

International and National Instruments and Mechanisms of Human Rights

**A Thesis Submitted to Tribhuvan University, Faculty of Humanities and
Social Sciences, Prithvi Narayan Campus, Department of Political
Science, Pokhara, in the Fulfillment of the Requirement
for the Master's Degree in Political Science**

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DECLARATION

I hereby declare that this M.A. thesis entitled “**International and National Instruments and Mechanisms of Human Rights**” submitted to the Department of Political Science, Prithvi Narayan Campus, Tribhuvan University is entirely my original work prepared under the guidance and supervision of my respected supervisor **Associate Professor Mr. Lal Bahadur Kunwar**. I have made due acknowledgement to all ideas and information borrowed from different sources in course of preparing this thesis. The result of this thesis have not been presented or submitted anywhere else for the award of any degree or for any purposes. I assure that no part of the content of this thesis has been published in any form before. I shall be solely responsible if any evidence is found against my thesis.

.....

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LETTER OF RECOMMENDATION

This is to certify that **Mr. Bimal Prasad Lamichhane** M.A. second (2nd) year private student of Tribhuvan University has completed thesis entitled “**International and National Instruments and Mechanisms of Human Rights**” in the partial fulfillment of requirement for Master’s Degree in Arts in Political Science under my guidance and supervision. He has successfully completed and fulfilled all the requirements as prescribed by our department. The topic chosen for this Thesis is unique, novel and is of great importance in the present context. To the best of my knowledge, Mr. Bimal Prasad Lamichhane has covered all the related areas in this research work and his work is original and appreciable. I would like to appreciate his thesis which is the outcome of his rigorous effort and endeavor. I have advised him to submit his thesis so, I hereby recommend this thesis for its acceptance, approval and final evaluation.

.....
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LETTER OF APPROVAL

This thesis paper submitted by **Mr. Bimal Prasad Lamichhane** entitled “**International and National Instruments and Mechanisms of Human Rights**” has been accepted for the partial fulfillment of requirement for Master’s Degree in Political Science of Tribhuvan University.

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It is my great pleasure to bring this thesis paper conducted by Tribhuvan University. This thesis has been prepared in accordance with the rules and regulations of the Tribhuvan University for the partial fulfilment of the requirement Thesis (PS540-3) for M.A. second year conducted by the Department of Political Science, Prithvi Narayan Campus, Tribhuvan University. This requirement has trained us in conducting research work and writing paper based on such work as when there is need to do so. Undoubtedly, the skills of the thesis writing, which we have acquired in this process, shall be extremely useful in our professional accomplishment in future.

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ABSTRACT

This thesis attempts to investigate, address and analyze the theoretical aspect of human rights, its nature, principle, classifications of human rights, major human rights instruments, national and international mechanisms of human rights, its implication and practice in Nepal. Human rights are the basic rights and freedoms that belong to every person in the world, from birth until death. This thesis attempts to address the research questions: What are the national and international legal and institutional mechanisms to deal with human rights in Nepal? What is present scenario of the implication of human rights in Nepal? For these research questions the researcher has developed objectives as; to access the major international as well as national legal instruments and institutional mechanisms and their role in the protection and promotion of human rights and to explore the Nepalese legal provisions and their efficacy in the application of human rights in Nepal. In this research the researcher has used qualitative data and has adopted content analysis as well as doctrinal research methodology according to need. The research design of this study is analytical, descriptive, critical as well as historical.

Nepal is the member state of several international human rights instruments. Nepal is undergoing a period of transformation in which the injustices and violations of human rights that occurred in the past cannot be neglected. The researcher gives a glimpse of international as well as national concerns and issues of human rights in Nepal. States have various duties including prosecuting crimes of human rights violations under international human rights law. Nepal at present is facing the challenge of prosecuting criminals and provide remedy of the victim of gross violations of human rights. Nepal needs to take violation of human rights seriously and raise about political and other interests in order to set an example for future remedies and actions.

There are several international instruments, mechanisms national laws and The Constitution of Nepal, 2072 B.S. express full commitment to civil liberties, fundamental rights and duties, human rights. The constitution provides for the establishment of human rights commission and other constitutional bodies as well as Truth and Reconciliation Commission to investigate the facts about those people involved in serious violations of human rights and crimes against humanity committed during the course of the conflict in order to provide relief to the relative of victims for the perpetrators of violation of humanitarian law. However, the implementation of human rights treaties or instruments must be made as per the present time and situation.

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LIST OF ABBREVIATIONS

A.D.	After the death of Christ
AIR	All India Repoters
APA	American Psychological Association
B.S.	Bikram Sambat
CAT	Convention Against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Right of the Child
ECOSOC	Economic and Social Council
FY	Fiscal Year
GON	Government of Nepal
HRC	Human Rights Committee
HMG	His Majesty Government
ICC	International Criminal Court
ICESCR	International Covenant on Economic Social and Cultural Rights.
ILO	International Labor Organization
ICJ	International Court of Justice
ICCPR	International Covenant on Civil and Political Rights
NGOs	Non-Governmental Organizations
NHRC	National Human Rights Commission
NKP	Nepal Kanoon Patrika
OHCHR	Office of the High Commission for Human Rights
PIL	Public Interest Litigation

SC	Supreme Court
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Program
UNESCO	United Nations Economic, Social and Cultural Organization
UNGA	United Nations General Assembly
UNHCR	United Nations High Commission for Refugee
UK	United Kingdom
UNICEF	United Nations Children's Emergency Fund
USA	United States of America

CHAPTER-ONE

INTRODUCTION

1.1 Background of the Study

Human rights are the basic rights and freedoms that belong to every person in the world, from birth until death (Human Rights, 2020). These basic rights are based on shared values like dignity, fairness, equality, respect and independence. These values are defined and protected by law. ‘Human rights are those minimal rights that individuals need to have against the state or other public authority by virtue of their being members of the human family, irrespective of any other consideration’ (Sundara, 2000: 1). International human rights law lays down obligations of governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups. Human rights gives the right to the mankind to claim its rights and creates an obligation for the government to fulfill those rights. Human right is also a non-violent mechanism to control the autocratic and anarchical rule in the state. This idea supports the sufferers and is a key to identify the civilized society.

Human rights allow us to fully develop and use our human qualities, intelligence, talents, conscience, and to satisfy our physical, spiritual and other needs. They are based on mankind’s increasing demand for a life in which the inherent dignity and worth of each human being will receive respect and protection (Kapoor, 2014: 1). In other words, human rights being eternal part of the nature of human beings are essential for individuals to develop their personality, their human qualities, their intelligence, talent and conscience and to enable them to satisfy their spiritual and other higher needs. These are inalienable rights which belongs equally to all members of the human family and as such, should be protected by rule of law if a man is not be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression (Chandra, 2010: 1).

Human rights are rights inherent to all human beings whatever our nationality, place of residence, sex, national or ethnic origin, color, religion, language or any status. But during the second World War the allies adopted the four freedoms: freedom of speech, freedom of assembly, freedom from fear and freedom from want as their basic war aims. The United Nations Charter reaffirmed faith in fundamental human rights and dignity and worth of the

human persons and committed all member states to promote universal respect for and observance of human rights and fundamental freedoms for all without discrimination as to race, sex, language or religion. Whereas recognition of the inherent dignity of the equal and inalienable rights of all members of the human family is the foundation of the freedom, justice and peace in the world. These rights are all interrelated, independent and indivisible.

Human rights in fact, are human attributes and as such they are inherent and inalienable. Their recognition and protection by state is not, therefore, a primary condition of their existence. Human rights are neither the creation of society nor its political structure-the state. Attributes of humanity inherently possess the quality of mutual dignity and equality, which is necessary for co-existence of every individual (Sangroula, 2010: 365). State can neither curtail nor create human rights because it is merely an instrument of human society in order to oblige every member of it to comply. Thus, state cannot make laws to restrict, or limit, or annihilate human rights. Human rights receive legitimacy from universally shared values or traditions. However, they obtain the shape of legal entities by formalization process of the state. Human right cannot be taken away by anyone else and no one has right to deprive another person of them for any reason. Human beings still have human rights even when the laws of their country do not recognize them or when they violate them. Nepal is also member state of several human rights instruments.

In this purview, the researcher as a student of political science will be concentrated on illustrating the theoretical aspect of the concept of human rights, nature, principles, classification of human rights, available international and national legal instruments and mechanisms of human and its implication in Nepal as the primary matter of concern of this study.

1.2 Statement of the Problem

There are several issues of human rights. In this research the researcher tries to find out, and analyze the human rights in context to Nepal. So, in this research the researcher has taken the most genuine problems which are listed in question form as below:

1. What are the concept, nature, principles and classification, of human rights?
2. What are the national and international legal and institutional mechanisms to deal with human rights in Nepal?
3. What is present scenario of the implication of human rights in Nepal?

1.3 Objectives of the Study

The main/principal objectives of this study is to sketch the national and international legal instruments and mechanisms of human rights. The specific objectives are:

1. To present a brief account of the conceptual framework of the human rights, its features, principles, classification and historical development of the concept of human rights.
2. To access the major international as well as national legal instruments and institutional mechanisms and their role in the protection and promotion of human rights.
3. To explore the Nepalese legal provisions and their efficacy in the application of human rights in Nepal.

1.4 Significance of the Study

In global context there are several human rights instruments and Nepal is also the member of several human rights instruments. In that case, Nepal needs to enact the national laws in accordance with the internal human rights treaties. These laws not only need to be supportive but also well equipped to handle human right violations and promote human rights. So, this study will study the legal provisions of human rights and study the existing laws in relation to the human rights.

No, doubt this research paper will be helpful to the general public because the people are associated to the human rights sector. This study analyses and observes the international and Nepalese legal provisions related to human rights and points out the major issues and problems with appropriate suggestions so this study is helpful for government, judiciary, lawyers, human right activists, human rights commission, lawmakers, judges, law teachers, law students and other institutions actively participated in this field and the other persons interested in the realm of subject matter. Likewise, it will be supportive to the future researchers and readers as well.

1.5 Methodology of the Study

Human rights is the broad issues and concern of world community. Legal and institutional mechanisms of human rights and violations of human rights is the concern of international community. So, human right is burning concept in the world that's why I select human

rights as my thesis topic. In this study, the researcher has applied multi-research methods, techniques and methodology. In this research the researcher has used qualitative data and has adopted content analysis as well as doctrinal research methodology according to need. The research design of this study is analytical, descriptive, critical as well as historical. The nature of the study is primary and secondary sources of data. International Human Rights Instruments, Constitution, Acts, Rules, Regulations, By-laws, Policies and other laws related to human rights have been used as primary source of data. Secondary data, information and knowledge have been collected and utilized from the various published research works, authorized books, journals, periodicals, related thesis's, research reports and relevant websites available from different libraries such as Central library of Tribhuvan University, Central law library, Nepal Law Campus library, Nepal Bar Association library, Supreme Court Library.

After the collection of data analysis of the contents, interpretation of data and information have been done. Information and data are descriptively analyzed and analytically explained. In the study, research methodology encompasses method of data collection, analysis, interpretation and drawing conclusion. Uniform rule of citation is strictly adhered while citing from authentic books or giving their references. In this study the researcher has used APA model in text citation and bibliography is kept in the end part.

1.6 Scope and Limitations of the Study

There are various aspects and issues in human rights, but this study will be limited on the international and national legal instruments and mechanisms of human rights in context to Nepal. The study is concerned within the international and national legal instruments and mechanisms of human rights. This research has been completed according to the guideline and within the time frame as prescribed by the Department of Political Science, Prithvi Narayan Campus, Tribhuvan University.

1.7 Review of Literature

Human rights is the central concept of human beings and legal arena therefore; so many books, articles, other literatures and materials have been found in this area of Human Rights. In this study and preparing this thesis, the researcher has attempted to review relevant literatures related with the research problem and objectives of the study such as relevant books of authority, research based articles, previous thesis, Constitutions, Acts, journals, reports, related websites and related other materials. These literatures are collected

from Central Law Library, Nepal Law Campus Library, Nepal Bar Association library, Supreme Court Library, etc. These relevant literature and materials are included thoroughly in reference sections of the complete thesis, some important literatures and materials which will help for the preparation of this study are as follows:

The Constitution of Nepal 2072 (2015) is the fundamental guideline of this research while explaining the mechanisms and instruments for the promotion of human rights. The Articles related fundamental rights and institutional arrangements for the protection of such rights are obviously important content of this research. In addition to this, various international instruments and the Constitutions declared in different phases of constitutional history are useful materials in writing this thesis.

The researcher has reviewed book written by *H.O. Agarwal* named *International Law and Human Rights* during this study. This is a base book for preparing the conceptual part of this thesis. From this book the researcher has borrowed the conceptual literatures of human rights, nature, principles of human rights, classification of human rights which is quite supportive for this study. The book has mainly focus on the international human rights conventions. The author has explained the human rights Conventions with the foreign cases where needed. But this book lacked Nepalese legal provisions, case laws and failed to incorporate the historical development of human rights. The researcher has included these issues in this study.

The researcher has studied “*International Law & Human Rights*” by *S.K. Kapoor*. This book has dealt with the theoretical portion of human rights but this book has not dealt much more on the Nepalese human rights trends and practices. So, this research broadly being specific on Nepalese legal provisions related to the human rights and try to address and incorporate all those issues and subject matters which are missing in this book.

The researcher has consulted the book authored by *Rega Surya Rao* named *Lectures on Human Rights and International Law* while preparing this thesis. The book has mainly focus on the international human rights Conventions or we can say it book is the overall analysis of the international human rights Conventions. This book will help to understand the international human rights Conventions in detail.

Another book is *Teaching of Human Rights New Trends and Innovations* by Jagannath Mohanty. This book included the concept of human rights which has helped the researcher to frame the conceptual part of this study. But this book failed to give the Nepalese legal

instruments related to human rights. Thus, this research broadly being specific in those issues and subject matter.

The researcher has studied book written by *Bimal Prasad Lamichhane & Manaj Jyakhwo* named “*Fundamental of Human Rights*” during this study. From this book the researcher has borrowed all the conceptual literatures, Nepalese legal and institutional mechanisms of human rights which is quite supportive for this study. But this book lacks the historical development of the human right which is incorporated in this paper.

“*Human Rights in India*” by *M. Sundara* is a book in which principal part of human rights is helpful for this study but this book does not contain the Nepalese provisions of human rights. The researcher has included those ideas in this study.

In this study the researcher has viewed book named “*Human Rights*” by *U. Chandra*. In this book the writer has clearly mentioned about the theoretical issues of human rights.

In this study the researcher has reviewed an article on *Trends of Supreme Court on Social Justice Special Focus on Dalit's' Rights*, by *Tek Tamrakar* published in *Nepal Law Review*, Vol. 17. In this article the author has clearly mentioned about the judiciary and Nepalese judicial practice which is quite helpful while conducting this study.

The researcher has studied book written by *Suri Ratnapala*, named “*Jurisprudence*” during this study. From this book the researcher has borrowed the scholarly developed doctrines which were the pillars for the development of human rights in the world. It will be very useful while preparing this thesis.

International Human Rights, by *Philip Alston & Ryan Goodman* is a book which introduces to the readers the concept of human rights with reference with the international human rights instruments. This book is helpful to understand human rights instruments and it is also helpful to have conceptual clarity on the various issues of human rights.

It is evident that many efforts are made to deal with the concept, instruments, mechanisms and other aspects of human rights in Nepal and global level as well. After making review of different literatures the researcher has felt more comfortable in writing this thesis. But no academic effort till now is made to highlight the issue under the same topic. So, this research is purely new topic and give new literature in the study of human rights under political science discipline.

1.8 Organization of the Study

This thesis is divided into six chapters. First chapter deals with introduction which includes background of the study, statement of problem, objective of the study, methodology of the study, significance of the study, Scope and limitation of the study, Literature review and organization of the study. Second chapter deals about conceptual framework of human rights. Third chapter deals with historical development of human rights law. Basically, the development of human right law is mentioned on the basis of progress achieved in different phases of history. Likewise, fourth chapter dealt about the major international human rights instruments and mechanisms. Fifth chapter deals with. Fifth chapter is about major national instruments and mechanisms for the implementation of human rights in Nepal. In this chapter special focus is given to the study of Nepalese context. Finally, the sixth and final chapter has concluded the thesis with findings, conclusion and suggestions.

CHAPTER-TWO

CONCEPTUAL FRAMEWORK

2.1 Meaning and Definitions of Human Rights

Human beings are rational beings. Every human being is entitled to some basic rights without which we cannot live as human beings. By virtue of being human they possess certain basic and inalienable right which are commonly known as human rights. Human right means all those rights which are inherent, fundamental and inalienable in our nature and without which we cannot live as human beings. They are the basic rights and freedoms that belong to every human being in the world, from birth to death. Human rights are the natural rights which is possessed and enjoyed by every individual as being human. So, they are called the birth rights. It denotes all those rights which are inherent in human beings irrespective of caste, creed, religion, sex and nationality. Human rights are entitlements of human beings. They are all equally entitled to human rights without any discrimination. Human rights as a basic right are based on shared values like freedom, dignity, fairness, equality, respect, independence and welfare (Lamichhane & Jyakhwo, 2076: 1).

The notion of human right starts from humanity and are required for a human being to live his or her life humanly. Human right has its foundation on moral, philosophical, political and legal arena. Human rights are norms that aspire to protect all people everywhere from severe political, legal and social abuses. Human rights are the legal rights because these are the rights to which all men are entitled under international, domestic or customary laws which constitute a legal system based on the rule of law. Universal human rights are often expressed and guaranteed by law, in the forms of Treaties, Conventions, Declarations, Covenants, customary international law, general principles and other sources of international law. Human rights are also articulated in the national laws and constitution.

Human right is easy to understand but difficult to define. There is no uniform view of scholars and jurists on substantive content of human right. Various scholars, jurists and statutes have defined the term human right from different perspective. Some notable definitions of human rights are cited and discussed hereunder:

According to *P.P. Rao*, “Human rights are the inherent dignity and inalienable rights of all members of human family recognizing them as the foundation of freedom, justice and peace in the world” (Lamichhane & Jyakhwo, 2076: 4).

Justice P.N. Bhagawati (Former Chief Justice of India) rightly stated that, “All those rights which are essential for the protection and maintenance of dignity of individuals and create conditions in which every human being can develop his personality to the fullest extent may be termed human right.”

UNDP (2000), “Human rights are the rights possessed by all persons, by virtue of their common humanity, to live a life of freedom and dignity.”

D.D. Basu, “Human rights as those minimum rights which every individual must have against the state or other public authority by virtue of his being a member of human family, irrespective of any other consideration.”

Of several good definitions of human rights in the contemporary literature, *Louis Henkin*’s is among the clearest:

Human rights are rights of individuals in society. Every human being has legitimate, valid, justified claims upon his or her society to various ‘goods’ and benefits, they are defined, particular claims listed in international instruments deemed essential for individual well-being, dignity and fulfillment and that reflect a common sense of justice, fairness and decency (Mohanty, 2005: 76).

According to Section 2(f) of National Human Rights Commission Act, 2068 B.S of Nepal, “Human Rights means rights related to life, liberty, equality and dignity of a person provided by the Constitution and other prevailing laws and this term also includes the rights contained in the international treaties regarding human rights to which Nepal is a party” (Section 2(f) of National Human Rights Commission Act, 2068 B.S.).

By analyzing the above mentioned definitions and discussion we can conclude that, rights which are related to human values and human dignity are called human rights. Human rights are internationally agreed norms, values, standards or rules which is designated to promote human dignity, human values and human personality, self-development and human existence and all round development of human beings.

2.2 Nature of Human Rights

The nature of human rights are discussed as below:

- a. **Human Rights are natural or birth right:** Human rights and fundamental freedoms are the birth right of all human beings. So, their protection and promotion is the first responsibility of the government. Human rights are the birth rights of human family. No one has to earn or deserve human right. Human right originated automatically after the birth of human being.
- b. **Human Rights are basic and fundamental right:** Human rights are sometimes called basic and fundamental rights because these rights cannot be taken away by any legislature or any act of the government. They are not created by any legislature through legislation and are not subject to amendment. Any civilized country or body like the United Nations must recognize them.
- c. **Human Rights are inherent:** Human rights are inherent because they are not granted by person or authority. It is not earned or inherited. They belong to individuals simply of being human being.
- d. **Human Rights are common rights:** Human rights are also called common rights because they are the rights which all men and women in the world can share and enjoy.
- e. **Human Rights are individual and collective rights:** Human right are both individual as well as collective right. In fact, virtually all rights depend on collective provisions. For example, the right to association or assembly is a traditional civil right but through which individuals undertake collective action.
- f. **Human Rights are multi-disciplinary:** Human rights are related to other disciplines. To do justice to the scope and complexities of human rights and to increase the understanding of human rights, material and perspectives from various disciplines are offered such as political science, philosophy, international relation, international law etc.
- g. **Human rights are dynamic:** Human rights changes according to the time, situation and need of the people. For example, in the past there was first generation right, in the pace of time second generation and third generation of human right are developed.

2.3 Principles of Human Right

Human rights are based on certain principle which are discussed as below:

- a. **Principle of Essentiality:** Human right originate with the very birth of individuals and are essentials for the adequate development of human personality and for human happiness and progress. Human rights are thus essential for the material and moral uplift of human race (Lamichhane & Jyakhwo, 2076: 7).
- b. **Principle of Inalienability:** Human rights are not something that is granted but it is naturally received by being a human. As human right cannot be granted by anyone, nobody has the right to violate it. It being an inherent right is not under the control of the state's representative. No one can interfere in such right without the consent of the concerned person. Human rights are inalienable. So, they should not be taken away, except in specific situations and according to due process. For example, the right to liberty may be restricted if a person is found guilty of a crime by a court of law.
- c. **Principle of Equality and Non-discrimination:** This principle treats all human beings equally. of UDHR provisioned that, 'all human beings are born free and equal in dignity and rights...' (Article 1 of UDHR). According to this principle, human right is to be enjoyed by everyone on the basis of self-proven equality. By virtue of being human every human being have same human rights equally in every society or in every corner of the world. Human being can gain, enjoy and possess human rights without any discrimination on the ground of caste, creed, class, color, sex, stature, social status, religion, national or social origin, property, birth, profession or any such basis. It is equally applicable to all peoples at time and in all places.
- d. **Principle of Universality:** Human rights are the basic rights of the people universally. Human rights are universal norms or ideal standards that are applicable to all human societies. Human rights are common and same everywhere and every individual can equally enjoy these rights in all over the world. Most of the states are parties of human rights instruments and undertake international obligations to implement these rights. It has universal jurisdiction

as well. The violators of human rights are prosecuted and punished whatever and whenever they may be occurred.

- e. **Principle of Supremacy:** Human rights are the supreme rights of human beings. Being the basic, inalienable and natural right it is supreme in the hierarchy of rights. They get priority over other moral, legal and political rights.
- f. **Principle of Indivisibility:** Human rights are indivisible rights. It cannot be divided and be denied even when other rights have already been enjoyed. All human rights are indivisible, whether they are civil and political rights such as the right to life, equality before the law and freedom of expression; economic, social and cultural rights, such as the rights to work, social security and education, or collective rights, such as the rights to development and self-determination are indivisible. The improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others.
- g. **Principle of Imprescriptible:** Human right does not prescribe and cannot be lost even if man fails to use or assert them, even by a long passage of time. They are naturally acquired by human beings after their birth.
- h. **Principle of High Priority:** Human rights are the matter of paramount importance because they are the basic rights, natural rights, birth rights and non-derogable rights of human beings. Human rights gets high priority than the other rights. If human rights did not have high priority they would not have the ability to compete with other powerful considerations such as national stability and security, individual and national self-determination and national and global prosperity.
- i. **Principle of Internationalization:** Human rights are the subject matter of international law because human rights do not depend on an individual's nationality therefore, the protection of these rights cannot be limited to the jurisdiction of any state. The subject of human right is an issue of both of the individual as well as of the whole world. It is local as well as regional, national as well as transnational. The recognition, protection and implementation of human rights is very important and complicated concern of the international community.

- j. Principle of Interdependence:** Various kinds of human rights are interdependent to each other. For example, right to life is dependent to right to food, without which life cannot be sustained. Similarly, right to health is dependent to right to healthy environment. Good health is not possible in a polluted and unsafe environment. Hence, the fulfillment or exercise of one cannot be held without the realization of the other.
- k. Principle of Practicability:** Human rights has its practical application as well. It empowers people to take action to demand and defend their rights and the rights of others. Article 8 of the UDHR mentions that, “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law” (Article, 8 of UDHR, 1948).
- l. Principle of Recognition:** Human rights are the natural rights. Many thinkers have assigned the origin of human rights to the natural law and not to positive law. Human rights being derived from the principles of natural law do not depend for their validity on being formulated or accepted by any authority. So, it is said that a positive law which does not recognize human rights is not law.
- In the same spirit human rights has its recognition in national as well as in the international level. It became the concern of all and in both national and international level various mechanisms are made to protect and promote human rights. Similarly, various international Treaties, Conventions, Covenants and Declarations are framed and promulgated in the international level such as UDHR, 1948 A.D., ICCPR, ICESCR, CRC, CEDAW etc. for the protection and promotion of human rights. Those states who became the parties of these international instruments enacted laws and develop mechanisms in the national level in accordance with the international instruments for recognizing the human rights.

2.4 Classification of Human Rights

Human rights are indivisible and interdependent therefore precisely there cannot be different kinds of human rights. All human rights are equal in importance and are inherent in all human beings. Universal Declaration of Human Rights 1948 is based on this philosophy that “All human beings are born free with equal dignity and rights. They are

endowed with reason and consciences and should act towards one another in a spirit of brotherhood” (Article 1 of UDHR). The UDHR has fostered vigorous development for the international promotion and protection of these rights. It has accepted universality of human rights, their indivisibility and interdependence. Although it is a simply declaration of rights its importance cannot be minimized. The human rights manifested in that document are mutually reinforcing and guiding principles to the international community ((Lamichhane & Jyakhwo, 2076: 11).

The Universal Declaration of Human Rights, 1948 therefore did not categorize the different kinds of human rights. It simply enumerated them in different Articles. However, the subsequent developments made in the human rights classified human rights as like:

2.4.1 Civil and Political Rights

Civil rights are those rights which are related to the protection of the right to life and personal liberty. Such rights include right to life, liberty and security of persons, right to privacy, home and correspondence, right to own property, right against torture, freedom of thought, conscience and religion and freedom of movement.

Political rights are those rights which allow a person to participate in the government of a state. Thus, right to vote, right to be elected at genuine periodic elections, right to take part in the conduct of public affairs directly or through chosen representatives are instances of political rights (Rao, 2008: 274).

The nature of civil and political rights may be different but they are interrelated and interwoven and therefore, it does not appear logical to differentiate them. This reason alone leads to the formulation of one covenant covering both civil and political rights into one covenant i.e. International Covenant on Civil and Political Rights (ICCPR), 1966. These rights are also termed as negative rights in the sense that a government is required to abstain from doing those activities that would violate them. These rights protect citizens from acts of murder, torture, cruel and unusual punishment, ex-post facto legislation, the denial of habeas corpus and imprisonment without due legal process.

The civil and political rights enumerated under the of Universal Declaration of Human Rights (UDHR), 1948 which are as follows (Article 3-21, UDHR, 1948):

- a. Right to Life, Liberty and Security of Persons.

- b. Prohibition of Slavery and Slavery Trade.
- c. Prohibition of Torture, Cruel, Inhuman or Degrading Treatment or Punishment.
- d. Right to be recognized as a person before law.
- e. Equality before the law and equal protection of law against any discrimination in violation of the Declaration.
- f. Right to effective remedy by the competent national tribunals.
- g. Prohibition of arbitrary arrest, detention or exile.
- h. Right to a full equality to a fair and public hearing by an independent and impartial tribunal.
- i. Right to be presumed innocent until proved guilty according to law in public trial.
- j. Freedom from Ex-post Facto Law.
- k. Freedom from arbitrary interference with privacy, family, home, correspondence or attack on honor or reputation and right to protection by law against such interference.
- l. Right to freedom of movement and residence within the borders of state.
- m. Right to leave any country, including his own and to return to his country.
- n. Right to seek and enjoy in other countries asylum from prosecution in respect of political crimes.
- o. Right to Nationality.
- p. Freedom from arbitrary deprivation of nationality and right to change nationality.
- q. Right to marry and to found a family and equal rights as to marriage during marriage and at its dissolution.
- r. Right to own property and freedom from arbitrary deprivation of property.
- s. Right to freedom of thought, conscience and religion.
- t. Right to freedom of opinion and expression.
- u. Right to freedom of peaceful assembly and association.
- v. Right to take part in the government of his country.
- w. Right to equal access to public service in his country.

The Universal Declaration of Human Rights has inspired a number of declarations and international conventions concluded under the auspices of the United Nations and of the specialized agencies. Instead of the above rights of UDHR the Civil and Political Rights are also contained in the International Covenant on Civil and Political Rights (ICCPR), 1966. The various rights contained in the International Covenant on Civil and Political Rights are the rights that had developed since the Greek period and concretized in the form

of the Magna Carta and hence these rights are called the rights of the first generation. These rights have been incorporated in various national and international documents (Rao, 2008: 302). Nepal ratified this covenants in 14 May 1991.

This covenant deals with various traditional human rights and fundamental freedoms such as the right to life and liberty, freedom from torture, cruel, inhuman or degrading treatment or punishment, freedom from slavery and slave trade, servitude and compulsory labor etc. The Covenant consists of 53 Articles divided into six parts. Part- I, II and III containing Articles 28 to 53 deal with implementation procedures for effective realization of these rights. The rights guaranteed in this Covenant are listed as below in pointwise basis:

- a. Right to peoples to Self-determination (Article 1).
- b. The Right to Life (Article 6).
- c. Freedom from inhuman or degrading treatment (Article 7).
- d. Freedom from slavery, servitude and force labor (Article 8).
- e. Right to liberty and security (Article 9).
- f. Right of detainee to be treated with humanity (Article 10).
- g. Freedom from imprisonment for inability to fulfill a contractual obligation (Article 11).
- h. Freedom of movement and to choose his residence (Article 12).
- i. Freedom of aliens from arbitrary expulsion (Article 13).
- j. Right to a fair trial (Article 14).
- k. Non-retroactive application of criminal law. (Article 15).
- l. Right to recognition as a person before the law (Article 16).
- m. Right to privacy, family, home or correspondence (Article 17).
- n. Freedom of thought, conscience and religion (Article 18).
- o. Freedom of opinion and expression (Article 19).
- p. Prohibition of propaganda of wars (Article 20).
- q. Right of peaceful assembly (Article 21).
- r. Freedom of association (Article 22).
- s. Right to marry and found a family (Article 23).
- t. Right of the Child (Article 24).
- u. Right to take part in the conduct of public affairs, to vote and to be elected. (Article 25).

- v. Equality before the law (Article 26).
- w. Right of minorities (Article 27).

In Nepal, these rights are incorporated by The Constitution of Nepal 2072 B.S. under the fundamental rights and other statutory provisions such as Civil Code 2074 and Local Government Operation Act, 2074 B.S.

2.4.2 Economic, Social, and Cultural Rights

Social, Economic and Cultural rights are related to the guarantee of minimum necessities of the life to human beings. In the absence of these rights the existence of human beings is likely to be endangered. These rights are based fundamentally on the concept of social equality. These rights are included in the International Covenant on Economic, Social and Cultural Rights, 1966 and Article 22-28 of the Universal Declaration of Human Rights, 1948. Social, economic and cultural rights of UDHR, 1948 are given below:

- a. Right to Social Security:** Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each state, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality (Article 22).
- b. Right to Work:** Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment. Everyone, without any discrimination, has the right to equal pay for the equal work. Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. Everyone has the right to form and to join trade unions for the protection of his interests (Article 23).
- c. Right to Rest and Leisure:** Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay (Article 24).
- d. Right to a Standard of Living:** Everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to

security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection (Article 25).

- e. **Right to Education:** Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. Education shall be directed to the full development of the human personality and to the strengthening of respect of human rights and fundamental freedom. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. Parents have a prior right to choose the kind of education that shall be given to their students (Article 26).
- f. **Right to Participate in Cultural Life:** Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author (Article 27).
- g. **Right to a Social and International Order:** Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized (Article 28).

Similarly, instead of the above rights of UDHR the Social, Economic and Cultural rights are also contained in the International Covenant on Economic, Social and Cultural Rights, 1966. This Covenant was adopted by the General Assembly of the United Nations on 16 December, 1966 and entered into force on 3 January, 1976. The various rights viz. right to work, right to education, right to health, right to culture etc. are called the rights of second generation. These rights have been incorporated in various national and international documents.

The Covenant consists of 31 Articles divided into five parts. Part-I contains Article 1 deals with Right to Self-determination. Part-II contains Article 2 to 5 deals with the nature of obligation of the state parties. Part-III contains Article 6 to 15 deals with specific substantive rights. Part-IV contains Article 16 to 25 deals with international implementation and Part-V contains Articles 26 to 31 lays down typical final provisions of legal nature. Some of the provisions of the ICESCR are similar and identical to some of the provisions of the ICCPR i.e. Article 1. Nepal had ratified this covenant on 14 May, 1991. The Social, Economic and Cultural rights guaranteed in this Covenant are listed as below in pointwise basis:

- a. Right to Self-determination (Article 1).
- b. Right to work equal rights of men and women (Article 2).
- c. Right to Work (Article 6).
- d. Right to just and favorable conditions of work (Article 7).
- e. Right to form and join Trade Unions and to strike (Article 8).
- f. Right to Social Security (Article 9).
- g. Right relating to Motherhood and Childhood (Article 10).
- h. Right to Adequate Food, Clothing, Housing and Standard of living of freedom from hunger (Article 11).
- i. Right to Physical and Mental Health (Article 12).
- j. Right to Education (Article 13).
- k. Right to Scientific and Cultural Life (Article 15).

In Nepal, these rights are incorporated by The Constitution of Nepal 2072 B.S. and other statutory provisions such as National Human Rights Commission Act, 2068, Children's Act, 2075, Senior Citizens Act, 2063, Poverty Alleviation Fund Act, 2063, Education Act, 2028 and so on.

2.4.3 Solidarity or Group Rights or Collective Rights

Karel Vasak coined the term 'solidarity rights' in an article written for the UNESCO Courier in 1977. Solidarity or group rights are called the third generation rights. Louis B. Sohn has argued that, individuals are also members of such units, groups or communities as a family, religious community, social club, trade union, professional association, racial group, people, nation and state. It is not surprising therefore that international law not only recognizes inalienable rights of individuals, but also recognizes certain collective rights

exercised jointly by individuals who are grouped into larger communities including people and nations.

Rights pertaining to groups, as opposed to individual members thereof, are also known as collective rights or solidarity rights. Solidarity rights refer to rights of fraternity or brotherhood rights. It develops the sense of collective feeling, collective efforts and brotherhood. These rights can be realized only through the intensive efforts of all the actors on the social scene such as the individual, the state, public and private bodies and the international community. Their human rights dimensions is justified by the fact that the benefits accruing from the relevant entitlement produce no conflicts between individual members of the group. For example, the right to development and right of peoples over their natural resources concern values that produce benefits for all and which are not susceptible to individual ownership to the exclusion of others. They have general applicability without any discrimination.

This category of right are based on the sense of solidarity which is essential for the realization of the major concern of the international community such as peace, development and environment. The effective exercise of solidarity or collective rights is a pre-condition to the exercise of other rights i.e. political rights or economic rights or both. Solidarity rights are the most valuable rights in the present world context. Therefore, solidarity rights are also called the majority rights operated exclusively in association with others.

Karel Vasak's list of solidarity rights included:

- a. The right to development
- b. The right to peace
- c. The right to environment
- d. The right to the ownership of the common heritage of mankind; and
- e. The right to communication.

The various kinds of solidarity or collective rights are explained below (Lamichhane & Jyakhwo, 2076: 40-43:

- a. Right to Self-Determination:** The right to self-determination is one of the most basic collective rights. By virtue of the right of self-determination people have right not only to freely determine their political status but also to freely pursue their economic, social and cultural development. Thus, right to self-determination

includes freedom or liberty to make own choice from the alternatives for the development.

- b. Right to Development:** Right to development covers within its ambit all human rights and fundamental freedoms including right to self-determination. Right to development has a direct nexus with the increase in capabilities of human beings as also range of things they can do. Development in all fields not only give a boost to the economy of the country but also result in better living conditions of the people and protection of human dignity. Right to Development is addressed by the United Nations Declaration on the Right to Development, 1986 as a human right.
- c. Right to Peace:** The right to peace is also one of the most solidarity or collective right. The United Nations Commission on Human Rights has asserted in 1976 that, “everyone has the right to live in conditions of international peace and security and fully to enjoy economic, social and cultural rights and civil and political rights. The commission has further asserted that “unqualified respect for and the promotion of human rights and fundamental freedoms require the existence of international peace and security” and that “flagrant and massive violations of human rights, including economic, social and cultural rights, may lead the world into armed conflict.” Thus, right to development must be protected and promoted for the maintenance of international peace, order and security.
- d. Right to Common Heritage:** Persons belonging to the certain heritage have the right to enjoy their own culture. Article 27 of the UDHR states that, “Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.” Under Article 32(2)(3) The Constitution of Nepal 2072 B.S. there is provision of culture which state that, “every person and community shall have the right to participate in the cultural life of their communities.” Similarly, every Nepalese community residing in Nepal shall have the right to preserve and promote its language, script, culture, cultural civilization and heritage. Right to common heritage includes, right to be different and of the respect of one heritage for another, right to participate in the activities of the common heritage. In the global level there is Convention concerning the Protection

of the World Cultural and Natural Heritage, 1972 for the protection of cultural heritage.

- e. **Right to Communication:** Communication rights involves freedom of opinion and expression, democratic media governance, media ownership and media control, participation in one's own culture, linguistic rights, rights to education, privacy, assemble, and self-determination. They are also related inclusion and exclusion, quality and accessibility to means of communication.
- f. **Right to a Healthy Environment:** Environment is common home and wealth of all and everyone has right to live in a healthy environment. It is related to right to life and health. The rights protected by a right to healthy environment include breathing clean air, drinking clean water, consuming safe food, accessing nature, access to the unspoiled natural resources, knowing about pollutants and contaminants released into the local environment. In Nepal, environmental rights are incorporated as a fundamental right in Article 30 of The Constitution of Nepal 2072 B.S. which states that, “every citizen shall have the right to live in a clean and healthy environment.” The victim shall have the right to obtain compensation, in accordance with law, for any injury caused from environmental pollution or degradation.
- g. **Right to be Free from Corruption:** Corruption is the misuse of power and authority for the private gain. It is illegitimate act which violates the human rights and fundamental freedom of human beings. Corruption is a common issue which affects all the human beings in their daily affairs. So, anti-corruption laws are enacted in the national and international level to combat the corruption and to protect the right to be free from corruption. In the international level there is anti-corruption convention i.e. United Nations Convention Against Corruption (UNCAC), 2003 and in the national level there is The Prevention of Corruption Act, 2059 B.S. in Nepal.

2.4.4 Environmental Rights

Environmental rights are the part of the third generation of human rights. Environmental rights are an extension of the basic human rights that mankind requires and deserves. Environmental rights indicate any assertion of a human right to environmental

conditions of a specified quality. Environmental rights mean access to the unspoiled natural resources that enable survival, including land, shelter, food, water and air. They also include more purely ecological rights, including the right for a certain beetle to survive or the right for an individual to enjoy an unspoiled landscape (Lamichhane & Jyakhwo, 2076: 21).

Environmental rights are human rights, as people's livelihoods, their health, and sometimes their very existence depend upon the quality of and their access to the surrounding environment as well as the recognition of their rights to information, participation, security and redress. The desire to ensure access for all of earth's inhabitants to this essential standard of living is the primary concern of environmental rights.

All human beings depend on the environment in which we live. A safe, clean, healthy and sustainable environment is integral to the full enjoyment of a wide range of human rights, including the rights to life, health, food, water and sanitation. Without a healthy environment, we are unable to fulfil our aspirations or even live at a level commensurate with minimum standards of human dignity. At the same time, protecting human rights helps to protect the environment. Environmental rights comprise following rights:

- a. Right to live in a safe, clean, healthy and sustainable environment.
- b. Freedom of association and peaceful assembly in relation to environmental matters.
- c. Right to seek, receive, and impart environmental information.
- d. Right to participate in public decision-making about environmental matters.
- e. Prior assessment of the possible environmental and human rights impacts of policies and projects.
- f. Effective enforcement of environmental standards against public and private actors.
- g. Right to claim ecological debt.
- h. Right to claim reparations for violated rights.
- i. Right to environmental justice.

It has now become widely known that rich nations have been dumping dangerous chemicals and pollutants in the developing countries. Similarly, they left various kinds of harmful gases such as CFCs, Nitrous Oxide, carbon monoxide etc. in the name of industrialization

as a result the under developed countries become the victim of the different environmental problems like, pollution, global warming, greenhouse effect, acid rain, depletion of ozone layer, melting of glaciers or Himalayas and so on. The risks to health and ultimately, life arising from the contamination of the natural environment are self-evident. So, beyond equal distribution and access to clean and sustainable resources, environmental rights also include an additional obligation from those in the industrialized nations. It requires us to act responsibly in our own use of natural resources and bear the responsibility and burdens of the environmental problems

Everyone has the right to an environment that is not harmful to their health or well-being and to have the environment protected for the benefit of present and future generations through reasonable legislative and other measures that:

- a. Prevent pollution and ecological degradation;
- b. Promote conservation; and
- c. Secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

In recent years, the recognition of the links between human rights and the environment has greatly increased. The number and scope of international and domestic laws, judicial decisions, and academic studies on the relationship between human rights and the environment have grown rapidly. Many states now incorporate a right to a healthy environment in their constitutions. Many questions about the relationship of human rights and the environment remain unresolved, however, and require further examination.

In Nepal, environmental rights are incorporated in The Constitution of Nepal 2072 B.S. which states that, “every citizen shall have the right to live in a clean and healthy environment. The victim shall have the right to obtain compensation, in accordance with law, for any injury caused from environmental pollution or degradation” (Article 30). Other statutory provisions relating to environmental rights are Environmental Protection Act 2053 B.S. and Rules, 2054, Water Resources Act 2049, Plant Protection Act, 2064, Forest Act 2049, Soil and Watershed Conservation Act, 1982 (2039) and so on.

2.4.5 Rights of Children

Children’s are the minors who has not completed the age of maturity prescribed by the law. They are the resources and pillars of nation. Children are the asset of the country. They are

the overall successor of the nation representing the future. Their development has direct relation with the future development of the nation (Khanal, 1988: 14). There is no uniformity in the definition of child. The definition of child varies according to the purpose under domestic laws and international instruments. According to the Convention of the Rights of the Child 1989, a child means every human being below the age of eighteen years unless, under the law applicable to child, majority is attained earlier (Article 1). Section 2(j) of the Children's Act 2075 B.S., children are those who have not completed the age of 18.

Children rights are human rights of children that define rights that are essential to protect and promote fundamental freedom and equality of children. These rights are rights based on their needs and status. The children have equal value as other human beings. The best interest of the child should be the primary consideration the weight should be given to the child's opinion. The child has the right to a name and a nationality.

2.4.5.1 Principles of Child Right: The basic principles incorporated in the United Nations Convention on the Right of the Child, 1986 are discussed as below (Pant, 2012: 27-28):

- a. Principle of non-discrimination:** The child rights should be enforced without any discrimination. The state parties must respect and ensure the rights without discrimination of any kind irrespective of the child's or his or her parents race, color, sex, language, religion, disability or other status.
- b. Principle of best interest of the child:** Every activity related to the child must be done in accordance to secure best interest of the child. The objective of this principle is to serve maximum for the interest of the children.
- c. Principle of survival and development:** Every child possesses the inherent right to life, their survival and development to the maximum extent possible.
- d. Principle of participation:** The participation of children entails sharing of their thoughts effectively as a member of the society and as person and to enable them to influence the decision, that concerns their interest.

Childhood is entitled to special care and assistance. This principle along with some other principles of the UDHR relating to child were incorporated in the Declaration of Rights of the

Child adopted by the UN General Assembly on November 20, 1959. Further, Article 23 and 24 of the ICCPR and Article 10 of the ICESCR, 1996 made provisions for child care. However, these principles are not binding on the state parties. Therefore, it was felt necessary to adopt a Convention for child care so as to make the states legally binding.

The United Nations Convention is the special document relating to the child rights. This convention was adopted by the UN General Assembly on November 20, 1989 which came into force on September 2, 1990. Nepal ratified this convention on 14 September 2, 1990. This convention contains 54 Articles divided into three chapters. A number of rights pertaining to child care and welfare have been incorporated under this convention. Some important rights are stated below:

- a. Right to life (Article 6).
- b. Right to acquire nationality (Article 7).
- c. Right to freedom of expression (Article 13).
- d. Right to freedom of thought, conscience and religion (Article 14).
- e. Right to freedom of association and to freedom of peaceful assembly (Article 15).
- f. Right to the protection of the law against arbitrary or unlawful interference with his or her privacy, family, home or correspondence (Article 16).
- g. Right to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health (Article 24).
- h. Right to benefit from social security (Article 26).
- i. Right to standard of living adequate for the child's physical, mental, spiritual and social development (Article 27).
- j. Right to Education (Article 28).

Similarly, the SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia, 2002 provides basic child rights which are as follows:

- a. Right to Protection (Article 2).
- b. Right to Survival (Article 6).
- c. Right to Development (Article 5, 24, 26, 28).
- d. Right to Participation (Article 12, 13, 14, 15, 17, 28, 29).

In addition to the above, the United Nations General Assembly established the United Nations International Children's Emergency Fund (UNICEF) in 11 December, 1946 to

provide assistance to the children and adolescents. Likewise, the 1990 World Declaration on the Survival, Protection and the Development of Children provides the children are entitled to joy, peace, playing, learning and growing which are necessary for the harmonious development of children.

In Nepal, child rights are incorporated as a fundamental right in Article 39 of The constitution of Nepal 2072 B.S. and other statutory provisions such as Children's Act, 2075 B.S., Child Labor (Prohibition) Act, 2056, Labor Act, 2074 and so on. There are several popular cases regarding the rights of child. In the case of *Advocate Anish Adhikari on behalf of Bablu Godia Vs Banke District Court (2057 B.S.)* Supreme Court gives order mentioning that the detention of child is prohibited by the Act. In the same manner, in the case of *Tilottam Poudel Vs Ministry of Home et.al. (NKP 2058 B.S.)* the Supreme Court speaks about right of children to establish organization.

In the case of *Advocate Sapana Pradhan Malla Vs Government of Nepal (2064 B.S.)*, Supreme Court gives directive order to enact laws for maintaining privacy of identity of the children in the case where children are defendant. Likewise, in the case of *Sunita Bista on behalf of Siddika K.C. Vs Samir K.C. et. al. (NKP 2071 B.S., D.N. 9219, p. 1213)*. The Supreme Court held that best interest of the child should be the basis for justice. Fundamental principles of justice for children needs to be followed in case related to the child well-being.

2.4.6 Rights of Women

Man and women are the two wheels of a cart; in the absence of one wheel the cart cannot function. As a mother, sister, daughter or wife, the role of the women in the development of a human being's personality in particular and the growth and progress of the society in general cannot be either denied or undervalued. Women's rights mean the equal rights to the women despite their sex age, race and color. Women's rights are the rights such as economic, social, religious, cultural, educational, reproductive, equal pay for equal work, voting and all rights for the status, dignity and well-being of women. Women right is human right. Women are taken as weak and vulnerable groups of the society. They are deprived of their human rights and fundamental freedoms. Today, the status of women has been uplifted through variety of legislations conferring various rights and privileges on women.

The Convention on the Elimination of all forms of Discrimination against Women (CEDAW) was adopted by the UN General Assembly on December 18, 1979. The convention came into force in 1981. This is the core and potent document for ensuring, protecting and promoting the women rights. This convention consists of 30 Articles divided into six parts. Nepal ratified this convention on 22 April 1991. The women rights guaranteed in this convention are listed as below in pointwise basis:

- a. Defacto equality between men and women and Maternity Benefit (Article 4).
- b. Right to vote, participate and equal representation in the policy making level, hold governmental and non-governmental office (Article 7).
- c. Right to represent on equal terms with men, represent their governments in international level and also to participate in the work of international organizations (Article 8).
- d. Right to nationality (Article 9).
- e. Right to education (Article 10).
- f. Right to employment (Article 11).
- g. Right to reproductive health and family planning (Article 12).
- h. Right to family and financial benefits and recreation (Article 13).
- i. Special rights and welfare to rural women (Article 14).
- j. Right to equality and equal opportunity with men before the law (Article 15).
- k. Right to marriage and family relations (Article 16).

Convention on the Political Rights of Women, 1952 and Convention on the Nationality of Married Women, 1957 are also related to the women's rights. In Nepal, women rights are incorporated as a fundamental right in Article 18, 38, 42, 43 of The Constitution of Nepal, 2072 B.S. and other statutory provisions such as Muluki Civil Code 2074 B.S., Gender Equality Act, 2063, Labor Act, 2074, Witchcraft (Crime and Punishment) Act 2072 B.S. and so on.

There are several popular cases regarding the rights of women. In the case of *Sarmila Parajuli vs. Council of Ministers*, this case is related to the sexual harassment at work place. In this case the court issued the directive order to make law on sexual harassment at work place so as to ensure the right to physical integrity to women. Likewise, in the case of *Meera Dhungana vs. Nepal Government et. al. (NKP 2052 B.S.)* the Supreme Court of Nepal has recognized the property rights of daughter.

2.4.7 Rights of Aged or Older Persons (Senior Citizens)

Aged persons face numerous problems and discriminations in various fields. Their age related discrimination is often compounded by other grounds of discrimination such as status, socio-economic status, sex, ethnicity, or health condition. The challenge faced by older persons in the protection or enjoyment of their human rights vary differently while some older persons continue to live active lives as a part of the society and many other face homeless, lack of adequate care or isolation.

Older men and women have the same rights as everyone else: we are all born equal and this does not change as we grow older. Even so, older people's rights are mostly invisible under international law. Despite the existence of the Universal Declaration of Human Rights, older people are not recognized explicitly under the international human rights laws that legally oblige governments to realize the rights of all people. Only one international human rights convention (The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families) mandates against age discrimination. Commitments to the rights of older people exist, such as with the Madrid International Plan of Action on Ageing (MIPAA). However, they are not legally binding and therefore only impose a moral obligation on governments to implement them (Strengthening Older People's Right, 2019).

Since 1982, the international community has explored the plight and situation of older persons in a series of international declarations such as Madrid International Plan of Action on Ageing (endorsed by General Assembly in 2002) which called for the elimination of age discrimination, neglect, abuse and violence. In reality there is no specific mention of human rights of older person in any international human rights treaty. However, international obligations are implicit in many core human rights instruments such as ICCPR, ICESCR, CEDAW, CRC and Convention on the Rights of Persons with Disabilities. But there is no specific and binding international human rights instruments.

A U.N. Convention on the Rights of Older Persons is necessary to ensure that older men and women can realize their rights. A U.N. Convention on the Rights of Older Persons is urgently needed because now it is being increasingly understood and recognized that ageism and age discrimination are unacceptable. It is also understood that human rights change people's lives and as such why should older peoples be deprived of their rights. Likewise, existing international and regional human rights law do not sufficiently protect

older people's rights. A U.N. Convention on the Rights of Older Persons is urgently required. With a new U.N. convention, and the assistance of a Special Rapporteur, governments can have an explicit legal framework, guidance and support that would enable them to ensure that older people's rights are realized in our increasingly ageing societies.

In the National Level The Constitution of Nepal 2072 B.S. made provision of right of senior citizens which states that, "the senior citizens shall have the right to special protection and social security from the state" (Article 41). Similarly, there is Senior Citizens Act, 2063 B.S. and Rule 2065 B.S. Senior Citizen means a citizen of Nepal having completed the age of Sixty years (Senior Citizens Act, 2063 B.S. Section 2(a)). This Act was enacted "to provide for protection and social security of senior citizens" (Preamble, Senior Citizens Act, 2063 B.S.). The overall rights necessary for aged persons are listed as below:

- a. Right to non-discrimination
- b. The right to autonomy and independence
- c. The right to equal recognition before the law
- d. The right to self-fulfillment
- e. The right to leisure
- f. The right to life
- g. The right to a dignified death
- h. The right to full and effective participation
- i. The right to age in place of choice
- j. The right to housing
- k. The right to the environment
- l. The right to personal mobility
- m. The right to accessibility
- n. The right to long term support for independent living
- o. The right to privacy and a family life
- p. The right to sexual identity and expression
- q. The right to freedom from all forms of violence and abuse
- r. The right to freedom from torture, cruel, inhuman or degrading treatment
- s. The right to work and employment
- t. The right to an adequate standard of living
- u. The right to social security and social protection
- v. The right to health

- w. The right to information
- x. The right to lifelong education and learning
- y. The right to property
- z. The right to justice
- aa. The right to freedom of expression and opinion
- bb. The right to freedom of association and assembly
- cc. The right to personal liberty
- dd. The right to freedom of movement and nationality
- ee. Rights in Emergency contexts, including situations of Armed Conflict and Humanitarian Disasters
- ff. International Cooperation
- gg. Rights Against Violence and Abuse
- hh. Right to Proper care

2.4.8 Rights of Dalits, Indigenous People and Ethnic Minorities

Dalit refers to group of people who are religiously, culturally, socially and economically oppressed who may belong to different language and ethnic groups (Mainali, 2010: 1-2). Racial discrimination literally means, any distinction, exclusion or restriction for the purpose of ignoring and denying the recognition, exercise or enjoyment of human rights and the fundamental freedoms. The International Convention on the Elimination of all forms of Racial Discrimination, 1966 defined, racial discrimination shall mean any distinction, exclusion, restriction or preference based on race, color, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. The convention shall not apply to distinction, exclusion, restriction or preference made by a state party between citizens and non-citizens (Article 1)

Article 2 of the Universal Declaration of Human Rights, 1948 envisages the rights and freedoms provided in the declaration shall be available to all the persons irrespective of race, color, sex and religion. In 1963, the assembly proclaimed the Declaration on the Elimination of all forms of Racial Discrimination. The declaration affirmed the fundamental equality of all persons and conformed that discrimination between human beings on the grounds of race, color or ethnic origin is a violation of the human right and is an obstacle to friendly and peaceful relations among nations and peoples. In order to make the provisions binding on the states a convention was adopted by the general

assembly on December 21, 1965, which is known as International Convention on the Elimination of all forms of Racial Discrimination. The convention came into force on January 4, 1969. This convention contains 7 Articles. The main objective of this convention is to eradicate and prevent racial discrimination.

This Convention makes provisions about the rights against the racial discrimination which are mentioned as below (Article 5):

- a. Right to work.
- b. Right to free choice of employment.
- c. Right to just and favorable conditions of work.
- d. Right to protection against unemployment.
- e. Right to equal pay for the equal work. and,
- f. Right to just and favorable remuneration.

Similarly, International Covenants on Civil and Political Rights, 1966 has also granted rights of the minorities which states that, ‘in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language’ (Article 27)

In Nepal, rights of dalits, indigenous people and ethnic minorities are related to Article 16, 17, 18, 24, 26, 29, 31, 32, 40, 42 of The Constitution of Nepal 2072 B.S. and other statutory provisions such Labor Act, 2074, Legal Aid Act, 2054, Caste Based Discrimination and Untouchability (Offence and Punishment) (First amendment) Act, 2075 B.S. and so on.

2.4.9 Development Rights

Development right is also a part of third generation rights. The human right discourse and the development emerged simultaneously after the Second World War. In the development discourse economic growth, basic needs, per-capita income, Gross National Product (GNP) etc. are concerned but focus on human rights was missing. The definition of development has a primary focus on economic growth and material prosperity and excludes freedom, dignity and overall well-being of the people and development was not linked to human rights standards. The concept of ‘Right to Development’ provides the missing link between these two discourses. It challenged the artificial division between the two sets of human rights and established the ‘unity of rights’ as a pre-requisite to development.

Though the Declaration on the Right to Development was adopted only in 1986, the origin of the concept of RTD lie much further back in time. Indirect references to the notion were made in various international human rights instruments in the mid-1940s and early 1950s. As early, the Philadelphia Declaration of the International Labor Organizations affirmed that, all human beings had the right to pursue their material well-being and spiritual development. The notion of RTD was also implicit in various Articles of the U.N. Charter, UDHR, ICCPR, TCESCR and their protocols. The concept of right to development was coined by the jurist KebaM'Baye in 1972.

This concept was first recognized by the UN Commission on Human Rights in 1977 (CHR Resolution 4 (XXXIII) (Alston & Goodman, 2013: 1526). The resolution mandated the U.N. Secretary General to study the conditions required for the effective enjoyment of RTD by all peoples. Finally, on 4th December 1987, the United Nations General Assembly formally adopted the Declaration on the Right to Development. It was the culmination or result of a long process of re-establishing the unity of human rights. So, development rights are the human rights which are recognized by the Declaration on the Right to Development.

Development right is defined as the right to a particular process of development that ensures the realization of all human rights such as civil, political, economic, social and cultural. In another words, development right is a composite right which comprises both CPRs as well as ESCRs. It is dependent on the existence of a particular socio-economic environment, the creation of which may require economic growth. Both human right and development share a common vision and a common purpose to secure the freedom, dignity and well-being. Development and human rights are the entitlement to a process of enhancing human capabilities and freedom.

Human rights are fulfilled when individuals not only enjoy certain goods and freedom but when they have social guarantee of secure access to them. It is only the process of development in which all human rights and fundamental freedoms can be fully realized which can be the entitlement of every human person as universal human right. Right to development is universal and inalienable right and an integral part of fundamental human rights. Development facilitates the enjoyment of human rights, lack of it may not be invoked to justify abridgment of internationally recognized human rights.

The United Nations Declaration on the Right to Development, 1986 mentions that, the right to development is an inalienable human right by virtue of which every human person

and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized (Article 1(1)). Similarly, “the human right to development also implies the full realization of the right of people to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.” Likewise, the declaration further states that, “the human person is the central subject of development and should be the active participant and beneficiary of the right to development” (Article 2(1)). So, right to development is of multi-dimensional character incorporating all civil, political, economic, social and cultural rights essential for the entire development of individual and the protection of his/her dignity.

Fundamental core elements of right to development are as follows (Parajuli & Lamichhane, 2017: 49):

- a. The human person is at the center of the development.
- b. The process of development should be respectful of all human rights.
- c. Development should promote social justice.

By analyzing this chapter, we can summarize that, human rights is a broad concept which are the human attributes and as such they are inherent and inalienable. Human right has distinct nature than the other rights, it is universal and inherent rights of an individual. It maintains and promotes human dignity and worth. International community and state must recognize the human rights and has the obligation to respect, protect and fulfill the notion of human rights. Being the broad concept human rights has different classification. They are guaranteed by several international human rights instruments such as civil and political rights, group rights, environmental rights, child rights, rights of women, rights of senior citizens, rights of indigenous people and ethnic minorities, development rights etc.

CHAPTER-THREE

HISTORICAL DEVELOPMENT OF HUMAN RIGHTS LAW

3.1 Emergence of Human Rights Law from the Western Legal System

3.1.1 Bill of Rights, 1689

In Britain the Bills of Right enacted in 1688 saw the end of the divine rule of king and power ceded to parliament and like the Magna Carta of the 13th century often regarded as a precursor of human rights law (Human Rights Law Cards, 2066: 02). It was not document of human right but it provided knowledge about rule of law, no person cannot above the rule, it means it promote the concept of human right law. It lays down limits on the powers of sovereign and sets out the rights of Parliament and rules for freedom of speech in Parliament, the requirement to regular elections to Parliament and the right to petition the monarch without fear of retribution. It has made the following provisions (Upahyaya, 2012):

- a. No Royal interference with the law. Through the sovereign remains the fount of justice, he or she cannot unilaterally establish new courts or acts as a judge.
- b. No taxation by Royal prerogative. The agreement of parliament became necessary for the implementation of any new taxes.
- c. Only civil courts not church courts are legal.
- d. Freedom to petition the monarch without fear of retribution.
- e. No standing army may be maintained during a time of peace without the consent of parliament.
- f. No royal interference in the freedom of the people to have arms for their own defense as suitable to their class and as allowed by law.
- g. No royal interference in the election of members of parliament.
- h. The freedom of speech and debates or proceedings in parliament ought not to be impeached or questioned in any court or place out of parliament.
- i. Grants and promises of fine or forfeitures before conviction are void.
- j. No excessive bail or cruel and unusual punishment may be imposed.
- k. The right of petition.

- l. An independent judiciary (the sovereign was forbidden to establish his own courts or to act as a judge himself).
- m. Freedom of taxation by royal (executive) prerogative, without agreement by parliament.
- n. Freedom from a peace-time standing army.
- o. Freedom (for protestants) to bear arms for their defense as allowed by law.
- p. Freedom to elect members of parliament without interference from the sovereign.
- q. Freedom of speech in parliament.
- r. Freedom from cruel and unusual punishment and excessive bail, and;
- s. Freedom from fines and forfeitures without trail.

3.1.2 United States Declaration of Independence

USA was the colony of UK, many state were agreed revolution against UK for freedom, which was called Declaration of Independence. The Declaration of Independence was a statement adopted by the Continental Congress on 4 July, 1776, which announced that the thirteen American Colonies then at war with Great Britain regarded themselves as independent states on July 4, the day the wording of the Declaration was approved by congress. We hold these truths to be self-evident that all men are created equal, that they are endowed by their creator with certain unalienable rights that, among these life, liberty and pursuit of happiness. Those are core principle of human right and all human right documents are approved these principles.

3.1.3 United States Bills of Right

The Bills of Rights is the collective name for the first ten amendments to the United States Constitution, which limit the power of the U.S. federal government. These limitations serve to protect the natural rights of liberty and property including freedom of religion, speech, a free press, free assembly and free association as well as the right to keep and bear arms. 'The declaration of independence and the Bills of Right may properly recognize as modern human rights in America' (Human Rights Law Cards, 2006: 2).

The Bills of Right included legal protection for white men only, excluding African, American and women. the Bills of Right plays a key role in American law and government and remains a vital symbol of the freedom and culture of the nation as well as to promote

the human right law. Some of its basic tenets were adopted and extended by the U.S. Bills of Rights including:

- a. The right of petition.
- b. An independent judiciary (the sovereign was forbidden to establish his own courts or to act as a judge himself)
- c. Freedom from taxation by royal (executive) prerogative, without agreement by Parliament.
- d. Freedom from a peace time standing army.
- e. Freedom (for Protestants) to bear arms for their defense as allowed by law.
- f. Freedom to elect members of parliament without interference from the sovereign.
- g. Freedom of speech in Parliament.
- h. Freedom from cruel and unusual punishment and excessive bail.
- i. Freedom from fines and forfeitures without trial.

3.1.4 Virginia Declaration of Rights

Virginia declaration is the declaration of rights of the citizen adopted June 12, 1776, by the constitutional convention of the colony of virginia. It was a model for the bill of rights added to the U.S. constitution 15 years later (Britannica, 2020). Individuals should be protected against cruel and unusual punishments, baseless search and seizure and be guaranteed a trial by jury. The government should not abridge freedom of the press or freedom of religion. Those are founder principles of human right law.

3.1.5 French Revolution (1789-1799)

French revolution was guided by the principles of equality, citizenship, inalienable rights as well as nationalism and democracy. The declaration des droits de l'homme et du citoyen is foundation of French Revolution and over through the monarchy. Those all revolutionary documents are rested on three principles:

- a. Universal Inherence:** Every human beings has certain rights which are not deprived of but which are inheritance him by virtue of his alone.
- b. Inalienability:** He cannot be deprived of those rights by another or by his own acts.
- c. Rule of Law:** Just laws must be applied consistently, independently, impartially and with just procedures.

According to the above principles, the US and France declared the written constitutions which provisioned several human rights.

3.2 Role of Natural Law in the Development of Human Right Law

Natural law is the milestone foundation or basic principle of human right. It is the ultimate source of human right law, has been described as a law whose content is set by nature and is thus universal natural law is governed by natural law which is equal for all without any discrimination to any individuals.

Natural law theories have however, exercised a profound influence on the development of English Common law and have featured greatly in the philosophies of Thomas Aquinas, Francisco Suarez, Richard Hooker, Thomas Hobbes, Hugo Grotius, Samuel Von Pufendorf, John Locke, Francis Hutcheson, Jean Jacques Burlamaqui and Emmerigh De Vattel. Because of the interaction between the natural law and natural rights, it has been cited as a component in United States Declaration of Independence and the Constitution of the United States. The essence of declaration is that the founding of the United States is based on natural law. 'According to above philosopher the principle of human rights asserted the principles to be derived from the ancient theory of natural law, other argued that authority from social contract, some says that from self-evident truths, but Bentham rejected all natural law philosophy and called them 'non-sense upon stilts. He belived that laws could only exist because government made them and could enforce them' ((Human Rights Law Cards, 2006: 03)

3.2.1 Thomas Aquinas

Thomas Aquinas lived at a critical juncture of western culture when the arrival of the Aristotelian *corpus* in Latin translation reopened the question of the relation between faith and reason, calling into question the *modus vivendi* that had obtained for centuries (Stanford Encyclopedia of Philosophy, 2020). Aquinas's thought, the goal of human existence is union and eternal fellowship with god. Specifically, this goal is achieved through the beatific vision, an event in which a person experiences perfect, unending happiness by seeing the very essence of god. This vision, which occurs after death is a gift from god given to those who have experienced salvation and redemption through Christ while living on earth. Aquinas says, human beings is governed by two laws i.e. the law of nature and custom (Upadhyaya: 2012).

The ultimate goal carries implications for one's present life on earth. Thomas stated that an individual's will must be ordered towards right things, such as charity, peace and holiness. He sees this as the way to happiness. Thomas orders his treatment of the moral life around the idea of happiness. The relationship between will and goal is antecedent in nature because rectitude of the will consists in being duly ordered to the last end. Those who truly seek to understand and see god will necessarily love what god loves. Such love requires morality and bears fruit in human rights originate in nature thus, rights cannot be granted via. Political character because that implies the right are legally revocable hence, would be privileges.

3.2.2 Thomas Pine

It is a perversion of terms to say that a charter gives right. It operates by a contrary effect that of taking rights away. Rights are inherently in all the inhabitants; but charters, by annulling those rights in the minority, leave the right, by exclusion in the hands of a few. They consequently are instruments of injustice. The fact therefore, must be that the individuals themselves each in his own personal and sovereign right entered into a compact with each other to produce a government and this is the only mode in which governments have a right to arise and the only principle on which they have a right to exist. Government's sole purpose is safeguarding the family and his/her inherent, inalienable rights; each societal institution that does not benefit the nation is illegitimate-especially the monarchy, the nobility and the military. He was supporter of the revolution in America and France was a radical and democratic republican who believed wholly in the sovereignty of the individual person.

3.2.3 Thomas Hobbes

Hobbes was a champion of absolutism for the sovereign but he also developed some of the fundamentals of European liberal thought, the right of the individual; the natural equality of all men; the artificial character of the political order the view that all legitimate political power must be representative and based on the consent of the people and a liberal interpretation of law which leaves people free to do whatever the law does not explicitly forbid. 'First, Hobbes was right in saying the civilization is impossible in conditions of perpetual conflict. It is difficult to conceive of humanity flourishing without security of life, liberty and property. Second, Hobbes advocated absolute power but not arbitrary power' (Ratnapala, 2011: 29).

3.2.4 Hugo Grotius

He was a jurist who was born in Holland on 10 April, 1583. He laid the foundations for international law based on natural law. 'Grotius infused the idea of natural law i.e. the law of reasoning in the law of nations because he considered that they are eternal and not changeable. Although he did not deny that these existed in his time a good many customary rules for the international conduct of the states, he expressly kept them apart from those rules which he considered were the outcome of the law of nature. He distinguished therefore between the *jus Gentium*, the customary law of nations and the *jus Naturae*, which later on came to be known as the natural law of nations. According to him, customary law of nations are of minor importance and therefore he concentrated more upon the natural law of nations' (Agarwal, 2010: 35).

3.2.5 John Locke

Locke view social contract that, it preserved the natural rights of life, liberty and property and the enjoyment of private rights: the pursuit of happiness engendered, in civil society, the common good. Locke derives natural rights from natural law, that is from reason. His natural right to freedom is circumscribed by the law of nature and its injunction that we should not harm each other in life, health, liberty or possessions (Wacks, 2012: 20).

3.2.6 Rousseau

Ideals General Will, amour-propre, moral simplicity of humanity, child centered learning, civil religion, popular sovereignty etc. are his concepts. His main theme was that community is guided by general will of which is will of the people.

3.3 Development of Human Rights during the 19th century

3.3.1 The Congress of Vienna (1814-1815)

The goal of the congress was to re-establish a balance of power among the countries of Europe and have peace between the nations. The Congress proved to be highly successful in achieving its goal, for the peace in Europe was left almost undisturbed for nearly forty years.

3.3.2 Paris Declaration of 1856

It was related with the rule of maritime warfare issue at the Congress of Paris. It was the first major attempt to codify the international law of the sea. Four principles were

enunciated by the declaration: privateering would no longer be considered legal; a neutral flag would protect the goods of an enemy except for the contraband of war; neutral goods with the exception of contraband of war would not be liable to capture when under the enemy's flag; a blockade would be binding only if it prevented access to the coast of the enemy.

3.3.3 London Declaration of 1909

It was related with maritime law especially related to war which was proposed in 1909. The declaration of London that they issued comprised 71 Articles dealing with many controversial points including blockade, contraband and prize. In general, it was a restatement of the existing law but in its high regard for the rights of neutrals it represented a distinct advance.

3.3.4 Hague Convention of 1899

The Hague Convention of 1899 consisted of four main sections and three additional declarations which are as follows:

- a. Pacific Settlement of International Disputes
- b. Laws and Customs of War on Land
- c. Adaptation of Maritime Warfare of Principles of Geneva Convention of 1864
- d. Prohibiting Laundering of Projectiles and Explosive from Ballons

Three Additional Declarations of Hague

Declaration I: On the Launching of Projectiles and Explosives from Balloons

Declaration II: On the Use of Projectiles and Objects of which is the Diffusion of Asphyxiating or Deleterious Gases

Declaration III: On the use of Bullets Which Expand or Flatten easily in the Human Body.

The main effect of the Convention was to ban the use of certain types of modern technology in war, bombing from the air, chemical warfare and hollow point bullets. The convention also set up the Permanent Court of Arbitration.

3.3.5 Hague Convention of 1907

It consisted of thirteen Sections of which twelve were ratified and entered into force they are:

- a. The Pacific Settlement of International Disputes
- b. The limitation of Employment of for Recovery of Contract Debts
- c. The Opening of hostilities.
- d. The Laws and Customs of War on Land.
- e. The Rights and Duties of Neutral Powers and Persons
- f. The Status of Enemy Merchant Ships at the Outbreak of Hostilities.
- g. The Convention of Merchant Ships into War-Ships.
- h. The laying of Automatic Submarine Contact Mines.
- i. Bombardment by Naval Forces in Time of war.
- j. Adoption of Maritime War of the principles of the Geneva Convention.
- k. Certain restrictions with regard to the exercise of the right of capture in Naval war.
- l. The creation of an International Prize Court.
- m. The rights and duties of Neutral Power in Naval War.

Two Declarations were signed as well they are as follows:

Declaration I: Extending Declaration II from the 1899 Conference to the other types of aircraft.

Declaration II: On the obligatory arbitration.

3.4 Development of Human Rights during the First World War

3.4.1 Covenant of the League of Nations

The devastating first world war paved the way for the establishment of world organization called The League of Nations. The League would be made up of a General Assembly an Executive Council and a permanent secretariat. Member states were expected to respect and preserve as against external aggression the territorial integrity of other members and to disarm to the lowest point consistent with domestic safety. All states were required to submit complaints for arbitration or judicial inquiry before going to war. The Executive Council would create a Permanent Court of International Justice to make judgements on the disputes.

3.4.2 International Labor Organization (ILO)

The International Labor organization is a specialized agency of the United Nations that deals with labor issues pertaining to international labor standards. Its headquarter is in

Geneva, Switzerland. The ILO has adopted 189 conventions. There are some basic rights are covering the ILO Convention of labor such as freedom of association and collective bargaining, equality of treatment and opportunity, abolition of forced & child labor, employment promotion and vocational training, social security, conditions of works, labor administration and workers related accidents, maternity protection and the protection of migrants and other categories of workers.

3.4.2.1 Child Labor

The term child labor is often defined as work that deprives children of their childhood, their potential and their dignity and that is harmful to physical and mental development. There are two ILO Convention which is most important for child labor protection Convention No. 138 and Convention No. 182.

3.4.2.2 Forced Labor

All kinds of forced labor are banned by ILO Convention. There are two conventions covering the problems of forced labor; Convention No. 105 and 29.

3.4.2.3 Minimum Wage Law

To protect the rights of labors for fixing minimum wage, ILO has created Minimum Wage Fixing Machinery Convention, 1928, Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 and Minimum Wage Fixing Convention, 1970 as minimum wage law.

3.4.2.4 HIV/AIDS

Under the name ILO, created the Code of Practice of HIV/AIDS and the World of Work as a document providing principles for policy development and practical guidelines for programs at enterprise, community and national level including:

- a. Prevention of HIV
- b. Management and mitigation of the impact of AIDS on the world of work.
- c. Care and support of workers infected and affected by HIV/AIDS.
- d. Eliminating of stigma and discrimination on the basis of real or perceived HIV status.

3.4.2.5 Indigenous People

ILO Convention 169 concerns indigenous and tribal peoples in independent countries. It was adopted on 27 June 1989 by the General Conference of the ILO at its 76th session. Its entered into force on 5th September 1991.

3.4.2.6 Migrant Workers

For the rights of migrant workers ILO has adopted Conventions including Migrant Worker's (Supplementary Provisions) Convention, 1975 and United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of their Families in 1990. The Migrant employment convention 1997, The Migrant Workers Convention No. 143 provides for rights of migrants.

3.4.2.7 Domestic Workers

For the rights and decent work of domestic workers including migrant domestic workers, ILO has adopted Convention on Domestic Workers on 16th June 2011.

3.4.2.8 Labor Statistics

The ILO is a major provider of labor statistics. Labor statics are an important tool for its members states to monitor their progress towards improving labor standards.

3.5 Geneva Convention, 1929

The Geneva Convention was signed at Geneva on 27 July, 1929. Its official name is the Convention Relative to the Treatment of Prisoners of War. Provisions concerning the treatment of prisoners of war are contained in The Hague Regulation of 1899 and 1907. In the course of World War I they revealed several deficiencies as well as a lack of precision. Such defects were partly overcome by special agreements made between belligerents in Berne in 1917 and 1918.

3.6 Development of Human Rights Law during the Second World War

3.6.1 Atlantic Charter, 1941

It was drafted by the Britain and the United States and later agreed by all the allies. The charter stated the ideal goals of the war: no territorial aggrandizement; no territorial changes made against the wishes of the people; restoration of self-government to those deprived of it; free access to raw materials; reduction of trade restrictions; global cooperation to secure

better economic and social conditions for all; freedom from fear and want; freedom of the seas and abandonment of the use of force as well as disarmament of aggressor nations. In the Declaration of United Nations of 1st January 1942, The Allies of World War II pledged adherence to the charter's principle.

3.6.2 Declaration by United Nations, 1942

The Declaration by United Nations was a World War II document agreed to on January 1, 1942 during the Arcadia Conference by 26 governments: The Allied Big Four (the USA, UK, USSR and China), nine American allies in central America and the Caribbean, the four British Dominions, British India, and Eight Allied Governments in exile for a total of twenty-six nations.

During December 1941, Roosevelt devised the name "United Nations" for the Allies of World War II and the United Nations on 1 January 1942 was the basis of the modern UN. The term United Nations became synonymous during the war with the allies and was considered to be the formal name that they were fighting under. The text of the declaration affirmed the signatories' perspective that complete victory over their enemies is essential to demand life, liberty, independence and religious freedom and to preserve human rights and justice in their own lands as well as in other lands and that they are now engaged in a common struggle against savage and brutal forces seeking to subjugate the world. The principle of complete victory established an early precedent for the allied policy of obtaining the axis powers unconditional surrender.

3.7 Development of Human Rights under the UN Legal System

The United Nations has created a global structure for protecting human rights based largely on its charter, non-binding declarations and legally binding treaties and on various activities aimed at advancing democracy and human rights throughout the world. The UN often finds it necessary to define rights in a cautious manner as it is host to an extremely diverse group of member states with varying economic, social, cultural and political histories. Subsequently, the UN must accommodate these differences in its mechanisms for protecting the human rights it has outlined in treaties and declarations. Thus, these methods may be less substantive or lack in strict enforcement as compared to those of regional institutions. Board agreements allow the UN to accommodate a spectrum of different viewpoints. The UN thus, affects more nations and many more individuals than any regional institution could

(Upadhyaya, 2012: 27). The UN's system of human rights protection has three main components:

- a. First, it establishes international standard through its Charter, legally binding treaties, non-binding declarations, agreements and documents;
- b. Second, it mandates Special Rapporteurs and experts and groups such as working groups, communities and treaty bodies to work in various manners for the promotion and protection of human rights;
- c. Finally, it offers technical assistance through the Voluntary Fund for Advisory Services and Technical Assistance in the field of human rights.

3.7.1 Main Bodies of the United Nations

Although the United Nations was divided into six spheres they are of unequal size, status and relevance to human rights:

1. General Assembly

The General Assembly is the legislative body of UN. Chapter 4 and Article 9(1) of the Charter of UN deals about the general assembly. 'It is the principal organs of the United Nations. The General Assembly consists of all the members of the UN. Each member may have not more than five representatives in the General Assembly. At present the General Assembly comprises of 193 members' (Kapoor, 2011: 511). The General Assembly has established Permanent Committees such as the seven main committees, the Procedural Commissions and the Permanent Commissions that meet between General Assembly sessions. It is also responsible for appointing the Secretary-General upon recommendation from the Security Council to a renewable five-year term.

2. Security Council

The Security Council is one of the 6 main organs of the United Nations. The Security Council has primary responsibility for the maintenance of international peace and security. It is mentioned in Chapter five Article 23-32 of the UN Charter.

3. Secretariat

The Secretariat is headed by the UN Secretary-General, who is recommended by the Security Council and then appointed to a five-year term by the General Assembly. It is in charge of carrying out programs designed by other branches of

the United Nations such as peace keeping missions, international dispute mediation and studying economic, cultural, human rights or social trends. It also handles administrative details such as speech and documents translations, UN news and information releases and international conference coordinators (Upadhyaya, 2012: 30-31).

4. International Court of Justice (ICJ)

It is the successor of PCIJ. The International Court of Justice, the judicial branch of the UN is based in The Hague, Netherlands and was established in 1945 by the Charter of the United Nations. All States that have signed the UN Charter are members of the ICJ. Its jurisdiction extends to international conflicts with the exception of political ones. Its responsibilities include: giving opinions on concrete topics, ruling on cases and clarifying international legal norms.

The ICJ is the latest step in the continuing evolution of international court. The first such court Permanent Court of Arbitration was founded in 1899 and still exist today. The Permanent Court of International Justice was created by the League of Nations and existed between 1922 and 1946. It served as the model on which the International Court of Justice is based.

5. Economic and Social Council

The Economic and Social Council makes recommendations to the General Assembly on human rights issues. It reviews the reports submitted by the Commission on Human Rights and submits the amended versions to the General Assembly. ECOSOC is composed of 54 members serving three years' terms; members meet twice a year. Additionally, it oversees several committees and commissions such as the Commission on Human Rights, The Commission on the Status of Women and the Commission on Crime Prevention and Criminal Justice as well as UN specialized agencies such as the International labor Organization and the World Health Organization.

6. Trusteeship Council

The council was originally established to preside over the so-called dependent areas within the International Trusteeship System under Article 75 and the UN Charter. However, the goals for and tasks of the Council have largely been fulfilled and it is

therefore now mostly obsolete. Currently, the Trusteeship Council only meets if and when a scenario requires it.

3.8 International Bills of Right

The International Bills of Human rights consists of the Universal Declaration of Human Rights, The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and its two Optional Protocols. In 1966 the General Assembly adopted the two detailed Covenants, which complete the International Bills of Human Rights and in 1976 after the Covenants has been ratified by a sufficient number of individual nations the Bill took on the force of international law.

3.9 Universal Declaration of Human Rights (UDHR) 1948

The Universal Declaration of Human Rights is one of the first international human right document to be guaranteed to each human beings. Most previous international declarations and treaties were based on the idea of positivism, whereby rights are only recognized once they have been set forth in national legislation. Like the UN itself, the UDHR brought together 58 geographic, cultural and political backgrounds in the formation of one universal document. It has created international human rights standards that are codified in various international human right standards that are codified in various international treaties.

3.10 International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights like the ICESCR was adopted by UN in 1966, but did not enter into force until 1976. Also like the ICESCR, the ICCPR saw a great deal of delay in its ratification due to the Cold War Conflicts. These two treaties were signed separately because of the thought that political and civil rights could and must be guaranteed from the moment a nation signs on to the Covenant listing them but that, while it was desirable for the same to be true of economic, social and cultural rights, it was not feasible. Implementation of social and economic rights was expected to take much time and thus could not be forced upon a nation merely because it has ratified the Covenant.

3.11 International Covenant on Economic, Social and Cultural Rights (ICESCR)

The International Covenant on Economic, Social and Cultural Rights was adopted by the United nations in 1966 and entered into force one decade later in 1976. Along with the

ICCPR the amount of time that it took the ICESCR to enter into force may be partly attributed to the Cold War, in which Communist regimes who advocated for economic, social and cultural rights stood squarely against western capitalist democracies who embraced the civil and political rights codified in the ICCPR. The ICESCR is monitored by the Committee on Economic, Social and Cultural Rights.

3.12 Treaties Based Mechanisms

The following are the treaties which are related to the human rights:

- a. Universal Declaration of Human Rights (UDHR) 1948
- b. International Covenant on Civil and Political Rights (ICCPR)
- c. International Covenant on Economic, Social and Cultural Rights (ICESCR)
- d. Convention on the Elimination of Racial Discrimination (CERD)
- e. Convention on the Elimination of all forms of Discrimination against Women (CEDAW)
- f. Convention Against Torture (CAT)
- g. Convention on the Rights of the Child (CRC)
- h. Convention on Migrant Workers (CMW)
- i. Convention on the Rights of Persons with Disabilities (CRPD)

3.13 Development of Human Rights in Nepal

Nepal is multi-religious, multi-lingual, multi-ethnic and multi-cultural country. Nepalese earlier legal system was based on Hindu religion and philosophy, customary practices, theology, traditional norms and values. Hindu king Manu in his code “Manusmiriti” has mentioned the guidelines for the Judicial and ruling purposes. Mahabharat, Ramayana, Vedas, Manusmiriti, Yagavakaya Smriti etc. were the scriptures which regulate the society of the ancient time. The first and second ruling dynasties of Nepal were Gopal and Maishpal respectively.

Kirat Period

Mundhum is holy book of Kirat, all activities was guided by Mundhum. Besides those other ten Limbu treaty other religious books was source of Kirat legal system which included norms of human right.

Lichavi Period

Lichhavi ruled after Kirat. This period is known as the golden age of Nepalese legal history because of the citizen centered ruling system. Everyone maintained the moral values and norms. Mana Deva, Amshuverma were the most popular King of this time. They respect the justice. They believed that god would be angry if justice was not secured. So, we can say that the judicial system is based on Hindu Dharmashastra. Thus, Dharmashastras had been the main source of law at that time. That state mechanism of Lichhavi period was well managed so as to play a key role by the state in the protection and promotion of the well-being of its citizens. The state was driven by the concept of Welfare State. Basically, role of Amshuverma was very important to the development of human right law; state was governed by rule of law, all were equal however caste system and sati system was prevalent at that period.

Malla Period

Malla dynasty governed by caste system which is stigma of the fundamental principles of human right law however the king Jayasthiti Malla was very helpful person. He always cares his citizens and treat all the citizens equally. He formulated *Naye Bikasani* (Manab Nayastra) which was the founding document of human right. Many provisions of this document is recognized by the present legal system.

Shah Period

Prithvi Narayan Shah was the founder of the ruling house of Gorkha. He was the founder and builder of modern Nepal. He was a successor fighter but because of war no special human right law was existed at that period so that he formulated rules which is known as *Divaypadesh*. Another prominent king was Ram Shah who made *Thitis* and *Sthitis* which was the base of human right law of that period.

Rana Period

Muluki Ain 1910 was the first written law of Nepal. It was enacted by the first Rana Prime Minister Jung Bahadur Rana after his England visit. He was highly impressed by the Acts, Court system of England and Civil Code made by Napoleon Bonaparte. This code was the milestone foundation of modern Nepalese legal system and development of human rights. In addition, in this period sati and slavery system was also abolished which were cruel, unhuman and against human rights.

Development of Human Rights Law under the Constitutions of Nepal

The Government of Nepal Act, 2004 B.S. (1948 A.D.): During the period of Prime Minister Padma Shamsheer the first constitution of Nepal, 2004 was promulgated on 13th Magh, 2004 B.S. It has 6 Chapters, 68 Articles and 1 Schedule. The executive power of the state had been vested to Rana Prime Minister, Shree Tin Maharaj. The name of parliament was Rastriya Sabha and Bharadari Sabha at the apex. Rastriya Sabha was consisted of 60 to 70 members and Bharadari Sabha was consisted of 20 to 30 members. It impliedly declared an inherent, unlimited and unregulated power of the Ranas. The main objective for the promulgation of this constitution was to sustain the rule of Rana. Some provision of fundamental rights was included in this constitution they are as follows:

- a. Freedom of speech
- b. Freedom of religion
- c. Individual liberty
- d. Freedom of publication
- e. Equality before law etc.

These provisions are the notions of human rights but unfortunately these fundamental rights were not implemented in practice.

Interim Government of Nepal Act, 2007 B.S. (1951 A.D.)

This constitution was promulgated by the successful people's movement which restored democracy in Nepal by overthrowing the 104 years cruel and autocratic Rana regime. It was implemented in 7th Chaitra of 2007 B.S. There were 47 Articles and 7 Parts. This constitution was prevailed until the formation of a new constitution by a Constituent Assembly. This constitution was replaced by the Constitution of The Kingdom of Nepal, 2015 B.S. The Interim Government of Nepal Act, 2007 B.S. includes Fundamental rights and Directive principles of State policy.

The provisions of directive principles of this part shall not be enforceable by any court in Nepal. Social conditions for citizens: Village Panchayat: unemployment, old age sickness etc. Conditions of Work and maternity relief: protection of monuments, international relations, equality before law, discrimination on grounds of religion, race, caste, sex etc., equality of opportunity, fundamental principles of law, rule of law, personal liberty, trafficking of human beings, beggary are the fundamental principles of law included in of

the constitution. Instead of these the following provisions are also mentioned in this constitution (Article 17):

- a. No tax shall be levied or collected except under the authority of law.
- b. Subject to the laws for the time being in force, all citizens shall have the right.
- c. Freedom of speech and expression.
- d. Freedom to form associations and unions.
- e. Freedom to move throughout the territory of Nepal.
- f. Freedom to reside and settle in any part of Nepal.
- g. Freedom to acquire, hold and dispose the property.
- h. Freedom to practice any profession, occupation, trade and business.

No person shall be deprived of his life or personal liberty except according to procedure established by law or rules made by government for the public goods, or for the maintenance of public order or the security of the state. there shall be equality of opportunity for all the citizens in matters relating to employment or appointment to any office under the government.

The Constitution of the Kingdom of Nepal, 2015 B.S. (1959 A.D.)

This Constitution was implemented in 1st Falgun of 2015 B.S. This constitution had made a provision that the sovereign power would be vested in the king. This constitution contained 10 Parts, 77 Articles and 3 Schedules. Discretionary powers were vested in the king and he could act without the advice of the elected government. The king had an absolute power to declare emergency which was provisioned in Article 55 of the said constitution.

Under the Part three some fundamental rights are mentioned they are given as below:

- a. Personal Liberty
- b. Equality
- c. Right to Property
- d. Political Freedom
- e. Right to constitutional remedies.

Under Article 7 some political rights of every citizen are provisioned they are listed here:

- a. Freedom of speech and expression;

- b. Freedom of assembly without arms;
- c. Freedom to form unions and associations;
- d. Freedom of movement or reside in any part of Nepal.

The Constitution of Nepal, 2019 B.S. (1962 A.D.)

The constitution has declared constitution as the fundamental law of the land and further declared that the law in consistent to the provisions of the Constitution shall be null and void to the extent of inconsistency. This constitution is the fourth constitutional development in our constitutional history. This constitution was declared as the fundamental law of the land. This constitution was implemented from Poush 1st 2019 B.S. This constitution was made restriction to the political parties. This constitution has 20 Parts, 97 Articles and 6 Schedules.

We are firmly convinced that such arrangement is possible only through the party less democratic Panchayat System rooted in the life of the people in general and in keeping with the national genius and tradition and as originating from the very base with the active cooperation of the people and embodying the principle of decentralization (Preamble, The Constitution of Nepal, 2019).

Constitution of the Kingdom of Nepal, 2047 B.S. (1990 A.D.)

People's movements were succeeded against Panchayat regime in leadership of Nepali Congress and joint left front 2046 B.S. Constitution of Kingdom of Nepal 2047 B.S. was enacted by the representative of political parties in 2047 B.S. This constitution has 23 Part, 133 Articles and 3 Schedules. It is also known as medium size constitution because it is neither as big as Constitution of India nor small as America. This constitution was implemented from Kartik 26, 2047 B.S. by king Birendra. The preamble of the constitution guarantees basic human rights to every citizens of Nepal. It was great achievement of Nepalese people because constitutionally accepted that human right is not only fundamental right but it is basic right of people which is aim of UDHR, UN Charter etc.

Part 3 of the constitution mentioned the fundamental rights as well as mentioned about the right of remedies. The right to proceed in the manner set forth in Article 88 for the enforcement of the rights conferred by this part is guaranteed. Right to equality, right to freedom, press and publication right, right regarding criminal justice, right against preventive detention, right to information, right to property, cultural and educational rights,

right to religion, right against exploitation, right against exile, right to privacy, right to constitutional remedy, etc. are the fundamental rights guaranteed by the constitution.

Interim Constitution of Nepal, 2063 B.S. (2007 A.D.)

Interim Constitution of Nepal, 2063 B.S. has come into force after the success of historical people movement 2062-63 B.S. which replaced the constitution of kingdom of Nepal, 2047 B.S. and overthrew the Monarchy of Nepal and established Republican regime. It has 25 Parts, 167 Articles and 48 Schedules. From Article 12-32 the fundamental rights are guaranteed by the constitution which are the core concept of human rights.

Constitution of Nepal 2072 B.S. (2015 A.D.)

This constitution is our present constitution. It has been drafted through political understanding by the Constituent Assembly. It came into existence since 2072 Ashoj 3. It is the output of great political moment and political conflict. It has vested Sovereign power in the hands of people. This constitution is the fundamental law of Nepal. All laws inconsistent with this constitution shall, to the extent of such inconsistency, be void. It contains 35 Parts, 308 Articles and 9 Schedules. From Article 16-46 the fundamental rights are guaranteed by the constitution which is the remarkable effort to recognize and promote the human right.

Basically, this chapter deals with historical development of human rights law. The development of human right law is mentioned on the basis of progress achieved in different phases of history. By analyzing the above international and national development of the human rights we can summarize that human rights have long history of development from the Bills of Rights to the literatures of various scholars of Greek periods and various international conventions. The world war had also contributed in the development of human rights. In the Nepalese context, the development of human rights has its base from the Kirat period to the enactment of Muluki Ain 1910 B.S. and to the Constitution of Nepal 2072 (2015).

CHAPTER-FOUR

MAJOR INTERNATIONAL HUMAN RIGHTS INSTRUMENTS AND MECHANISMS

4.1 Introduction to the Concept of Bill of Rights

International Bill of Rights constitutes three major human rights documents. It consists of Universal Declaration of Human Rights 1948 (UDHR), International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR) and International Covenant on Civil and Political Rights 1966 (ICCPR) and its two Optional Protocols.

4.2 Human Right under UN Charter

The Charter of the United Nations also marks the formal recognition that human rights are a matter of international concern. It contains several provisions concerning human rights. The Provision of Human rights under U.N. Charter are highlighted below:

- a. The preamble of the U.N. Charter states the determination of the peoples of the UN “...to reaffirm, faith in fundamental human rights, in the dignity and worth of human person, in the equal rights of men and women and of nation large and small.”
- b. *Article 1(2)*, of the Charter provisioned that, “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.”
- c. *Article 1(3)* of the Charter includes the purpose of the U.N. “to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.” Thus, this Article puts the promotion of respect for human rights on the same level as the maintenance of international peace and security as a purpose of the U.N.
- d. *Article 13(1)(b)* of the Charter has assigned the General Assembly to initiate studies and make recommendations for the purpose of, “international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the

realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.”

- e. *Article 55(c)* of the Charter mentions that U.N. shall promote “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.” This Article is supported by *Article 56* by which “all members pledge themselves to take joint and separate action in co-operation with the organization for the achievement of the purposes set forth in Article 55.” Thus, *Article 55 and 56* bind member states to observe and respect human rights.
- f. *Article 62(2)* of the Charter has empowered the Economic and Social Council to make “recommendations for the purpose of promoting respect for, and obligation of, human rights and fundamental freedoms for all.
- g. *Article 68* of the Charter mentions the responsibility of Economic and Social Council regarding “set up commissions in economic and cultural fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.”
- h. *Article 76(c)* of the Charter provisioned about the objectives of the trusteeship in accordance with the purpose of the U.N. laid down in Article 1 of the Charter shall be “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 of the interdependence of the peoples of the world.”

Thus, the provisions of the U.N. Charter concerning human rights provide a foundation and an impetus for further improvement in the protection of human rights (Brownlie, 1973: 552). They indicate the wide possibilities of the international recognition of human rights (Oppenheim, 1970: 783). There is, however controversy as to whether the provisions of the Charter concurring human rights create obligation on the members. Some writers have expressed the view that the “Charter clauses only contain a pious injunction to co-operate and do not impose any obligations (Robertson, 1961: 53). The provisions of the Charter were not adequate and so an attempt was made to fulfill them out by enacting the Universal Declaration of Human rights, 1948.

4.3 Universal Declaration of Human Rights 1948 (UDHR)

UDHR is regarded as possibly the single most important document accepted worldwide as the standard for human rights. It delineates thirty fundamental rights that form the basis for a democratic society. It sets a standard of rights for all people everywhere - whether male or female, black or white, communist or capitalist, victor or vanquished and rich or poor. The Declaration is operated merely as a statement of ideals, which was not of the nature of a legally binding Covenant (Basu, 2008: 09).

The Declaration consists of a preamble and 30 articles, setting forth the human rights and fundamental freedoms to which all men and women, everywhere in the world, are entitled, without any discrimination. Article 1 lays down the philosophy on which the Declaration is based, which reads, 'All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.' Article 2 sets out the basic principle of equality and non-discrimination as regards the enjoyment of human rights and fundamental freedoms. From Article 3-21, the Declaration sets out civil and political rights. Similarly, from Article 22-27, it sets out economic, social and cultural rights -the rights to which everyone is entitled "as a member of society". The concluding Articles, Articles 28 to 30, recognize that everyone is entitled to a social and international order in which the human rights and fundamental freedoms set forth in the Declaration may be fully realized, and stress the duties and responsibilities which each individual owes to his community.

4.4 International Covenant on Civil and Political Rights 1966 (ICCPR)

This Covenant was adopted by the United Nations General Assembly on 16 December 1966 and entered into force on 23 March 1976. Its Preamble recalls the obligation of States under the Charter of the United Nations to promote human rights; remind the individual of his responsibility to strive for the promotion and observance of those rights.

ICCPR is an international human rights document. It obliges the State-parties to perform the following functions: First, to respect human rights – that is, not to violate the rights in ICCPR; Second, to protect the enjoyment of rights – against violation by third parties; and Third, to fulfill individuals' rights – to take steps to create an environment in which rights can be fully achieved. ICCPR is a legally binding Covenant. The ICCPR establishes the Human Rights Committee which oversees commitment to the ICCPR. The Committee has 18 members made up of nationals from states parties who act as independent experts. They

must have 'high moral character' and a 'recognized competence in the field of human rights.

4.5. International Covenant on Economic, Social and Cultural Rights 1996 (ICESCR)

The International Covenant on Economic, Social and Cultural Rights was adopted by the General Assembly by its resolution 2200 A (XXI) of 16 December 1966. It entered into force on 3 January 1976. It is a multilateral treaty adopted by United Nations General Assembly (UNGA). It commits its parties to work toward the granting of economic, social, and cultural rights. The Covenant reflects the commitments adopted after World War II to promote social progress and better standards of life, reaffirming faith in human rights and employing the international machinery to that end.

The Preamble of the Covenant recognizes, inter alia, that economic, social and cultural rights derive from the "inherent dignity of the human person" and that "the ideal of free human beings enjoying freedom of fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as civil and political rights." This Covenant is basically premised upon two principles. First, equality and non-discrimination in the enjoyment of all rights set forth in the treaty. Second, States parties have an obligation to respect, protect and fulfil economic, social and cultural rights. This Convention is legally binding upon the State-parties.

UDHR, ICESCR and ICCPR along with its Two Optional Protocols, collectively known as Bill of Rights, lay down a strong basis of human rights. The provisions of these Conventions are applicable at both national and international levels. Nationally, the State-parties apply provisions into their constitution and legislative enactments. State parties enact laws in line with them. At international level, these Conventions serve as guiding star. The UN itself and other international and regional organizations take consideration of them while drafting any new conventions, treaties or drafts. Therefore, Bills of Rights is the universally accepted charter of human rights. Every state, whether democratic or socialist, adopts it for protection and promotion of human rights of all human of the world

4.6 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) 1992

CAT refers to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. CAT is an extension of the prohibition of UDHR against torture and cruel, inhuman or degrading treatment or punishment. It is a legally binding convention at the international level. Its purpose is to completely eradicate instances of torture at national and international level by laying down obligations upon the State-parties. It came into force on 26 June 1987. As of June 2018, the Convention has 114 State parties.

This Convention recognizes the principles proclaimed in UN Charter. Human rights are inalienable rights and apply equally to all members of human family. It respects the inherent dignity of human life. Preamble of this Convention clearly iterates that this Convention came in response to the obligations of states under Article 55 of UN Charter, Article 5 of UDHR and Article 7 of ICCPR.

The CAT Convention criminalizes the act of torture. Therefore, it obliges the State-parties to try and punish offenders under criminal law. This Convention applies equally to all alleged offenders, whether they are State-personnel or agencies or they are rebellions. This is the treaty that provides universal jurisdiction with regard to the offence of torture outside the context of an armed conflict. The purpose behind the universal jurisdiction is to ensure that a torturer does not escape the consequences of his or her acts by going to another country.

4.7 Convention on the Elimination of All Forms of Racial Discrimination Against Women (CEDAW)

Its full form is Convention on the Elimination of all Forms of Discrimination Against Women. This Convention is often described as an International Bill of rights of women. It defines 'discrimination against women' as "...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

CEDAW is an international document which lists the rights of all girls and women. It is an important agreement about equality between girls/women and boys/men. It obliges State-

parties to do all they can do so that girls and women are treated equally. CEDAW says all discrimination against girls and women must end.

The importance of CEDAW lies in its devotion to gender-equality. It envisions to empower women as equally as men through principle of equality and non-discrimination in every aspects of life. It focusses on substantive equality to undertake legal obligations to respect, protect and fulfil women's human rights.

Underlying Principles of CEDAW

- a. Principle of Equality
- b. Principle of Non-discrimination
- c. Principle of state-obligation

4.8 Convention on the Rights of Child 1989, (CRC)

This is the special Convention committed to the protection of rights of children. It applies to all children and young people under the age of 18. Realizing that childhood is entitled to special care and assistance and recognizing the special need of child to grow up in a family environment for the full and prosperous development of his or her personality, this Convention was drafted. Till date, 193 States are member to this Convention. Nepal had ratified it on 14th September 1990 and by virtue of Section 9 of the Nepalese Treaty Act, its provisions prevail over the provisions of Nepalese Law in case of inconsistency to the extent of inconsistency. This Convention is a legally binding international instrument. It obliges states to incorporate policies and laws to realize full range of human rights for children.

CRC is based upon four basic principles. These Principles are as follows:

- a. Right to life, survival and development;
- b. Right to non-discrimination;
- c. Right to express views freely;
- d. Right to have a child's best interests taken as a primary consideration in all matters affecting them

The rights of child guaranteed in the Convention are extensive. It contains 54 Articles and is backed by two Optional Protocols too. These rights can be classified into few categories for the simplicity of understanding. They are:

- e. Civil Rights and Freedoms
- f. Violence against Children
- g. Family environment and alternative care
- h. Basic health and welfare
- i. Education, leisure and cultural activities
- j. Special protection measures

Nepal is a State-party to CRC. In order to implement the mandate of this Convention, Nepal has enacted Children Act 2049 B.S., which is now replaced by Children Act, 2075 B.S. It has adopted the principles of CRC.

4.9 Convention on the Rights of Persons with Disabilities (CRPD)

CRPD is an important convention for the protection and promotion of rights of persons with disabilities. This ‘Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others’. Convention does not create any new rights. Instead, it sets out practical ways to make existing human rights real and meaningful in the lives of people with disabilities. The UN General Assembly adopted the Convention on 13 December 2006, and came into force on 3 May 2008.

According to a WHO report, approximately 10% of the world’s population is persons with disabilities (over 650 million persons). This Convention came as a response to the fact that although pre-existing human rights conventions offer considerable potential to promote and protect the rights of persons with disabilities, this potential was not being tapped. Persons with disabilities continued being denied their human rights and were kept on the margins of society in all parts of the world. The Convention sets out the legal obligations on States to promote and protect the rights of persons with disabilities. It does not create new rights.

The purpose of this convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. This Convention chiefly imparts three types of obligation on the State-party. These obligations are *Respect*, *Protect* and *Fulfil* the rights of persons with disabilities so that they can live respected and dignified life without any kind of discrimination. The Convention is legally binding and thus States shall fulfil

the obligations mentioned above. The Convention includes 30 substantive articles that set out the rights of all people with disabilities.

The Convention marks a 'paradigm shift' in attitudes and approaches to persons with disabilities. Persons with disabilities are not viewed as "objects" of charity, medical treatment and social protection; rather as "subjects" with rights, who are capable of claiming those rights and making decisions for their lives based on their free and informed consent as well as being active members of society. The Convention gives universal recognition to the dignity of persons with disabilities.

Guiding Principles of the Convention

- a. Dignity: Every human being possesses inherent and equal worth, regardless of disability.
- b. Autonomy: Every person has the right to make their own decisions.
- c. Equality of opportunity and non-discrimination: All rights must be afforded to persons with disabilities on an equal basis as others.
- d. Respect for difference: Disability should be viewed as a positive expression of human diversity.
- e. Respect for intersecting identities: Human identity is made up of many parts and a range of personal characteristics, including gender and age, can overlap.
- f. Full and effective participation and inclusion in society: Social interaction enables all persons to become fully human and grow over time.

4.10 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

It is a United Nations Convention. This Convention promotes third generation human right. It commits its members to the elimination of racial discrimination and the promotion of understanding among all races. The Convention was adopted by UNGA on 21 December and entered into force on 4 January 1969.

The Convention defines "racial discrimination" as: 'any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life'. It totally outlaws any act of discrimination. In

order to achieve the goal set in this Convention, the State parties are required to do the following:

- a. Not practice racial discrimination in public institutions
- b. Not "sponsor, defend, or support" racial discrimination
- c. Review existing policies, and amend or revoke those that cause or perpetuate racial discrimination
- d. Prohibit "by all appropriate means, including legislation," racial discrimination by individuals and organizations within their jurisdictions.
- e. Encourage groups, movements, and other means that eliminate barriers between races, and discourage racial division

4.11 International Mechanisms of Human Rights

4.11.1 Office of the High Commissioner for Human Rights (OHCHR)

OHCHR is a department of UN Secretariat. It works to protect and promote the rights guaranteed in the international human rights law and those stipulated in the UDHR. The office was established by the UN General Assembly on 20 December 1993 in the wake of the 1993 World Conference on Human Rights. It was established with the mandate to protect and promote the enjoyment and full realization, by all people, of all rights established in the UN Charter and other international human rights laws and treaties. The mandate includes preventing human rights violations, securing respect for all human rights, promoting international cooperation to protect human rights, coordinating related activities throughout the United Nations.

Operationally, OHCHR works with governments, legislatures, courts, national institutions, civil society, regional and international organizations, and the United Nations system to develop and strengthen capacity, particularly at the national level, for the protection of human rights in accordance with international norms.

During the Maoist Insurgency in Nepal, UN has deployed OHCHR to watch over the activities of Government and Maoist during Cease Fire. In addition, OHCHR has facilitated for the smooth transition of conflict into peaceful settlement.

The objectives of OHCHR are to:

- a. Promotes universal enjoyment of all human rights by giving practical effect to the will and resolve of the world community as expressed by the United Nations
- b. Plays the leading role on human rights issues and emphasizes the importance of human rights at the international and national levels
- c. Promotes international cooperation for human rights
- d. Stimulate and coordinates action for human rights throughout the United Nations system
- e. Promotes universal ratification and implementation of international standards
- f. Assists in the development of new norms
- g. Supports human rights organs and treaty monitoring bodies
- h. Responds to serious violations of human rights
- i. Undertakes preventive human rights action
- j. Promotes the establishment of national human rights infrastructures
- k. Undertakes human rights field activities and operations
- l. Provides education, information advisory services and technical assistance in the field of human rights

4.11.2 Human Right Committee

Human Right Committee is an independent body established to monitor implementation status of international human rights instruments. There are several human right committees constituted separately for each major international human right treaty. ICCPR, CAT, CEDAW, CRC, CERD, CMW, etc., have their own Committee. However, ICESCR does not have provision of such Committee. Almost all human right instruments except UDHR have a legally binding nature to state-parties. It is in fact such Committee that actually renders such these instruments binding. Human right Committee undertakes the responsibility to monitor, investigate, recommend, cooperate and assist at national, regional and international level to protect and promote human rights. In addition, such Committee has complaint mechanism by which individual complaints of human right violations are heard.

Human right Committee is a body of expertise in human right. Whenever the state parties require, it provides technical assistance through expertise. It provides assistance in terms of training, law-drafting and other in order to grow efficient human right personnel and to enact laws and policies to enhance human rights.

4.11.3 Committee on Economic, Social and Cultural Rights (CESCR)

CESCR is not the treaty of ICESCR. It was established by the United Nations Economic and Social Council to carry out the monitoring functions assigned to the to the United Nations Economic and social Council in part IV of the Covenant. It is composed of independent experts that monitors implementation of ICESCR by State-parties. This Committee recommends and also collaborates with State in order to improve the implementation and enforcement of rights guaranteed in the Covenant.

The Committee also publishes its interpretation of the provisions of the Covenant, known as General Comments. The general comments serve as a means of promoting the implementation of the Covenant. The Committee is serviced by the United Nations center for Human Rights.

4.11.4 Committee on Elimination of Discrimination Against Women

It was established under the Convention on the Elimination of all forms of Discrimination against Women Article 17. It is an independent body consisting 23 experts on the women's rights from around the world. The committee's main function is to monitor the implementation of the convention based on consideration of reports from State parties.

4.11.5 Committee against Torture

The Committee against Torture was established pursuant to Article 17 of the CAT Convention. The Committee consists of 10 experts of high moral standing and recognized competence in the field of Human Rights. Members are elected by State-parties for the tenure of four years.

The primary functions of the Committee are to monitor the implementation of the convention by examining reports submitted by states parties, to receive individual communications concerning violations of the convention by states parties. The Committee also publishes its interpretation of the content of the provisions of the convention, known as general comments on thematic issues.

4.11.6 Committee on the Rights of the Child

The Committee on the Rights of the Child is the UN body responsible for ensuring children enjoy their human rights and live with dignity, respect and equality. The Committee is a body of 18 independent experts. It is responsible to monitor the implementation of CRC and its Optional Protocols. It is established pursuant to Article 43-45 of CRC. It establishes an

international complaints procedure for violation of child rights. The Committee examines reports submitted by UN agencies (e.g. UNICEF) and other competent bodies, including NGOs, National Human Rights Institutions (NHRIs), as well as children.

The main function of the Committee is to monitor the implementation of the convention on the Rights of the Child. It works in close cooperation with the United Nations Children's Fund (UNICEF), Specialized Agencies and other competent bodies including Non-Governmental Organizations (NGOs). It also monitors implementation of two Optional Protocols to the Convention, on involvement of children in armed conflict and on sale of children, child prostitution and child pornography.

The functions of the Committee can be listed as below.

- a. **Examine the children's rights situation in countries:** It examines regular report of every member states on the implementation of child right and makes necessary recommendations.
- b. **Complaints Mechanism:** The individual complaints procedure is held before the Committee on the Rights of the Child. The procedure following the lodging of an individual communication is detailed in its Two Optional Protocols. Any individual or group of individuals whose right is violated can initiate procedure by the submission of a complaint. The complaint is submitted to the secretariat of the Committee on the Rights of the Child.
- c. **General Comments:** The Committee occasionally publishes its interpretation of provisions of the Convention in the form of General Comments, sometimes following a Day of General Discussion debate. These are important as they are the Committee's latest thinking on a particular right, and allow the Convention on the Rights of the Child to evolve.
- d. **Days of General Discussion:** Once a year, at its September session, the Committee holds a Day of General Discussion (DGD) on a provision of the Convention on the Rights of the Child in order to issue more detailed recommendations to governments
- e. **Report to the UN General Assembly:** Once a year, the Committee submits a report to the Third Committee of the UN General Assembly, which also hears a statement from the CRC Chair.

4.11.7 Committee on the Elimination of Racial Discrimination

The Committee on the Elimination of Racial Discrimination was established under the International convention on the Elimination of All forms of Racial Discrimination. It is

composed of 18 experts, acting in their personal capacity, who are nominated and elected by State parties to the convention for a Four-year term. This committee is empowered to oversee the implementation of the obligations accepted by the State parties (Convention on the Elimination of All forms of Racial Discrimination, Article 8).

Functions

- a. Monitors the implementation of the convention by examining reports submitted by states parties.
- b. Makes general recommendations and proposals on the basis of the review of the reports of state parties.
- c. Send annual report to the General Assembly through the Secretary-General of the United Nations
- d. Committee performs its monitoring functions in three ways: early-warning procedure, examinations of individual and the examination of inter-state complaints.
- e. Publishes its interpretation of the content of Human Rights provisions, known as general recommendation on thematic issues.

4.11.8 Committee on the Protection of all Migrant Workers and Members of their Families

The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) is the body of independent experts that monitors implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families by its State parties. It held its first session in March 2004.

All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. The Committee will examine each report and address its concerns and recommendations to the State party in the form of "concluding observations". Unlike other Committees, individual complaint mechanism has not yet entered into force.

The Committee meets in Geneva and normally holds two sessions per year. The Committee also organizes days of general discussion and can publish statements on themes related to its work and interpretations of the content of the provisions in the Convention (general comments).

4.11.9 Committee on the Rights of Persons with Disabilities

The Committee is a body of 18 independent experts which monitors implementation of the Convention on the Rights of Persons with Disabilities. The members of the Committee serve in their individual capacity, not as government representatives. All States parties have to submit regular reports to the Committee on how the rights enshrined in the Convention are being implemented. The Committee examines each report and makes suggestions and general recommendations on the report. It forwards these recommendations, in the form of concluding observations, to the State Party concerned. The Committee normally meets in Geneva and holds two sessions per year.

4.11.10 International Court of Justice (ICJ)

Chapter 14 of the Charter of UN has made the Provision of ICJ. ICJ is the main judicial organ of the UN. It is established for peaceful settlement of international disputes between independent, sovereign states. ICJ is established through ICJ Statutes. It is seated at the Peace Palace in The Hague in the Netherlands. It is charged with settling legal disputes submitted to it by states and giving advisory opinions on legal questions from U.N. bodies and agencies. The ICJ is composed of 15 independent and qualified judges. They are appointed by UN General Assembly and Security Council of UN. It has the jurisdiction to hear and decide on cases brought before it. It can hear cases which are related to violation of international conventions and treaties. Therefore, ICJ is the universally recognized and powerful institution to seek remedy against violation of human rights and humanitarian rights as well by state-parties.

The official languages of the Court shall be French and English. It is upon the disputing party to decide upon the language to be used in pleading. The Court delivers the verdict of case in the language in which pleading was done. The Court decides on the disputes based on international law and applies the following:

- a. International Conventions
- b. International Customs
- c. General Principles of law recognized by civilized society
- d. Judicial decisions and teachings of most highly qualified publicists of various nations

4.11.11 International Criminal Court (ICC)

The International Criminal Court (ICC) is a permanent international court established to investigate, prosecute and try individuals accused of committing the most serious crimes of concern to the international community as a whole. The ICC was established through the Rome Statute in the year 2002. It was established with the purpose of penalizing international crime against human beings like genocide, war crimes, crimes against humanity and the crime of aggression. ICC is an independent body whose head office is located in Hague, Netherlands. Unlike ICJ, it is not an agency of UN.

The ICC is an independent Court, without any political influence. Its decisions are based on legal criteria and rendered by impartial judges. The ICC prosecutes individuals, not groups or states. Any individual who is alleged to have committed crimes within the jurisdiction of the ICC may be brought before the ICC. However, The Court has no jurisdiction to try against children.

The Court provides reparation to the victims. It determines the scope and extent of any damage, loss and injury to, or in respect of, victims and can provide reparations to victims including restitution, compensation and rehabilitation.

4.12 Remedy for the Violation of Human Rights in International Level

Major international and regional human rights treaties demand an effective remedy be available for individual victims of human rights violations. A remedy involves two elements: i. a victim's access to the appropriate authorities to have his claim fairly heard and decided; and ii. the redress or relief that he can receive. Universal Declaration of Human Rights (UDHR) iterates that "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law" (Article 8)

Violation of human rights is a serious crime. Victim shall be provided immediate remedy for every instance of violation. As per the provision of international law, the remedies available for gross human rights violation are provided as follows:

- (a) Equal and effective access to justice;
- (b) Adequate, effective and prompt reparation for harm suffered;
- (c) Access to relevant information concerning violations and reparation mechanisms

In the chapter summary, this chapter dealt about the major international human rights instruments and mechanisms. The foundation of international instrument of human rights are the UN Charter and the Bills of Rights. After these two documents UDHR, ICCPR, ICESCR are the subsequent human rights documents which plays vital role in encouraging respect, protection and promotion of human rights in the international level. As per the human rights instruments several mechanisms i.e. committees and institutions has been established for ensuring human rights and providing remedy for the violation of human rights.

CHAPTER-FIVE

MAJOR NATIONAL INSTRUMENTS AND MECHANISMS FOR THE IMPLEMENTATION OF HUMAN RIGHTS IN NEPAL

5.1 National Legal Mechanism

Nepal is a member state of United Nation Organization. She has adopted Universal Declaration of Human Rights 1948 as a guiding standard for enacting laws related with human rights. Nepal has ratified several international treaties and conventions. For instance, Geneva Conventions 1949, Slavery Convention 1926, Convention on the Prevention and Punishment of Crime of Genocide 1948, International Convention on the Elimination of All Forms of Racial Discrimination 1965, International Covenant on Civil and Political Rights 1966, International Covenant on Economic, Social and Cultural Rights 1966, Convention on the Rights of Children 1989, etc. to name a few. The act of ratification or accession to these treaties and conventions entails Nepal's commitment towards protection and promotion of human rights at international arena. Such obligation is conferred by the Vienna Convention on the Law of Treaties 1969 and a Nepal Treaty Act 2047 B.S.

Once a state ratifies to or accedes on any international treaty, she is under treaty-obligation to observe and enforce it inside her territory. Nepal is a state party to several human rights instruments therefore; Nepal is under treaty obligation to observe the treaty in good faith.

In order to implement and enforce human rights, Nepal has made several efforts and arrangements. Nepal has enacted numerous Acts related to human rights. These Acts have ensured protection and promotion of human rights along with effective legal remedy to the victims. Besides that, Nepal has constituted several constitutional bodies in order to enforce human rights, in addition, there are several NGOs and INGO, working in the field of human rights. Nepal has enacted several legislations in order to implement the international commitments towards protection and promotion of human rights. Some of the important laws related to human rights are discussed below.

5.1.1 The Constitution of Nepal 2072 (2015)

Constitution is the strongest and most effective national mechanism for the enforcement of human rights. The sole reason for this fact is: Constitution is the supreme law of the land

and any law inconsistent with it is void to the limit of inconsistency. The Constitution of Nepal 2072 B.S. has enlisted and guaranteed extensive list of fundamental rights in its Part III from Article 16-46. Fundamental right is actually the human rights enlisted and guaranteed by the constitution. Once rights are guaranteed in Constitution, they are enforced for lifetime. The Legislative shall enact laws to implement such fundamental rights. And, Executive shall mobilize state resources to protect and promote such rights.

The Constitution of Nepal 2072 B.S. has guaranteed following 31 fundamental rights to citizens.

- | | | |
|-----|------------|---|
| 1. | Article 16 | Right to live with dignity |
| 2. | Article 17 | Right to freedom |
| 3. | Article 18 | Right to equality |
| 4. | Article 19 | Right to communication |
| 5. | Article 20 | Right relating to justice |
| 6. | Article 21 | Right of victim of crime |
| 7. | Article 22 | Right against torture |
| 8. | Article 23 | Right against preventive detention |
| 9. | Article 24 | Right against untouchability and discrimination |
| 10. | Article 25 | Right relating to property |
| 11. | Article 26 | Right to freedom of religion |
| 12. | Article 27 | Right to information |
| 13. | Article 28 | Right to privacy |
| 14. | Article 29 | Right against exploitation |
| 15. | Article 30 | Right to clean environment |
| 16. | Article 31 | Right relating to education |
| 17. | Article 32 | Right to language and culture |
| 18. | Article 33 | Right to employment |
| 19. | Article 34 | Right to labor |
| 20. | Article 35 | Right relating to health |
| 21. | Article 36 | Right relating to food |
| 22. | Article 37 | Right to housing |
| 23. | Article 38 | Right of women |
| 24. | Article 39 | Right of the child |
| 25. | Article 40 | Right of Dalit |

26.	Article 41	Rights of senior citizens
27.	Article 42	Right to social justice
28.	Article 43	Right to social security
29.	Article 44	Rights of the consumer
30.	Article 45	Right against exile
31	Article 46	Right to constitutional remedies

5.1.2 Nepal Treaty Act, 2047 B.S.

This Act was enacted by His Majesty King Birendra Bir Bikram Shah Dev under Article 129 of the Constitution on the advice and with the approval of the Council Ministers. It came into force from Kartik 23, 2047(9 November, 1990). It was enacted to make legal provisions in regard to the procedure relating to signing, ratification, accession, acceptance, or approval of treaties or agreements to which Nepal is a party, as well as in regard to their implementation (Nepal Treaty Act, 2047, Preamble).

It is an important act for enforcement and implementation of international human rights treaties in Nepal. This Act empowers and at the same time validates the act of Government of Nepal regarding signing, ratification and accession to treaties and conventions. According to Section 9(1) of the Act, provisions of international treaties prevail as good as Nepalese laws. Therefore, provisions of international human rights laws, to which Nepal is a State-party, are *ipso facto* enforced in Nepal by virtue of this Act. However, this Act is based on dualist approach. Accordingly, there is need of national legislation to transform and apply the provisions of international law in Nepal.

5.1.3 National Human Rights Commission Act, 2068 B.S.

NHRC Act, 2068 B.S. was enacted to make legal provisions with regard to the functions, duties, powers and procedures of the National Human Rights Commission. It ensures the respect, protection and promotions as well as effective implementation of human rights (NHRC Act 2068, Preamble.). This Act is enacted pursuant to Article 83 of the Interim Constitution of Nepal, 2063 B.S. It repealed Human Rights Commission Act, 2053 B.S.

NHRC Act has empowered the NHRC to draw attention of any agency or official to any matter related to the protection and promotion of human rights. It provides consultation to the Government of Nepal in matters of legislation relating to human rights. For the

protection of human rights of victims, it can provide interim relief immediately to prevent further damage (NHRC Act 2068, Section 9.).

5.1.4 Compensation Relating to Torture Act, 2053 B.S.

This Act came into existence to make provisions on compensation for inflicting physical or mental torture upon any person in detention. It strictly prohibits any act of torture. If any employee of Government of Nepal is held to have inflicted torture upon any person, the victim shall be provided with compensation as referred to in this Act (Compensation Relating to Torture Act, 2053, Section 4). As per Section 5, a victim of torture may file a complaint in District Court. Such a complaint shall contain a claim for compensation. After receiving complaint of torture, the District Court shall proceed the procedures as referred to in the Summary Procedures Act, 2028 (1972). District court may order Government of Nepal to pay compensation in a sum not exceeding One Hundred Thousand Rupees to the victim (Compensation Relating to Torture Act, 2053, Section 6).

5.1.5 Poverty Alleviation Fund Act, 2063 B.S.

‘Poor’ means a person or group below the national or regional poverty line prescribed by Nepal Government. Poor people remain backward on the basis of human development indicators such as education and health etc. and excluded from the national development process on the grounds of particular gender or social group. Thus to improve the condition of poor people and to promote their human right this Act came into existence. This Act provides for legal provision to establish and operate a Fund related to poverty alleviation, for causing to implement various programs related to poverty alleviation through active participation of poor and backward class of society and to alleviate poverty from the country by providing grant and necessary assistance to the institutions involved in the activities for poverty alleviation.

- a. Children’s Act, 2075 B.S.
- b. Child Labor (Prohibition and Regulation) Act, 2056 B.S.
- c. Social Welfare Act, 2049 B.S.
- d. Protection and Welfare of the Disabled Persons Act, 2074 B.S.
- e. Social Security Act, 2075 B.S.
- f. Public Health Service Act, 2075 B.S.
- g. Consumer Protection Act, 2075 B.S.
- h. Crime Victim Protection Act, 2075 B.S.

- i. Environment Protection Act, 2053 B.S.
- j. Compulsory and Free Education Act, 2075 B.S.
- k. Employment Act, 2075 B.S.
- l. Personal Privacy Act, 2075 B.S.
- m. Caste Discrimination and Untouchability (Crime and Punishment) Act, 2075 B.S.
- n. Food Right and Food Sovereignty Act, 2075 B.S.

5.2 National Institutional Mechanism

5.2.1 National Human Rights Commission (NHRC)

The Constitution of Nepal 2072 and NHRC Act 2068 have established NHRC as an institution for enforcement as well as protection and promotion of human rights in Nepal. NHRC is empowered to investigate and research along with promotion of human rights. Nepal is State-party to numerous international instruments relating to human rights and humanitarian laws. Being a State-party Nepal has treaty obligation to implement the provisions of treaty within the territory of Nepal. It is the responsibility of NHRC to keep an eye on the government's plans and actions for implementation of such treaty obligation. NHRC serves as a watch-dog against the government actions. It researches, investigates, makes report and recommends the government whenever there is lacuna in enforcement, protection and promotion of human rights in Nepal.

The NHRC is composed of a Chairperson and members appointed by the President (Constitution of Nepal 2072, Article 248(2).) for the tenure of six years from the date of appointment. To be the Chairperson of NHRC, one must be a retired Chief Justice or retired Judge of the Supreme Court and having rendered outstanding contribution to the protection and promotion of human rights or being a renowned person having been active for at least twenty years in and rendered outstanding contribution to the protection and promotion of human rights or to various fields of national life. To be a member one should be a person being involved in the field of the protection and promotion of human rights or rights and interests of the child or being a renowned person having been active for at least twenty years in and rendered outstanding contribution to various fields of national life. In addition, they should have high moral character and not affiliated to any political party at the time of appointment.

5.2.2 National Women Commission (NWC)

NWC is a constitutional body. It is instituted through National Women Commission Act, 2074 B.S. This Commission is established to ensure gender justice through protection and

promotion of human rights and women empowerment. The Commission is composed of a Chairperson and four other members appointed by the President for the tenure of six years from the date of appointment (Constitution of Nepal 2072, Article 252(3)).

Functions, duties and powers of National Women Commission

- a. To formulate policies and programs concerning the rights and interests of the women
- b. To monitor implementation status of treaty obligations related to rights of women
- c. To suggest Government of Nepal for effective compliance and implementation of treaty obligations
- d. To ensure proportional participation of women in all organs of the State
- e. To assess, monitor and evaluate the existing policies and programs, and make recommendation to the Government of Nepal for their effective implementation
- f. To carry out study and research work on the legal provisions relating to gender equality, empowerment of women and women, make recommendations
- g. To file cases against any persons or bodies on matters of violence against women

5.2.3 National Dalit Commission (NDC)

NDC is a constitutional body. It is instituted through National Dalit Commission Act, 2074 B.S. This Commission is established for nation-building and development by keeping an end to caste discrimination and untouchability and by empowering society through protection and promotion of rights of Dalit community. The Commission is composed of a Chairperson and four other members appointed by the President for the tenure of six years from the date of appointment (Constitution of Nepal 2072, Article 255(3)).

Functions, duties and powers of National Dalit Commission

- a. To conduct study and exploration as to the overall situation of the Dalit community
- b. To make recommendations to the Government of Nepal in the field of necessary policy, legal and institutional reforms
- c. To formulate national policies and programs concerning the interests of the Dalit for the upliftment and development of the Dalit, putting an end to caste-based discrimination, oppression and discrimination
- d. To monitor implementation status of treaty obligations related to rights of Dalit

- e. To suggest Government of Nepal for effective compliance and implementation of treaty obligations
- f. To ensure proportional participation of Dalit in all organs of the State
- g. To assess, monitor and evaluate the existing policies and programs, and make recommendation to the Government of Nepal for their effective implementation

5.2.4 National Inclusion Commission (NIC)

Pursuant to Article 258 of the Constitution of Nepal 2072 and through the enactment of National Inclusion Act, 2074 B.S., this Commission was established. This Commission has the noble aim to empower the community of Khas Arya, back warded group, disable person, senior citizen, labor, peasant, minority, marginalized, Karnali people and economically back warded people by protecting and promoting their rights. The Commission is composed of a Chairperson and four other members appointed by the President for the tenure of six years from the date of appointment.

Functions, duties and powers of National Inclusion Commission

- a. To conduct study and research works for the protection of the rights and interests of the communities, including Khas Arya, Pichhada class, persons with disabilities, senior citizens, labours, peasants, minorities and marginalized community, backward class, people of Karnali and the indigent class
- b. To study the status of implementation of the policies and laws adopted by the Government of Nepal for the inclusion of the community, class and region mentioned in clause (a) and make suggestions to the Government for reforms
- c. To formulate national policies and programs concerning the interests of the community mentioned above
- d. To monitor implementation status of treaty obligations related to rights of those community
- e. To suggest Government of Nepal for effective compliance and implementation of treaty obligations
- f. To ensure proportional participation of those community people in all organs of the State
- g. To assess, monitor and evaluate the existing policies and programs, and make recommendation to the Government

5.2.5 Madhesi Commission

Madhesi Commission is established for the protection and promotion of the rights of Madhesi people. It recognizes the special need of Madhesi people for their overall development. This Commission consists of a Chairperson and maximum of four members (Constitution of Nepal 2072, Article 262(1)). The term of office of the Chairperson and members of the Madhesi Commission shall be six years from the date of appointment (Constitution off Nepal 2072, Article 262(3)). The functions, duties and rights of Madhesi Commission are stipulated in the Madhesi Commission Act, 2074 B.S. in its Section 7.

Functions, duties and rights of Madhesi Commission

- a. To recommend the Government of Nepal reform in policy, law and institution effect overall development of Madhesi community
- b. To recommend the Government of Nepal to draft and implement national policies for empowerment of Madhesi community
- c. To revise, monitor and evaluate the policies and programs related to Madhesi Community
- d. To recommend the Government of Nepal to draft and implement national policies for development and empowerment of economically and socially backward people among Madhesi
- e. To recommend the Government of Nepal to implement plans and programs to develop and preserve Madhesi language, script, culture, history, tradition, literature, etc.
- f. To recommend the Government of Nepal to implement plans and programs to eradicate social evils prevalent in Madhesi community

5.2.6 Tharu Commission

The establishment of this Commission is mandated by Article 263 of the Constitution of Nepal 2072. The purpose of this Commission is to uplift the overall development of Tharu people residing all over the territory of Nepal. The Commission is composed of a Chairperson appointed by President on the recommendation of Constitutional Council and other four members. The term of office of the Chairperson and members of the Tharu Commission shall be six years from the date of appointment (Constitution off Nepal 2072, Article 263(3)). The functions, duties and rights of Madhesi Commission are stipulated in the Tharu Commission Act, 2074 B.S. in its Section 7.

Functions, duties and rights of Tharu Commission

- a. To recommend the Government of Nepal reform in policy, law and institution effect overall development of Tharu community
- b. To recommend the Government of Nepal to draft and implement national policies for empowerment of Tharu community
- c. To revise, monitor and evaluate the policies and programs related to Tharu Community
- d. To recommend the Government of Nepal to draft and implement national policies for development and empowerment of economically and socially backward people among Tharu
- e. To recommend the Government of Nepal to implement plans and programs to develop and preserve Tharu language, script, culture, history, tradition, literature, etc.
- f. To recommend the Government of Nepal to implement plans and programs to eradicate social evils prevalent in Tharu community
- g. To Recommend the Government of Nepal to investigate and prosecute upon the person involved in violation of rights of Tharu
- h. To Recommend the Government of Nepal to establish Living Museum for protection and preservation of tangible and intangible cultures of Tharu

5.2.7 Muslim Commission

Muslim Commission works for the protection and promotion of rights of Muslim community. The President of Nepal appoints the Chairperson of the Commission on the recommendation of Constitutional Council. Besides Chairperson, there are four other members. They are appointed for the period of six years (Constitution of Nepal 2072, Article 264(3)). The functions, duties and rights of Madhesi Commission are stipulated in the Tharu Commission Act, 2074 B.S. in its Section 7.

Functions, duties and rights of Muslim Commission

- a. To recommend the Government of Nepal reform in policy, law and institution effect overall development of Muslim community
- b. To recommend the Government of Nepal to draft and implement national policies for empowerment of Muslim community

- c. To revise, monitor and evaluate the policies and programs related to Muslim Community
- d. To recommend the Government of Nepal to draft and implement national policies for development and empowerment of economically and socially backward people among Muslim
- e. To recommend the Government of Nepal to implement plans and programs to develop and preserve Muslim language, script, culture, history, tradition, literature, etc.
- f. To recommend the Government of Nepal to implement plans and programs to eradicate social evils prevalent in Muslim community
- g. To monitor and give direction concerning the national implementation of international treaties related with Muslim
- h. To recommend the Government of Nepal to investigate and prosecute upon the person involved in violation of rights of Muslim
- i. To recommend the Government of Nepal to establish Living Museum for protection and preservation of tangible and intangible cultures of Muslim

To convey to the Government of Nepal about the backwardness of Muslim society, their deteriorating condition of education, politico-social and economic life.

5.3 National Remedy for the Violation of Human Rights in Nepal

5.3.1 National Human Rights Commission (NHRC)

The National Human Rights Commission (NHRC) of Nepal is an independent and autonomous constitutional body. It was established in the year 2000 as a statutory body under the Human Rights Commission Act 1997 (2053 BS). The Interim Constitution of Nepal 2007 (2063 BS) has made the NHRC a constitutional body. This Commission was created in response to Paris Principles. NHRC is entrusted to ensure respect for, protection and promotion of, and effective enforcement of human rights. It is responsible to undertake or cause to be undertaken research in the field of human rights, and evaluate the existing human rights situation of the country.

Composition: NHRC is composed of a Chairperson and Four other members. Chairperson is appointed by the President for the term of 6 years.

Functions, Duties and Powers

The NHRC has functions, duties and powers as mentioned in the existing Constitution and NHRC Act 2068 B.S. NHRC performs following functions, duties and powers.

- a. To conduct or cause to conduct inspections and monitoring of prisons, other agencies of the Government of Nepal for the protection of human rights
- b. To provide necessary suggestions or directives for the protection of human rights
- c. To conduct investigations in cases involving human rights violation
- d. To monitor the implementation status of the prevailing laws regarding human rights
- e. To undertake study and research into various aspects of protection, promotion, enhancement and implementation of human rights
- f. To recommend to the concerned institution for including human rights education oriented subject matter related into the syllabus of school and university

5.3.2 Ministry of Women, Children and Social Welfare

This Ministry is committed to work for the overall development and improvement of women, children and society as a whole. Premised on the achievement, experience and contemporary necessity of various programs on Women Development Movement conducted during FY 2039/40, this Ministry was established in 2052 B.S. The Ministry is now renamed as Ministry for Women, Children and Elderly Citizen from the year 2075 B.S. It has the scope to formulate plans and policies and implement them, monitor and evaluate along with various study, research and survey concerned with empowerment of women, children and elderly people. Various institutions like National Women Commission, Social Welfare Council, Social Welfare Centre, and Old-age home, child-care center, etc. fall under this Ministry.

5.3.3 Local Government

The Constitution of Nepal 2072 has entrusted the local government with the authority to look after some human right issues. Local government is responsible to manage some aspects of human rights like education, health and sanitation, environment protection, access to water, rights of senior citizens, etc. Power, functions, jurisdiction of Local Government is delineated by Local Government Operation Act, 2074 B.S.

5.3.4 Nepal Police

Nepal Police operates under the Ministry of Home Affairs. This institution is authorized to investigate, make inquiries on the alleged human rights abuses at first instance. Nepal

Police has established Human Rights Unit within its organization in 16 January 2003 to ensure better protection and promotion of Human Rights. This institution is committed to de facto realization of de jure provisions of human rights. Nepal Police shall respect human rights of people during police-operations like during arrest and detention of suspects, crowd control operations and also in the process of electoral process.

5.3.5 Nepal Bar Association (NBA)

Nepal Bar is an umbrella organization of practicing lawyers of Nepal. It is an institution recognized by the Constitution itself. Nepal Bar Association is registered as a professional organization under the provision of National Guidance Act 1961. It has the goal to influence the relevant policies and structure for consolidating democracy, human rights, legal profession, and independence of judiciary, good governance and access to justices for the advancement of the nation. It has the vision to uphold democracy and protect and promote human rights.

5.3.6 Non-Governmental Organizations

There are several non-governmental organizations (NGOs) which are committed to work for the protection and promotion of human rights in Nepal. For instance, Amnesty International, Informal Sector Service Centre (INSEC), Human Rights Action Centre, Human Rights Watch, Child Workers in Nepal (CWIN), etc.

5.3.7 Judicial Commitment

Judiciary is the most powerful and competent organ for the protection and promotion of human rights. It has the jurisdiction to provide remedy and compensation to victims and punish the perpetrators of human rights. Supreme Court is the guardian of the Constitution. It has the extra-ordinary jurisdiction to provide constitutional remedy for violation of fundamental rights guaranteed by the Constitution. Besides SC, High Court and District Court are also now empowered to remedy and restore human right violation of citizens.

Court is a constitutional body having power and function to adjudicate case and render final verdict to resolve any disputes. Black's Law Dictionary defines 'Court' as 'a governmental body consisting of one or more judges who sit to adjudicate disputes and administer justice.' According to Encyclopedia of Britannica, Court is a person or body of persons having judicial authority to hear and resolve disputes in civil, criminal, ecclesiastical, or military cases.

In Nepal, there are three tiers of court. The apex court is Supreme Court and lower to it are High Court and District Court. In addition to the courts mentioned, judicial bodies may be formed at the Local level to try cases under law or other bodies as required may be formed to pursue alternative dispute settlement methods. These altogether constitute Judiciary of Nepal. Courts of Nepal are committed to the protection and promotion of human rights in Nepal. They have constitutional power to give remedy to victims of human rights violation.

Supreme Court (SC): The Supreme Court of Nepal is the highest court in Nepal. It is the Court of Record. The Supreme Court has the ordinary and extra-ordinary jurisdiction. It has extra-ordinary power to issue writ-order against the government or its agency to protect and remedy the violation of fundamental rights of people. Under the extra-ordinary jurisdiction, the Supreme Court may issue appropriate orders and writs including the writs of *Habeas Corpus*, *Mandamus*, *Certiorari*, *Prohibition* and *Quo Warranto* (Article 133, The Constitution of Nepal, 2072). Besides that, the Supreme can give directive orders to the government or its agency to enact or amend laws to protect and promote human rights. There are numerous instances where SC has played active role in protection and promotion of fundamental rights of citizen.

High Court (HC): There are seven High Courts in Nepal, one in each Province. The High Court has jurisdiction over its Province and thus it has the power to issue appropriate orders in favour of people living inside the Provincial territory to protect their fundamental rights. It is an extra-ordinary jurisdiction of HC. Similar to the jurisdiction of SC, HC may issue appropriate orders and writs including the writs of *Habeas Corpus*, *Mandamus*, *Certiorari*, *Prohibition* and *Quo Warranto* (Article 144, The Constitution of Nepal, 2072). However, such writs and orders are effective only inside the Province and people residing inside it.

District Court (DC): DC is the lowest in ranking among three tiers of Court. There are 77 DC, one in each district of Nepal. It is the Court of First Instance and has jurisdiction to hear and decide any case within its jurisdiction. Although it does not have extraordinary jurisdiction like SC and HC, it can try and settle cases of *Habeas Corpus* and *Prohibition* (Article 151, The Constitution of Nepal, 2072).

Finally, in the summary, this chapter is about major national instruments and mechanisms for the implementation of human rights in Nepal. Nepal being the party of several human rights instruments it had made several efforts to frame legal and institutional mechanisms for fulfilling the obligations of the international human rights instruments. This chapter is remains the main focus of the study because in this chapter special focus is given to the study of Nepalese context.

CHAPTER-SIX

FINDING, CONCLUSION AND SUGGESTIONS

6.1 Findings

- The Constitution of Nepal, 2072 B.S. express full commitment to civil liberties, fundamental rights and duties, human rights, independence of judiciary and the concept of rule of law. It has guaranteed a number of fundamental rights to justice under the state obligation, a number of provisions oblige the state to design and implement measures for dealing with past human rights violations. The constitution provides for the establishment of human rights commission and other constitutional bodies as well as Truth and Reconciliation Commission to investigate the facts about those people involved in serious violations of human rights and crimes against humanity committed during the course of the conflict in order to provide relief to the relative of victims for the perpetrators of violation of humanitarian law.
- As far as the practice of the Nepalese legal system is concerned, it is more influenced by common law practice which requires an act of parliament for treaty to be implemented. However, this may not be an appropriate approach for the implementation of human rights treaties or instruments in the present situation.
- The implementation of human rights is very weak.
- Impunity is developing as a culture is the present time and the perpetrator of violation of human rights remain out of the reach of the laws due to political covers and victim have not been able to get justice, this has greatly challenged the rule of law and the security situation of nation as well as human right law.
- Security situation and criminal activities in the eastern hill regions and boarder region is a key challenge to the human rights and against International Bills of Right as well as international core human right convention of UN.
- Nepal at present is facing the challenge of prosecuting criminals and provide remedy of the victim of gross violations of human rights.

6.2 Conclusion

The objective of this study is to explore the international and national legal and institutional mechanisms as well as situation of human right in Nepal. It concentrates on the transformative role of law, justice mechanisms and justice actors seeking to achieve greater adherence of national legal and institutional frameworks with international human rights instruments and standards so as to allow for effective redress and accountability; more independent justice mechanisms capable of dealing with challenges of impunity and access to redress and judges, lawyers, human rights defenders, victims and their representatives that are better equipped to demand and deliver truth, justice and reparation.

Being the member of several international human rights instruments and enactment of the Constitution was a positive step towards showcasing a strong determination to provide essential fundamental rights regarding justice in cases of gross human rights violation. While Nepal is reeling back from the decade long armed conflict that involved gross human rights violations from the state actors and other parties. The fact that many cases are still pending in the court of law also shows symptoms of problems that exist in providing redress to victims. Mechanisms adopted for transitional justice such as Truth and Reconciliation Commission and Commission on Investigation of Disappeared Persons to investigate cases of enforced disappearance fall short of international standards, despite the reinforcement of such standards by directions of the Supreme Court. The continuing failure to address egregious violations has empowered perpetrators of human rights violations, who know that they can and nearly always will escape accountability for serious crime. Impunity therefore, lies at the heart of the rule of law crisis in Nepal. It links the horrific violations during the conflict to the simmering tensions in the terai today and is one of the major obstacles to the creation of a stable and legitimate democratic government in Nepal. The lingering instability once again affirms experiences from around the world that a climate of impunity undermines efforts establish democratic governance driven by respect for human rights and the rule of law.

National mechanisms in term of introducing several legislations and policies seem positive however the major problem lies in the fact that, implementation involves various actors and institutions. Most of the work seems to have a bottle neck effect during implementation and blame game to each other seems to be the only way for now. Nepal is the member of several international human rights instruments has introduced commission of inquiry, truth and

reconciliation commission and similar mechanisms. However, these institutions are often criticized for not conferring to international standards and for having legally flawed mandate which among other problems allows the commission to recommend amnesties for gross human rights violation. These mechanisms do not provide sufficient guarantees for the independent and impartial operation; keeping open the possibility of political pressure interfering in their work.

6.3 Suggestions

On the basis of above study on the topic, the following suggestions are suggested:

- The confusion and conflicts provisions between Treaty Act 2047 B.S. and The Constitution of Nepal 2072 B.S. must be removed as far as possible.
- Existing national legislation of human rights must incorporate the notion of human rights as per the provisions of international human rights instruments.
- Nepal needs to take violation of human rights seriously and raise about political and other interests in order to set an example for future remedies and actions.
- To develop Nepal as a peace zone.
- To take appropriate action against the human rights violators during the period of past conflict.
- Rule of law must be followed.
- To provide for the efficient legal provisions to regulate, monitor and take legal action against perpetrators of human right violation.
- The government must enforce the international human right law in domestic courts a rule rather than the exception.
- Take immediate initiation on addressing and implementing the court's decision relating to human rights properly.
- Government should not give excuse to those people who are the accused of human rights violation.
- Law maker should be taken appropriate action to remove the conflict provision of constitution as well other provisions of Nepalese law.
- Government should establish a regular monitoring and reporting committee to ensure the proper implementation of human rights, programs, possibly on an annual basis.

- The Human Rights Commission must suggest the government to take appropriate action to protect the basic human rights of the people.
- Judge should be aware and well-known about the provisions of international human rights law.
- Lawyers must be aware and should practice about the provisions of international human rights law.
- All the governmental officers must be trained about the human rights law.
- Decisions made by the Supreme Court regarding human rights should be applied and implemented by the state.

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Annex-I

The Universal Declaration of Human Rights

On December 10, 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights by General Assembly Resolution 217A (III)
PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore the General Assembly proclaims this universal declaration of human rights 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 freedoms 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.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, 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. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each state.
2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right of equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote

understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Annex-II

International Covenant on Economic, Social and Cultural Rights

(Acceded by Nepal on 14th May, 1991)

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 *entry into force* 3, January 1976

Preamble

The States Parties to the present Covenant, considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant, Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the

realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.
2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be

admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Article 8

1. The States Parties to the present Covenant undertake to ensure:
 - (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are

necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social

exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.
2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:
 - (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
 - (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
 - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
 - (b) The improvement of all aspects of environmental and industrial hygiene;
 - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

- (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
 - (a) Primary education shall be compulsory and available free to all;
 - (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
 - (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
 - (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
 - (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.
3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.
4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the

observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:
 - (a) To take part in cultural life;
 - (b) To enjoy the benefits of scientific progress and its applications;
 - (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.
3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.
4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

PART IV

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

2. (a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;
- (b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts thereof, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts thereof, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.
2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.
3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities.

These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

Article 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

Article 22

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

Article 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

Article 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART V

Article 26

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favor a conference of States Parties for

the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favors such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.
3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 30

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

- (a) Signatures, ratifications and accessions under article 26;
- (b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

Article 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.

Annex-III

International Covenant on Civil and Political Rights

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following Articles:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, 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.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as
3. Each State Party to the present Covenant undertakes:
 - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
 - (b) To ensure that any person claiming such a remedy shall have his right determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
 - (c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.
2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3. (a) No one shall be required to perform forced or compulsory labour;
 - (b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;
 - (c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:
 - (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
 - (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
 - (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
 - (iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as un-convicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
 - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) To be tried without undue delay;

- (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
 - (g) Not to be compelled to testify against himself or to confess guilt.
- 4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
 - 5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
 - 6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
 - 7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

- 1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.
- 2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed,

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the

Article 19

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 impart 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.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its

dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.
2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.
3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.
2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.
3. A person shall be eligible for re-nomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.
2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.
3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.
4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary General of the United

Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.
2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.
2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.
2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.
3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.
2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:
 - (a) Twelve members shall constitute a quorum;
 - (b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:
 - (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;
 - (b) Thereafter whenever the Committee so requests.
2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.
3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.
4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.
5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:
 - (a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the

communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and

- (b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;
 - (c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;
 - (d) The Committee shall hold closed meetings when examining communications under this article;
 - (e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;
 - (f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;
 - (g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;
 - (h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:
 - (i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
 - (ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.
2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph I of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United

Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view
- (b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.
2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.
3. The Commission shall elect its own Chairman and adopt its own rules of procedure.
4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.
5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.
6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.
7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall

- (a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;
 - (b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;
 - (c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;
 - (d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.
8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.
9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.
10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before

Article 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.
3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

1. Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:
2. Signatures, ratifications and accessions under article 48;
3. The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.