

## **CHAPTER - I**

### **INTRODUCTION: CONCEPT OF HUMAN RIGHTS**

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The world today, has accepted the notion that all human beings are entitled to and are empowered for a dignified existence. It is a common phenomenon that human beings everywhere, demand the realization of diverse values to ensure their individual and collective well-being. However, these demands or rights are denied through exploitation, oppression, persecution, etc, in many countries of the world.<sup>1</sup> Human rights gained attention at the international level following the Second World War, where millions of people lost their lives. Horrified by the devastation of life caused by the Second World War, members of the United Nations (UN) took a pledge to take measures for the achievement of universal respect for and observance of human rights and fundamental freedoms for all.<sup>2</sup>

The term 'human rights' which is used since World War II, gained importance in contemporary debates and became a universal phenomenon. After the adoption of the Universal Declaration of Human Rights (UDHR) on December 10, 1948 by the United Nations, it was seen by many as a sign of optimism for the better protection, promotion and enforcement of human rights. However, 50 years since the adoption of the Universal Declaration of Human Rights, it has been reported that human rights abuses has not decreased. The world is filled with examples of violations of basic rights such as

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<sup>1</sup> Weston, Burns, H. (1984) 'Human Rights', *Human Rights Quarterly*, 6 (3): 257-83.

<sup>2</sup> Sills, David, L. (1968) *International Encyclopedia of Social Sciences*. New York: The MacMillan Company and The Free Press. p. 541.

ensorship, discrimination, political imprisonment, torture, slavery, disappearances, genocide, extrajudicial killings, arbitrary arrests and killings, poverty, etc. The rights of women and children are also ignored in many different ways.<sup>3</sup>

### **Definition of Human Rights**

There are various contemporary definitions of human rights. The UN defined human rights as those rights which are inherent in our state of nature and without which we cannot live as human beings.<sup>4</sup> Human rights belong to every person and do not depend on the specifics of the individual or the relationship between the right-holder and the right-guarantor.<sup>5</sup> Human rights are the rights that everyone has equally by virtue of their humanity. It is grounded in an appeal to our human nature. Christian Bay defined human rights as any claims that ought to have legal and moral protection to make sure that basic needs will be met.<sup>6</sup> Human rights can be defined as those minimum rights which every individual must have against the state or other public authority by virtue of his being a member of the human family. Shree P. P. Rao said human rights are the inherent dignity and inalienable rights of all members of the human family recognizing them as the foundation of freedom, justice and peace in the world. For D. D. Raphael, human rights in a general sense denote the rights of humans. However, in a more specific sense, human rights constitute those rights which one has precisely because of being a human.<sup>7</sup> In the words of Michael Freedon, a human right is a conceptual device, expressed in linguistic form that

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<sup>3</sup> O' Byrne, Darren J. (2005) *Human Rights: An Introduction*. Singapore: Pearson Education. p. 5.

<sup>4</sup> Mishra, Pramod (2000) *Human Rights Global Issues*. Delhi: Kalpaz Publications. p. 4.

<sup>5</sup> Coicaud, Jean Marc, Doyle, Micheal, W. and Marie, Anne (eds.) (2003) *The Globalization of Human Rights*. New York: United Nations University Press. p. 25.

<sup>6</sup> Vincent, R. J. (1986) *Human Rights and International Relations*. Cambridge: Cambridge University Press. pp. 12-14.

<sup>7</sup> Rajawat, Mamta (2001) *Burning Issues of Human Rights*. Delhi: Kalpaz Publications. pp. 33-47.

assigns priority to certain human or social attributes regarded as essential to the adequate functioning of a human being that is intended to serve as a protective capsule for those attributes; and that appeals for a deliberate action to ensure such a protection.<sup>8</sup> Scot Davidson defined human rights as closely connected with the protection of individuals from the exercise of state government or authority in certain areas of their lives. It is also directed towards the creation of social conditions by the state in which individuals can develop their fullest potential.<sup>9</sup> David Selby defined human rights as those rights which pertain to all persons and are possessed by every individual because they are human.<sup>10</sup> In the words of Cranston, human rights are forms of moral rights and they differ from other rights in being the rights of all human beings at all times and in all situations. Susan Moller Okin defined human rights as a claim to something of crucial importance for human life.<sup>11</sup>

In the context of the present study, human rights can be defined as those rights without which human beings cannot live with dignity, freedom (political, economic, social and cultural) and justice in any nation or state regardless of colour, place of birth, ethnicity, race, religion or sex or any other such considerations. These rights are inherent in human nature and therefore guaranteed and protected by the state without distinction of any sort. When such rights are denied to an individual, whether by the state or non-state actors, it constitutes human rights violations. When large scale violations of such rights occur, it constitutes human rights abuses. Human rights abuses in this context could refer to large-

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<sup>8</sup> Biswal, Tapan (2006) *Human Rights Gender and Environment*. New Delhi: Viva Books Private Limited. p. 44.

<sup>9</sup> *Ibid*, p.44.

<sup>10</sup> Kumar, Arun Palia (1995) *National Human Rights Commission of India*. New Delhi: Atlantic Publishers and Distributors. p. 10.

<sup>11</sup> Kumar, Jawahar, C. (ed.) (1995) *Human Rights Issues and Perspectives*. New Delhi: Regency Publications. p. 10.

scale violations committed repeatedly by state or non-state actors to any community or group of people in their everyday lives. Further, human rights abuses occur when arbitrary arrests, killings, torture, rape, repressive legislations, discrimination, etc., are carried out systematically against any community or sections of society by the state or non-state actors with the objective of suppressing a particular group's aspiration or demand for equal standard of living vis-à-vis other groups in that country. It is in this context that the concept of human rights and its abuses have been examined with particular reference to the Sri Lankan situation mainly to understand whether these rights as mentioned above are guaranteed for the common citizens particularly in the Tamil areas of Sri Lanka.

Further, the concept of human rights can be understood as universal, incontrovertible and subjective. Human rights are universal since they belong to every human being without any distinction of ethnicity, race, gender, religion, or type of government. It is incontrovertible, that is, they are absolute and innate. Human rights are subjective as they are properties of individuals who possess them because of their capacity for rationality, agency and autonomy.<sup>12</sup>

Today, the concept of human rights includes civil and political rights or public liberties, economic, social and cultural needs particularly with regard to development, the environment and self-determination. As said, it is the state's responsibility to protect and promote human rights. It is also the duty of the state to create conditions for peaceful existence which enable human rights to be enjoyed by every individual in that state. But with the increasing risk of violation of human rights resulting from the activities of the state

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<sup>12</sup> O' Byrne, Darren, J. (2005) *Human Rights: An Introduction*. n. 3. p. 27.

as well as non-state actors, international law, whether in its universal or regional manifestation, also guarantees and promotes the enforcement and observance of human rights.<sup>13</sup>

### **Origins of Human Rights**

The term 'human rights' came into usage after the Second World War particularly with the founding of the United Nations in 1945. It replaced the phrase natural rights because it became a matter of great controversy and the later phrase the rights of man was not understood universally to include the rights of women.<sup>14</sup>

It is common in political philosophy and among scholars to suggest that the antecedents of contemporary rights and liberties are of ancient origin.<sup>15</sup> Many trace the historical origins of human rights to ancient Greece and Rome, where it is closely tied to the pre modern natural law doctrines of Greek Stoicism. The Roman jurist Ulpian declared that according to the law of nature, all men are equal and born free. The present concept of human rights can also be identified with early Christian philosophy or with the advent of medieval constitutionalism. For instance, Thomas Aquinas in the Thirteenth Century revived and expounded the classical doctrine that human dignity sets moral limits to political rule.<sup>16</sup>

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<sup>13</sup> Symonides, Jansuz, (ed.) (2002) *Human Rights, Concepts and Standards*. New Delhi: Rawat Publications. pp. 347-49.

<sup>14</sup> Weston, Burns, H. (1984) 'Human Rights', *Human Rights Quarterly*, n. 1. p. 257-58.

<sup>15</sup> Claude, Richard, P. (ed.) (1976) *Comparative Human Rights*. London: John Hopkins University Press. p. 3

<sup>16</sup> *Ibid*, p. 3

Some writers traced the origin of the concept of human rights back to the Dutch jurist Hugo Grotius (1583-1645) or even to earlier thinkers. But the first fully elaborated doctrine of human rights seemed to have appeared in the form of natural rights in the political writings of Thomas Hobbes called the *Leviathan*. The key to Thomas Hobbes' political philosophy is his doctrine of the state of nature where he describes the pre-political situation of the human condition. According to Thomas Hobbes, all men are equal and each is dominated by the desire for self preservation.<sup>17</sup> Thomas Hobbes in his *Leviathan* stated that all individuals possess simple freedoms and liberties which are correlated with duties and obligations on the part of others. Thomas Hobbes said that the right of nature (natural rights) is defined as the right to self preservation which is immediately contrasted with the law of nature (natural law) where the law forbids individuals from doing anything destructive of their lives or to omit the means of self-preservation.<sup>18</sup>

For the idea of human (natural) rights to take hold as general social need and reality, certain basic changes in the beliefs and practices of society had to take place. These basic changes in beliefs and practices began from the Thirteenth Century and took place till the decline of feudalism. Further, when resistance to religious intolerance and political economic bondage began, the long transition to liberal notions of freedom and equality, particularly in relation to the use and ownership of property were the foundations of the modern concept of human rights. The writings of Thomas Aquinas (1224-1274) *Summa Theologica* (Summary of Theology), Hugo Grotius (1583-1645) *De jure belli ac pacis* (On

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<sup>17</sup> Lipset, Seymour Martin (ed.) (1995) *The Encyclopedia of Democracy*. London: Routledge. p. 573.

<sup>18</sup> Curran, Eleanor (2001) 'Hobbes's Theory of Rights: A Modern Interest Theory', *The Journal of Ethics*, 6(1): 63-64.

the Laws of War and Peace), and documents such as the Magna Carta (1215), the Petition of Rights (1628) and the English Bill of Rights (1689) all reflect this transition.<sup>19</sup>

Doctrines of natural law and natural rights suggested that men were entitled to make claims for the protection of their life, liberty and property by virtue of their common humanity.<sup>20</sup> Natural rights are the rights that all men possess, because of which they may be obligated to act, or to refrain from acting in certain ways. According to Thomas Hobbes and John Locke there are many natural rights, but all of them are inferences from one original right, the right of an individual to preserve his life. What is intrinsically right is no longer what is required by, or what partakes of, the good life; it is what is subjectively regarded by the individual as necessary to his security (David Sills, 1968).<sup>21</sup> John Locke stated that, “Man being born with a little to perfect freedom and to an uncontrolled enjoyment of all the rights and privileges of law of nature, equally with any other man hath by nature not only to preserve his property, his life, liberty and estate against the injuries and attempts of other men, but to judge and punish the breaches of law in others”.<sup>22</sup> John Locke further said that sovereignty pertains not to the monarch but of the people as a whole, and that government is an instrument for securing the lives, the property and the well-being of the governed without enslaving them in anyway. Government is not their

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<sup>19</sup> Goetz, Philip, W. (ed.) (1989) *The New Encyclopedia Britannica*, Vol. VI. Chicago: The University of Chicago Press. p. 137.

<sup>20</sup> Laslett, Peter (ed.) (1975) *Philosophy, Politics and Society*. Great Britain: A Blackwell Paperback Publication. p. 35.

<sup>21</sup> Sills, David, L. (ed.) (1968) *International Encyclopedia of Social Sciences*. n. 2. pp. 85-86.

<sup>22</sup> Joshi, S. C. (ed.) (2006) *Human Rights, Concepts, Issues and Laws*. New Delhi: Akansha Publishing House. p. 16.



master; it is created by the people voluntarily and maintained by them to secure their own good.<sup>23</sup>

The concept of natural law which propounded the philosophy of law asserted that positive law ought to be subordinated to the natural law. It was proclaimed that law is an expression of the will of the community. All citizens have a right to concur, either personally or through their representatives, in its formation. It should be the same for all whether it protects or punishes. No man should be accused, arrested or held in confinement, except in cases determined by the law, and according to the forms it has prescribed.<sup>24</sup>

Natural law began with the Roman idea of a universal system of laws, which is not dependent merely on Stoic Cosmopolitanism, but also on the earlier Greek discovery of the idea of nature. The Stoic doctrine reflected in the Greek period, the Hellenization of much of the world by Alexander the Great, and in the Roman period the imperial integration of diverse cultures. The Stoic ideal of living agreeably to nature had an external and an internal aspect from the individual point of view. It believed that there was a natural order in the world at large, governed by reason and that it benefited individuals to discover and live in conformity with this order. Internally the individual was to subordinate will to reason in order to live a moral life.

Natural law according to Cicero was universal and unchanging. Cicero's conception of the equality of man has been located as the beginning of a theory of human nature and

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<sup>23</sup> Robertson, A. H. and Merrills, J. G. (2005) *Human Rights in the World*. Delhi: Universal Law Publishing Co. Pvt. Ltd. pp. 4-5.

<sup>24</sup> Sharma, Gokulesh (1998) *Human Rights and Social Justice*. New Delhi: Deep and Deep Publications. p.3.

society of which the liberty, equality and fraternity of the French Revolution is only the present day expression.<sup>25</sup> The Stoics said that nature provided the best guidance for people's behaviour and that people should do their best to devise an ethical and moral system based on nature. The Stoics argued that because nature had given all individual human beings the capacity to reason, all individuals have the obligation to treat one another with respect. Slave owner and slave were equal in the Stoics eyes. The idea that all mankind has the same rights is the beginning of modern theories of human rights.

After the fall of the Roman Empire, ethical philosophy was overshadowed by discussions of Christian morality and ethics. The idea of rights was picked up again by philosophers in early modern Europe. Hugo Grotius, the Dutch Philosopher, wrote "*De Jure Belli ac Pacis*" (On the Laws of War and Peace, 1625), in which he carried forward the Stoic idea of natural law based on reason. Before Hugo Grotius, an English legal tradition had developed arguing that all men had certain rights vis-à-vis the government. This tradition began with the Magna Carta (Great Charter), which King John I was forced to sign in 1215. The Magna Carta stated that Englishmen had certain basic rights which even the King could not violate: no free man shall be taken or imprisoned, or outlawed, or exiled, or in any way destroyed except by the lawful judgment of his peers or by the law of the land. These English rights were expanded by the Petition of Rights (1628), and the English Bill of Rights (1689).<sup>26</sup>

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<sup>25</sup> Vincent, R. J. (1986) *Human Rights and International Relations*. n. 6. pp. 20-21.

<sup>26</sup> Lewis, James, R. and Skutsch, Carl (2001) *The Encyclopedia of Human Rights*. New York: Sharpe Reference. pp. 748-49.

In his two treatises on *Civil Government*, John Locke wrote a theory of human rights based on natural law. John Locke like the Stoics argued that all people have reason; he further added that human being's reason should tell them that they should not harm others because all human beings were created by the same divine force, and therefore shared certain rights. According to John Locke these rights were right to life, liberty and property.<sup>27</sup> John Locke imagined the existence of human beings in a state of nature in which men and women were in a state of freedom, able to determine their actions and also in a state of equality in the sense that no one was subjected to the will or authority of another. In practice, natural rights theory was the philosophical impetus for the wave of revolt against absolutism during the late eighteenth century. It is seen in the French Declaration of the Rights of Man, the American Declaration of Independence, and later in the Constitutions of numerous states created after liberation from colonial power and still later in the principal of human rights document of the United Nations, the Universal Declaration of Human Rights. Thus, natural rights theory made an important contribution to the development of human rights. It identified human freedom and equality from which other human rights are derived. However, natural rights became unpopular during the Nineteenth and Twentieth centuries and were criticized by legal scholars and philosophers.<sup>28</sup> Jeremy Bentham was the most notable among those who criticized natural rights. Jeremy Bentham, the founder of the philosophy of utilitarianism, said that the doctrine of natural rights was speculative in nature and therefore, it was nonsense upon stilts for him. According to Jeremy Bentham, rights were determined from law and the people. To him it was the people who made laws which later became rights. On the

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<sup>27</sup> *Ibid*, p. 749.

<sup>28</sup> Rajawat, Mamta (2001) *Burning Issues of Human Rights*. n. 7. pp. 37-38.

contrary, natural law compels a man on the dictates of his conscience, to take up arms against any law which he may dislike. To this Bentham asked, what sort of government will survive in such sort of opposition to the laws made? According to him, it is the principle of utility which promotes the greatest possible number of people that affords the only clue to guide a man.

### **Modern Concept and Universalization of Human Rights**

The aftermath of the Second World War brought about a revival of the natural rights theory.<sup>29</sup> Until 1945, international protection of individual human rights was confined to treaties abolishing slave trade, the laws of war and the minority rights which were concluded after the Treaty of Versailles (June 28, 1919). It was after 1945, that the rights of all human individuals have come under the protection of international law. Immediately after the Second World War, the rules of state behavior and rights pertaining to individuals within states were rewritten in authoritative international documents such as the United Nations Charter of the Human Rights 1945; the Universal Declaration of Human Rights 1948; the Genocide Convention of 1948; the revision of the Geneva Conventions in 1949; the European Convention on Human Rights 1950; and the United Nations Educational, Scientific and Cultural Organizations 1945. All these documents arose with the moral impulse to rebuild public morality after the Second World War. The United Nations Charter of the Human Rights is addressed to states as moral actors, while the Universal Declaration of Human Rights (UDHR) addresses the individual human.<sup>30</sup>

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<sup>29</sup> *Ibid*, pp. 42-43.

<sup>30</sup> Patil, V. T. (2001) *Human Rights, Third Millennium Vision*. Delhi: Authors Press. pp.3-5.

The Charter of the United Nations, signed at San Francisco on June 26, 1945, was a document with its roots in the past and possibilities for the future that could only be imagined. It represented the historical development on mankind's social organization. Its provisions were based largely on past experience and found substantial if not exact expression in earlier instruments. The Charter was a commitment to purposes and principles, the realization of which in the light of the changing world conditions might require substantial adaptation of institutional and procedural arrangements. It is important to note that the Charter not only embodied limitations on a state's freedom of action, it also made provisions for the development of human rights through each nation's Constitution. Thus, the Charter<sup>31</sup> provided a Constitutional basis for achieving international peace, security and well-being.

The Preamble of the Charter of the United Nations (UN) states:

“We the peoples of the United Nations determined:  
to save the succeeding generations from the scourge of war, which twice  
in our lifetime has brought untold sorrow to mankind, and  
to reaffirm faith in fundamental human rights, in the dignity and worth of  
the human person in the equal rights of men and women and of nations  
large and small, and  
to establish conditions under which justice and respect for the obligations  
arising from treaties and other sources of international law can be  
maintained and  
to promote social progress and better standards of life in larger  
freedom...”<sup>32</sup>

The clauses concerning human rights in the Charter provide the foundation for an impetus to further implement the protection and promotion of human rights. In the

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<sup>31</sup> Goodrich, L. M., Hambro, Edvard and Simons, Anne Patricia (1969) *Charter of the United Nations, Commentary and Documents*. New York: Colombia University Press. p. 1.

<sup>32</sup> *Ibid*, p. 19.

Preamble, the members reaffirmed their faith in fundamental human rights and in the equal rights of men and women. Article 1 of the United Nations Charter states that the purposes of the United Nations is to include co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, colour, language or religion. Article 55, states that the United Nations shall promote (a) higher standards of living, full employment, (b) conditions of economic and social progress and development, and (c) universal respect for and observance of human rights and fundamental freedoms for all. Article 56 provides that: all members pledge themselves to take joint and separate action in co-operation with the organization and for the achievement of the purposes set forth in Article 55.<sup>33</sup> According to Article 62, the Economic and Social Council (ECOSOC) was empowered to make recommendations on its own initiative, with respect to international economic, social and other humanitarian matters.<sup>34</sup> The basic objectives of the trusteeship system (Article 76 of UN Charter), in accordance with the purposes of the United Nations as laid down in Article 1 of the Charter, shall be to further international peace and security; to promote political, economic, social and educational advancement of the inhabitants of the trust territories and their progressive development towards self-government or independence; to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion and to encourage recognition for the interdependence of the peoples of the world; and to ensure equal treatment in social, economic, and commercial matters without distinction of any kind.<sup>35</sup>

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<sup>33</sup> Brownlie, Ian (1973) *Principles of Public International Law*. New York: Oxford University Press. pp. 569-70.

<sup>34</sup> Sills, David, L. (1968) *International Encyclopedia of Social Sciences*. n. 2. p. 412.

<sup>35</sup> *Ibid*, p. 466.

In this background, the emergence of the UDHR in 1948, International Covenants, Conventions and treaties of human rights became very important for the protection and promotion of human rights since 1945.<sup>36</sup>

### **The Universal Declaration of Human Rights (UDHR)**

It was more than fifty years ago, that the international community resolved to make a historic commitment to enshrine the fundamental rights of the individuals for living in any part of the world. The commitment came in the form of a Universal Declaration of Human Rights (UDHR) adopted by the member states of the United Nations General Assembly on December 10, 1948.<sup>37</sup> The declaration outlined a common standard of achievement for the future of human rights and has become the cornerstone of human rights. However, the UDHR is not a binding treaty, but rather a declaration of principles of human rights.

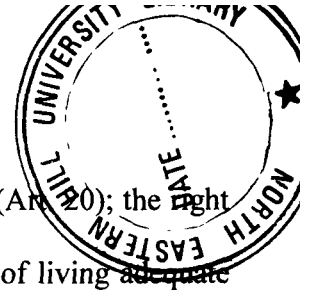
The UDHR which was adopted by the United Nations on December 10, 1948,<sup>38</sup> which contains 30 Articles, specifies and unequivocally affirms, among others the following generally agreed upon basic rights: right to life, liberty, and security of a person (Article. 3); the right not to be subjected to torture or to cruel inhuman or degrading treatment or punishment (Article. 5); the right to equal protection of the law (Article. 7); the right not to be subjected to arbitrary arrest, detention or exile (Article. 9); the right to a fair and public trial by an independent and impartial tribunal (Article. 10); the right to freedom of thought, conscience and religion (Article. 18); the right to freedom of opinion

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<sup>36</sup> Nayar, Kuldip (2001) 'The United Nations and Human Rights', *World Focus*, 22(1): 19.

<sup>37</sup> Balu, A. (2001) 'Human Rights and The United Nations', *World Focus*, 22(1): 7.

<sup>38</sup> Paul, Seighart (1983) *The International Law of Human Rights*. New York: Oxford University Press. p. 24.



and expression (Article. 19); the right to freedom of peaceful assembly (Article. 20); the right to work, equal pay for equal work (Article. 23); the right to a standard of living adequate for health and well being... including food, clothing, housing and medical care (Article. 25); the right to education (Article. 26); and the right to a social and international order in which the rights set forth in this declaration can be fully realized (Article. 28).<sup>39</sup> While Article 29 deals with the duties and limitations of individuals in the exercise of rights and freedoms, Article 30 makes provisions for protection against human rights abuses.

Further, on assumption that the UDHR would not impose sufficient binding obligations, the UN Commission on Human Rights drafted the Covenants on human rights designed to become legally binding on the UN's member states. The two Covenants, International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) were presented to the United Nations General Assembly in 1954. However, it took a further twelve years before the United Nations General Assembly adopted these Covenants in 1966. The ICCPR has 27 Articles defining a variety of rights and freedoms, and imposing in Article 2 an absolute and immediate obligation on each of the state parties to respect and ensure these rights to all individuals within its territories and subject to its jurisdiction. The ICESCR which was also adopted by the United Nations General Assembly in 1954 has 31 Articles. Article 2 of the ICESCR provides that the States which are party to the covenant shall undertake to

<sup>39</sup> Johansen, Robert, C. (1983) 'Human Rights in the 1980s: Revolutionary Growth or Unanticipated Erosion?', *World Politics*, 35(2): 228-29.



ensure the equal rights of men and women for the enjoyment of all economic, social and cultural rights put forth in the Covenant.<sup>40</sup>

According to the ICCPR it is the responsibility of all states to ensure the life, liberty and security of its citizens. It shall also be the duty of the state to guarantee that no one is subjected to arbitrary arrest and detention or to torture and that everyone is entitled to a fair trial. Everyone has the right to freedom of thought, conscience, religion and freedom of expression. Under the ICESCR, all governments are expected to progressively improve the living conditions of their citizens, they should make efforts to guarantee the right to food, clothing, housing, medical care and protect the family by ensuring the right to social security, education and employment. They are to promote these rights without discrimination of any kind.<sup>41</sup>

The most visible trend in the development of human rights has been seen through the increased number and range of treaties which elucidate or add to the principles of the UDHR. Of these treaties, the most important are the International on Convention Economic, Social and Cultural Rights (ICESCR) and the International Convention on Civil and Political Rights (ICCPR), These are supplemented by a vast number of more specific instruments such as the Convention Against Torture and other cruel inhuman or degrading treatment or punishment; the Convention on the Elimination of all Forms of Discrimination Against Women; the Convention on the Rights of the Child; and regional Conventions such as the European Convention on Human rights 1953, the American Convention on Human

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<sup>40</sup> Paul, Seighart (1983) *The International Law of Human Rights*. n. 38. pp. 24-26.

<sup>41</sup> United Nations High Commissioner for Refugees (2005) *Human Rights: The New Consensus*. London: The Regency Press. pp. 11-13.

Rights in 1958, and the Charter on Human Rights and Peoples Rights in 1983.<sup>42</sup> A brief discussion of the ICESCR and the ICCPR are made in the following passages to provide a better understanding of the two Covenants.

### **The International Covenant on Economic, Social and Cultural Rights (ICESCR)**

The International Covenant on Economic, Social and Cultural rights was adopted by the United Nations General Assembly on December 16, 1966, and came into force on January 3, 1976. The Preamble to the Covenant states that state parties to the Covenant, in accordance with the principles proclaimed in the Charter of the United Nations, should recognize the inherent dignity and of the equal and inalienable rights of all members of the human family which is the foundation of freedom, justice, and peace in the world. Article 1 of the ICESCR states that all peoples have the right of self-determination, by virtue of which they can freely determine their political status and freely pursue their economic, social and cultural developments.<sup>43</sup>

The Covenant on Economic, Social, and Cultural Rights contains various Articles which provide recognition for the right to work (Article. 6), the right of everyone to social security (Article. 9) and to an adequate standard of living for any individual and his or her family (Article. 11). Each state party shall undertake necessary steps, with a view to achieving progressively the full realization of the rights recognized in the covenant by all appropriate means. The rights recognized are to be exercised without discrimination of any

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<sup>42</sup> Mishra, Pramod (2000) *Human Rights Global Issues*. n. 6. pp. 2-3.

<sup>43</sup> Patil, V. T. (2001) *Human Rights, Third Millennium Vision*. n. 35. p. 72.

sort.<sup>44</sup> The ICESCR has no provisions for interpretation and application. Instead it provides a reporting procedure, through the UN Secretary General, to the UN Economic and Social Council (ECOSOC), which may transmit the state reports to the Human Rights Commission with recommendations of a general nature.<sup>45</sup>

### **The International Covenant on Civil and Political Rights (ICCPR)**

Though adopted by the United Nations General Assembly in 1966 the International Covenant on Civil and Political Rights (ICCPR) came into force on March 23, 1976.<sup>46</sup> The ICCPR has 53 Articles, which define in much greater detail than the UDHR and imposing an absolute and immediate obligation on each of the state parties to respect and ensure these rights to all individuals within its territories and subject to its jurisdiction.<sup>47</sup> According to Article 2, each state party is obligated to undertake, respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without discrimination of any kind such as race, color, sex, language, religion political or other opinion, national or social origin, property, birth or other status.<sup>48</sup> Article 25 of the ICCPR provides equal rights for all citizens to take part in the conduct of public affairs, directly or through freely chosen representatives; to vote and be elected at genuine periodic elections based on universal and equal suffrage, secret ballot, guaranteeing the free expression and will of the electors, coupled with other rights to

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<sup>44</sup> O' Byrne, Darren, J. (2005) *Human Rights: An Introduction*. n. 3. p. 26

<sup>45</sup> *Ibid*, pp.128-29.

<sup>46</sup> Paul, Seighart (1983) *The International Law of Human Rights*. n. 38. pp. 24-26

<sup>47</sup> Sills, David, L. (1968) *International Encyclopedia of Social Sciences*. n. 2. p. 128.

<sup>48</sup> *Ibid*, p. 25.

freedom of speech, association and peaceful assembly and allowing for variation in electoral and constitutional arrangements.<sup>49</sup>

The ICCPR contains provisions which include rights, inter-alia, and the right to life and to protection against arbitrary deprivation of life; freedom from torture or cruel, inhuman, or degrading treatment or punishment; freedom from slavery; the right to liberty and to security of person; the prohibition against arbitrary arrest or detention; the right to a fair and public trial; the right of detainees to be treated with dignity; the prohibition against imprisonment for debt; freedom of movement and residence, including the right to have citizenship or nationality; protection for aliens lawfully within a state's territory against arbitrary expulsion; the prohibition against arbitrary interference with privacy, family, home, correspondence; freedom of thought, conscience, religion, opinion or expression, association and peaceful assembly; protection for the family and children; the right to participate in public affairs; the prohibition of discrimination; and the right of minorities to enjoy their own culture, practice their religion, and to use their own language.<sup>50</sup> The instrument has also established a Human Rights Committee (HRC) having competence in three matters:

- a) to comment on reports that are to be submitted by the state parties on the measures they have adopted to comply with their obligations under the covenant;
- b) to investigate complaints by state parties of failures by other state parties to fulfill their obligations under the covenant;

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<sup>49</sup> Schachter, Oscar and Joyner, Christopher (eds.) (1995) *United Nations Legal Order*, Vol. I. New York: Cambridge University Press. pp. 328-29.

<sup>50</sup> O' Byrne, Darren, J. (2005) *Human Rights An Introduction*. n. 3. p. 25.

- c) under the optional protocol, to investigate complaints from victims of such failures.<sup>51</sup>

### **The Optional Protocol to the International Covenant on Civil and Political Rights**

The Optional Protocol entered into force on March 23, 1976. The purpose of the Optional Protocol as mentioned in the text of the document states that, in order to achieve the purposes of the Covenant on Civil and Political Rights and the implementation of its provisions it would be appropriate to enable the Human Rights Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant. Since then the Human Rights Committee has adopted rules of procedure and carried out a substantial volume of work including thorough examination of reports of many states, and the consideration of a number of complaints under the Optional Protocol.<sup>52</sup> Any party may refer an alleged breach of the Convention by another party to the Human Rights Committee. In addition, parties may by declaration recognize the competence of the Human Rights Committee to receive petitions from any person, group of persons, non-governmental organizations, etc, regarding violation of the rights provided in the Convention.<sup>53</sup>

The foregoing discussion on the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, revealed that the rights provided in these documents are at the international level. However, in each nation or state, these rights are found

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<sup>51</sup> Brownlie, Ian (1973) *Principles of Public International Law*. n. 39. p. 146.

<sup>52</sup> *Ibid*, p. 118.

<sup>53</sup> *Ibid*, p.119.

enumerated in their respective Constitutions known mostly as fundamental rights. Fundamental rights included in the Constitutions of various countries guarantee individual and minority rights.<sup>54</sup>

### **Human Rights in Sri Lanka**

Although, international human rights instruments and Constitutions of various countries create provisions to protect the rights of the people, it is reported that these rights are not fully protected and violations of human rights continue to exist in many parts of the world. It is also seen in the Third World countries like in Sri Lanka the prevalence of ethnic conflict and human rights abuses perpetrated by the state as well as non-state actors. Ever since its independence from British rule on February 4, 1948, Sri Lanka has been facing ethnic tension between Sinhalese and the Tamils of Sri Lanka that resulted in various forms of human rights abuses in the areas dominated by the Tamils. Sri Lanka has signed and ratified many of the international human rights instruments which are shown in Table 1.1:

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<sup>54</sup> Wickramaratne, Jeyampathy (1996) *Fundamental Rights in Sri Lanka*. New Delhi: Navarang Publishers. pp. 2-9.

**Table 1.1: International Human Rights Instruments Signed and Ratified by Sri Lanka.**

<b>Sl. No</b>	<b>International Human Rights Instruments</b>	<b>Date</b>
1.	Convention on the Prevention and Punishment of the Crime of Genocide	12.10.1950
2.	Slavery Convention as amended by the Protocol	21.03.1958
3.	Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery	21.03.1958
4.	Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others	15.04.1958
5.	Convention on the Nationality of Married Woman	30.05.1958
6.	International Covenant on Economic, Social and Cultural Rights	11.06.1980
7.	International Covenant on Civil and Political Rights	11.06.1980
8.	Convention for the Elimination of all Forms of Discrimination Against women	05.10.1981
9.	International Convention on the Suppression and Punishment of the Crime of Apartheid	18.12.1982
10.	International Convention for the Elimination of all Forms of Racial Discrimination	18.12.1982
11.	Convention on the Rights of the Child	12.07.1991
12.	Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment	03.01.1994
13.	Convention on the Rights of Migrant Workers and Members of their families	11.03.1996
14.	Optional Protocol to the International Covenant on Civil and Political Rights	03.10.1997
15.	Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts	06.09.2000
16.	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography	09.05.2002
17.	Optional Protocol to the Convention on Elimination of All forms of Discrimination Against Women	15.10.2002

Source: Manoharan, N. (2003) 'Ethnic Violence and Human Rights in Sri Lanka', Ph. D. Thesis, Jawaharlal Nehru University, New Delhi. p. 230

Table 1.1: clearly shows that Sri Lanka has signed and ratified many of the important international human rights instruments. Further, Articles 10 to 14 of the 1978 Constitution of Sri Lanka provides the fundamental rights which are to be enjoyed by every citizen of the country. These Articles provide the various freedoms and rights such as freedom of thought, conscience, religion, speech, assembly, association, movement, arbitrary arrest, detention and punishment, torture, prohibition of retroactive penal legislation and the right to equality.<sup>55</sup> Although, Sri Lanka has signed and ratified many of the international human rights instruments and has also included in its Constitution the various fundamental rights for its citizens, various reports suggest that widespread human rights abuses were committed in the Tamil areas of Sri Lanka by various agencies of the Government including its security forces and the Liberation Tigers of Tamil Eelam (LTTE). Therefore, the study has examined the various factors responsible for human rights abuses in the context of the charges made against the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam. Further, the role of major human rights Non-governmental organizations and the Human Rights Commission of Sri Lanka in the protection and promotion of human rights in the Tamil Areas of Sri Lanka has been examined.

### **Methodology**

Data for the study was collected through primary and secondary sources. Primary sources included documents and reports of the UN Human Rights Commission, reports of Amnesty International, Asian Human Rights Commission, Human Rights Watch, International Committee of Red Cross, Peace Brigades International, University Teachers

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<sup>55</sup> *The 1978 Constitution of Sri Lanka, Articles 10 to 14.*



Human Rights (Jaffna), Home for Human Rights, Colombo, Law and Society Trust, Colombo, Centre for Policy Alternatives (Colombo), INFORM (Colombo), Consortium of Humanitarian Agencies, Human Rights Commission of Sri Lanka and Sri Lankan Parliamentary debates. Primary data was also collected through in depth interviews conducted with District Officials such as District Medical Officers, Police Officers, Members of the Special Task Force, Civil Servants in Sri Lanka, Party leaders and Secretaries of the Sri Lanka Freedom Party (SLFP, Colombo), United National Party (UNP, Colombo), Tamil National Alliance (TNA, Colombo), Dravida Munnetra Khazhagam (DMK, Chennai), Pattali Makkal Katchi (PMK, Chennai), Marumalarchi Dravida Munnetra Khazhagam (MDMK, Chennai), leaders of refugee camps in Tamilnadu, Journalists in Sri Lanka, Directors, Executive Directors and Secretaries of Human Rights Non-Governmental Organizations in Sri Lanka such as the Home for Human Rights, Law and Society Trust, Centre for Policy Alternatives, Information Monitor and the Consortium of Humanitarian Agencies. Further, interviews were conducted with the chairman and general secretaries of the Human Rights Commission of Sri Lanka (HRCSL).

Secondary sources include data collected from books, monographs, articles from various journals, magazines, newspapers, and weekly's.

The data collected from both the sources (primary and secondary) were quantified and analyzed in qualitative terms.