country, and in fact in every aspect of our life, individual, collective, national and international. Sociable as he is, no man can live in isolation nor a nation can exist completely isolated from the family of nations. The vital force which preserves and develop this democratic life is the force of freedom.[15]

Life is dynamic, and so are man and human society. One charateristic of dynamism is that it generates friction and in terms of social values that means the differences, disputes and the right to differ which lie at the root of all knowledge, inquiry, research and progress. While, therefore, we must strive to safeguard the right to differ, to question and even to protest, we must at the same time stirve to secure that our differences in every sphere—social, economic, political or whatever, should act and react beneficially and not destructively. They must be regulated and sought to be resolved through the adoption of agreed peaceful procedure. This means broadly that we must all submit voluntarily or if needed reluctantly and even under constraint to what has come to be described as the Rule of Law.

Some of the written Constitutions, more particularly those of newly independent states, have incorporated the substance of several of the articles of the U. N. Declaration as substantive provisions making them justiciable and enforceable through judicial process. But the Declaration of Human Righs does not in the accepted juristic sense of the term, constitutes a "Law". It stands, nevertheless as a

shining milestone along the long difficult and weary path trodding by man down the corridor of history. At this stage the main efforts must continue to be directed towards wider recognition that human rights shall carry with them sanctions making these rights enforceable through national judicial system. This process would, however, prove effective if the judicial process is not unduly restricted but is guaranteed to take its due course without let or hindrance. In other words, a free and independent judiciary is a sine qua non for the effective safeguarding of human rights and for guaranteeing freedom, justice and equality.[16]

Achievement of justice social, economic, political and equality of status and opportunity are the aims enshrined in the national constitutions. The Universal Declaration was proclaimed as the commom standard of achievement for all people and all nations in respect of human rights as the first segment of the International Bill of Rights and the U. N. has evolved a series of international instruments over the last forty years laying down a normative regime of human rights but it is rather unfortunate that, in fact, the principles exist as ideal rather than real. Consequently, great hiatus is left between the ideal and the actual. The most important basic principle of the sovereign equality of all member states proclaimed in the Charter of the U, N. which took its birth out of the ashes of the Second World War is negatived and defeated by the ghostly provision of the veto power of the big permanent members which is the root cause of all threats to the peace, breaches of the peace and acts agression, frustrating the main purpose of the U. N. The majority decision of the General Assembly on important issue and even the judicial decision of the International Court of Justice, a dependant judiciary like a powerless power which is a contradiction in terms, is sent for final

political consideration of and gambling by the permanent members of the Security Council. It must be realised that the independence of the mechanisms which enforce human rights are no less and perhaps, more important than the definition of rights since, in the absesce of independent Courts which enforce those rights, they will remain unfulfilled pious wihses and noble objectives in the statute books or international treaties.

How is it that in the last half of the twentieth century, after having passed through the shattering and devastating experience of two world wars and in the shadow of a nuclear holocaust, despite all the efforts that has so far been put forth to save mankind, man continues to be the victims of discrimination, intolerance and cruelty at the hands of his fellow man? Today, there are hundred and seventy nine member states of the U. N. who are pledge bound to honour the U. N. Charter and the Declaration of Human Rights both in letter and spirit. But what is the real picture that we see today? These principles are honoured more in breach than in observance and the violations, as a natural corrollary leads to violence. Resort for others rights is the essential pre-requisite of democracy and rule of law. That is why the great French philosopher Voltaire had said "I disagree with you but I shall sacrifice my life to defend your right to disagree."

One thing has become more and more conspicuous since the adoption of the Universal Declarartion of Human Rights more than four decades ago and that is the politicisation of human rights. Attention to violation of human rights is paid only if it is politically expedient otherwise we close our eyes no matter how cruel the violations are. Some get overwhelming attention, as in the case of Iraqi invasion of Kuwait, while others are allowed to pass by in silence as the case of Israili occupation of Palestine for about fifty years by

ejecting the former from their homeland and transplanting the latter thereon, as well as the recent Serbian aggression on Bosnia, a member State of the U. N., and the current Russia's aggression on Chechenya which symbolize the ugliest form of state terrorism perpetrated on the basic human rights of the people. Can there be a more glaring example of gross violation of human rights in the world today than the denial of self-determination to Palestanian and Kashmeris and the denial of self-defence to Bosonian on the verge of their annihilation by aggression? It is distressing to all who cherish freedom and democracy to find one super power or the other vetoing the overwhelming world opinion on Palestine as reflected in series of resolutions of the United Nations. We agree with and support every word spoken against the Iraqi invasion of Kuwait. But are not those very same words applicable to Israil and Serbs with equal if not stronger force? They why is this double standard in applying the U. N. Charter, and why one standard in Haiti and Somalia and the quite opposite standard in Algeria?

It is a standing shame on all of us that about fifty years after the adoption of the U. N. Bill of Human Rights and the Universal Declaration on Human Rights, we still have discrimination in many parts of the world based on race, religion, language or creed, which is an insult and an affront to human conscience. Despite universal condemnation it continues to imperial world peace which is considered a worst form of violation of the fundamental and basic human rights. It is a primary objective of the world body and the moral conscience of all mankind that this abhorrent practice is systematically rooted out. We appeal to the world conscience and the United Nations to come foreward sincerely and wholeheartedly in aid of the suffering

humanity, who are being denied the most fundamental of all fundatmental human rights, the right to life in accordance with the principles of the U. N. Charter and the Universal Declaration of human rights.

There are reasons and some justifiable reasons also to be pessimistic about what we see all around us today. But every cloud has a silver lining and it is said that out of chaos and evil cometh the cosmos and good. So let us not loose heart or despair. After all the country nay the world is ours. Let us, therefore, rededicate ourselves to the ideals, values and the spirit of the inalienable right to life, liberty, equality, fraternity and the persuit of happiness, which are cherished human values recognised as natural rights of a free man. Of all the legal and constitutional concepts in the world's experience the concept of a human right has the largest moral, ethical and spiritual content. It is wrong to treat a civil right as creating a constitutional riddle to be solved only by courts, lawyers or partisan political agitation. They represent basic values of civilization and in the struggle for a more just society it would be folly to forget this in the modern noise of juristic and political wrangle over these rights.[17] They are after all, those rights that make life worth living. These basic human rights have a force of their own and governments may promote or suppress them but they can never be extinquished. But liberty lies in the hearts of men and women and when it dies there no constitution, no law, no court can save it.

Let objective reasons and humane consideration shape all of our national and international activities on which rests the civilized existence and summum bonum of the human society.

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HUMAN RIGHTS IN ISLAM

DR. MUHAMMAD MUSTAFIZUR RAHMAN

When the will of the strongest was everywhere the measure of law and right, then Islam inculcated among mankind the principle of divine unity and human equality. A delegation from the christians of Najran, consisting of sixty nobles, learned men and religious leaders, arrived in Madina and entered with the prophet of Islam into a public debate. They were joined by the Jews, thus resulting in a tripartite dialogue. The Prophet was calling them to recognize the unity of God and the equality of mankind. They asked him which prophets he believed in. He recited the following verse of the Holy Quran: We believe in Allah and in that which has been revealed to us and in that which was revealed to Ibrahim, Ismael, Ishaq, Yaqub and his children. We believe in what has been given to Moses and Jesus, as well as in all the revelations which the Prophets have received from their Lord. We do not differentiate between them. And we do submit to Him. (2:136) At this the prophet was commanded by Allah to address the delegates and proclaim to all mankind:

Say, O people of the Book, Come now to a fair principle common to both of us, that we do not worship any one but God, that we do not associate anyone with Him, and that we do not take one another as lords besides God. But if they

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turn away, then say; Bear witness that we are Muslims. (3: 63) .

This call of divine unity and human equality endowed with reason and candid emotion was so effective that the delegates resolved neither to oppose Muhammad nor the missionary activities of his followers. They requested him to appoint for them a judge for their disputes at home. The prophet sent with them Abu' Ubaydah Ibn al Jarrah, who was vested with the proper judicial authority.

Abu Haritha, the most learned man of the Najran delegates, told a friend of him that he was perfectly convinced of the truth of which Muhammad was teaching. When he was asked, why he did not then convert to Islam, he answered: I can not do so on account of what my people have done to me. They have honoured, financed, and respected me; and they insist on differing from him. Should I follow him, they would take away from me all this that I now have. (Life of Mohammad, Haykal, p. 197). Nothing but the inclination to material gain and social eminence dissuaded Abu Harithah from accepting Islam.

In the year 6 A. H. the prophet of Islam wrote letters to several kings including Heracleus inviting them to the divine unity and human equality. His letter contained the verse which includes the sentence". . .we do not take one another as lords besides God". This referes to the practice prevailing then among different nations to take political and religious leaders as invested with divine powers. The clergy, the magnates, the priests, the dehkans and other courtezans enjoyed all power and privileges. The condition of the masses was miserable. They were treated either as serfs or slaves. They possessed no civil rights or political privileges. The law was not the same for the weak and the strong, rather a lawless despotism was the go of the time.

Al-Quran depicts this in the following words: "They have taken their doctors of law and their monks for Lords besides God". (9:31).

The priests, the monks and the sovereigns were followed by the people blindly in what they enjoined and what they forbade, on account of attaching to them super human power and dignity. ` Adi Ibn Hatim, a convert from christianity, asked the prophet that we did not worship our priests and monks then what was the significance of the verse. The Prophet replied: Is it not so that the people consider lawful what their priests declare to be lawful, though it is forbidden by God? ' Adi Ibn Hatim replied: Yes. The prophet said: That was what the verse meant. (Tirmizi 44: 9).

Islam accords the individual a high level of esteem and dignity without recognising any distinction in respect of race, class, language, colour or nation. Islam considers men to be the members of one family. Their divisions into nations, tribes and families are for a better understanding of each other but not in anyway for estrangement. In Islam, superiority of one over another does not depend on rank or status, wealth or nationality, but on the careful observance of duties and performance of responsibilities. The Holy Quran declares:

O mankind, surely we have created you from a male and a female and made you into tribes and families that you may know each other. Surely the noblest of you with Allah is the most dutiful of you. (49:13)

Islam has promoted human rights and fundamental freedom for all and has granted women equal social reghts in all their relationships with men and has confirmed complementary roles for both of them.

In connection with human rights, Juustice is the main factor. The concept of justice and human rights is colsely connected. If the fundamental rights of man are ignored then the justiee would be meaningless. In Islam, human rights are not merely political rights, as is the case with the Declaration of Rights of the 18th century. As Islam is a complete code of life, it deals with human rights as rights of the community as a whole including personal rights, political rights, economic rights, religious rights, cultural rights and so on.

Islam has addressed the issue of human rights at three levels: (i) individual motivation; (ii) guaranty and protection of rights by legal system; and (iii) accountability before Allah in the Hereafter.

The holy Quran is replete with admonitions against injustice and exhortations to ensure justice and human rights. The Concept of a balanced socio-political order in Islam is based on the foundation of justice which includes equality of human beings, freedom from exploitation, just distribution of property, legal and public guaranties etc. Islam teaches not only to know the truth but to act truthfully, and it urges man not only to know justice but also to act in accordance with it, So long as the the principle of divine unity and human equality is recognised, Islam allows the widest latitude to the human conscience. To believe in a religion is a personal right of a man. Islam recognises this right and the Muslims are forbidden to abuse even the idols of others, though worshiping idols is condemned in the strongest terms. Al-Quran declares :

Abuse not those whom they call upon besides God, lest, they out of spite abuse God through ignorance. Thus we have made to every people their deeds fair-seeming; then they

will return to their Lord and He will infrom them of what they did. (6 108)

In his farewell sermon, the Prophet of Islam declared:

O men, your Lord is one, your father is one, you all are from Adam and Adam is of clay. Surely, noblest of you with Allah is the most dutiful of you. No Arab has any preference over any non-Arab except piety. (Jahiz: Al-Bayan wa al-Tabyeen, pp, 31-32).

In Islam law is same for the weak and the strong, for the ruled and the ruler, for the Muslim and the non-Muslim. During the caliphate of Omar Ibn al Khattab, Bakr ibn Wali, a Muslim, killed Hairut, a christian. Honain, the heir of the killed, brought the case before Omar for judgement. The Caliph ordered that "the Killer should be surrendered to the heirs of the killed". Accordingly the killer Bakr b. Wali was made over to Honain who put him to death. Similar cases are recorded in the reign of Omar ibn Abdul Aziz and others. (Zail ' i: Takhrijul Hedaya, Delhi edition, P. 338).

The prerogatives of the head of the state were confined to the administative and. executive matters but he could never act in contravention of the recognised law. In Islam law is based upon religious sanctions and moral obligations; and the executive authority is rendered subordinate to the law. Appreciating this, Oelsner writes : "Admitting no privilege, no caste, their legislation produced tow grand results,-that of freeing the soil from factitious burdens imposed by barbarian laws, and of assuring to individuals perfect equality of rights". (cf. The Spirit of Islam, Ameer Ali, p. 289).

The guarantee of the prophet given to the christians of Najran is a unique document on basic human rights in the history of mankind:

" To the Christians of Najran and the neighbouring territories, the security of God and the pledge of His prophet are extended for their lives, their religion, and their property-to the present and to the absent and to others besides; there shall be no interference with the practice of their faith or their observances; nor any change in their rights or privileges; no bishop shall be removed from his bishopric; nor any monk from his monastery, nor any priest from his priesthood, and they shall continue to enjoy every thing great and small as heretofore; no image or cross shall be destroyed; they shall not oppress or be oppressed; they shall not practice the rights of blood-vengeance as in the days of Ignorance; no tithes shall be levied from them nor shall they be required to furnish provisions for the troops". (Futuhul Buldan; Balazuri, P. 65; cf. Kitabul Kharaj: Imam Abu Yusuf; Ameer Ali, op. cit.)

In Islam, life and property are inviolate. The prophet declared in his Farewell Sermon:

O Men, your lives and your property shall be inviolate until you meet your Lord. The safety of your lives and of your property shall be as inviolate as this holy day and holy month. Remember that you will indeed meet your Lord, and that He will indeed reckon your deeds. (Jahiz: Al- Bayan wa-al- Tabyeen, pp. 31-32).

About the sanctity of life, al-Quran declares:

Whoever kills a person, unless it be for murder or for spreading mischief in the land, it is as though he had killed all people. And whoever saves a life, it is as though he had saved the life of the all people. (5:32)

The concept of property in Islam is quite different from the Western concept. In Islam, Allah is the Creator of the

universe and Sustainer of the worlds. He is the owner of whatever is in the neavens and whatever is in the earth. Men are the representative of God on earth. They have been given the possession of property so that they can use it for rightful purpose without exploiting others. Every human being has a right to fulfil his or her basic need. In order to create a balance within society, Islam introduced a just system for the earning and distribution of property. There are tow kinds of property: (i) Public property and (ii) Private property. Property which God has provided for the benefit of all like minerals, water, energy, forests and so on is reckoned as common and public in which the rights of the community have been accepted. Al-Quran says: It is He Who created for you all that is in the earth. (2:29). Property which is acquired by various means is called private property. As regard public property, Islam emphasised state control over it for the good of the common people and in no way it be made personal property. In the case of private property, none has the right to encroach upon it. There are some religious obligations like Zakat and Khums, which the state has to collect from the rich and pay to the poor and the needy. Al-Quran declares: "Take alms out of their property, you would cleanse them and purify them thereby and pray for them. Surely your prayer is a relief to them. And Allah is Hearing, Knowing. (9:103)

It may be mentioned that during the caliphate of Abu Bakr, the first caliph of Islam, Khalid bin Walid subjugated Hira and after the people had taken the oath of allegiance, he issued a proclamation by which he guaranteed the lives, liberty and property of the Christians, and declared that they shall not be prevented from beating their 'nakus'-a piece of wood used in eastern Christian churches in place of a bell-, and taking out their crosses on the occasions of

festivals." This declaration was approved of and sanctioned by the Calipn and his council consisting of Omar, Osman, Ali and the other leading Companions of the Prophet. (Kitabul Kharaj: Imam Abu Yusuf, p. 84).

After the conquest of Egypt, Omar, the second Caliph of Islam, preserved intact the property dedicated to the Christian churches and allowed to continue the grants made by the former government for the support of the priests. (Makrizi, pp. 492,499)

No Moslim was allowed to acquire the land of a Zimmi even by purchase. Neither the Imam nor the Sultan could dispossess a Zimmi of his property. (cf. Ameer Ali, op. cit.)

During the caliphate of Osman, the third Caliph of Islam, the Christian Patriarch of Merv wrote to Simeon, the Bishop of fars, in the following terms: "The Arabs who have given by God the kingdom of the earth do not attack the christian faith; on the contrary they help us in our religion; they respect our God and our saints, and bestow gifts on our churches and monasteries. (cf. op. cit.)

Ali, the fourth Caliph of Islam, said: The blood and property of the Zimmis are like our blood and property. (op. cit.)

In the first century of Islam, the leaders of the Muslim community including the Caliphs took it upon themselves to inspect the condition of the people to insure that no basic need of their subjects remained unsatisfied. One basic principle was agreed upon by the Companions of the prophet that every man is duty-bound to put to full use all his capacities for the sake of the community, and the community has the duty to guarantee to every individual all his basic needs. (cf. The life of Muhammad: Haykal pp. 550-551).

There arose difference of opinion as regard tne definition of public utilities in the first century of Islam. It was agreed upon that all public utilities should become common property for the people. Some of the companions of the Prophet opined that all the creations of God should be included in the definition of publice utilities. They regarded the land and all that it contained on a par with water and air, and thus not subject to becoming the property of anyone. They regarded every man as entitled to its fruits in proportion to his effort and capacity. Other Companions deemed the land capable of becoming the property of individuals and, like the immovble properties, capable of being exchanged. (cf. Haykal: op. cit.).

This is evident from the fact that those who were unable to work owing to old age, illnes, or childhood, were entitled to draw from the public treasury all that was required to satisfy their survival needs. The public treasury was also responsible for supporting those who did not find work to do or the work they did was not sufficient to satisfy their needs. (cf. Muhammad Qutb: Shubhat Hawlal Islam; Haykal, op. cit.)

Property abandoned by the enemy or taken from him without a fromal war is called 'fai', the distribution of which is mentioned in the following verse:

Whatever Allah has bestowed on His Apostle from the people of the towns, is for Allah and for the Apostle, and for the near of kin, and for the orphans and the needy and the wayfarer; in order that it may not merely make a circuit between the rich among you. So take whatever the Apostle gives you, and deny yourselves that which he withholds from you, And keep your duty to Allah: Surely, Allah is Severe in punishment. It is for the poor Muhajirs who were expelled

from their homes and their property, while seeking grace of Allah and His pleasure, and helping Allah and his Apostle: such are indeed the sincere ones. (59:7-8).

It may be noted that when the state had not yet been formed in the proper sense of the term, there was no regular army at all, nor a treasury from which to meet the requirement, at that time war was forced on the Muslims, so they were required to face the challenge on an exigency basis. This is why those who took part in the war were allowed a share in the war acquisitions.

" And know that whatever you acquire in war, a fifth of it is for Allah and for the Apostle and for the near of kin and the orphans and the needy and the wayfarer.....(8.47).

One-fifth of ghanimah is again to be divided into five parts: (i) the Prophet, (ii) the near of kin, (iii) the orphans, (iv) the poor, and (v) the wayfarer being equal sharers. It appears that the Prophet's twenty-fifth was also used for the benefit of the people. The four-fifth of the ghanimah were divided among those who took part in the battle, though there is no order to this effect in the Quran itself. It may be noted that this arrangement was simply an exigency to meet the basic human rights. As to the 'Fai', the whole of it was to be distributed in exactly the same manner as the one-fifth of the ghanimah, and no share be allocated to the warriors as there had been no fighting. Here no shares are fixed, they depend upon circumstances, and are left to the judgement of the leader. Considering the need and requirement, the leader will distribute it among the beneficiaries.

Islam does not approve the accumulation of property in the hands of particular persons. Under the Islamic system, property constantly exchanges hands without being

confined to a certain section of the people. Islamic law of inheritance made provisions ensuring continual circuit of wealth among the heirs. No inheritance is passed on to a single person except in a very rare case.

According to Quranic teachings, the poor and destitute have due right in the wealth of the rich. And the state is bound to take that due share from the rich and make it over to the beneficiaries. Al-Quran declares:

And in their wealth there is a due share for the beggar and for the destitute. (51:19)

And in their wealth there is a known right for the beggar and the destitute. (70:24-25.)

History bears witness that Islam ensured man's basic right to porperty by enacting specific legal system and introducing moral obligations. Islam recognizes no distinction whatsoever in this respect between man and woman. The Holy Quran declares:

"For men is the benefit of what they earn and for women is the benefit of what they earn. And ask Allah of His Grace. Surely Allah is ever knower of all things. (4:32)

"And whoever does good deeds, whether male or female, and he or she is believer, these will enter the heaven and they will be dealt with no injustice." (4:124)

Islam ensures justice as a legitimate right to every person. In Islam, justice is something higher than the formal justice of Roman Law or any other human Law, as it searches out the innermost motives, because believers are asked to act as in the presence of God, to Whom all motives are known. Justice is one of the attributes of God. Believers are enjoined to stand firm for justice even if it is detrimental to their own interests or the interests of those who are near and dear of them. Al-Quran declares:

"O you who believe, stand out firmly for justice, as witnesses to God, even though it be against your selves, or your parents or near relatives-whether he be rich or poor, Allah has a better right over them both. Follow not the lust of your hearts, lest you deviate, If you distort justice or decline to do justice, surely Allah is ever Aware of what you do. "(4:135).

Islam brought to the people practical equality in the eye of the law. An incident which occurred during the Caliphate of Omar shows the absolute equality of all men before the law in Islam, Ameer Ali recorded the incident in " The Spirit of Islam":

"Jabala, king of the Ghassanides, having embraced the Faith, had proceeded to Madina to pay his homage to the Caliph. He had entered the city with great pomp and ceremony, and been received with much consideration. While performing the circumambulation of the Kaaba, a humble pilgrim engaged in the same sacred duties accidentally dropped a piece of his pilgrim's dress over the royal shoulders. Jabala turned round furiously and struck him a blow which knocked out the poor man's teeth.

The rest of the episode is told in the words of Omar himself to Abu Obaidah, commanding the Moslem troops in Syria. "The Poor man came to me", Writes the Caliph, "and prayed for redress; I sent for Jabala, and when he came before me I asked him why he had so ill-treated a brother-Moslem. He answered that the man had insulted him, and that were it not for the sanctity of the place he would have killed him on the spot. I answered that this words added to the gravity of his offence, and that unless he obtained the pardon of the injured man he would have to submit to the usual penalty of the law. Jabala replied: ' I am a king, and the

other is only a common man'. " King or no king, both of you are Muslims and both of you are equal in the eye of the law". He asked that the penalty might be delayed until the next day; and on the consent of the injured, I accorded the delay. In the night Jabala escaped and has now joined the Byzantine Christians. But Allah will grant you victory over him and the like of them..." This letter of Omar was read by Abu Obaidah at the head of his troops. (p. 279-280).

During the time of the pious Caliphate, none of the Caliphs could alter, or act contrary to, the judgement of the Constituted courts of justice. The equal-handed justice which they administered to all citizens, without distinction of any kind, secured them the confidence of the peoplee.

The desire for personal distinction and excellence is inherent in human nature. On a scale of merits and abilities, men are not all equal. Every one has the right to reap the benefit of his endeavour and this includes wealth, position, strength, honour, talent, happiness and so on. Islam recognizes this inherent nature as a basic human right. The Holy Quran says:

And covet not that by which Allah has made some of you excel others. (4:32).

Here we are asked not to be jealous if other people have more than we have by dint of their merits and skills. The existence of entire human society rests on this scheme of Providence. Further, men have been exhorted to strive or they will gain nothing. If they strive, the result will Soon appear in sight and they will find their reward in full measure. Al-Quran says:

"And that man can have nothing but what he strives for: and that his striving will soon be seen: then he will be rewarded for it with the fullest reward. (53:39-41).

Man is free to exercise his wisdom and ability in gaining his coveted object and it is his fundamental right. Islam recognizes this as a personal right of a man.

In Islam, every one has the right to protect his privacy, honour, reputation and status. Al-Quran says:

"O you who believe, let not people laugh at others: it may be that the latter are better than the former; nor let women laugh at others: it may be that the latter are better than the fromer; nor defame nor be sarcastic to each other, nor call one another by offensive nicknames: evil is a name connoting wickedness, to be used of one, after he has believed: and those who do not desist are indeed doing wrong. O you who believe, avoid suspicion as much as possible: for suspicion is in some cases a sin; and spy not on each other; nor speak ill of each other behind their backs; would any of you like to eat the flesh of his dead brother? Nay, you would abhor it. Fear God; surely God is Oft-returing, Most Merciful," (49:11-12).

O you who believe, enter not houses other than your own houses, Until you have asked permission and saluted their inmates; that is better for you, in order that you may be mindful. But if you find no one therein, enter not there until permission is given to you;and if you are asked to go back, then go back; this is purer for you. and Allah knows well all that you do" (24:27-28).

For a refined, decent and well-ordered life, privacy is a precious and essential thing. Islam does not allow anyone to enter any dwelling-house without obtaining prior permission of its owner. The principle of asking respectful permission and giving salutations ensures privacy. No one has the rihgt to infringe or violate this privacy. For domestic peace and security and as a preventive measure against

slander, the privacy is the most needed human right.Muslims are asked to refrain from hurting people's feelings and causing them pain by defamation, taunt, sarcasm, offensive nicknames, back biting and spying into other's affairs. Its a basic right of a man to lead a respectful, honourable and dignified life . The aforementioned versses bear testimony to this effect.

The General Assembly of the United nations proclaimed in the preamble of the Universal Declartion of Human Right : it is essential to promote the development of friendly relations between nations; The Holy Quran declares:Verily this Brtotherhood of yours is a single brotherhood and I am your Lord and Cherisher: therefore serve Me and no other. (21: 92) Further says: O mankind, We created you from a single pair of male and a female, and made you into nations and tribes, that you may know one another. (49:13) Here the address is to all mankind and exhortation is to promote development of brotherly relations among all human beings without any consideration to their different temperaments and virtues. race and language, surroundings and history, faith and prctice. Islam envisages a perfect brotherhood of human being on the basis of Unity of God and equality of man. For this, four heads are mentioned in the Holy Quran: (i) our faith must be true and sincere.(ii) We should prove it throuth deeds of charity to our fellow-men.(iii) We must be good citizens supporting social organisations and (iv) our own individual soul must be firm and unshaken in all circumstances. Al-Quran says:

"It is not righteousness that you turn your faces towards the East and the West, but it is righteousness to believe in God and the last Day, and the Book, and the messengers; and to spend wealth out of love for Him, to the near of kin

and the orphans and the needy and the wayfarer and to those who ask and to set slaves free; and to be steadfast in prayer, and practice regular charity; and to fulfil the promise which they have make; and to be firm and patient in distress and adversity and in the time of panic. These are they who are truthful· and these are they who keep their duty.(2:177).

For the welfare of humanity the performance of promise on the part of individuals as well as of nations is one of the first essentials. No nation or society can prosper until its individual members are true to their mutual contacts , so humanity at large can never have peace and tranquility unless the nations are true to teir agreements.Al-Quran says: "Do you enjoin right conduct on the people, and forget to practise it yourselves? "(2:44).

At present the international code of modern world is in dire need of such a principle of uprightness that would provide with equal treatment for all nations.The principle laid down in the Holy Quran as to uprightness of conduct in dealing even with those whom one hates can serve as a nucleus for an international law. Al-Quran Says:" And let not hatred of a people, because they hindered you from the Sacred Mosque, incite you to transgress; and help one another in rihgteousness and piety, and help not one another in sin and rancour; Fear God, for God is strict in punishment.(5:3)

In islam, Human Rights are inviolate as those are enjoined by the Creator of human beings.

HUMAN DEVELOPMENT AND INTERNATIONAL LAW

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Since the end of the World War 11, the world has witnessed a dramatic transformation of the international society and a remarkable development of science and technology. As a consequence, there has been a vast expansion of International Law. The changes that have occurred in this field cover virtually every area of state interaction and mankind's common concern.

Of these developments in International Law, perhaps the most revolutionary has been a body of instruments concerning human rights. This is because prior to the birth of the United Nations there was hardly anything of this kind. Moreover, individuals are now clearly, and no more indirectly, the subjects of the Law of Nations,[1] although many textbook writers still define the field as consisting of rules regulating inter-state relations and international organizations, thus giving priority to pre-conceived concepts over present realities.

In more recent years, the very concept of human rights has also undergone a significant change. The emphasis is now shifted from particular human rights of individuals to a comprehensive right to human development for individuals

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as well as people as a whole. No doubt, the interest in the human factor has grown with the developments of the international society but the seeds of much of the relevant ideas can be traced from the Charter of the United Nations itself. Indeed, whereas the Covenant of the League of Nations begins as a proclamation of the High Contracting Parties, the Charter starts with the expression "We the peoples of the United Nations" and the same spirit runs all through the latter document.

FROM HUMAN RIGHTS TO THE RIGHT TO HUMAN DEVELOPMENT

The human right provisions of the Charter are quite extensive. As set forth in the very Article 1 of the Charter, one of the main purposes of the United Nations is to "promote respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion". Article 55 gives the UN, as an organization, an obligation for the purpose by calling for promoting "higher standard of living, full employment, and conditions of economic and social progress and development; solutions of international economic, social, health and related problems .....". By another provision (Article 56), the member-states pledge themselves to take "joint and separate action" in co-operation with the organization to the same end. "The protective arm" of the human right provisions of the Charter is extended even to peoples who do not enjoy self-government. For, in several articles it also stresses on the right of self determination as a basic political right.

Admittedly, the Charter does not define human right, nor does it create any specific obligations on the part of the member-states with regard to the same. Nevertheless, the

conditions essential for the enjoyment of human rights are sufficiently stressed and the right to human development is more than implied.

However, the United Nations moved logically to promote the cause of human rights keeping in view the hopes and aspirations of the emerging international community. As early as December 1948 the General Assembly adopted without opposition the Universal Declaration of Human Rights (UDHR) comprising basic principles to serve as a common standard for all nations. The Declaration has influenced many a national legislation and is now considered to be a common law of mankind.

Then in 1966 the General Assembly adopted the text of three documents so as to make the obligations contained in the UDHR binding. The documents are : the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the Optional Protocol to the International Covenant on Civil and Political Rights. Of these, the first two have already come into force with the ratification by the required number of states.

Over the decades, the World Body also sought to create a series of international instruments on specific rights. One of the latest outcome of UN efforts has been the Declaration on the Right to Human Development[2] which is both an individudal and a collective right. But unlike the case of many other human rights, the right just referred to has not been created by any convention, nor has it been mentioned in the UDHR. Its basis lies on a resolution adopted by the General Assembly in December 1986. It was reaffirmed by the Assembly in every subsequent year on the basis of a consensus.

SIGNIFICANCE OF THE RIGHT TO HUMAN DEVELOPMENT

The right to human development is obviously not a new right but is designed to serve as a roof topping off the existing human right standards.[3] Its real significance may be gauged from the process of its conceptualization that began in 1960's. In that decade, speaking from the background of hunger, misery and centuries of exploitation by colonial-rulers, developing countries urged for giving more stress on socio-economic rights but Western developed countries, in general, refused to concede as they wanted to avoid any obligation and insisted that much greater emphasis should be laid on basic civil and political rights. Then in early 1974 the World Body became the scene of a North-South confrontation as the developing countries, assured of a majority in the General Assembly, called for a thorough restructuring of the global economy and a New International Economic Order (NIEO). The acrimony was raised to a new height with the adoption of the Charter of Economic and Social Duties of States in December 1974. Throughout the decade Western developed countries opposed the idea of NIEO and insisted on fulfilment of basic needs and the observance of human rights. In these circumstances, the developing countries felt obliged to change their strategy. They thought of creating a bridge between the demand for a NIEO and international protection of human rights. At their urging a 15-member Working Group of Government Experts on the Right to Human Development was established by the Economic and Social Council in 1981. The resolution adopted in December 1986 by the General Assembly as the Right to Human Development, which was declared as an inalienable human right, was the culmination of the process.

But even this resolution, that is the Declaration on the Right to Human Development, could not immediately get wholehearted support from all quarters. In the General Assembly, while 133 countries voted in favour, 11 Western countries (including the USA and the Federal Republic of Germany) voted against it and 12 abstained. The industrialized nations, in general, suspected that the right to development might serve as a Trojan horse, a way for the developing countries to penetrate the bastion of fundamental political rights using demands relating to development.[4]

DEVELOPMENTS SINCE 1986

That there has been a fundamental change in the concept of development as a result of the recognition of a human right to development is obvious not only from the reformulation of most bilateral programmes for development co-operation, but also from the annual reports of the UNDP on Human Development which have been published since 1990. There is now a broad agreement that development is a comprehensive economic, social, cultural and political process, which aims at the constant imporovement of well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation. The international debates conducted in the European community, the OECD, the World Bank and the IMF point to the same direction and of late in agreements concerning development projects, all of those bodies have been calling for greater account to be taken of a linkage between human rights, democracy and development. Further, whereas the General Assembly's Declaration of 4 December 1986, on the Right to Human

Development had met with resistance from a number of industrialized countries, on 25 June 1993, the 167 countries participating in the UN-sponsored second World Conference on Humn Rights held in Vienna were unanimous in their demand that the universal and inalienable right to human development must be implemented and realized.

However, the link between human rights and human development continues to be complex. Efforts are now being made by various UN agencies and committees to create a symbiosis between human-rights-based development and human development.

JURIDICAL POSITION

Like all other categories of law, International Law is also an evolving field and as such it is not bound to depend only upon some prescribed or traditional sources. In fact, most contemporary publicists and textbook writers on the subject take into account quite a few sources other than those enumerated in Article 38, paragraph 1, of the Statute of the International Court of Justice and also call for the necessity of re-interpreting the latter sources. After all, in the international community, the development of law is a matter for states. They can even act obliquely through their conduct, modifying practice and establishing custom or intervening directly through the sponsorship or support of innovatory proposal made within standing organs of international organizations or agencies or in the *ad hoc* multilateral conferences.

In the light of the foregoing, the legal position of the right to human development, which was originally adopted by the General Assembly by an overwhelming majority and later endorsed unanimously at the Vienna Conference on

Human Rights, can hardly be brushed aside. There may be serious doubt as to whether a resolution adopting a Declaration by a majority of the General Assembly, which is essentially a recommending body, has any binding force. But the proclamation freely and unanimously adopted at the Vienna Conference, which was participated by virtually the entire international community, may be considered, in the opinion of a former Judge of the ICJ, "as a contract partaking of treaty law", although it does not possess the formality of a treaty.[5] Moreover, even though this particular right and its binding application in law have not yet been fully formulated, the establishment of a number of international organizaitons and the conclusion of treaties providing for development processes (International Law of Development) represent initial attempts to give that right legal substance. In short, the right to human development seems to have the potentialites for the legal status which the UDHR can now claim to possess.

NOTES AND REFERENCES :

1. A subject of International Law, according to the Advisory Opinion of the ICJ in the Reparation for Injuries case (1949), is an entity capable of possessing international rights and duties and which has capacity to maintain its rights by bringing international claims.
2. UN Doc. 41/133.
3. Rainer Tetzlaff (ed.), *Human Rights and Development : German and International Comments and Documents*, Bonn, 1993, p. 90.
4. *Ibid.*
5. Nagendra Singh, "The UN and the Development of International Law" in Adam Roberts and Benedict Kingsbury (ed.), *United Nations . Divided World: The UN's Role in International Relations*, Oxford, 1993, p. 400.

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS — THE MAGNA CARTA OF MANKIND

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1. INTRODUCTION

Human rights, which were typically called the rights of man or natural rights and represent an idea that now has world-wide acceptance, are those rights that are inherent in human persons and without which they cannot live as human beings. They are the rights which all individuals ought to have solely by virtue of their birth and humanity. Since huan rights come with birth and every person is entitled to them simply because he or she is human, they are aplicable to all people throughout the world irrespective of their rece, colour, sex, language, political or other opinion, nationality, birth or other status and, as such, they are universal. Human rights are concerned with the dignity and worth of the individual and "represent minimal moral standards for human society."[1] As the possession of human rights is essential to the protection and realization of human nature and dignity, human rights, unlike other possessions cannot normally be traded off; they are inalienable. Human rights enable individuals to fully develop their faculties and use their human qualities not only in his own interest but also in the interest of the community as a whole. Therefore, it is the duty of the State to recognise and protect human

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rights. Thus human rights are distinguished from other rights, which are acquired or given to people, by three principal features : first, they inhere universally in all human beings throughout their lives in virtue of their humanity alone; secondly, they are inalienable; thirdly, their primary correlative duties fall on states and their public aouthorities, not on other individuals.[2] Therefore, human rights are universally inherent, inalienable and inviolable rights of all members of the human family which the states are to recognise and ensure for their citizens by providing a well-defined procedure.

The origins of human rights could be traced from Greek antiquity.[3] According to Roman Jurist Cicero, around 200-300 years B.C. the Greek Stoics developed, on the basis of what is now called human rights, the theory of natural law, a law higher than the positive laws of states, which declared that individuals were entitled to certain immutable rights as human beings. The centuries from classical times through the Middle Ages and the late Renaissance the concept of human rithts was to be traced only in the writings of such jurists as Bodin (of France), Grotius (of Italy), Vattel, John Locke (of England), Jean Jacques Rousseau (of France), Blackstone (of England) and Karl Marx (of Germany) who, in fact, also observed that all persons were entitled to certain natural rights as human beings. The idea (of human rights) to a great extent evolved as a result of political absolutism since rights of man became a slogan against the injustices and indignities committed by tyrannical or dispotic governments. In order to limit the power of such government, attempts began to be made by the leaders of revolution to set down certain minimum rights in Charters, Bills, Petitions or Declarations that could be demanded by all citizens. For example in the Magna Carta (1215), the

Petition of Rights (1628), the Bill of Rights (1689), (these three documents are described as "the Bible of the English Constitution") the Virginia Bill of Rights (1776), the American Declaration of Independence (1776) and the French Declaration of the Rights of Man and of Citizen, human rights have been claimed as a brake on the abuse of power by the governments. The content of human rigths—civil, political, economic, social and cultural rights—has broadly been defined at various stages of moden history. It is noticeable that the human rights mentioned in the English Petition of Rights and the Bill of Rights, as well in the Virginia Bill of Rights and the American Declaration of Independence and in the French Declaration of the Rights of Man are all civil and political rights. There fore, the civil and political rights are primarily associated with the English, American and French "bourgeois" revolutions of the 17th and 18th centuries. On the other hand, economic, social and cultural rights find its origins primarily in the socialist and Marxist revolutions of the early 20th century. With the socialist October Revolution this new category of citizen's rights appeared in the Soviet Union and gradually through the entire world by revolutionary struggles and welfare movment ever since. The econmic, social and cultural rights were enumerated in the first Soviet Constitution of 1918. They also appeared in 1917 in the Mexican Constitution and, in 1919, in the Weimar Constitution. They are gradually included in most modern constitutions as 'programme" or "manifesto" rights of a promotional nature with pledge to take steps to the maximum of available resources with a view to achieving progressively the full realization of these rights.

However, the concept of human rights was for long entirely viewed as a matter entirely within the domestic

jurisdiction of the states to grant or deny rights to their citizens and, as such, was not subject to interference from any outside pressure. But in course of time, as a result of the work of international, regional, govrnmental and non-governmental organisations around the globe, human rights transcend national boundaries and jurisdictions and thereby go beyond the limits of municipal public law, falling a matter of internatinal concern to be promoted and protected within the framework of international law.

At first not the individual, but groups of individuals, minorities, within a state appeared to the conscience of civilized nations as in need of protection at the international level. All the Pre-World War II concern for and efforts in the protection of religious freedom, protection for war prisoners and treatment of wounded, protection of minorities and labour cannot be described as universal as they were not general human rights to which all members of the human family were entitled. But during and after World War II it was the concern for man, for the human erson which emerged at the centre of international affairs as a common denominator in the search for a better world of tomorrow.

The nations of the world, stunned by the atrocities committed against humanity in the course of World War II by facist States (Italy, Germany), realized that the protection of individual freedoms could no longer be left to the sole discretion of states. The laws authorizing the dispossession and extermination of Jews and other minorties, the laws permitting arbitrary police search and seizure, the laws condoning imprisonment, torture, and execution of six million Jewish people during 1938-1945 in concentration and death camps of Nazi Germany aroused the unanimous indignation and a wave of public opinion arose demanding

the establishment of organized international protection for human rights. It was realized that there could be no real and enduring peace among the nations of the world without the acknowledgement of the human dignity and worth of the individuals who made up these nations and that a nation which systematically denies the rights of its own citizens could not be realistically depended on to recognise the rights of other nations and their peoples.

In fact, the Second World War became a crusade against tyranny, a crusade for human rights. Political leaders and legal scholars looked to the international protection of human rights both as an end in itself and as a means of ensuring international peace. Their conviction was set out in a number of statements, declarations and proposals made while the war was still being fought. For example, President Roosevelt's "Four Freedoms" massege to Congress of 6 Januay 1941, the Atlantic Charter of 14 August 1941 and the "Declaration by the United Nations" of January 1942.

At the end of World War II, the United Nations was established through the adoption of the Charter in June 1945. The United Nation Conference on International Organization, which met in San Francisco in April 1945, in completing the drafting of the (United Nations) Charter greatly enlarged and broadened the objectives of the United Nations as a whole revolving around a central idea, that peace cannot be established in a durable fashion so long as oppression, injustice and economic distress prevail in the world. The deep concern of the international community for the promotion and protection of human rights is clearly expressed in the United Nations Charter, in which the peoples of the United Nations reaffirm their "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women."[4]

The Charter pronounces that one of the purposes of the United Nations is to "achieve international co-operation..... in promoting and encouraging resopect for human rights and for fundmental freedoms for all without distinction as to race, sex, language or religion."[5] Infact, unlike the Covenant of the League of Nations, which contained no reference to the indivdual rights, the Charter embodies nine direct references to the concept of human rights and fundamental freedoms.[6] Thus the idea of the recognition, and protection of human rights is woven like a golden thread throughout the entire Charter as one of the principal objetives of the United Nations Organization.[7]

The Charter of the United Nations is the first international instrument in which the nations of the world community agreed to promote and observe human rights and fundamental freedoms on an international level. Since it is the statute of an intergovernmental organisation, the Charter has the status of a multilateral treaty, imposing on its State Parties legally binding obligation. The UN Charter requires the Member States "To pledge themelves to take joint and separate action in co-operation with the Organization"[8] in order to "promote.... universal respect for, and observance of, human rights and fundamental freedoms for all without distiction as to rece, sex, language or religion."[9] However, although human rights constitutes a theme which recures again and again throughout the Charter and is singular in its predominance, the Charter contains no definition or catalogue, of the human rights and fundamental freedoms. The proposal put forward by the delegations of Chile, Cuba, and Panama, (Panama even urged the incorporation of bill of rights), to ensure the protection of specified human rights by the United Nations was explicitly rejected at the Charter-drafting San Francisco

Conference. For it required more detailed consideration than was possible at that time.[10] Moreover, the great majority of governments, including all the great sponsoring powers, were unwilling to give the new organization the wide powers which the proposals would have implied.[11] Despite the fact that the proposal to insert provisions in the Charter defining human rights failed, the Charter, largely in response to energetic lobbying by the representatives of forty-two non-governmental organizations who acted as consultants to the United Nations delegation, provided that a commission be apppointed by the Economic and Social Council for the promotion of human rights.[12] While it was not provided that the commission would draft an international bill of rights, the general consensus at the San Francisco Confernece was in favour of such a drafting to which President Truman gave voice in his closing address: "Under this document, we have good reason to expect the framing of an international bill of rights, acceptable to all the nations involved ....The Charter is dedicated to the achievement and observance of human rights and fundamental freedoms...[13]

The Preparatory Commission of the United Nations, which met immediately after the closing session of the Conference, recommended that the Economic and Social Council should, at its first session establish a commission on human rights as envisaged in Article 68 of the Charter. In compliance with the Charter, the Economic and Social Council established the Commission on Human Rights by resolution 5(I) of 16 February 1946 and instructed it to submit proposals, recommendations and reports regarding an international bill of human rights. The Council further requested the Commission, in resolution 9(II) of 21 June 1946, to submit "suggestions regarding ways and means for

the effective implementation of human rights and fundamental freedoms."

The Commission held its first regular session on 27 January, 1947 which continued until 10 February (1947), under the Chairpersonship of Mrs. Eleanor Roosevelt. After a general discussion on the form and content of an international bill of rights, the consensus at the meeting was that the bill should take the form of an Assembly resolution. The commission decided that a small committee, consisting of the Chairperson of the Commission, Mrs. Roosevelt, its Vice Chairman, P. C. Chang of China, and it Rapporteur, Charles Malik from Lebanon, should undertake, with the assistance of the Secretariat, the task of preparing a preliminary draft to be submitted to its second session. This Committee of three, together with the Director of the Human Rights Division in the Secretariat and his colleague Emile Geraud from France, met on the weekend following the adjournment of the Commission in Mrs. Roosevelt's apartment on Washington Square in New York City. It was decided to instruct the Director of the Human Rights Division to prepare a draft. Before this could be done, the delegation of the Soviet Union at the next session of the Economic and Social Council, which met in March 1947, complained that the Drafting Committee of three did not provide for appropriate geographical distribution. Mrs. Roosevelt worte a letter to the President of the Council, in which she suggested that the Drafting Committee of three be replaced by a Committee of eight Member States of the Commission selected with due regard for geographical distribution: Australia, Chile, China, France, the Lebanon, the United States, the Soviet Union, and the United Kingdom. This received the approval of the Council on 28 March 1947. At the same time the Council requested

the Secretariat to prepare a documented outline of an international bill and called upon the new Drafting Committee, to prepare, on the basis of documentation supplied by the Secretariat, a preliminary draft of an international bill of human rights.[14]

This new Drafting Committee held its first meeting at Lake Success in june 1947. It was to this Comitttee that the Director presented his draft on 9 June. The Drafting Committee took the decision to prepare two documents: one in the form of a Declaration, which would set forth general standards of human rights; the other in the form of a converntion which would define specific rights and the limitation on their enjoyment. The committee prepared and submitted to the commission draft articles of an international declaration on human rights and of an international convention on human rights. It also transmitted to the Commission a memorandum on the question of implementation. The Committee used the secretariat Outline as the basis for its work. It was not merely an outline but was a draft declaration in part drawn up as a synthesis of a number of various previous draft declarations that had been prepared by some private organizations and individuals.

The commission on human Rights decided at its second session, held at Geneva from 2 to 17 December 1947, that the term "International bill of rights" should be applied to a declaration on human rights, a convention or covenant on human rights (the 1951 session of the General Assembly directed that there be two separate covenants : one on political and civil rights and the other on economic, social and cultural rights) and international measures of implementation. The Commission set up three working groups : one on the declaration, one on the covenant and

one on implementation. The Commission drafted a declaration of human rights and a covenant on human rights on the basis of the reports of the first two working groups. Later the drafting Committee at its second session. from 3 to 21 May 1948, revised the declaration and the covenant, taking into consideration the comments, suggestions and proposals of various Governments. The Commission, at its third session from 24 may to 16 June 1948, redrafted the declaration, but did not have time to consider the covenant or the measures of implementation. The Commission own draft declaration, (together with the draft covenant and several proposals on implementation) was submitted to the Economic and Social Council and was referred by the Council on 26 August 1948 to the General Assembly for its considerations at its third session in Paris be opened on 21 September 1948. Although the (draft) declaration was routed through the Economic and Social Council, the Council as such took no part in the drafting the declaration.

The draft declaration was placed on the agenda of the third session of the General Assembly (held in Paris from 21 September to 12 December 1948). The Assembly transmitted the draft to its Social, Humanitarian and Cultural (Third) Committee. The Committee devoted 85 meetings to the preparation of the declaration at which some 168 suggested amendments were considered and voted on almost every word, phrase, clause and paragraph - 1,400 votes in all. But the text which finally emerged as a completed draft and adopted by the Committee was surprisingly like the one that had been prepared by the Commission on Human Rights. This was largely due to the fact that the Chairman of the Third Committee (Charles Malik of the Lebanon who was also the Rapporteur of the

Commission) and a number of other representatives, including some of the most influential, had worked on the draft in the Commission.

The plenary session of the General Assembly, which after accepting one amendment in relation to Article 2 proposed by the United Kingdom, adopted and proclaimed the Universal Declaration of Human Rights — the first stage of the three stage rocket— on the night of 10 December 1948 - a little more than three years after the entry into force of the Charter of the United Nations on 24 October 1945. The Declaration was adopted without dissenting vote. While 48 out of 56 members voted in favour, the whole of the communist block (Byelorussia, Ukraine, the USSR, Czechoslovakia, Yugaslavia, Poland) Saudi Arabia and South Africa (in total eight) abstained in the vote.[15] Each year since 1950, the anniversary of the adoption of the Universal Declaration of Human Rights on 10 December, is observed internationally as Human Right day-disignated so by the General Assembly.

2. RIGHT RECOGNIZED IN THE DECLARATION.

The Universal Declaration of Human Rights, which consists of a preamble and 30 Articles, is based on the philosophy that " All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and shoud act towards one another in a spirit of brotherhood.[16] The Declaration gives pride of place, and indeed of emphasis, to the basic principle of equality and non-discrimination as regards the enjoyment of all the rights and freedoms set forth in it. Everyone is entitled to the rights without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."[17]

Articles 3-21 of the Declaration set forth 19 traditional civil and political rights. Articles 3, which introduces Articles 4 to 21 is considered as a cornerstone of the Declaration. For it proclaims the right to life, liberty and security of person essential to the enjoyment of all other rights. However, the civil and political rights recognized in the Declaration are :

The right to life, liberty and security of person:[18]

freedom from slavery and servitude;[19]

freedom from torture or cruel, inhuman or degrading treatment or punishment ;[20]

The right to recognition everywhere as a person before the law;[21]

equality before the law and equal protection of the law;[22]

the right to an effective judicial remedy; 23

freedom from arbitrary arrest, detention or exile;[24]

the right to a fair trial and public hearing by an independent and impartial tribunal.[25]

the right to be presumed innocent until proved guilty;[26]

freedom from arbitrary interference with privacy, family, home or correspondence, freedom from attacks upon honour and reputation, the rights and to protection of the law against such attacks;[27]

freedom of movement and residence: [28]

the right of asylum: [29]

the right to a nationality;[30]

the right to marry and to found a family;[31]

the right to own property;[32]

freedom of thought, conscience and religion;[33]

freedom of opinion and expression; [34]

freedom of peaceful assembly and association;[35]

the right to take part in the government and the right of equal access to public service; [36]

on the other hand, Articles 22 to 27 of the Universal Declaration of Human Rights recongnize 6 economic, social and cultural rights. Article 22 is another cornerstone of the Declaration which introduces Articles 23 t0 27. because, the Article declares, inter alia that everyone, as a member of society, is entitled to the economic. social and cultural rights which are indispensable for Human dignity and the free development of personality. Furthermore, it sugests that these rights are to be realized "through national effort and international co-operation and in accordance with the organizaton and resources of each state." However, the economic, social and cultural rights set out in the Declaration are :

the right to social security;[37]

the right to work, the right to equal pay for equal work, the right to form and join trade unions; [38]

the right to rest and leisure including reasonable limitation of working hours and periodic holidays with pay;[39]

the right to a standard of living adequate for the health and will-being of a person and his family;[40]

the right to education,[41] and

the right freely to participate in the cultural life of the community.[42] Thus the Universal Declaration is couced in terms of individual rights, a concept that evolved in the matrix of a European civilisation forged amidst conflicts between church and state and ruler and ruled. It further

provides that everyone is entitled to a social and internatinal order in which the rights and freedoms set forth in the Declaration can be fully realized.[43] Although the Declaration is in terms of rights only as opposed to duty which was unknown to some legal system (e.g. Islamic. Japanese and Chinese legal system), it has referred to the duties of man in a short paragraph 1 of Article 29. This Article says that everyone has duties to the community in which alone the free and full development of his personality is possible. The same Article also stipualates the conditions under which limitations can legitimately be put on the exercise and enjoyment of the rights and freedoms proclaimed by the declaration: "in the exercise of his rights and freedoms everyone shall be subject only to such limitations as are determined by law soley for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirement of morality. public order and the general welfare in a democratic society." The Article further adds that in no case may human rights and fundamental freedoms be exercised contrary to the purposes and principles of the United Nations. The concluding Article 30 warns that no State, group or persons may claim any right, under the Declaration, "to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth" .in the Declaration.

3. SIGNIFICANCE OF THE DECLARATION

The Universal Declaration of human Rights, with which began the real history of human rights at the level of international law, is the basic international statement of the inalienable and inviolable rights of all members of the

human family. The General Assembly on 10 December, 1948 proclaims the Declaration "as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction."[44] Mrs . Roosevelt, the then Chairperson of the Commission on Human Rights, predicting in the General Assembly that the Declaration "might well become the international Magna Carta of all mankind", stressed that it was "a statement of principles of inalienable human rights setting up a common standard of achievements for all peoples and all nations."[45] "It was the first occasion on which the organized community of nations had made a declaration of human rights and fundamental freedoms. The document was backed by the authority of the body of opinion of the United Nations as a whole and millions of people—men, women and children all over the world— would turn to it for help, guidance and inspiration."[46] The Declaration beamed into the world a message of hope and belief in human dignity. In an address to the United Nations in 1979 Pope John Paul II referred to the Declaration as "the basic inspiration and cornerstone of the United Nations"[47]

In a statement following the voting the President of the General Assembly pointed out that adoption of the Declaration, "by a big majority, without any direct opposition, was a remarkable achievement."[48] In fact, the adoption of the declaration is one of the greatest achievements of the United Nations as in less than two

years, the organization had been able to reconcile the clashing ideologies of Member States regarding the contents of the Declaration. In an attempt to conciliate diverse ideologies of members states, the terms defining each right have been kept general and non-committal. The Universal Declaration was the first agreed and authentic catelogue of human rights and fundamental freedoms enumerated by the United Nations. the purpose of the Declaration, which is a sort of a common denominator of civil, political, economic, social and cultural rights, is to explain the contents of the human rights provisions of the United Nations Charter. As Charles Malik, one of the drafters of the declaration and Chairman of the Third Committee, said:

> ".... The very substance of the Declaration of Human Rights was contained in the Charter and was governed by specific provisions. The Declaration continued and in a way supplemented the Charter".[49]

Professor Ren Cassion of France, who was the perosn most responsible for the draft of the instrument, also supports this view: the Declaration was an authoritative interpretation of the Charter,[50] of the highest order. In this context, the views of Jan Martenson, Director General of the United Nations office at Geneva and Under-Secretary—General for Human Rights, are note-worthy.:

"The declaration is nothing less than a monument to humankind, a veritable Magna Carta enumerating specific standards of achievement in the civil, political, economic, social and cultural fields that had never been attempted before and which are valid for all members of the human family.[51]

Thus the Declaration, which promised a better world, is inseparably linked with the United Nations Charters.

4. INFLUENCE OF DECLARATION

The influence of the Universal Declaration of Human Rights is deeper and more lasting than any political document or legal instrument. Since its proclamation in 1948, the Declaration "has become one of the best-known and most influential documents of all times. It has exercised a powerful influence throughout the world, both internationally and nationally."[52] Its provisions have been cited in various resolutions of the United Nations. Every international and some national documents concerning human rights unfailingly start off from the Universal Declaration or lead logically to it. The provisions of the Declaration have also been incorporated or cited, in national constitutions, municipal legislation, and court decisions.

INFLUENCE ON THE RESOLUTION OF THE UNITED NATIONS

On a number of occasions, the General Assembly and the Security gouncil invoked the Universal Declaration of Human Rights in their resolutions or decisions as a yaardstick to measure the degree of respect for, and compliance with, international human rights standards. Within five months of the adoption of the Universal Declaration of Human Rights, on 25 April 1949, the two of the Articles of the Declaration— Article 13 on the right of every one to leave any country including his own and Article16 on the right of men and women of full age to marry and to found a family without any limitation due to

race, nationality or religion—was invoked by the General Assembly as a basis for censuring the actions of the Soviet Union which had refused permission to Soviet Women married to non-Soviet nationals to leave their country and join their husbands.[53] Another early resolution of the General Assembly was resolution 290(iv) of 1 December 1949 entitled "Essentials of Peace" in which the Assembly called upon every nation "To promote, in recognition of the paramount improtance of preserving the dignity and worth of the human person, full freedom for the peaceful expression of poltitical opposition, full opportunity for the exercise of religious freedom and full respcet for all the other fundamental rights expressed in the Universal Declaration of Human Rights." Later, on 28 November 1961, the General Assembly adopted a resolution dealing with the racial conflicts of South Africa in which it was stated that :

> "the recial policies being practised by the Government of South Africa are a flagrant violation of the Charter of the United Nations and the Declaration of Human Rights and are totally inconsistent with South Africa's obligations as a Member State."[54]

On 27 October 1966, the General Assembly took a resolution terminating the League of Nations Mandate of South Africa over South-West Africa (Namibia) on the ground that it had "been conducted in a manner contrary to the mandate, the Charter of the United Nations and the Universal Declaration of Human Rights."[55]

The Security Council also invoked the Universal Declaration of Human Rights in its decisions, particularly those relating to the situation in Southern Africa. On 4 December 1963, the Security Council adopted a resolution

requesting the Government of South Africa "to cease forthwith its continued imposition of discriminatory and repressive measures, which are contrary to the principles and purposes of the Charter and which are in Violation of its obligations as a Member of the United Nations and of the provisions of the Universal Declaration of Human Rights."[56] In 1972, the council in a resolution condemned repressive measures which had been taken against African labourers in Namibia and called upon the Government of South Africa "to end immediately these repressive measures and to abolish any labour system which may be in conflict with the basic provisions of the Universal Declaration of Human Rights." In this resolution it further called upon all States whose nationals and corporations were operating in Namibia" to use all available means to ensure that such nationals and corporations conform, in their policies of hiring Namibian workers, to the basic provisions of the Universal Declaration of Human Rights."[57]

INFLUENCE ON CERTAIN DECLARATIONS

Since the adoption of the Universal Declaration of Human Rights in December 1948, it has been referred to in some statutes, agreements and declarations. The special Statute annexed to the Memorandum of Understanding of 5 October 1954, regarding Trieste provided that "in their administration of their respective areas, the Italian and Yougoslav authorities shall act in accordance with the principles of the Universal Declaration of Human Rights." This was for the first time an international agreement made the Declaration part of its operative provisions. The Declaration on the Granting of Independence to Colonial Countries and Peoples, which was adopted by the General

Assembly on 14 December 1960 (by eighty-nine votes in favour, none against and nine abstentions), provides in its seventh and final paragraph that all "States shall observe faithfully and strictly the provisions of.... the Universal Declaration of Human Rights." The Assembly used similar language in the Declaration on the Elimination of All Forms of Racial Disrimination adopted unanimously without abstention on 20 November 1963: "Every State shall....fully and faithfully observe the provisons of .... the Universal Declaration of Human Rights."[58] The Final Act of the inter-governmental Conference on Security and Co-operation in Europe held in 1975 in Helsinki, Finland and, participated in by 35 nations (all the sovereign States of Eastern and Western Europe with the single exeeption of Albania as well as the USA and Canada) made reference to the Universal Declaration of Human Rights: In the field of human rights and fundamental freedoms, the participating States will act in conformity... with the Universal Declaration of Human Rights."[59]

INFLUENCE ON CONVENTIONS

The standards, set out in the Universal Declaration of Human Rights concerning human rights have been elaborated and codified in various multilateral and bilateral conventions. The International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights, which were unanimously adopted by the General Assembly on 16 December 1966, and came into force in 1976, are virtually based on the Universal Declaration although the rights covered are not identical. Moreover, many of the principles described in the declaration have been detailed and clarified in multilateral

conventions which, citing the Declaration as their inspiration, deal with one or more particulaar of spect of human rights. For example, the right to equality and non-discrimination on the ground of race is ensured by the International Convention on the Elimination of all Forms of Racial Discrimination, which was adopted by the General Assembly in 1965 and entered into force on 4 January 1969, based on Article 2 of the Universal Declaration. Similarly, on the basis of Article 4 of the Declaration, the right to be free from slavery and servitude is ensured by the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, adopted on 4 September 1965.

Furthermore, the Universal Declaration has also had a significant impact in shaping the formulation of regional conventions to promote and protect the enjoyment of human rights and fundamental freedoms by all individuals living in particular parts of the world. For example, the European Convention for the Protection of Human Rights and Fundamental Freedoms, which was the first multilateral regional treaty on human rights concluded in the framework of the Council of Eurpoe and signed in Rome on 4 November 1950 and entered into force on 3 September 1953, refers to the Universal Declaration of Human Rights in the opening paragraph of its preamble and sets out in the fifth preambular paragraph the resolution of "the Governments of European countries which are likeminded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration". In fact, it contains detailed provisions concerning most of the civil and political rights enumerated in the Declaration.

Another regional instrument is the Inter-American Convention on Human Rights (the American Convention on Human Rights), signed at the Inter-American Specialized Conference on Human Rights at San Jose, Costa Rica, on 22 November 1969 and entered into force on 18 July 1978. The convention considers the principles set forth in the Universal Declaration of Human Rights[60] and reiterates the General Assembly's view that, in accordance with the Universal Declaration of Human Rights, the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights.[61]

The fourth and most recent of the regional human rights conventions is the African Charter on Human and Peoples' Rights, which was adopted at a meeting of Heads of State and Government of the Organization of African Unity in Nairobi, Kenya, on 26 June 1981 and entered into force in 1986. The Charter reaffirms the adherence of the Member States of the Organization to the principles of human and people's rights and freddoms contained in the declarations, including the Universal Declaration of Human Rights, adopted by the United Nations.[62] It also mentions that the African Commission on Human and People's Rights shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of, inter alia, the Universal Declaration of Human Rights.[63]

Moreover, instruments applying to particular countries or territories, or to a region, also stem from the Universal Declaration of Human Rights. For example, the Franco-Tunisian Convention of 1955 incorporated the whole Declaration as part of their substantive law.[64] The Heads of

State or Government of the Non-Aligned Movement have, at various summits (e. g. Havana in 1979 and New Delhi, 1983, reiterated their commitment to ensure respect for the promotion of human rights of individuals and the rights of peoples in accordance with .... the Universal Declaration of Human Rights ... No other specific human rights instruments are referred to in the non-Aligned documents."[65]

INFLENCE ON NATIONAL CONSTITUTIONS

The influence of the Universal Declaration of Human Rights is evident in a number of national constitutions enacted since 1948, some of which reproduce the provisions of the Declaration verbatim. For example, in their constitutions of the Peoples of Guinee (1958), Madagascar (1959), Ivory Coast, Mali and Niger (1960), Gabon and Mauritania (1961) Burundi (1962), Algeria, Republic of the Congo, Senegal and Togo (1963), Zaire (1967), Dahomey and Upper Volta (1970) and Cameroon (1972) solemnly affirmed their devotion and adherence to the principles setout in the Declaration. The Constitution of Somalia of 1960 provides that Republic shall comply, in so far as applicable, with the Universal Declaration of Human Rights. The Constitution of Rwanda of 1962 states that fundamental freedoms, as set forth in the Universal Declaration of Human Rights, shall be guaranteed to all citizens. The Constitution of Equatorial Africa of 1968 provides that the State shall recognize and guarantee the human rights and freedoms set forth in the Universal Declaration of Human Rights and shall proclaim that the freedoms of conscience and religion, association, assembly, speech, residence and domicile, and the right to property, education and decent

working conditions are to be respected.[66] The principles of the Declaration are also reflected in the new Constitutions of France, and the Federal Republic of Germany, India, Pakistan, Bangladesh, Libya, Syria, Uganda, Kenya, Sudan, Malaysia, Eritrea, the United States of Indonesia, El-Salvador, Costa Rica, Chad, Cyprus, Malta and others Trinidad, Tobao and Malta. Most of the ciul and political rights which are find enshrined in the Declaration find proud place in Part III entitled "Fundamental Rights" of the 1972 Bangladesh Constitution with the High Court Division as the custodian of those rights, while most of the economic, social and cultural rights of the Declaration incorporated in Part II in the Form of Fundamental Principle of State Policy which are not judicially enforceable.

The Great (extraordinary) impact of the Universal Declration on the Constitutions of newly emerged States has eloquently been portrayed in the words of the then Secretary-General of the United Nations U. Thant, at the official International Conference on Human Rights in Teheran in 1986 convened in celebration of International year of Human Rights: "there are no fewer than forty-three constitutions adopted in recent years which are clearly inspired by the Universal Declaration."67

INFLUENCE OF MUNICIPAL LEGISLATION

The influence of the Universal Declaration of Human Rights on municipal legislation is found in all continents expressly quoting or reproducing provisions of the Declaration. A number of Municipal laws and decrees promulgated in recent years for the purpose of eliminating discrimination refer to the principle of equality and non-

discrimination set out in the Universal Declaration of Human Rights. among these are a series of anti-discrimination statutes enacted in various provinces of Canada. In Bolivia, a legislative decree issued in 1955 to establish a national system of education reaffirms in its preamble the principle of equality of opportunity for all Bolivians, without discrimination, and declares that national education shall be inspired by the Universal Declaration of Human Rights. In Panama, a Law enacted in 1956 to prohibit discrimination provides that discrimination on account of colour or race is "a flagrant Violation" of the National Constitution "and of the Universal Declaration of Human Rights . . . ."[68]

INFLUENCE ON COURT DECISIONS

The Universal Declaration of Human Rights has influenced many decisions of national courts; it has been invoked in judicial proceedings of many national tribunals. For example, in Sej Fujii V. California69 an intermediate Appellate Court of California observed in 1950 that restrictions contained in the California alien Property Initiative Act of 1920 known as the Alien Land Law[70] are in direct conflict . . . . with Article 17[71] of the Declaration of Humaan Rights. "In *Wilson* v. *Hacker*,[72] the Court referred to the prohibition of the Universal Declaration against distinction based on sex as being indicative of the spirit of modern times. In *Lincoln Federal Labour Union* v. *Northwestern Iron and Metal Co.*[73] and *American Federation of Labour* v. *American Sash S Door Co.*[74] (where in the issue was to determine the constitutionality of state laws concerning right to work), Justice Frankfurter (covering both case) mentioned that Article 20(2) of the Universal

Declaration forbade anyone's being compelled to belong to an association. In 1980, the US Court of Appeals held in the case of Filartige V. Pena-Irala 75 that the prohibition of torture, as defined by the Universal Declaration of Human Rights, has become part of customary international law.

In a freedom of the press case, the Penal Chamber of the Supreme Court of the Netherlands interpreted the Constitution by reference to the Universal Declaration of Human Rights.76

In 1951, the Supreme Court of the Philippines seems to have considered the Universal Declaration binding law in the two cases of Borovsky V. Commissioner of Immigration and Director of Prisons,77 and Chinskoff V. Commissioner etal 78. For the Supreme Court ordered the release from custody of stateless persons about to be deported, and placed him under the surveillance of the immigration authorities on the basis, inter alia, that the Universal Declaration proclaimed the right of every one to life and liberty to the rights and freedoms set forth in the Declaration without distinction, the right of every one to an effective remedy and the prohibition of arbitrary arrest, detention and exile.

V. BINDING FROCE OF THE UNIVERSAL DECLARATION

When the Universal Declaration was adopted unanimously in December 1948 by the General Assembly, it was not by itself intended to create binding obligations in international law for the UN's Member States: it was devoid of legal authority and enforceability. For its Preamble ends with the words: the General Assembly proclaims the "Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations."

The President of the General Assembly also expressed this view following the voting on the Universal Declaration. The Declaration, he said, only marked a first step, since it was not a convention by which States would be found to carry out and give effect to the fundamental human rights; nor would it provide for enforcement; yet it was a step forward in the great evolutionary process.78 Mrs. Eleanor Roosevelt, speaking for the United States (in the General Assembly), said that the Declaration "was not a treaty or international agreement and did not impose legal obligations: it was rather a statement of principles of inalienable human rights setting up a common standard of achievement for all peoples and all nations".79 Originally the Universal Declaration was not meant to have binding international force as it is also evident from the fact that the General Assembly after the adoption of the Declaration in Resolution 217E (III) of 10 December 1948 requested the Economic and Social Council to ask the Commission on Human Rights to prepare, as a matter of priority, a draft covenant.

On human rights to put into binding legal form the rights proclaimed in the Declaration and draft measures of implementation. This Resolution would not have been necessary if the Declaration had been meant to be legally binding.

However, the Universal Declaration can now be considered as forming part of customary international law as over the thirty-odd years since its adoption, the Declaration has become a true common denominator shared by all peoples, a permanent and universal point of reference and the central document for the cause of human rights. To the same effect, Sir Humphrey Waldock said:

"this constant and widespread recognition of the principles of the Universal Declaration clothes it, in my opinion, in the character of customary law."80 Louis B. Sohn also supports this view:

"In a relatively short time the Universal Declaration of Human Rights has thus become a part of the constitutional law of the world community; and together with the Charter of the United Nations, it has achieved the character of a world law, superior to all other international instruments and domestic laws."81

The final statement (known as Montreal Statement and drafted by Louis B. So of Harvard law School of the Assembly for Human Rights which met in Montreal, Canada, in March 1968, in celebration of the international Year of Human Rights declared in the same vein:

> "the Universal Declaration of Human Rights constitutes an authoritative interpretation of the Charter of the highest order and has over the years become a part of customary international law."

Next, Month (from 22 April-13 May 1968) the UN International Conference on Human Rights met in Teheran, Iran), Which was attended by representatives of 84 States, "to review the progress made in the twenty years since the adoption of Universal Declaration of Human Rights and to formulate a programme for the future." Article 2 of the Proclamation states that :

> "The Universal Declaration of Human Rights states a common understanding of the peoples of the world concerning the inalienable able inviolable rights of all members of the Human family and constitutes an obligation for the members of the international community."82

Therefore Universal Declaration of Human Rights has now become part of customary international law, and so is binding on all States. It has acquired the status of jus cogens in international law. The principle of *jus cogens*— the notion of peremptory norms of international law—is a norm accepted and recognised by the international community of states as a whole as a norm from which no derogation is permitted.. And the rubo of customary international Law that require the States to abstain form the violation of human rights constitute *jus cogens* and all agreements made in contravention of these rules are considered illegal. Judge Mosler of the international Court of Justice took account of the dignity of the human person and declaraed that obligations to protect human rights fall in the domain of jus cogens.83

Thus the opinion given by the Legal Affairs of the UN Secretariat in 1962 in pursuance of the inquiry of the commission on Human Rights as to the meaning of the word "declaration" in United Nations practice came true:

"In United Nations practice, a declaration is a formal and solemn instrument, suitable for rare occasions when principles of great and lasting importance are being enunciated, such as the Declaration on Human Rights. A recommendation is less formal . . . A declaration or a recommendation is adopted by a resolution of a United Nations organ. As such it cannot be made binding upon member States, in the sense that a treaty or convention is binding upon the parties to it, purely by the device of terming it a 'declaration' rather than a 'recommendation' However, in view of the greater solemnity and significance of a declaration, it may be considered to impart, on behalf of the organ adopting it, a strong expectation that Members of

the international community will abide by it. Consequently, in so far as the expectation is gradually justified by State practice, a declaration may by custom become recognized as laying down rules binding upon States."[84]

VI. CONCLUSION.

The foregoing discussion reveals that the Universal Declaration of Human Rights—the first segment of the International Bill of Human Rights— is the basic international pronouncement of the universal, inalienable and inviolable rights of all members of the human family. But the Declaration, which supplies for the first time the agreed list of 19 civil and political rights and 6 economic, Social and cultural rights, has failed to give due emphasize to the fact that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone. However, it was adopted as a "common standard of achievement for all peoples and all nations" in respect of human rights and was not initially concived of imposing binding obligations on the Member States of the UN. But since its adoption in December 1948, the Declaration has become a "living instrument of incomparable importance in the field of human rights." Its provisions have been invoked in many resolutions of the United Nations and have inspired or been incorporated in many international and regional instruments on human rights. The influence of the Declaration on national constitution, municipal laws and court decisions is also considerable. In fact, it laid the foundations for the entire global system of institutions for human rights protection. Now it "is like a brave banner flying from the highest tower in the world which no one can ignore"[85] and its political authority is second only to the

Charter itself. The Declaration is at present considered as forming part of customary international law because of its general acceptance on all levels. What began as a mere common expectation is presently described both as an authoritative interpretation of the human rights provisions of the UN Charter and as established customary international law, having the attributes of Jus cogens limiting the treaty-making freedom of states and constituting the heart of the International Bill of Human Rights. The Universal Declaration has become the Magna Carta of humankind. To conclude in the words of Gerard J Mangone:

> "The standards of the Universal Deciaration of Human Rights have become a guiding star to international jurispredence and the high tone of its exhortation continues to influence national policies and their legal applications."[86]

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2. Sieghart Paul, *The International Law of Human Rights* 17(1983)
3. Szabo, Imre, "Historical Foundations of Human Rights and Subsequent Developments" in Karel Vasak (ed.) *The International Dimensions of Human Rights*, 11(1982)
4. Preamble, the UN Charter.
5. Art 1(3), *ibid.*
6. Preamble, Arts.1(3), 8,13(1)(b), 55(c), 56, 62(2), 68 and 76(c), the UN Charter.

7. Lauterpacht. *Human Rights and the Charter of the United Nations*, Report. Human Rights Committee. Brussel's Conference. International Law. Association. 1948. Passim.

8. Art; 56. the UN Charter.

9. Art. 55(c). *ibid.*

10. Office of Public Information. United Naions. *The United Nations and Human Rights*. 22 (1978).

11. Humphrey John P., *The UN Charter and the Universal Declaration of Human Rights*, in Evan Luard. (ed.) The International Protection of Human Rights 40-41(1967).

12. Art. 68. the UN Charter.

13. Quoted in Robertson. A. H. *Human Rights in the World*. 25(1972).

14. Centre for Human Rights (United Nations). *United Nations Action in the Field of Human Rights*. 31(1988); Humphrey. J John P., The Magna Carta of Mankind. in Peter Davies (ed.) Human Rights 32-33 (1991).

15. The reasons given for the abstention of South Africa by its reprsentative in the Third Committee was that the list of rights included in the Declaration was too wide and that it should have been limited to those fundamental rights which were universally recognized. He also predicted that ultimately the Declaration would be used to interpret the Charter. The reason assigned the Saudi Arabia's representative (Jamil Baroody a Christian Lebanese) was that Article 18 of the Declaration provides that everyone has a right to change his religion is contrary to the Koran. But all the other Muslim States which were then members of the United Nations voted for the Declaration. More than one reason was given for the communist abstentions. In a long speech. Ambassador of the Soviet Union said that the Declaration suffered from serious defects and omissions: the article on freedom of information could do nothing to prevent warmongering and fascist ideas: there could be no freedom of information unless the workers had means to voice their opinions (i..e printing presses and newspapers

should be at their disposal), there were no provisions protecting the rights of minorities. The representative of the Ukraine rationalized his abstention in traditional Marxist terms: the Declaration proclaimed rights that could not be exercised under existing conditions and within the economic structure of many countries. Speaking for Czechoslovakia, its representative complained that the Declaration was not imbued with revolutionary spirit; it was neither bold nor modern. The representative of Byelorussia said, it was merely a proclamation: it did not guarantee the rights proclaimed. The rights included, said the Pole, did not go beyond the rights recognized by the old liberal school. There was no mention of the duties which an individual owed to his neighbours, his family and his nation. Compare to the Declaration of 1789 on the Rights of Man and of the Citizen, and the Communist Manifesto, especially the principles which inspired the October Revolution, it was a step backward. The Yugoslave said, the traditional categories of human rights (meaning civil and political rights needed to be widened and a system of social rights) recognized which would include the collective rights of certain communities.

16. Art. 1. the Universal Declaration of Human Rights .
17. Art. 2, *ibid.*
18. Art.3, *ibid.*
19. Art. 4, *ibid.*
20. Art. 5, *ibid.*
21. Art. 6 , *ibid.*
22. Art. 7, *ibid.*
23. Art. 8, *ibid.*
24. Art. 9, *ibid.*
25. Art. 10, *ibid.*
26. Art. 11, *ibid.*
27. Art. 12, *ibid* .
28. Art. 13, *ibid.*

29. Art. 14, *ibid.*
30. Art. 15. *ibid.*
31. Art. 16, *ibid.*
32. Art. 17, *ibid.*
33. Art. 18, *ibid.*
34. Art 19, *ibid.*
35. Art. 20, *ibid.*
36. Art. 21, *ibid.*
37. Art. 22, *ibid.*
38. Art. 23, *ibid.*
39. Art. 24, *ibid.*
40. Art. 25, *ibid.*
41. Art. 26. *ibid.*
42. Art. 27, *ibid.*
43. Art. 28, *ibid.*
44. The ending paragraph of the Preamble, the Universal Declaration of Human Rights.
45. Quoted in Humphrey, John P. *Human Rrights and the United Nations* : a Great adventure. 73 .
46. Centre for Human Rights (United Nations). *op. cit.*, 32.
47. Note Quoted in Humphrey, John P., *The Magna Carta of Manlkind* . *op. cit.*, 37.
48. Centre for Human Rights (United Nations) . *op. cit.*, 32.
49. Russo, Alessandra Luinidel. *International Protection of Human Rights* 37(1971).
50. Quoted in Humphrey, John P., The UN Charter and the Universal Declaration of Human Rights in Evan Luard (ed.) *op.cit.*, 50.
51. Centre for Human Rights (Geneva). *Bulletin of Human Rights* (Special Issue) 1(1988).
52. Office of Publication (United Nations) op. cit., 24.
53. Res. 285 (III), the General Assembly.

54. Res. 1663 (XVI).
55. Res. 2145 (XXI).
56. Res. S/5471
57. Office of Public Information, United Nations, *op. cit.*, 25.
58. Art. 11, the Declaration on the Elimination of All Forms of Recial Discrimination.
59. Princ. VII, the Helsinki Final Act. The Act imposes no binding obligations under international law, and therefore has no formal legal effect.
60. Third Preambular Paragraph, the American Convention on Human Rights, 1969
61. Fourth Preambular Paragraph, ibid.
62. Nineth Preambular Paragraph, the African Charter on Human and Peoples' Rights.
63. Art. 60, ibid.
64. *The United Nations Year Book on Human Rights*, 340(1955).
65. Alston, philip, "The Universal Declaration" 35; Western and Passe or Alive and Universal" in I*nternational Commission of Jurists*, 31(1983), 63
66. Office of Public Information (United Nations), op. cit., 27.
67. Quoted in Robertson, A. H., *Human Rights in the World* 27(1972). The twentieth anniversary, 1968, was designated by the General Assembly: Its main feature was the International Conference on Humn Rights held at Teheran.
68. Office of Public Information (United Nations) op. cit 27.
69. 97 ACA 217 P. 2d 481 (Cl. Dist. Ct.App. 1950)
70. The Alien Land Law distinguished the right to own real property based on class of alienage: liens who were eligible for US citizenship (whether or not naturalized citizens in fct) were permitted to hold title to real property: aliens

ineligible for citizenship (principally Chinese and Japaness, although not specifically designated by the statute) were not permitted to own land. Land acquired by those aliens escheated to the state. 71. Article 17 of the Universal Declaration provides that every one hs the right to own property alone as well as in association with others. No one shall be aribitrarily deprived of his property.

72. 200 Misc. 124, 101 N. Y. S. 2d. 461 (Sup, ct. 1950).

73. 335 US. 525 (1948).

74. 335 US. 538 (1948)

75. 630 F. 2d 876 at 882 (2d cir 1980)

76. Lillich, Richard B. and Newman, Frank C. *International Human Rights: Problems of Law and Policy* 63 (1979).

77. Sec *the United Nations Yearbook on Human Rights*. 29-90 (1951).

78. Centre for Human Rights, Geneva (United Nations), op. cit., 32.

79. Quoted in Humphrey, John P, op. cit., 50.

80. *The international and Comparative Law Quarterly*, Supplementary Publication No II 15(1965).

81. Quoted in War wick Mckean. *Equality and Discrimination under international Law*, 275(1983).

82. Un. Doc. A/Conf. 32/41 (1968).

83. Quated in Haleem, Muhammed. "The Domestic Application of international Human Rights Norms" in Commonwealth Secretariat (ed.) Judicial Colloquium in Bangalore: *Developing Human Rights Jurisprudence:* 100 (1988)

84. UN Doc. E/CN. 4/L. 610(1962). There is an opposite view to the effect that the Universal Declaration to day creates binding obligations for the Member States of the UN. not

because it has become part of customary international law but because they have expressly accepted these obligations. Articles 55 and 56 of the UN Charter create a legal obligation (expressed as a pledge) for all the UN's Member States to take action to achieve universal respect for and observance of human rights and fundamental freedoms. The Charter did not enumerate those rights and freedoms but the Universal Declaration supplies the agreed catalogue which was missing from Article 55 (c) of the Charter. Therefore the Member States are now under an obligation to take action to achive' universal respect for and observance of the specific human rights and fundamental freedoms authentically enumerated in the Declaration. Sieghart, Paul, *The International Law of Human Rights* 53-54(1983). Even in 1948, in the Third Committee of the General Assembly, there were those who argued that the Declaration already had the force of law. The representative of China said that, where as the UN Charter Committed Member States to respect and observe human rights, the Declaration "stated these rights explicity." The representative of France, Professor Rene Cassin, said that the Declaration "could be considered as an authoritative interpretation of the Charter." Mr. Hernan Santa Cuz of Chile said that "violation by any State of the rights enumerated in the Declaration would mean violation of the Principles of the United Nations."

85. Chagla, M. C. *The Individual and the State*, 10(1961).

86. Mangone, Gerard J. *The Elements of International Law*, 255(1967).