

HUMAN RIGHTS IN INDIA

(ELECTIVE : POL3E01)



STUDY MATERIAL

THIRD SEMESTER

M.A. POLITICAL SCIENCE
(2019 Admission onwards)

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HUMAN RIGHTS IN INDIA**

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MODULE I

Meaning of Human Rights

Human beings are rational beings. By virtue of being human, they possess certain basic and inalienable right which are commonly known as human rights. Since these rights belong to them because of their very existence, they become operative with their birth. Human rights, being the birth right, are, therefore, inherent in all the individuals irrespective of their caste, creed, religion, sex and nationality. These rights are essential for all the individuals as they are consonant with their freedom and dignity and are conducive to physical, moral, social and spiritual welfare. They are also necessary as they provide suitable conditions for the material and moral uplift of the people. Because of their immense significance to human beings; human rights are also sometimes referred to fundamental rights, basic rights, inherent rights, natural rights and birth rights.

The expression "Human Rights" denotes all those rights, which are inherent in our nature without which we cannot live as human beings. Human Rights being eternal part of the nature of human beings are essential for individuals to develop their personality, their human qualities, intelligence, talent and conscience and to satisfy their spiritual and other higher needs. Further it is described that the rights, which are natural and inherent for the life and happiness of every individual and so this right is called human rights. These rights

are indispensable for the maintenance of human dignity and the individual. Man as a member of human society has some rights in order to survive, sustain and nourish his best potentials. Some of the human rights thinkers have tried their best to define the human rights in order to justify its meaning.

Human rights are the rights that humans have and are entitled to simply by virtue of being humans. They are inherent and inalienable rights that human beings require to live a dignified life. Collectively they are a comprehensive, holistic statement elaborated and codified in the 1948 Universal Declaration of Human Rights (UDHR). All human rights—civil, political, economic, social and cultural—are recognized as a universal, inherent, inalienable, indivisible and interdependent body of rights.

The idea of basic rights originated from the desire to protect the individual against the (arbitrary) use of state power. Attention was therefore initially focused on those rights which obligate the governments to refrain from certain actions. Human rights in this category are generally referred to as ‘fundamental freedoms’. As human rights are viewed as a precondition for leading a dignified human existence, they serve as a guide and benchmark for legislation.

Definitions of Human Rights

There are various contemporary definitions of human rights. The UN defined human rights as ‘those rights which are inherent in our state of nature and without which we cannot live as human beings.’ Human rights belong to every person

and do not depend on the specifics of the individual or the relationship between the right-holder and the right guarantor. Human rights are the rights that everyone has equally by virtue of their humanity. It is grounded in an appeal to our human nature. Christian Bay defined human rights as “any claims that ought to have legal and moral protection to make sure that basic needs will be met”. Human rights can be defined as those minimum rights which every individual must have against the state or other public authority by virtue of his being a member of the human family. Shri P. P. Rao said human rights are the inherent dignity and inalienable rights of all members of the human family recognizing them as the foundation of freedom, justice and peace in the world. For D. D. Raphael, human rights in a general sense denote the rights of humans. However, in a more specific sense, human rights constitute those rights which one has precisely because of being a human. In the words of Michael Freedon, a human right is a conceptual device, expressed in linguistic form that According to R.J. Vincent human rights are the rights that everyone equally has by virtue of his very humanity and also by virtue of his being grounded in an appeal to our human nature. D.D. Basu defined human rights as those rights, which even, individual must have against the State or public authority by-virtue of his being a member of the human family irrespective of any other considerations.

The characteristics of human rights

1. Human rights represent claims which individual or groups make on the society.

2. These rights are inalienable and human beings are entitled to them by birth.
3. These rights are the basic minimum requirement for survival of human beings in society.
4. It is universal in character but not absolute.
5. It is protected and enforced by the authority of the state.
6. These rights are meant to uphold human dignity.
7. These rights are essential and necessary for the development of the people.
8. It is irrevocable and equal to all
9. These rights are natural rights based on the law of nature.
10. Human rights are dynamic and evolutionary in nature.
11. These rights are protected and enforced by the authority of society or state at all levels.

The above characteristics can be enlarged in these words. Human Rights are inherent in human being It is not granted by any person or authority. Human rights do not have to be bought, earned or inherited; they belong to people simply because they are human. Human rights are inherent to each individual. Human Rights are fundamental in the sense that without them, the life and dignity of man will be meaningless. Human rights are inalienable. It cannot be taken away; no one has the right to deprive another person for any reason. Human Rights are inalienable because:

- a. They cannot be rightfully taken away from a free individual.

- b. They cannot be given away or be forfeited.

Human Rights do not prescribe and cannot be lost even if man fails to use or assert them, even by a long passage of time. Human rights are indivisible. If it is divided, it will destroy the essence of Human. They cannot be denied even when other rights have already been enjoyed. Human Rights are universal in application and its scope is beyond nation, caste, one's origin, status, or condition or place where one lives. The arena of Human rights are relevant beyond national borders. Human rights are similar kind of rights for all human beings regardless of race, sex, religion, political or other opinion, national or social origin. By all these factors, human rights are universal. Human Rights are interdependent because the fulfilment or exercise of one cannot be had without the realization of the other.

Origin of Human Rights

Although the concept of human rights gained wider currency in the 20th century, it owes its origin to the ancient texts and classical writings. Ancient Indian thinkers like Manu, Parasar and Kautilya. They prescribed many duties for the rulers to protect the dignity of the citizens. Some sort of thinking about human rights could be found in the writings of ancient and classical scholars. Among the West, it was Plato (427-406 BC), who first made a systematic attempt to protect the citizens and non-citizens of ancient Greece in his grand scheme of justice. His disciple Aristotle (384-322 BC) too followed same path of his teacher and discussed virtue, justice and rights for individuals in the Greek society. It was Cicero

(106-43 BC), who provided philosophical foundations of natural law. Later, the scholars like Thomas Aquinas (1225-1274) and others based their religious arguments on the fundamental value of human dignity and universality of natural law. These writings, however, had oblique reference to human rights thinking rather than the one we find in the subsequent contributions.

Importance of human rights

Human rights are extremely important because they provide fairness and equality in our society. Human rights allows all people to live with dignity, freedom, equality, justice, and **peace**. Every person has these rights simply because they are human beings. They are guaranteed to everyone without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. Human rights are essential to the full development of individuals and communities.

Many people view human rights as a set of moral principles that apply to everyone. Human rights are also part of international law, contained in treaties and declarations that spell out specific rights that countries are required to uphold. Countries often incorporate human rights in their own national, state, and local laws.

Human rights are important in the relationships that exist between individuals and the government that has power over them. The government exercises power over its people.

However, human rights mean that this power is limited. States have to look after the basic needs of the people and protect some of their freedoms

Development of Human rights

The concept of human rights has passed in several stages of history. Some sort of rights was there before the settled and organised life of individual itself. Broadly speaking, these developments can be summed up into the following periods. They are;

Prior to Greek Period –

One of the first examples of a codification of laws that contain references to individual rights is the tablet of Hammurabi. The tablet was created by the Sumerian king Hammurabi about 4000 years ago. While considered barbaric by today's standards, the system of 282 laws created a precedent for a legal system. This kind of precedent and legally binding document protects the people from arbitrary prosecution and punishment. The problems with Hammurabi's code were mostly due to its cause and effect nature, it held no protection on more abstract ideas such as race, religion, beliefs, and individual freedoms.

Greek Period –

It was in ancient Greece where the concept of human rights began to take a greater meaning than the prevention of arbitrary persecution. Greeks were the first profounder of natural law principles. They gave a conception of universal law for all mankind under which all men are equal and which is

binding on all people. Human rights became synonymous with natural rights, rights that spring from natural law. According to the Greek tradition of Socrates and Plato, natural law is law that reflects the natural order of the universe, essentially the will of the gods who control nature. A classic example of this occurs in Greek literature, when Creon reproaches Antigone for defying his command to not bury her dead brother, and she replies that she acted under the laws of the gods. Despite this principle, there are fundamental differences between human rights today and natural rights of the past. For example, it was seen as perfectly natural to keep slaves, and such a practice goes counter to the ideas of freedom and equality that we associate with human rights today.

Roman Period

This idea of natural rights continued in ancient Rome, where the Roman jurist Ulpian believed that natural rights belonged to every person, whether they were a Roman citizen or not. They classified the law of Rome into three broad categories namely; Jus Civile, Jus Genitum and Jus Naturale. The first two were the law of the land based on the third concept (Jus Naturale) which embody the principles of natural law, though not enforceable in the court directly. The origin of the concept of human rights are usually agreed to be formed in the Greco-Roman natural law doctrines of “Stoicism”, which held that a universal force pervades all creation and that human conduct should therefore be judged according to the law of nature

Christian Period

The idea of natural law continues even after Roman period which forwarded the cause of human rights. However, natural law, at this stage was considered as will of God revealed to men by Holy Scriptures. According to Christian father all laws, government and property were the product of sin and so human laws contrary to law of God were to be discarded and ignored. Church as the exponent of divine law could override the State.

Medieval period

Human Rights were further promoted in the form of natural law in the middle ages. It was St. Thomas Aquinas who made a classic attempt to harmonise the teachings of the Church with those of natural laws. He distinguished between four kinds of law in his “Summa Theology”. He observed that the law of nature is the discovery of eternal law through reason and reason is the manifestation of religion.

The Magna Carta (1215)

Magna Carta, or “Great Charter,” signed by the King of England in 1215, was a turning point in the evolution of human rights. In 1215, after King John of England violated a number of ancient laws and customs by which England had been governed, his subjects forced him to sign the Magna Carta, which enumerates what later came to be thought of as human rights. Among them was the right of the church to be free from governmental interference, the rights of all free citizens to own and inherit property and to be protected from

excessive taxes. It established the right of widows who owned property to choose not to remarry, and established principles of due process and equality before the law. It also contained provisions forbidding bribery and official misconduct. Widely viewed as one of the most important legal documents in the development of modern democracy, the Magna Carta was a crucial turning point in the struggle to establish freedom.

Petition of Right (1628)

In 1628 the English Parliament sent this statement of civil liberties to King Charles I. The next recorded milestone in the development of human rights was the Petition of Right, produced in 1628 by the English Parliament and sent to Charles I as a statement of civil liberties. Refusal by Parliament to finance the king's unpopular foreign policy had caused his government to exact forced loans and to quarter troops in subjects' houses as an economy measure. Arbitrary arrest and imprisonment for opposing these policies had produced in Parliament a violent hostility to Charles and to George Villiers, the Duke of Buckingham. The Petition of Right, initiated by Sir Edward Coke, was based upon earlier statutes and charters and asserted four principles: (1) No taxes may be levied without consent of Parliament, (2) No subject may be imprisoned without cause shown (reaffirmation of the right of habeas corpus), (3) No soldiers may be quartered upon the citizenry, and (4) Martial law may not be used in time of peace.

Social Contract and Human Rights

Most systematic thinking about human rights could be

found in the writings of the social contract scholars such as Hobbes, Locke and Rousseau. Rousseau made a determined effort to protect individuals from the state abuse. Their thinking challenged and questioned the divine right of kings. The three distinguished philosophers of the social contract tradition had three different interpretations of human nature in the state of nature though; one thing that ran common among them was that they agreed to accept the inherent capacity of the state to protect individuals from the exploitation of the ruler. There are varying degrees of authority entrusted to the ruler by these three philosophers. Hobbes wanted to make the Leviathan all powerful to protect individuals from the anarchical state of nature through contract. He believed that human beings were basically greedy and violent creatures who lived in anarchy in their natural state. However he was more conscious of providing the right to security to the individuals to prevent the exploitation of the rulers. The state came into being for the fulfilment of this basic need. The individuals in the civil society acquired certain rights which are inalienable and inviolable that the ruler has to protect those rights. In case the ruler does not perform the task of protecting those rights he has to go. This is the essence of Hobbes contribution in empowering individuals against the Leviathan who might be all powerful.

Although Locke adopted Hobbes's methodology to discuss the state of nature in his *Second Treatise on Government* (1690), his interpretation of human nature is totally different from that of the former. He believed that in the

state of nature humans were basically good, peaceful and mercantile. He felt that the need for the protection of right to life and property necessitated the creation of a state. He insisted on having a ruler who might act as an arbiter to settle dispute that might arise over trade and property. Therefore, Locke's ideas formed the key foundation for the subsequent thinking on human rights.

The social contract theorists and the French Enlightenment tradition laid the philosophical foundations of human rights philosophy, but the real groundwork for the modern human rights as we perceived today was done by the German philosopher, Immanuel Kant (1724- 1804). Kant provides a useful and important break with Lockean abstraction by outlining a manifesto for practical and moral action, based the qualitative recognition of a fundamental dignity, which has subsequently found its way into the core of human rights discourse (Kant believed in the autonomy of the individual wherein rights follow to choose one's end. The state is meant to promote conditions that will guarantee "the free and harmonious unfolding of individuality." Kant made an attempt to distinct human rights from other rights like civil rights, international rights, and cosmopolitan rights. He believed in the oneness of human race. To quote him :

French Declaration of the Rights of Man (1789)

The representatives of the French people, organized as a National Assembly, believing that the ignorance, neglect, or contempt of the rights of man are the sole cause of public calamities and of the corruption of governments, have

determined to set forth in a solemn declaration the natural, unalienable, and sacred rights of man, in order that this declaration, being constantly before all the members of the Social body, shall remind them continually of their rights and duties; in order that the acts of the legislative power, as well as those of the executive power, may be compared at any moment with the objects and purposes of all political institutions and may thus be more respected, and, lastly, in order that the grievances of the citizens, based hereafter upon simple and incontestable principles, shall tend to the maintenance of the constitution and redound to the happiness of all. Therefore the National Assembly recognizes and proclaims, in the presence and under the auspices of the Supreme Being. Under the Declaration, rights of men and citizens includes guarantee of equality, liberty, free speech and laid down that law is the expression of the general will.

The US Declaration of Independence in 1776

The US Declaration of Independence in 1776, affirming the right of American colonies to break away from the British Empire, appealed to the inalienable human rights to life, liberty, happiness and popular consent for legitimate government. The Declaration of the Rights of Man and of the Citizen, approved during the French Revolution in 1789, endorsed the end of the absolute monarchist regime and its replacement with a liberal constitutional system based on popular sovereignty, equality under the law and natural, inalienable and sacred rights of man, whose basic entitlements were liberty, private property, security and resistance to

oppression, and political and civil rights . These two declarations, which merged the political philosophies of liberalism and individualism, became the foundation not just for the abolition of absolute monarchies and the establishment of states of law in Europe, but also for the establishment of constitutions of former European colonies, which evolved into independent national states and for the majority of modern liberal constitutional democracies .

Russian Revolution of 1917

The great communist revolution of Russia had its own repercussions in the development of human rights. The social security issues and economic rights come into limelight and became part of human rights since the great Bolshevik Revolution happened in Russia against Czarist regime. The Russian Revolution was the first successful communist revolution in the world. The revolution brought total change in the political, social and economic life of the people and established the first proletariat government of the world. Russian Revolution is important in many aspects. Unlike other revolutions that took place in the world in different occasions, it raised some basic issues that were facing the world. It was an alternative philosophy to the liberal theory and the philosophy underlying Russian Revolution was based on improving the status workers. Here social security, health security, labour security came into focus. So Russian Revolution greatly contributed to the development of human rights. Since Russian Revolution social and economic rights were added to human rights and this really widened the scope of human rights. It

emphasized that economic and social rights were as important as the civil and political rights. Many economic and social rights had been included in the soviet constitution. It is gratifying to note that the socialist revolution in Russia introduced socio-economic dimensions to the concept of rights, which were neglected in the events and documents of English, American and French revolutions. While the three revolutions emphasized the first generation (civil and political) rights, the October Revolution of Russia popularized socioeconomic rights; such as right to work, social security, protection of the family, right to adequate standard of living, right to education, health and right to join trade unions. These are second generation rights or positive rights.

Contemporary Thinking:

The most important contribution to the contemporary thinking on human rights is that of John Rawls' *A Theory of Justice* (Rawls, 1971). His work is so influential that "no theory of human rights for domestic or international order in modern society can be advanced today without considering Rawls's thesis". Rawls's idea of justice consists of two principles: The First Principle is that "each person is to have an equal right to the most extensive total system of equal basic liberties compatible with similar system of liberty for all" This implies equality of political rights to all citizens in a democratic country. These rights are necessary for the development of individual liberty. Rawls may not have enumerated the basic liberties in detail though, by and large, they include political liberty, freedom of speech and assembly and liberty of

conscience and thought, freedom of the person and freedom from arbitrary arrest and seizure. The Second Principle of Rawls' justice deals with distributive justice. According to distributive justice, social and economic inequalities are to be arranged so that they are both (a) to the greatest benefit of the least advantaged, consistent with a just saving principle and (b) attached to positions and offices open to all under condition of fair equality of opportunity. Rawls has identified 'primary goods' which include rights, liberties, power, wealth, opportunities and self-respect. In just society these goods are distributed equitably among its citizens. Rawls' theory of justice has been criticized by many on the ground that this is "highly abstract philosophy and not easily digested. Nevertheless, one thing that can be said in favor of Rawls is that his theory of justice is designed to sustain the institutions of modern democracy.

Another important author of the neo-Kantian tradition is Jurgen Habermas who located the universal principles in the practice of day-to-day communication. In doing so, Habermas using the Rawlsian argument which suggests that there is a need of a consensus which will achieve truth. This truth will lead to the defence of justice against injustice, equality against inequality, and freedom from oppression. In order to reach consensus and achieve truth, according to Habermas, an utterance must be comprehensible (the hearer must be able to understand it); it must be rightful (the speaker must be in an appropriate position to make it); it must be truthful (the speaker must be speaking with honesty); and it must be right

(the utterance must be factually correct). Both Rawls and Habermas have made attempts to separate the idea of universality from that of natural law. They have adopted a pragmatic approach though, both, however, sought to bridge the gap between the universalists and relativists from within the universalist camp. According to Habermas, modernity based on Weberian rationality can not be discounted, yet there is a competing modernity located in the social and cultural 'lifeworld' of human thought and action, driven by logic of 'true' rationality, self awareness and human emancipation. For Habermas, thus, the development of theory of human rights forms clearly an integral part of the (post-) modern project.

Human Rights and Democracy

The evolution of democracy and human rights has been in tandem though, the two seem to compete and compliment with each other in ensuring freedom to individuals. The history of the evolution of human rights is the history of the growth of democracy in the world. While democracy has been the arrangement to enable individuals to enjoy human rights, lately human rights became a universal principle, notwithstanding whether it is a totalitarian or democratic society. Individuals have come to enjoy specific rights that are inalienable. The arrangement of democracy may strengthen these rights, but dictatorial regimes also have come to accept certain inalienable rights for their citizens that were nonexistent in the middle-ages. The later part of 20th century, however, witnessed a tremendous growth in the clamour for democracy and human rights. Following decolonization and the emergence of more

number of nation states, democracy and human rights gained wider currency. In the colonial times and before, democracy was prevalent in the western societies. Human rights came into existence in its first generation as a result of the elimination of authoritarianism and adoption of democracy.

Today human rights have crossed the frontiers of the nation state and have assumed international dimensions. With the increasing democratization of the international system and greater involvement of non-nation state actors, there is a greater credence to human rights. Nation states are forced to liberalize the economies and throw open for more social, cultural and political freedom to the citizens. There is forced liberalism of sorts. The onslaught of the gigantic process of globalization has, of late, driven developing societies to go for providing greater freedom to their citizens. There are notable exceptions to such tendencies, though. China is the best example where liberal democracy is an anathema, yet economically its citizens are offered more opportunities and freedom.

The most important aspect of the 21st century democracy is that it is no longer restricted itself to the political aspect of the society. It has spawned into other areas with greater force, mainly economic and cultural aspects. With the erosion of nation states and rise of multinational institutions in the economic, social, cultural and security sphere, human rights have become key components for the sustenance of liberal democracy. The rights of individuals are ensured not only through nation states but due to the entrenchment of

multilateral institutions in these societies. Here questions may be asked as to the universal character of human rights paradigm. Despite the contributions from all spectrums of humanity, there are still doubts about its acceptance by everybody, both from the western as well as eastern world. No matter whatever differing perspectives that might exist in the human rights paradigm there is a bottom-line, that need to be accepted by all. Democracy has assumed a new dimension and so does human rights in its own way due to the differing perspectives.

The challenge of this century, however, is to make a balance between the movement for human rights and the rise of international terrorism . It is more so in the newly emerging societies. The compromise between providing security to the citizens and ensuring human rights has to be carefully guarded. The western societies have also witnessed the crisis of democracy and human rights in the context of the rising terrorism. Individual freedom is curtailed for the sake of state security. The measure of curtailment may not be antithetical to human rights paradigm, but there is greater degree of restriction today, than a few decades earlier. In this context, it is relevant that we discuss human rights in the third world countries in the next section.

Human rights are a special sort of rights to all persons equally, by virtue of their humanity, irrespective of race, nationality, or membership of any particular social group. The term human right came into wide use after World War II, replacing the earlier phrase "natural rights," which had been

associated with the Greco-Roman concept of natural law since the end of the Middle Ages. The concept of human rights is based on the belief that every human being is entitled to enjoy her/his rights without discrimination. Human rights differ from other rights in two respects. Firstly, they are characterised by being:

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

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

The specific nature of human rights, as an essential precondition

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

Different stages of human rights development

The concept of human rights has gone through

different stages. These stages are briefly explained below;

First stage

The concept of human rights has gone to different stages. First stage of human rights began during the Medieval Times, Catholic theologians and philosophers strengthened the consciousness of the universality of human dignity and equality, based on natural law, in Western civilization. In this context, the contributions of Saint Augustine and Saint Thomas Aquinas were fundamental to developing a synthesis of elements from classic Greek philosophy and Christianity based on the theory of natural law, which recognizes the individual rights of each person independent of the state to which he or she belongs.

Second stage

A second stage, in which there was a monumental advance in the vision and consciousness of human rights, would be identified by the five centuries that comprise the Renaissance, the Reformation and the formation of national states, entering into the Enlightenment, the independence of the United States of America and the French Revolution. During this time, from a rational and enlightenment philosophy and an *ius naturae* legal perspective, individual rights and freedom were privileged, and in some cases became absolute. In this context, the *ius naturae* contributions of Erasmus of Rotterdam stand out. He wrote about concepts of justice, equality and individual liberty as natural rights, which the state was obligated to protect and citizens to respect. Francisco Suárez

and Hugo Grotius also deserve special mention. Suárez explored the universality of natural law and the uniting nature of the law of peoples. Grotius examined independence and natural law with respect to a given political or religious power and the resultant need to recognize the natural rights of all people who, because of their shared humanity, should be treated in a just and equal manner, independent of their religious or civil status (Giraldo 2010). Subsequently, John Locke highlighted the natural rights to life, liberty and private property, which should be protected by governments (Locke 1947). Jean-Jacques Rousseau, Voltaire, Denis Diderot and Montesquieu wrote on the natural, inalienable and unalterable rights of all people to equality, liberty and solidarity, which governments must pledge to protect and respect through a social contract. All these contributions merged and helped bring about the English, American and French Revolutions. Through them, natural law, which deals with human rights and is therefore confined to the field of ethics and political philosophy, entered into the realm of positive rights, which become effective through laws and legal systems.

Third stage

This stage of human rights development has continued the consolidation of human rights in international and domestic law inspired by the 1948 Declaration. The Charter of the United Nations, containing in its preamble not the traditional language of plenipotentiary nation-states but of the “peoples of the United Nations,” announced peacekeeping and the security of peoples to be the primary functions of the new organization.

Its first article proclaimed universal respect for fundamental human rights and liberties as indispensable conditions to peace and security. In this manner, the UN Charter bound itself to the issues of security and peace, universal respect for human rights and, by definition, constraints on sovereign power (Battistella, 2009).

World wars and Human Rights

The grave upheavals produced by the two World Wars led to the creation of the UN and to enactment of international laws to safeguard human rights, beginning with the Universal Declaration of Human Rights of 1948. The Declaration ushered in a new era in the evolution of human rights that would drive the development of the consciousness of human security (Campagnoni 1995). The Declaration is not a legally binding document. However, through the general acceptance and practice of its principles as law, it has become the Magna Carta and internationally recognized legal and ethical framework for international, regional and national human rights mechanisms. It also serves as a source for other international and regional declarations and conventions on human, civil, political, economic, social and cultural rights.

The growth of consciousness between civil society organizations, rights activists, and supporters of self-determination had a crucial role in the decolonization process. From the end of the 1940s to the 1970s, numerous African, Asian and Caribbean countries became independent from their British, North American, French, Dutch or Belgian empires. The apartheid regime was also abolished in South Africa. The

retrenchment of the concept of absolute sovereignty during the Cold War era sparked a process of systematic persecution of human rights activists and defenders, who were considered insurgents and a threat to national security. In this climate, the UN General Assembly adopted the 1970 Declaration on the Strengthening of International Security, which reinforced the interdependence of international security, human rights and development, overcoming the national security logic linked to the use of armed forces.

With the end of the Cold War and the worldwide process of democratization, civil society organizations and international agencies assumed a fundamental role in denouncing human insecurity and lack of protection and security, as reflected in violence, hunger, poverty, preventable illnesses and man-made disasters. In this context, starting in the 1990s with the help of different initiatives and the contributions from different disciplines, including the fields of development, international relations, political economy, legal philosophy and human rights, a process began to reform the concept of security. From its traditional focus on the protection of sovereignty and state territory against external and internal threats, security began to evolve as a concept that placed individual security as a top priority. This paradigm shift propelled the UN Development Programme to coin the term of “human security,” concerning itself with the population’s security and not the territorial sovereignty of countries .

APPROACHES TO THE STUDY OF HUMAN RIGHTS

Approaches are the way of looking at or analysing of

any idea or social phenomena by the use of a particular theory or intellectual principles. There are mainly three approaches to the study of human rights. They are:

1. Western or Liberal approach.
2. Marxian or Socialist approach.
3. Third World approach.

WESTERN OR LIBERAL APPROACH

Liberal views on human rights

Thomas Paine (1737-1809), who followed the liberal tradition of the Rights of Man, celebrated the French and American revolutions. He believed in the sovereignty of individual and argued for the minimal interference of the state. Like Locke he was deeply committed to the inalienable rights of man- rights of mind and rights of happiness and freedom. Giuseppe Mazzini (1805-1872), who was considered to be an ardent republican too followed Paine's path in locating individual's duties within the nation state. The state, Mazzini contended, was meant to unite individuals with diversified interests under one banner so as enable the individuals to perform their duties to the nation.

The contributions of philosophers like Locke and Kant or even that of Paine may have strengthened the evolution of human rights thinking to a great extent. It does not mean that they were certainly not free from criticisms. The first challenges came from the utilitarian and radical school of thought represented by Jeremy Bentham and Karl Marx respectively. According to Bentham, goodness or badness

could be judged only in a specific context. His famous line that 'Pushpin is as good as poetry' is based on the rational choice of man. Thus human rights are not rooted in the pre-social natural law rather than in rational decision-making by individuals. He was even critical of Rousseau who believed in the dictum of men being free individuals in the state of nature. In fact, Bentham's felicific calculus provides the basis for the creation of human rights as inventions made out of necessity. To the Utilitarian, justice and rights are nothing but derivatives of interests and desires. Even though these rights may be considered to be superior needs for liberty, they are to be given the context to decide what is necessary to realize the property, open market, open competition; It laid emphasis for the creation of a good society and state based on personal liberty.

Liberal approach gave more importance to the individual liberty. It also laid stress on the Civil and Political Rights and these rights are implemented through the laws of the state and those who violate these laws shall be punished. Liberal approach believes in free trade commerce and competition. The liberal approach is against the important human right principles like economic equality and social justice.

The liberal approach was subject to severe criticism by the conservatives. They argued that the real right of men were social not natural. It also criticized by the universalism of natural rights theory, for its failure take into account national and cultural diversity. Utilitarian only recognized legal rights, thereby denounce natural rights theory. Marxist criticized

liberal approach because for considering man has a being separate from community and nature which man has an instinctive relationship and for its unconditional support for the right to private property.

MARXIAN OR SOCIALIST APPROACH

Karl Marx, who was considered to be the prophet of 20th century, was highly critical of the natural rights of individuals. He argued that these rights were idealistic and a historical. To him, in the society where the means of production and distribution are monopolized by the capitalist, ideas like individual rights are illusory. These rights are meant to cater to the interest of the ruling bourgeois class only. The proletariats would have nothing but their chains. Although Marxism is now considered to be dead by the liberals, it did hold sway in the 20th century on more than half of the globe. In fact, the Marxist paradigm is still considered to be one of the most formidable theoretical tools to analyze the human rights abuses in the developing societies of the third world.

The Marxist approach of the human rights can be seen in the writings of Karl Marx, the Engels and Lenin. The Marxian approach gives more importance to the social rights than the individual rights. It states that the personality development is possible only through the society where the social rights dominate over individual rights. Hence it is the duty of the state is to guarantee the civil and economic rights to its citizens. According to Marx personal rights and personal liberty makes a man more selfish and exclude him from the society. Therefore social rights should be given priority.

This view of human rights was accepted by the developing and underdeveloped nations of the world. According to Marx natural rights based human rights are not seen in history and therefore they are the creation of the human mind. The natural right theory is made for the protection of the interest of the bourgeoisie. Marx state that man is a social animal and therefore they should utilize their abilities qualities and work for the society. To achieve the social good the people should do their duties and responsibility to the society. At the same time it is the duty of the state to provide social welfare and development to the people. Marx maintained that inequality existing in the society due to the existence of the classes. In a capitalist society, there is no equal enjoyment of rights. The capitalist will enjoy all the rights and majority working class is deprived of the rights and they are exploited. Therefore only in a classless society the people can enjoy the rights in its full meaning. The rights can be exist and succeed in a society where there is social economic liberty and equality. The Marxian approach does not consider religion, culture, morality, and customs traditions etc. as integral components of human rights. They argue that full realization of individual's development is possible only within the context of society. The approach envisages freedom as freedom through the society not freedom from the society. The importance of the Marxist approach is that it emphasized that socio, economic rights in a society. The important criticism against this theory is that it gives emphasis on society rather than the individuals.

THIRD WORLD APPROACH

The third world countries are approaching towards development, democratization process and economic growth seems to run counter to each other in most of the countries. In the march towards development the biggest casualty is human rights. Despite the efforts by the international institutions and international community, there is a tardy growth in the advancement of human rights in these societies. Further, the emergence of international terrorism as a weapon to gain political power by the disgruntled elements in the developing societies of the east as well west has threatened the prospects of human rights in these societies. There is also the increase in the demand for self-determination by many communities in many countries. These communities most often use violence to achieve their goals. There is a thin line of wedge, however, dividing terrorists and freedom fighters. In the case of the former the fear and violence caused do damage to the intent and purpose of the objective and ideology they pursue. In the later case too the method of violence for the sake of self-determination also does bring much harm to their goals and objective. This, in any case, brings a lot of damage. The regime in power takes the advantage and engages in human rights violations for protecting its loyal citizens.

Besides the slow pace of growth of democracy and human rights in the third world societies, there is the problem of interpretation of the universal nature of the western perspective of human rights. It is often believed that the rich countries use the human rights violations as a shield to protect

their economic ends. Still more interesting is that the western world is unmindful of human rights abuses in those countries that cater to their economic and security interests. There seems to be a double standard in the use of human rights as a weapon for furthering liberal democracy. There are questions regarding the rigid applicability of the high standards of human rights in the backward societies that are undergoing the transition from tradition to modernity. The problem is further compounded in the context of globalization where nation states of the third world are on the path of liberalizing their economies.

The fundamental issue that bothers the third world societies is that given the structural difficulties, too rigid adherence to the western human rights programs would stifle the development process. Rigid adherence of human rights pursuit in the third world countries also opens the floodgate for numerous groups and communities to fight for separate political entities. In the name of self-determination there would be chaos of sorts in these societies. The writ of the centralized state apparatus will erode and progress may be thwarted. The ultimate objective of freedom from want and privation, which is the basic human rights concern, will be lost. This does not imply that the pursuit of human rights in the third world should be abandoned altogether. Issues such as environment and labor standard in the context of third world situations would deprive the majority of people of the basic needs of livelihood. Poverty and unemployment make it difficult to conform to these newly emerging issues of human

rights discourse. A middle path has to be found in order to ensure the basic needs of livelihood and minimum human rights for the citizens in the third world societies.

Another important dimension of human rights pursuit in the third world societies is the need of the growth of institutions and structures. There are some countries where the mechanisms for governance are still to be evolved. There are also some societies where the writ of the government over the entire political system is yet to be felt. There are many less-developed countries where paucity of resources makes it difficult even to run the government, let alone enforcing human rights. These difficulties, however, do not make it an excuse for human rights violation nor do they entitle them to shy away from basic human rights obligations. Nevertheless, these are some of the issues that stand in the way of realizing the objective human rights paradigm in the third world societies.

Human Rights violation is a common feature in most of the third world countries. The criminalization of politics and lack of accountability has become common in these countries. The brutalization of state power is reflected in the form of state repression. Judiciary, press, human rights activists and non-governmental organization etc. gives some relief to the people. There is an extremely close nexus between human rights and peace, freedom national self- determination economic cultural and technological development. Third world approach theory believes in the *Human Rights Trade Off theory* and gives primary to economic development over human rights. The

theory stands to postpone human rights for the sake of development. The slogan of the third world is that “development first and rights second”.

MODULE II

The United Nations (UN) and Human Rights

The United Nations (UN) plays a key role in the development and promotion of an international human rights protection system. Constituted under the United Nations Charter, which was adopted at the United Nations Conference on International Organisation in San Francisco in 1945, the UN set out to maintain international peace and security, to develop friendly relations among nations and to achieve international cooperation in solving international problems (UN Charter, Art. 1). Furthermore, the organisation aims for promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion. The respect and enhancement of human rights are an inherent part of the UN system.

Charter-based bodies

The General Assembly

The General Assembly (GA) is considered the legislative wing of the UN, which entitled to discuss any questions or any matters within the scope of the UN Charter, which therefore includes human rights issues (UN Charter, Art. 10). Furthermore, the GA “shall initiate studies and make recommendations for the purpose of assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion” (UN Charter, Art. 13). Thus, the GA has far-reaching competences and

possibilities concerning human rights. It has adopted numerous Resolutions and Declarations covering human rights questions and although its Declarations are not legally binding, they have often been a precursor for binding international treaties (e.g. CEDAW). Furthermore, the GA receives and discusses reports by the treaty-based bodies and through the Economic and Social Council . According to the UN-Charter, the GA is entitled to set up subsidiary organs to perform its functions (Art. 22), which are called Committees. Two of the six GA's main Committees are entrusted to deal with human rights issues: the Social, Humanitarian and Cultural Committee (Third Committee), and the Legal Committee (Sixth Committee). The two committees "often add comments and changes to proposed human rights documents before they are submitted to the plenary General Assembly for approval". Oberleitner (2008: 83) distinguishes four fields of the GA's human rights activities: 1) leadership and oversight of the UN human rights system, 2) budgetary responsibility for UN human rights institutions, 3) participation in standard setting, and 4) scrutinising individual countries. Despite this broad range of competences the evaluation of the human rights record is quite ambiguous, some even classify the GA's merits as "scarce as far as human rights are concerned".

Security Council

It is another important organ of the United Nations in connection with human rights. It consist of five permanent and ten non permanent members. The permanent members of UN Security Council are United States of America(USA),the

United Kingdom, Russia, France and China. The non permanent members elected by the General Assembly. The Security Council's (SC) principal responsibility is to promote the establishment and maintenance of international peace and security (UN Charter, Art. 24). Although the SC was initially reluctant to be involved in human rights matters its activities and decisions have increasingly been influenced by and relevant for human rights considerations. Especially the discussions in the context of the development of the Responsibility to Protect (R2P) are inherently interwoven with human rights considerations.

The Economic and Social Council

According to the UN Charter, the Economic and Social Council (ECOSOC) is one of the core UN bodies dealing with human rights. ECOSOC is entitled to “make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all” (Art. 62 (2)). The body may further prepare draft conventions for submission to the GA and it may initiate international conferences, relating to matters falling within its competence (Art. 62). In addition, ECOSOC is entitled to receive regular reports from the specialised agencies and it has the power to set up commissions in economic and social fields and for the promotion of human rights and other commissions required for the performance of its functions (UN Charter, Art. 64 and 68). ECOSOC may also “make suitable arrangements for consultation with non-governmental organisations which are concerned with matters within its competence” (UN Charter,

Art. 71). The body has fifty-four members; the GA elects each year eighteen members for a period of three years. Despite this central role ECOSOC was given by the UN Charter, “its substantive contributions to the human rights debate since the 1970s have been extremely limited and its coordination efforts have had little practical impact”. The body is even alleged to have counteracted human rights efforts at the UN level⁷ and since the establishment of the Human Rights Council (HRC) its role has further been confined.

The International Court of Justice (ICJ)

The International Court of Justice (ICJ) is defined as the principal judicial organ of the UN by Art. 92 of the UN Charter and is responsible for settling legal disputes submitted by UN Member States and to give an advisory opinion on any legal question if requested by the GA or the SC. “Other organs of the United Nations and specialised agencies, which may at any time be so authorised by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities”. Individuals are not entitled to file a complaint with the ICJ. Although the ICJ is not a human rights court, it has been noted on many occasions that the court has decided on human rights in its judicial as well as advisory role . “Recent judgments and advisory opinions of the Court have drawn extensively on the provisions of the principal UN human rights instruments and the relevant pronouncements of the UN human rights bodies. Judgments or advisory opinions may help clarify the interpretation of provisions of international human rights

instruments, or spell out the legal obligations of states under these instruments”.

In June 2006, the first session of the Human Rights Council (HRC) took place in Geneva, replacing the Commission on Human Rights (CHR) which had been in operation for almost 60 years and which was criticised for being too political and selective in its criticism as well as including Member States with a flawed human rights record. The HRC was established by Resolution A/RES/60/251 adopted by the General Assembly on 3 April 2006. The HRC took over the role and responsibilities of the CHR. Its responsibilities involve a wide range of tasks in the field of human rights, inter alia to promote human rights education and learning, to function as an arena for dialogue on human rights, to make recommendations to the GA to further develop international law in this field, to promote and monitor the full implementation of humanrights obligations undertaken by the Member States, to work towards the prevention of human rights violations, to closely work together with Governments, regional organisations, national human rights institutions and civil society in the field of human rights and to make recommendations with regard to the promotion and protection of human rights.

The Human Rights Council Advisory Committee (HRCAC) consists of 18 independent experts which are nominated by governments and elected by the HRC. The HRCAC supports the work of the HRC. Its main responsibility is “to provide expertise to the Council in the manner and form

requested by the Council, focusing mainly on studies and research-based advice” (HRC Resolution 5.1, Art. 75)

The post of the United Nations High Commissioner for Human Rights (UNHCHR) was created by GA Resolution A/RES/48/141 on 7 January 1994. The UNHCHR is appointed by the Secretary General (SG) of the UN and approved by the GA and has a fixed term of four years with the option to be reappointed for another term of four years. The UNHCHR is the UN official with principal responsibility for UN human rights activities under the direction and authority of the SG. In general, his/her primary task is the promotion and protection of the effective enjoyment of all civil, cultural, economic, political and social rights by all.

International Labour Organisation

The International Labour Organisation (ILO) is one of the UN specialised agencies in accordance with Art. 57 and 63 of the UN Charter and has 185 Member States. Its objectives are the promotion and realisation of standards and fundamental principles and rights at work, the enhancement of equal working and income opportunities for men and women, the advancement of social protection and the strengthening of tripartism and social dialogue. The ILO’s mandate is laid down in the ILO Constitution as well as in the so-called Declaration of Philadelphia. The organs of the ILO are the International Labour Conference, a Governing Body and the International Labour Office. The ILO has a tripartite structure which includes government, employer and worker representatives. The International Labour Conference has the power to adopt

international Conventions and Recommendations. As at 20 Jan 2014, the ILO had adopted 189 Conventions and 202 Recommendations.

Food and Agricultural Organisation

The Food and Agriculture Organisation, aiming at enhancing food security, eliminating hunger and malnutrition and improving nutrition and the standard of living of the rural populations. The International Fund for Agricultural Development, which funds agricultural development projects with the objective to reduce rural poverty in developing countries.

UNESCO

The United Nations Educational, Scientific and Cultural Organisation, with the objective of strengthening, the mutually supporting pillars of peace, sustainable development and human rights, contributing to poverty eradication and promoting the dialogue among civilizations and cultures. The World Health Organisation is responsible for global health issues.

Treaty-based bodies

Treaty-based bodies were created by specialised treaties in order to promote and monitor the implementation of the treaty in question. The following treaty-based bodies are currently in operation: Human Rights Committee (HRCComm), Committee on Economic, Social and Cultural Rights (CESCR), Committee on the Elimination of Racial Discrimination (CERD Committee), Committee on the

Elimination of Discrimination against Women (CEDAW Committee), Committee against Torture (CAT Committee), Subcommittee on Prevention of Torture (SPT), Committee on the Rights of the Child (CRC Committee), Committee on Migrant Workers (CMW Committee), Committee on the Rights of Persons with Disabilities (CRPD Committee). The International Criminal Court (ICC) was established by the Rome Statute, which was adopted in 1998 and entered into force on 1 July 2002. It currently counts 139 signatories and 122 ratifications. 24 The Court is based in The Hague and is an international organisation independent from the UN framework. According to the Rome Statute, the jurisdiction of the Court is limited to the most serious crimes of concern to the international community as a whole, including genocide, crimes against humanity, war crimes and the crime of aggression.

Universal Declaration of Human Rights (UDHR)

United Nations Organisation (UNO) was created on 24 October 1945 to curb violence, prevent the outbreak of a third world war and to restore peace and justice in the world. The Universal Declaration of Human Rights (UDHR) was adopted on 10 December 1948. The UDHR is a comprehensive document detailing and articulating human rights. Being a declaration, it is not legally binding; however, it implores states to aspire towards moral obligations. The Declaration details all rights that are basic minimum and necessary to enjoy a dignified human life.

Universal Declaration of Human Rights (UDHR) is an

important declaration adopted by the United Nations General Assembly on 10 Dec., 1948 at Paris. This announcement arose as a result of the bitter experience of the Second World War and represents the first global expression of rights to which all human beings are inherently entitled. It consists of 30 articles which have been elaborated in subsequent international treaties, regional human rights instruments, national constitutions and laws. The UDHR was adopted by the General Assembly of the United Nations by a vote of 48 in favour, zero against with eight absentees. The members who were absent from this historic declaration were all Soviet states, Yugoslavia, South Africa and Saudi Arabia.

Preamble

Like any important charter, constitution or the declaration, UDHR begins with a preamble. The following text clearly indicate the gist of things in the UDHR.

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.

- Article 1 Right to Equality
- Article 2 Freedom from Discrimination
- Article 3 Right to Life, Liberty, Personal Security
- Article 4 Freedom from Slavery
- Article 5 Freedom from Torture and Degrading Treatment
- Article 6 Right to Recognition as a Person before the Law
- Article 7 Right to Equality before the Law
- Article 8 Right to Remedy by Competent Tribunal
- Article 9 Freedom from Arbitrary Arrest and Exile
- Article 10 Right to Fair Public Hearing
- Article 11 Right to be Considered Innocent until Proven Guilty
- Article 12 Freedom from Interference with Privacy, Family, Home and Correspondence
- Article 13 Right to Free Movement in and out of the Country
- Article 14 Right to Asylum in other Countries from Persecution
- Article 15 Right to a Nationality and the Freedom to Change It
- Article 16 Right to Marriage and Family
- Article 17 Right to Own Property
- Article 18 Freedom of Belief and Religion

- Article 19 Freedom of Opinion and Information
- Article 20 Right of Peaceful Assembly and Association
- Article 21 Right to Participate in Government and in Free Elections
- Article 22 Right to Social Security
- Article 23 Right to Desirable Work and to Join Trade Unions
- Article 24 Right to Rest and Leisure
- Article 25 Right to Adequate Living Standard
- Article 26 Right to Education
- Article 27 Right to Participate in the Cultural Life of Community
- Article 28 Right to a Social Order that Articulates this Document
- Article 29 Community Duties Essential to Free and Full Development
- Article 30 Freedom from State or Personal Interference in the above Rights

INTERNATIONAL COVENANTS AS CIVIL AND POLITICAL RIGHT

This covenant came into existence in 1966 in response to the inadequacies of UDHR. The critics of UDHR says, it is a western document and nothing to do with socialistic principles and third world countries. Most of the critic argued that UDHR only satisfies the interest of western countries neglecting large number of countries living outside Europe. In 1966, two

important declarations drastically changed the concept of Human rights. These are International Covenant on Civil and Political Right (ICCPR) and International Covenant on Economic and Social Right (ICCEC).

The International Covenants as Civil and Political Right (ICCPR) recognizes the inherent dignity of each individual and undertakes to promote conditions within states to allow the enjoyment of civil and political rights. Countries that have ratified the Covenant are obligated “to protect and preserve basic human rights and to take administrative, judicial, and legislative measures in order to protect the rights enshrined in the treaty and to provide an effective remedy.” There are currently 74 signatories and 168 parties to the ICCPR.

The unifying themes and values of the ICCPR are found in Articles 2 and 3 and are based on the notion of non-discrimination. Article 2 ensures that rights recognized in the ICCPR will be respected and be available to everyone within the territory of those states who have ratified the Covenant (State Party). Article 3 ensures the equal right of both men and women to the enjoyment of all civil and political rights set out in the ICCPR.

The rights protected under the ICCPR include:

Article 6 – Right to life

Article 7 – Freedom-from-torture.

Article 8 – Right to not be enslaved.

Article 9 – Right to liberty and security of the person.

Article 10 – Rights of detainees.

Article 11 – Right to not be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12 – Freedom of movement and choice of residence for lawful residents.

Article 13 – Rights of aliens.

Article 14 – Equality before the courts and tribunals. Right to a fair trial.

Article 15 – No one can be guilty of an act of a criminal offence which did not constitute a criminal offence.

Article 16 – Right to recognition as a person before the law.

Article 17 – Freedom from arbitrary or unlawful interference.

Article 18 – Right to freedom of thought, conscience and religion.

Article 19 – Right to hold opinions without interference.

Article 20 – Propaganda for war shall be prohibited by law.

Article 21 – Right of peaceful assembly.

Article 22 – Right to freedom of association with others.

Article 23 – Right to marry.

Article 24 – Children's rights

Article 25 – Right to political participation.

Article 26 – Equality before the law.

Article 27 – Minority protection.

Limitations:

Article 4 of ICCPR allows for certain circumstances for States Parties to derogate from their responsibilities under the Covenant, such as during times of public emergencies. However, State Parties may not derogate from Articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18.

OPTIONAL PROTOCOLS:

There are two optional protocols to the ICCPR which gives additional human rights protections.

First Optional Protocol:

This protocol allows victims claiming to be victims of human rights violations to be heard. The Human Rights Committee (Committee), which is established by the Covenant, has the jurisdiction to receive, consider and hear communications from victims. The first Optional Protocol came into force with the Covenant. There are currently 35 signatories and 115 parties to this protocol.

Second Optional Protocol:

This protocol aims to abolish the death penalty. It was entered into force on July 11, 1991 and it currently has 37 signatories and 81 parties. Article 2(2) of ICCPR provides that State Parties are to take the “necessary steps.... to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.” Countries that have ratified the ICCPR must take steps in their own jurisdictions to recognize the acceptance of this international covenant because, in “international law, a signature does not

usually bind a State. The treaty is usually subject to a future ratification, acceptance, approval or accession.” In Canada, the accession process involves a series of reviews and consultation by the federal government and followed by a tabling of the treaty in Parliament.

In addition to State Parties’ formally adopting and recognizing the ICCPR in their jurisdiction, Article 28 of ICCPR provides for a Human Rights Committee (Committee) to be established for monitoring the State Parties’ implementation of the Covenant. State Parties are required to submit reports to the Committee for review, on measures used to adopt and give effect to the rights enshrined in the ICCPR.

As mentioned above, the First Optional Protocol allows victims of human rights violation to be heard by the Committee. However the ICCPR also provides in Article 41 that a State Party who claims another State Party is not fulfilling its obligations to implement ICCPR, may make written submissions to the Committee for consideration. Also, non-governmental organizations (NGOs) may also participate in ensuring that values under the ICCPR are protected by submitting ‘shadow reports’ and highlight areas for consideration by the Committee.

INTERNATIONAL COVENANTS ON SOCIAL, CULTURAL AND ECONOMIC RIGHTS

The World War II saw massive violations of human rights across the world. The period between the First and Second World Wars saw the rise of fascist forces that were

responsible for large-scale genocide. The Second World War itself saw unprecedented number of casualties and destruction. In the period following the Second World War, many nations who were colonies of different European countries got their independence. The prevailing world scenario and as a result of the experiences of war, the world felt that there was a need for an international body to monitor the states to ensure violence of this magnitude is not repeated.

International human rights law comprises the International Bill of Human Rights, which consists of the UDHR, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The separation in civil and political rights and economic, social cultural rights took place as a result of the Cold War politics and dynamics between the two blocs.

Adopted and opened for signature, ratification and accession by the General Assembly resolution 2200A (XXI) of 16 December 1966; entry into force 3 January 1976. Important provisions of this covenant is as follows;

Preamble

Part I (Articles 1-15): The right to self determination and the general obligations of State parties

Part II (Articles 16-23): Outlines state obligations and international implementation mechanisms

Part III (Articles 24-31): Contains the reporting process and outlines the interpretation of the treaty ICESCR establishes an

obligation for the State party to respect, protect and fulfil the rights and standards contained within.

Article 1 Right to self determination to pursue their economic, social and cultural development.

Article 2.1 Commitment of State parties to achieve progressively the full realisation of rights enshrined in the Covenant.

Article 2.2 Non-discrimination

Article 3 Right of men and women to the equal enjoyment ofESCR rights 12

Article 4 Limitations in enjoyment of rights only for promoting the general welfare of ademocratic society

Article 5 Non-derogation from the rights enshrined in the Covenant; no person, group or government has the right to destroy any of these rights

Article 6 Right to work

Article 7 Right to just and favourable conditions at work.

Article 8 Right to form and join trade unions without restriction

Article 9 Right to social security

Article 10 Rights of the family and its members, including special protection for mothers,children and young persons.

Article 11 Right to an adequate standard of living including basic income, food, housing, water,sanitation and clothing and the continuous improvement of living conditions

Article 12 Right to health.

Articles 13-14 Right to education

Article 15 Right to take part in cultural life and enjoy the benefits of scientific progress

Articles 16-31 Refer to state obligations and implementation of the rights enshrined in the Covenant Instruments at UN level

Till date a multitude of human right instruments exists at UN level. Steiner, Alston and

Goodman (2008: 137) identify “a four-tiered normative edifice”:

1) The UN-Charter, which is generally perceived as being the basis for the UN human rights system, however, as mentioned above does not contain a specific bill of rights.

2) The UDHR, which claims in the preamble to be a “common standard of achievement for all peoples and all nations” and stipulates in 30 articles a comprehensive catalogue of rights including civil and political rights as well as social, economic and cultural rights and envisaging limitations only “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” (UDHR, Art. 29). Although the UDHR is – in legal terms – a non-binding document, its significance for the development of the global human rights protection system is generally acknowledged; it is said to have “strong moral force” and to be an “unprecedented step for the

world” (Smith, 2012: 28 and 42) and “a remarkable achievement” (Nowak, 2012a: 67) or “to have gained formal legal force by becoming a part of customary international law”.

3) The International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR),² both adopted on 16 December 1966. The UDHR together with the ICESCR and the ICCPR are often referred to as the International Bill of Human Rights. The ICPR states 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” (ICCPR, preamble). The ICESCR has a similar formulation in its preamble. The latter codifies economic, social and cultural rights and obliges the State Parties “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” (ICESCR, Art. 2 (2)), thus specifying in detail Art. 21-27 of the UDHR. A similar stipulation is laid down in the ICCPR, which contains a detailed catalogue of civil and political rights, hence developing extensively Art. 3-21 of the UDHR. Both Covenants entered into force ten years later, in 1976.

4) A multitude of multilateral treaties that codify and focus on specific rights: the following treaties are considered to be

the most important.

The International Convention on the Elimination of All Forms of Racial Discrimination (CERD 1965/1969)⁴ , The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW 1979/1981) , The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT 1984/1987) , The Convention on the Rights of the Child (CRC 1989/1990) , The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW 1990/2003) ,The Convention on the Rights of Persons with Disabilities (CRPD 2006/2008) ,The International Convention for the Protection of All Persons from Enforced Disappearance (CED 2006/2010)

Apart from some formal structures, there are a few Non Governmental Organisations are working for the protection of human rights. The following are the few agencies working on human rights in the world.

Human Rights watch

Human Rights Watch is a non profit, non governmental human rights organization consists of roughly 400 staff members around the globe. Their staffs consists of human rights professionals including country experts, lawyers, journalists, and academics of diverse backgrounds and nationalities. Established in 1978, Human Rights Watch is known for its accurate fact-finding, impartial reporting, effective use of media, and targeted advocacy, often in

partnership with local human rights groups. Each year, Human Rights Watch publishes more than 100 reports and briefings on human rights conditions in some 90 countries, generating extensive coverage in local and international media. With the leverage this brings, Human Rights Watch meets with governments, the United Nations, regional groups like the African Union and the European Union, financial institutions, and corporations to press for changes in policy and practice that promote human rights and justice around the world.

Human Rights Watch defends the rights of people worldwide. They scrupulously investigate abuses, expose the facts widely, and pressure those with power to respect rights and secure justice. Human Rights Watch is an independent, international organization that works as part of a vibrant movement to uphold human dignity and advance the cause of human rights for all. Their work is guided by international human rights and humanitarian law and respect for the dignity of each human being. To ensure their independence, they do not accept government funds, directly or indirectly, or support from any private funder that could compromise our objectivity and independence. They do not embrace political causes, are non-partisan, and maintain neutrality in armed conflict.

They are committed to maintaining high standards of accuracy and fairness, including by seeking out multiple perspectives to develop an in-depth, analytic understanding of events. We recognize a particular responsibility for the victims and witnesses who have shared their experiences with us.

Americas Watch was founded in 1981 while bloody

civil wars engulfed Central America. Relying on extensive on-the-ground fact-finding, Americas Watch not only addressed perceived abuses by government forces but also applied international humanitarian law to investigate and expose war crimes by rebel groups. In addition to raising its concerns in the affected countries, Americas Watch also examined the role played by foreign governments, particularly the United States government, in providing military and political support to abusive regimes. Asia Watch (1985), Africa Watch (1988), and Middle East Watch (1989) were added to what was known as "The Watch Committees". In 1988, all of these committees were united under one umbrella to form Human Rights Watch.

Amnesty International (AI)

British attorney Peter Benenson was inspired to launch an international campaign for the release of political prisoners worldwide after reading a news item about two Portuguese students arrested for "toasting freedom." Benenson and his colleagues hoped to wake up the world to violations of the fundamental right to free speech and opinion, and their main and innovative tactic was to focus on the persecution of "prisoners of conscience." Amnesty International's prisoner-focused work eventually led to broad policy concerns about the death penalty, prison conditions, torture, and fair trials.

Amnesty International is an organization of more than 7 million supporters, activists and volunteers in over 150 countries, with complete independence from government, corporate or national interests. Amnesty International works to protect human rights worldwide. Its vision is one of a world in

which every person - regardless of race, religion, gender, or ethnicity - enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. Since its foundation in 1966, the United States section, made up of over 350,000 members, of the nonpartisan organization has worked to free prisoners of conscience, oppose torture, and fight other human rights violations around the world. It seeks to promote human rights in the United States through lobbying and education, and describes itself as working for full human rights for everyone.

Amnesty International USA's Security with Human Rights campaigns strongly against torture, unlawful detention and prisoner abuse, particularly by United States military forces in Iraq and Afghanistan. The organization has opposed restrictions of human rights as part of the 'War on Terror', and does not believe that any torture or inhuman treatment is justified by the campaign against terrorism. The Security with Human Rights campaign also strongly advocates for the rights of victims of armed groups as well as accountability for those individuals and states that use torture, in order to end cycles of violence and increase overall global security against terrorism and human rights violations.

Various intervention of Amnesty International

In 1963, Ukrainian Archbishop Josyf Slipyi in Siberia became the first prisoner freed as the result of an Amnesty International campaign. Since then, tens of thousands of prisoners have been released thanks to the letters and actions of our members. In 1972 Amnesty International expanded its

activities to include a campaign against torture in 1972, and worked for the passage of the UN Convention against Torture in 1984. Our work on this issue remains a key component of our platform, most recently in advocating for the release of the U.S. Senate report on torture of detainees in CIA custody.

In 1977, Amnesty International was awarded the Nobel Peace Prize. In its presentation speech, the Nobel committee said “the defence of human dignity against torture, violence, and degradation constitutes a very real contribution to the peace of this world.” In 1980 ending the death penalty became another key campaign for Amnesty International in 1980, when only nine countries had abolished capital punishment. Today, there are 140. In the United States, public support for the death penalty has declined in recent years, and Amnesty International continues to work at the state and federal level to push to end it once and for all.

In the late 1970s and 1980s, Amnesty International helped spark a new generation of human rights activist through major events in popular culture and music. Amnesty International expanded its mission in the 1990s and early 2000s to include supporting reproductive freedom, holding corporations responsible for human rights violations, and preserving human rights in national security policies in the wake of the September 11 attacks. The campaigns to close the prison at Guantanamo Bay and end mass surveillance of the population continue to be major initiatives. In recent years Amnesty International has focused on protecting human rights in the global refugee crisis. In the United States, we’ve been on

the ground in Ferguson, Baltimore, and other communities affected by police-related violence, and we published a groundbreaking report calling for reform of laws governing the use of lethal force by police. That report has helped spark local, state, and federal reforms in the United States.

Human Rights Watch (HRW)

Human Rights Watch is an international non-governmental organisation that conducts research and advocacy on human rights. Its headquarters is in New York City with offices in Amsterdam, Beirut, Berlin, Brussels, Chicago, Geneva, Johannesburg, London, Los Angeles, Moscow, Nairobi, Seoul, Paris, San Francisco, Sydney, Tokyo, Toronto, Washington, D.C., and Zürich. The group pressures governments, policy makers and human rights abusers to denounce abuse and respect human rights, and the group often works on behalf of refugees, children, migrants and political prisoners. Human Rights Watch in 1997 shared in the Nobel Peace Prize as a founding member of the International Campaign to Ban Landmines, and it played a leading role in the 2008 treaty banning cluster munitions.

Peoples Union for Civil Liberties

People's Union for Civil Liberties (PUCL) is a human rights body formed in India in 1976 by socialist leader Jayaprakash Narayan, as the People's Union for Civil Liberties and Democratic Rights (PUCLDR). Jaya Prakash Narayan, a Gandhian leader in India after independence. When Indira Gandhi was found guilty of violating electoral laws

by the Allahabad High Court, Narayan called for Indira to resign, and advocated a program of social transformation. He asked the military and police to disregard unconstitutional and immoral orders. However, Janata Party opposition leaders and dissenting members of her party, Congress (I) were arrested. Narayan was detained at Chandigarh, and when he was released in 1976, he formed the PUCL to oppose the suppression of civil and political rights during the emergency. The organization was thrown into disarray by his death and the election of the Janata party to power, which promised to enact the PUCL platform. Narayan originally intended PUCL to be an organisation free from political ideologies, bringing those concerned about defending civil liberties and human rights from different backgrounds onto a common platform. According to the PUCL, the PUCLDR was a loosely organised group of people who were working with Narayan, a prominent figure in the Indian Opposition in the 1970s. After the return of Indira Gandhi to power in the 1980 elections in India, the organisation regained momentum and was renamed as the People's Union for Civil Liberties (PUCL). Its founding conference was held in November 1980. The founding conference of the PUCL in November 1980, drafted and adopted the organization's constitution, making it a membership based organization. The PUCL's constitution does not allow members of a political party to hold any office and hold membership in the PUCL; the number of members, belonging to political parties, in the national or state executive committees shall not be more than 50% of the members of the National Council and the National Executive Committee

respectively (and also the corresponding bodies at the state and local level). The PUCL does not allow more than 10% of its members to be from the same political party.

V. M. Tarkunde served as president and editor-politician. Arun Shourie served as general secretary. Y. P. Chhibbar was appointed as executive secretary. Those elected as president and general secretary have included V. M. Tarkunde, Rajni Kothari, Rajinder Sachar, K. G. Kannabiran, Arun Shourie, Y. P. Chhibbar, Arun Jaitley, Satish Jha, Dalip Swami, and others. It publishes a monthly journal in English, the *PUCL Bulletin*, that was founded by Satish Jha, Arun Jaitley, Smitu Kothari and Neeraja Chowdhary and helped bring a large number of people to the fold of PUCL. PUCL also organises a *JP Memorial Lecture* on March 23 every year, the date on which the Indian State of Emergency was lifted in 1977. It presents its Journalism for Human Rights' Award which carries a citation and an award of Rs 20,000. PUCL, as its policy, does not accept money from any funding agency, Indian or foreign. All the expenses are met by the members, the office bearers, and the activists. The PUCL supports grassroots movements that focus on organizing and empowering the poor rather than using state initiatives for change. They have brought to light the cases of the bonded labourers, children in prison and violence committed against women under trials. The PUCL has worked on the issue of the hundreds of people detained by India and Pakistan's government and accused of espionage after trivial crimes like minor trespassing, a problem linked to the tension caused by the Kashmir conflict

MODULE III

HUMAN RIGHTS IN INDIA-CONSTITUTIONAL MANDATE, POLITICAL AND SOCIO-ECONOMIC RIGHTS, FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES

The Concept of human rights as it is understood today has evolved over the centuries. The concept of human rights has assumed importance globally during past few decades. The concept of human rights, it has been argued, falls within the framework of Constitutional law and International law. For this purpose, it has been identified to defend it collectively against the abuses of power committed by the organs of the State and at the same time to promote the establishment of fair living conditions for human being and multi- dimensional development of human personality.

Various philosophers of social contract theory are of the view that the primary object for the creation of the state is to maintain and protects the rights of individuals. According to Aristotle, state came into existence for life and continues its existence for good life. Prof.Laski had view that state is known by the right it maintains. Each individual is entitled to have some rights which are inherent to human existence. Such rights should not be violated on the grounds gender, race, caste, ethnicity, religion etc. and these are called human rights. Human rights are also basic rights, fundamental rights, natural rights, or inherent rights.

Human Rights: Indian Scenario

The section 2(d) of the Protection of Human Rights Act, 1993, defines “Human Rights” as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by the Courts in India. One of the unique features of Indian Constitution is that a large part of human rights are included in Fundamental Right part of the constitution, and right to enforce fundamental rights itself has been made a Fundamental Right. The Fundamental Rights incorporated in the Constitution of the country is considered as the “Magna Carta” of individual’s liberty and Human rights.

Even before Indian Independence; the framers of Indian Constitution, took utmost care and attention to include the basic human rights of all human beings and embodied them in the Preamble and Part III of the Constitution. Besides fundamental rights and directive principles of state policy the Preamble of Indian Constitution itself containing certain ideologies ensuring human rights. These are, *justice*-social, economic and political; *liberty* of thought, expression and belief; *equality* of status and opportunity and fraternity ensuring dignity of individuals; freedom of speech, expression etc. have also been incorporated as fundamental rights of the citizens of India. These principles are considered as founding pillars of Indian democracy which the people of India are solemnly resolved to follow. The basic purpose of the Preamble is to ensure protection of rights and freedoms of all citizens without any discrimination whatsoever.

The Supreme Court of India, in its historic judgment in *Maneka Gandhi vs. Union of India*, observed that fundamental rights represent the basic values cherished by people of India and ensure to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. Among all species of human rights, right to life receives precedence and is a *sine qua non* for the enjoyment of other rights. Therefore, right to life has been given paramount importance by our Constitution and the Courts. For in the event of any invasion to right to life, other rights – which are subsidiary to this right become meaningless, since the entire edifice of human rights jurisprudence revolves around the bedrock of right to life. Right to life and personal liberty is the most precious, sacred, inalienable and fundamental of all the fundamental rights of citizens. Right to life includes protection against torture or cruel, inhuman and degrading treatment in any form

Constituent Assembly and Human Rights

The Indian Constitution was drafted by the Constituent Assembly of India. It was a great task performed by the leaders of India for framing a constitution after suffering from severe exploitation and denial of justice from colonial powers, to vast number of Indian people, the Constitution of India gave primary importance to human rights. Ramachandra Guha said that, "The demand for a declaration of fundamental rights arose from four factors."

1. Lack of civil liberty in India during the British rule

2. Deplorable social conditions, particularly affecting the untouchables and women
3. Existence of different religious, linguistic, and ethnic groups encouraged and exploited by the Britishers
4. Exploitation of the tenants by the landlords

The Constituent Assembly incorporated in the Constitution of India the essence of the rights proclaimed and adopted by the General Assembly in the Universal Declaration of Human Rights. Further on 10th December 1948, when the Constitution of India was in the making, the General Assembly proclaimed and adopted the Universal Declaration of Human Rights, which surely influenced the framing of India's Constitution. Viewed from the Indian standpoint, human rights have been synthesized, as it were, not as an integrated fabric by the Preamble promises and various Constitutional clause of the National Charter of 1950

Human rights and Indian Constitution

The Constitution of India which came into force on 26th January 1950 with 395 Articles and 8 Schedules is one of the lengthiest constitutions the world has ever created. This constitution begins with a Preamble which declares India to be a Sovereign, Democratic Republic. Later in 1976, through the 42nd amendment of the constitution, the of concept Socialist, Secular were added. The term 'democratic' denotes that the Government gets its authority from the will of the people. It gives a feeling that they all are equal "irrespective of the race, religion, language, sex and culture." The Preamble to the

Constitution pledges justice, social, economic and political, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and fraternity assuring the dignity of the individual and the unity and integrity of the nation to all its citizens.

Development of human rights in India

History of human civilisation reveals that human rights existed throughout the ages, in one name or the other. The idea of human rights was not new to the political thinkers and philosophers in India and as pointed out in the Chapter III under 'Evolution of Rights in India', the visions to secure human rights and fundamental freedoms for all and everywhere existed even in *Vedic* times.

The modern form of human rights jurisprudence originated in India at the time of British rule. But the Indians were discriminated in the enjoyment of civil and political liberties. This was criticised by the enlightened freedom fighters such as Gandhi and others of that time. Collective movements too were organised to demand for the basic rights. This was reflected for the first time in the Charter of 1813. Similarly, the Charter Act of 1833 conferred upon Indians to enjoy few political rights by allowing them to participate in governance subject to certain limitations. Further, the declaration to recognise respect for religion by being a secular State.

Queen Victoria in 1833 ensured that there will be no interference with religious belief and worship of any of the

subjects by further declaring that no one would be favoured, and molested by reasons of one's religious faith and observances. Additionally, it also provided that "all shall enjoy the equal and impartial admittance to public offices and assignment to duties of which any subject by his education, ability and integrity was qualified to discharge". Subsequently, the Swaraj Bill of India, 1895 spoke about freedom of speech, right to privacy and equality, right to Franchise and punishment for specific offence only.

Government of India Act 1909

Next important development is traceable to the Government of India Act 1909, which in pursuance of the demands for Fundamental Rights initiated through the Home Rule Bill, prepared by the National Congress provided for equality of opportunity in public services. It was also provided that such opportunity in public services must exclude the considerations of religion. Other resolutions of the National Congress made between 1917 and 1919 reiterated the demand for conferment of civil rights and equality of status with English persons. At the time of Montague-Chelmsford report, which led to the enactment of the Government of India Act of 1919, the Indian National Congress became very intense as they pressed for reforms.

Inspired by the Irish Constitution, in 1925, the Indian National Congress prepared a 'Commonwealth of India Bill,' that provided for the much-needed declaration of bill of rights. This in itself was not sufficient, so the Indian National Congress in 1927 demanded incorporation of a Declaration of

Fundamental Rights in any future constitutional Acts. Accordingly, the first formal document came into existence in 1928 with the report made by Jawaharlal Nehru. The report mentioned list of aspired rights such as free elementary education, living wage, protection of motherhood, welfare of children. This way, the report is seen as a forerunner to Fundamental Rights and Directive Principles of State Policy which were later incorporated into the Constitution of India.

Government of India Act 1935 and human rights in India

The Simon Commission rejected Nehru Report and which consequently led to the next important Session at Karachi held by the National Congress to adopt a detailed programme of 'Fundamental Rights and Duties and Economic and Social Change.' At the same time, the Government of India Act, 1935 was being prepared to be a substitute for the Government of India Act, 1919. However, the Government of India Act, 1935, which the British thought, was a great step in the direction of India's advancement towards constitutionalism made no provision for civil liberties and Fundamental Right. Thus, it was recommended to the British government that Fundamental Rights be included in it. Again, citing a reason different to the earlier one, that is, that the Statutory Commission of the British had found that princely States in India as against the formulation of such rights, the British Government straight away rejected the demand for rights. In 1939, when the Second World War broke out, in which Europe and Great Britain were involved, the constitutional machinery in India was suspended and the nationalist aspirations of the

Indian people were suppressed. When the war ended in 1945, the issue of India's Independence was reconsidered, and after negotiations and discussions, a Constituent Assembly was set up in 1946 for the purpose of framing the Constitution to an independent India. Meanwhile, the *Sapru Committee* founded in 1945 recognised the importance of incorporating Fundamental Rights into the Constitution of India. For the first time, the said Committee Report distinguished between Fundamental Rights

The *Fundamental Rights* are defined as the basic human rights of all citizens. These rights, defined in Part III of the Constitution, applied irrespective of race, place of birth, religion, caste, creed, or gender. They are enforceable by the courts, subject to specific restrictions. The *Directive Principles of State Policy* are guidelines for the framing of laws by the government. These provisions, set out in Part IV of the Constitution, are not enforceable by the courts, but the principles on which they are based are fundamental guidelines for governance that the State is expected to apply in framing policies and passing laws.

The Fundamental Rights, embodied in Part III of the Constitution, guarantee certain rights to the people and these rights have been considered fundamental for the governance of the country. These rights prevent the State from the encroachment of individual liberty. A group of seven fundamental rights were originally provided by the Constitution. These rights were; right to equality, right to freedom, right against exploitation, right to freedom of

religion, cultural and educational rights, right to property and right to constitutional remedies. However, the right to property was removed from Part III of the Constitution by the 44th Amendment in 1978. The purpose of the Fundamental Rights is to preserve individual liberty and democratic principles based on equality of all members of society. Dr Ambedkar said that the responsibility of the legislature is not just to provide fundamental rights but also and rather more importantly, to safeguard them.

Fundamental Rights

Meaning of the Fundamental Rights : In every Democratic State, all the citizens have got some rights for the development of life. These rights are given to them by the constitution of that State. They have the force of law behind them. No government can take them away. And if, any government dare to do so, citizens can go to the court to get justice. Only such kind of justifiable rights are called 'Fundamental Rights'. A man's fullest development is not possible without these rights.

Importance of the Fundamental Rights:

The fundamental rights are of great importance as stated below :

1. These rights are necessary for the development of man's life. They assure him of his physical, mental and moral development.
2. Without these rights, we cannot make our life happy and prosperous.

3. The importance of these rights lies in the fact that they have been guaranteed by the Constitution of India. If any government tries to snatch them away, we can go to the court to get justice.

Classification of Fundamental Rights

Fundamental rights have been classified into six broad category of life. These are

1. Right to Equality

The Right to Equality is one of the chief guarantees of the Constitution. It is embodied in Articles 14–16, which collectively encompass the general principles of equality before law and non-discrimination, and Articles 17–18 which collectively encompass further the philosophy of social equality. Article 14 guarantees equality before law as well as equal protection of the law to all persons within the territory of India. This includes the equal subjection of all persons to the authority of law, as well as equal treatment of persons in similar circumstances. The latter permits the State to classify persons for legitimate purposes, provided there is a reasonable basis for the same, meaning that the classification is required to be non-arbitrary, based on a method of intelligible differentiation among those sought to be classified, as well as have a rational relation to the object sought to be achieved by the classification.

Article 15 prohibits discrimination on the grounds only of religion, race, caste, sex, place of birth, or any of them. This right can be enforced against the State as well as private

individuals, with regard to free access to places of public entertainment or places of public resort maintained partly or wholly out of State funds. However, the State is not precluded from making special provisions for women and children or any socially and educationally backward classes of citizens, including the Scheduled Castes and Scheduled Tribes. This exception has been provided since the classes of people mentioned therein are considered deprived and in need of special protection. Article 16 guarantees equality of opportunity in matters of public employment and prevents the State from discriminating against anyone in matters of employment on the grounds only of religion, race, caste, sex, descent, place of birth, place of residence or any of them. It creates exceptions for the implementation of measures of affirmative action for the benefit of any backward class of citizens in order to ensure adequate representation in public service, as well as reservation of an office of any religious institution for a person professing that particular religion.

The practice of untouchability has been declared an offence punishable by law under Article 17, and the Protection of Civil Rights Act, 1955 has been enacted by the Parliament to further this objective. Article 18 prohibits the State from conferring any titles other than military or academic distinctions, and the citizens of India cannot accept titles from a foreign state. Thus, Indian aristocratic titles and title of nobility conferred by the British have been abolished. However, awards such as the *Bharat Ratna* have been held to be valid by the Supreme Court on the ground that they are

merely decorations and cannot be used by the recipient as a title.

2. *Right to Freedom*

The Right to Freedom is covered in Articles 19-22, with the view of guaranteeing individual rights that were considered vital by the framers of the Constitution, and these Articles also include certain restrictions that may be imposed by the State on individual liberty under specified conditions. Article 19 guarantees six freedoms in the nature of civil rights, which are available only to citizens of India. These include *the freedom of speech and expression, freedom of assembly without arms, freedom of association, freedom of movement throughout the territory of our country, freedom to reside and settle in any part of the country of India and the freedom to practice any profession*. All these freedoms are subject to reasonable restrictions that may be imposed on them by the State, listed under Article 19 itself. The grounds for imposing these restrictions vary according to the freedom sought to be restricted, and include national security, public order, decency and morality, contempt of court, incitement to offences, and defamation. The State is also empowered, in the interests of the general public to nationalise any trade, industry or service to the exclusion of the citizens.

The freedoms guaranteed by Article 19 are further sought to be protected by Articles 20–22. The scope of these articles, particularly with respect to the doctrine of due process, was heavily debated by the Constituent Assembly. The Constituent Assembly in 1948 eventually omitted the

phrase "due process" in favour of "procedure established by law". As a result, Article 21, which prevents the encroachment of life or personal liberty by the State except in accordance with the procedure established by law, was, until 1978, construed narrowly as being restricted to executive action. However, in 1978, the Supreme Court in the case of *Maneka Gandhi v. Union of India* extended the protection of Article 21 to legislative action, holding that any law laying down a procedure must be just, fair and reasonable, and effectively reading due process into Article 21. In the same case, the Supreme Court also ruled that "life" under Article 21 meant more than a mere "animal existence"; it would include the right to live with human dignity and all other aspects which made life "meaningful, complete and worth living". Subsequent judicial interpretation has broadened the scope of Article 21 to include within it a number of rights including those to livelihood, good health, clean environment, water, speedy trial and humanitarian treatment while imprisoned. The right to education at elementary level has been made one of the Fundamental Rights under Article 21A by the 86th Constitutional amendment of 2002.

Article 20 provides protection from conviction for offences in certain respects, including the rights against ex post facto laws, double jeopardy and freedom from self-incrimination. Article 22 provides specific rights to arrested and detained persons, in particular the rights to be informed of the grounds of arrest, consult a lawyer of one's own choice, be produced before a magistrate within 24 hours of the arrest, and

the freedom not to be detained beyond that period without an order of the magistrate. The Constitution also authorizes the State to make laws providing for preventive detention, subject to certain other safeguards present in Article 22. The provisions pertaining to preventive detention were discussed with skepticism and misgivings by the Constituent Assembly, and were reluctantly approved after a few amendments in 1949. Article 22 provides that when a person is detained under any law of preventive detention, the State can detain such person without trial for only three months, and any detention for a longer period must be authorised by an Advisory Board. The person being detained also has the right to be informed about the grounds of detention, and be permitted to make a representation against it, at the earliest opportunity.

3. Right against Exploitation

The Right against Exploitation, contained in Articles 23–24, lays down certain provisions to prevent exploitation of the weaker sections of the society by individuals or the State. Article 23 prohibits human trafficking, making it an offence punishable by law, and also prohibits forced labour or any act of compelling a person to work without wages where he was legally entitled not to work or to receive remuneration for it.

However, it permits the State to impose compulsory service for public purposes, including conscription and community service. The Bonded Labour system (Abolition) Act, 1976, has been enacted by Parliament to give effect to this Article. Article 24 prohibits the employment of children below the age of 14 years in factories, mines and other hazardous

jobs. Parliament has enacted the Child Labour (Prohibition and Regulation) Act, 1986, providing regulations for the abolition of, and penalties for employing, child labour, as well as provisions for rehabilitation of former child labourers.

4. Right to Freedom of Religion

The Right to Freedom of Religion, covered in Articles 25–28, provides religious freedom to all citizens and ensures a secular state in India. According to the Constitution, there is no official State religion, and the State is required to treat all religions impartially and neutrally. Article 25 guarantees all persons the freedom of conscience and the right to preach, practice and propagate any religion of their choice. This right is, however, subject to public order, morality and health, and the power of the State to take measures for social welfare and reform. The right to propagate, however, does not include the right to convert another individual, since it would amount to an infringement of the other's right to freedom of conscience. Article 26 guarantees all religious denominations and sects, subject to public order, morality and health, to manage their own affairs in matters of religion, set up institutions of their own for charitable or religious purposes, and own, acquire and manage property in accordance with law. These provisions do not derogate from the State's power to acquire property belonging to a religious denomination. The State is also empowered to regulate any economic, political or other secular activity associated with religious practice. Article 27 guarantees that no person can be compelled to pay taxes for the promotion of any particular religion or religious

institution. Article 28 prohibits religious instruction in a wholly State-funded educational institution, and educational institutions receiving aid from the State cannot compel any of their members to receive religious instruction or attend religious worship without their (or their guardian's) consent.

5. Cultural and Educational Rights

The Cultural and Educational rights, mentioned in Articles 29 and 30, are bound to protect the rights of cultural, linguistic and religious minorities, by enabling them to conserve their heritage and protecting them against discrimination. Article 29 grants any section of citizens having a distinct language, script culture of its own, the right to conserve and develop the same, and thus safeguards the rights of minorities by preventing the State from imposing any external culture on them. It also prohibits discrimination against any citizen for admission into any educational institutions maintained or aided by the State, on the grounds only of religion, race, caste, language or any of them. However, this is subject to reservation of a reasonable number of seats by the State for socially and educationally backward classes, as well as reservation of up to 50 percent of seats in any educational institution run by a minority community for citizens belonging to that community.

Article 30 confers upon all religious and linguistic minorities the right to set up and administer educational institutions of their choice in order to preserve and develop their own culture, and prohibits the State, while granting aid, from discriminating against any institution on the basis of the

fact that it is administered by a religious or cultural minority. The term "minority", while not defined in the Constitution, has been interpreted by the Supreme Court to mean any community which numerically forms less than 50% of the population of the state in which it seeks to avail the right under Article 30. In order to claim the right, it is essential that the educational institution must have been established as well as administered by a religious or linguistic minority. Further, the right under Article 30 can be availed of even if the educational institution established does not confine itself to the teaching of the religion or language of the minority concerned, or a majority of students in that institution do not belong to such minority. This right is subject to the power of the State to impose reasonable regulations regarding educational standards, conditions of service of employees, fee structure, and the utilisation of any aid granted by it.

6. *Right to Constitutional Remedies*

The Right to Constitutional Remedies empowers citizens to approach the Supreme Court of India to seek enforcement, or protection against infringement, of their Fundamental Rights. Article 32 provides a guaranteed remedy, in the form of a Fundamental Right itself, for enforcement of all the other Fundamental Rights, and the Supreme Court is designated as the protector of these rights by the Constitution. The Supreme Court has been empowered to issue writs, namely *habeas corpus*, *mandamus*, *prohibition*, *certiorari* and *quo warranto*, for the enforcement of the Fundamental Rights, while the High Courts have been empowered under Article 226

– which is not a Fundamental Right in itself – to issue these prerogative writs even in cases not involving the violation of Fundamental Rights. The Supreme Court has the jurisdiction to enforce the Fundamental Rights even against private bodies, and in case of any violation, award compensation as well to the affected individual. Exercise of jurisdiction by the Supreme Court can also be *suo motu* or on the basis of a public interest litigation. This right cannot be suspended, except under the provisions of Article 359 when a state of emergency is declared.

While protecting the fundamental rights these courts can issue the following writs:

- (a) The Writ of Habeas Corpus.
- (b) The Writ of Mandamus.
- (c) The Writ of Quo Warranto.
- (d) The Writ of Prohibition.
- (e) The Writ of Ceritorari.

Right to Property was removed from the list of Fundamental Rights through 44th Amendment of Indian Constitution in 1978. Now it is not counted as a Fundamental Right.

The presence of above mentioned Fundamental Rights limits the powers of the legislature and executive according to Article 13, and in case of violation of these rights the Supreme Court of India and the High Courts of the states have the power to declare such legislative or executive action as unconstitutional and void. These rights are largely enforceable against the State, which as per the wide definition provided in

Article 12, includes not only the legislative and executive wings of the federal and state governments, but also local administrative authorities and other agencies and institutions which discharge public functions or are of a governmental character. However, there are certain rights – such as those in Articles 15, 17, 18, 23, 24 – that are also available against private individuals. Further, certain Fundamental Rights – including those under Articles 14, 20, 21, 25 – apply to persons of any nationality upon Indian soil, while others – such as those under Articles 15, 16, 19, 30 – are applicable only to citizens of India.

The Fundamental Rights are not absolute and are subject to reasonable restrictions as necessary for the protection of public interest. In the *Kesavananda Bharati v. State of Kerala* case in 1973, the Supreme Court, overruling a previous decision of 1967, held that the Fundamental Rights could be amended, subject to judicial review in case such an amendment violated the basic structure of the Constitution. The Fundamental Rights can be enhanced, removed or otherwise altered through a constitutional amendment, passed by a two-thirds majority of each House of Parliament. The imposition of a state of emergency may lead to a temporary suspension any of the Fundamental Rights, excluding Articles 20 and 21, by order of the President. The President may, by order, suspend the right to constitutional remedies as well, thereby barring citizens from approaching the Supreme Court for the enforcement of any of the Fundamental Rights, except Articles 20 and 21, during the period of the emergency.

Parliament may also restrict the application of the Fundamental Rights to members of the Indian Armed Forces and the police, in order to ensure proper discharge of their duties and the maintenance of discipline, by a law made under Article 33.

Directive Principles of State Policy

Being influenced by the principles contained in the Irish Constitution, the framers of the Indian Constitution incorporated Directive Principles of State Policy in the constitution of India. These principles aimed to create social and economic democracy in India. It is also necessary to mention these provisions in the Indian constitution because India has ratified the two conventions on Human Rights. International Convention on Civil and Political Rights (1966) International Convention on Economic, Social and Cultural rights (1966)

The Directive Principles of State Policy, embodied in Part IV of the Constitution, are directions given to the state to guide the establishment of an economic and social democracy, as proposed by the Preamble. They set forth the humanitarian and socialist instructions that were the aim of social revolution envisaged in India by the Constituent Assembly. The state is expected to keep these principles in mind while framing laws and policies, even though they are non-justiciable in nature. The Directive Principles may be classified under the following categories: ideals that the state ought to strive towards achieving; directions for the exercise of legislative and executive power; and rights of the citizens which the State must aim towards securing.

Though being non-justifiable, the Directive Principles act as a check on the state. It serves as an instrument in the hands of the electorate and the opposition to measure the performance of a government at the time of an election. Article 37 states that though the Directive Principles are not enforceable in any court of law, declares them to be "fundamental to the governance of the country" and imposes an obligation on the State to apply them in matters of legislation. Thus, they serve to emphasise the welfare state model of the Constitution and emphasise the positive duty of the state to promote the welfare of the people by affirming social, economic and political justice, as well as to fight income inequality and ensure individual dignity, as mentioned in Article 38.

Article 39 lays down certain principles of policy to be followed by the State, including providing an adequate means of livelihood for all citizens, equal pay for equal work for men and women, proper working conditions, reduction of the concentration of wealth and means of production from the hands of a few, and distribution of community resources to "subserve the common good". These clauses highlight the Constitutional objectives of building an egalitarian social order and establishing a welfare state, by bringing about a social revolution assisted by the State, and have been used to support the nationalisation of mineral resources as well as public utilities. Further, several legislation pertaining to agrarian reform and land tenure have been enacted by the federal and state governments, in order to ensure equitable

distribution of land resources.

Articles 41–43 mandate the State to endeavour to secure to all citizens the right to work, a living wage, social security, maternity relief, and a decent standard of living. These provisions aim at establishing a socialist state as envisaged in the Preamble. Article 43 also places upon the State the responsibility of promoting cottage industries, and the federal government has, in furtherance of this, established several Boards for the promotion of khadi, handlooms etc., in coordination with the state governments. Article 39A requires the State to provide free legal aid to ensure that opportunities for securing justice are available to all citizens irrespective of economic or other disabilities. Article 43A mandates the State to work towards securing the participation of workers in the management of industries. The State, under Article 46, is also mandated to promote the interests of and work for the economic uplift of the scheduled castes and scheduled tribes and protect them from discrimination and exploitation. Several enactments, including two Constitutional amendments, have been passed to give effect to this provision.

Article 44 encourages the State to secure a uniform civil code for all citizens, by eliminating discrepancies between various personal laws currently in force in the country. However, this has remained a "dead letter" despite numerous reminders from the Supreme Court to implement the provision. Article 45 originally mandated the State to provide free and compulsory education to children between the ages of six and fourteen years, but after the 86th Amendment in 2002,

this has been converted into a Fundamental Right and replaced by an obligation upon the State to secure childhood care to all children below the age of six. Article 47 commits the State to raise the standard of living and improve public health, and prohibit the consumption of intoxicating drinks and drugs injurious to health. As a consequence, partial or total prohibition has been introduced in several states, but financial constraints have prevented its full-fledged application. The State is also mandated by Article 48 to organise agriculture and animal husbandry on modern and scientific lines by improving breeds and prohibiting slaughter of cattle. Article 48A mandates the State to protect the environment and safeguard the forests and wildlife of the country, while Article 49 places an obligation upon the State to ensure the preservation of monuments and objects of national importance. Article 50 requires the State to ensure the separation of judiciary from executive in public services, in order to ensure judicial independence, and federal legislation has been enacted to achieve this objective. The State, according to Article 51, must also strive for the promotion of international peace and security, and Parliament has been empowered under Article 253 to make laws giving effect to international treaties.

Art 51 of Constitution of India deals an important part regarding the International Law and treaty obligations. But this article does not give any clear guideline regarding the position of international law and municipal law in India. Article 51 is contained in part IV of Constitution of India, and Art 37 of this

part clearly provides that provision contained in this part shall not be enforceable by any court. This article falls in the chapter of Directive Principle of State Policy which are non justifiable. But in the later part it is to be said that- it is the fundamental in the governance of the country and it shall be the duty of the state to apply these principle in making laws.

India and the Universal Declaration

India was a signatory to the Universal Declaration of Human Rights. A number of fundamental rights guaranteed to the individuals in Part III of the Indian Constitution are similar to the provisions of the Universal Declaration of Human Rights. The following chart makes it very clear.

MODULE IV

INSTRUMENTALITIES FOR PROTECTING HUMAN RIGHTS, JUDICIARY, NATIONAL HUMAN RIGHTS COMMISSION AND THE MEDIA, RIGHT TO INFORMATION ACT, PUBLIC INTEREST LITIGATIONS

Judiciary and Human rights

Judiciary in every country has an obligation and a Constitutional role to protect Human Rights of citizens. As per the mandate of the Constitution of India, this function is assigned to the superior judiciary namely the Supreme Court of India and High courts. The Supreme Court of India is perhaps one of the most active courts when it comes into the matter of protection of Human Rights. It has great reputation of independence and credibility. The preamble of the Constitution of India encapsulates the objectives of the Constitution-makers to build a new Socio-Economic order where there will be Social, Economic and Political Justice for everyone and equality of status and opportunity for all. This basic objective of the Constitution mandates every organ of the state, the executive, the legislature and the judiciary working harmoniously to strive to realize the objectives concretized in the Fundamental Rights and Directive Principles of State Policy.

The judiciary must therefore adopt a creative and purposive approach in the interpretation of Fundamental

Rights and Directive Principles of State Policy embodied in the Constitution with a view to advancing Human Rights jurisprudence. The promotion and protection of Human Rights is depends upon the strong and independent judiciary. The main study here would be given wide coverage to the functional aspect of the judiciary and see how far the Apex judiciary in India has achieved success in discharging the heavy responsibility of safeguarding Human Rights in the light of our Constitutional mandate. The major contributions of the judiciary to the Human Rights jurisprudence have been two fold: (1) the substantive expansion of the concept of Human Rights under Article 21 of the Constitution, and (2) the procedural innovation of Public Interest Litigation.

Judiciary is the ultimate guardian of the rights of the people. It is the constitutional mandate thrust upon the judiciary to safeguard and protect human rights of the citizens. in India Supreme Court and the High Courts are empowered to take action to enforce these rights according to Article 32 and 226. These provisions can help an aggrieved person can directly approach Supreme Court or High Court for the protection of his fundamental rights. In such cases the courts are empowered to issue appropriate order, direction and writs in the nature of Habeas Corpus, mandamus, prohibition, Quo-Warranto and certiorari. In certain important judgements the court reiterated this power. The Supreme Court in *Menaka Gandhi v. Union of India* interpreted the right to life and to widened its scope in such a way that the right to life includes life with dignity.

Writ Jurisdiction of the Supreme Court and the High Courts

The most significant of the Human Rights is the exclusive right to Constitutional remedies under Articles 32 and 226 of the Constitution of India. Those persons whose rights have been violated have right to directly approach the High Courts and the Supreme Court for judicial rectification, redressal of grievances and enforcement of Fundamental Rights. In such a case the courts are empowered to issue appropriate directions, orders or writs including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-warranto, and Certiorari. By virtue of Article 32, the Supreme Court of India has expanded the ambit of Judicial Review to include review of all those state measures, which either violate the Fundamental Rights or violative of the Basic Structure of the Constitution. The power of Judicial Review exercised by the Supreme Court is intended to keep every organ of the state within its limits laid down by the Constitution and the laws. It is in exercise of the power of Judicial Review that, the Supreme Court has developed the strategy of Public Interest Litigation.

National Human Rights Commission

National Human Rights Commission shall consist of a Chairperson and seven other members. A person who has been a Chief Justice of the Supreme Court is alone eligible to become the Chairperson. The other members are appointed from the following categories:-One member may be sitting or retired judge of the Supreme Court of India; One member may

or retired Chief Justice of any High Court; Two members are appointed on the basis of their special knowledge or experience in the field of human rights and; The Chairpersons of the National Commission for Scheduled Castes, the National Commission for Scheduled Tribes, National Commission for Minorities, and the National Commission for Women are the members.

Mode of Appointment and their tenure

The Chairperson and the members of the Commission are appointed by the President of India upon the recommendation of a committee consisting of the Prime Minister as the Chairperson and five other members as specified in the Act. The Chairperson and the members of the Commission shall continue to hold office for a period of five years from the date on which they assume the office or until they attain the age of seventy years, whichever is earlier. The members of the Commission alone are eligible for reappointment of one more term, provided if they have not attained the age of seventy years. After relinquishing the office, the Chairperson and the members of the Commission are barred from taking up any appointment either under the Central or any of the State governments. If any vacancy occurs in the office of the Chairperson by reason of his being on leave, resignation, death or otherwise, such other member as may be directed by the President of India shall act as Chairperson, until the Chairperson resumes office or a new incumbent is appointed.

Removal

The Protection of Human Rights (Amendment) Act, 2006 provides that the Chairperson or any Member can resign from the post in writing under his hand addressed to the President of India. The President of India can remove the Chairperson or any of the members of the Commission on the grounds of proved misbehaviour or incapacity in accordance with a report submitted by the Supreme Court after conducting a due inquiry upon a referral by the President of India. However, the above provision has no bar on the President to remove the Chairperson or the members of the Commission on any of the grounds if they are

Adjudged as an insolvent; or engaged in any paid employment outside during their term of office; unfit to continue in office by reasons of infirmity of mind or body; declared as of unsound mind by a competent court of law; or convicted or sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.

Supporting staff of the Commission

In addition to the Chairperson and the members, the Commission shall consist of a Secretary-General, Police and investigative, administrative, technical and scientific staff to support it in its effective functioning. The Secretary-General is the Chief Administrative Officer of the Commission. The Government of India is empowered to appoint any officer holding a post not below the rank of the Secretary to the Government of India as the Secretary-General of the

Commission. The Police and other investigative staff are also provided by the Central Government and placed under an officer not below the rank of a Director-General of Police. The administrative, technical and scientific staffs are appointed by the Commission to suit its need in accordance with the rules framed by the Central Government. The Commission is empowered to frame its own rules and regulations for its effective functioning.

Headquarters of the Commission

The Commission shall normally conduct its meetings and sittings in its office in New Delhi. However, with the prior permission of the Central government, and if in its discretion it is necessary and expedient in its functioning it can hold meetings or sittings outside its seat of place as decided by it. The Commission shall ordinarily have its regular meetings in the first and third weeks of every month excepting holidays. However, the Chairperson by himself or at the instance of one or more of the members may have a special sitting to deal with any specific matter if it requires immediate action.

Functions and powers of the Commission

The Commission performs different kind of powers and functions. These are listed below

1. To inquire into the violation of human rights or abatement thereof either on its own or on a petition submitted by an affected party or on his behalf by any person, or negligence shown by a public servant in the prevention of such a violation.
2. To intervene in any of the proceedings pending before a

court with the permission of such a court on any complaint of violation of human rights.

3. To visit any jail, or any other institutions where persons are detained or lodged for purposes of treatment reformation or protection under the control of a State government with an advance notice to study the living conditions of the inmates and to make recommendations.

4. To review the safeguards for the protection of human rights provided by the constitution or any of the existing law and to suggest measures to the Central and State governments for their effective implementation.

5. To review all the aspects that inhibits the enjoyment of human rights including the acts of terrorism and recommends the remedial measures to the Government.

6. To study the treaties and other international instruments on human rights and make recommendations to the Central government for their effective implementation.

7. To undertake and promote research in the field of human rights

8. To propagate the concept of human rights and to promote the awareness for their protection among the various sections of the society, it can undertake publication of books or pamphlets or conduct seminars, or use the media or any other means available to it.

9. To promote and support the non-governmental organisations and institutions in the field of human rights.

Powers of the Commission

The Commission is though empowered to exercise the powers of a civil court only during the course of inquiring into the complaints, it can also record the facts constituting the offence and the statement of an accused person as is described in Sections 175, 178, 179, 180 or 228 of the IPC. The Commission after recording the facts constituting the offence and the statement of the accused as specified in CrPC has to transmit the case to a Magistrate having jurisdiction to conduct the trial. Since all the proceedings before the Commission are considered as judicial proceedings, the Magistrate to whom the case is referred bound to conduct the trial.

The Commission exercises the following powers while inquiring into the violation of humanrights

Investigation

The Commission exercises the following investigative powers while inquiring into thecomplaints:-

It may utilise the services of any officer or any of the investigative agency of the Central or State government with their prior approval. The officer or agency whose services are utilised by itshall be under the control and direction of the Commission. Further, the Commission may- Summon and enforce the attendance of any person and examine him; or

Direct such person to discover or produce any document before it;

Requisition any public record or copy there from any office.

Any statement made by a person before any officer or agency whose services are utilised or a statement made by a person in the course of giving evidence before the Commission shall not be used against him in any civil or criminal proceedings; except for the purpose of prosecution for giving false evidence by such statement. However, the Commission is empowered to use such statement if it is made in reply to a question asked by the Commission or relevant to the subject matter of inquiry. If the Commission is not satisfied about the correctness of the facts stated and any conclusion arrived at in the report submitted by such person, it may conduct an inquiry or examine such person or persons assisted the investigation.

Inquiry into Complaints

The Commission while inquiring into the complaints of the violations of human rights may adopt the following procedure:

It can call for information or report either from the Central or any of the State government concerned or any other Authority, or organisation subordinate to them within the time frame fixed by it. However, it may proceed to inquire into the complaint on its own if it does not receive the information or report within the time frame. But the Commission shall not proceed further if it is satisfied upon the report submitted by the concerned government or authority along with the action initiated. If in the opinion of the Commission a matter requires immediate action, it can initiate an inquiry even without asking the relevant government or authority for their report or information.

Procedure with respect to Armed forces

In accordance with the provisions of the Act while dealing with the complaints of the armed forces it adopts the following procedure:-

1. It may, either on its own or upon receipt of a petition, can ask the Central Government to submit a report. After receiving the report from the Central government it may not either proceed further, or may make recommendations to that effect.
2. From the date of the receipt of the recommendations the Central Government is bound to inform the Commission of the action taken by it within three months, or within the period of extension as permitted by the Commission.
3. The Commission has to publish a report on its recommendations and the action initiated by the Central government upon them.
4. The Commission transmits copy of the published report to the petitioner or his representative.
5. If the Commission at any stage of inquiry considers it necessary to inquire into the conduct of any person it may do so. But if in the opinion of the Commission such an inquiry may prejudicially affect the reputation of the person, it has to give a reasonable opportunity to that person to produce evidence in his favour during such inquiry. However, the Commission cannot conduct an inquiry if it affects the reputation of the person in any manner.

Divisions of the Commission

There are six divisions in the Commission. Each of these divisions has been entrusted with some specific tasks. They work in close consultation and coordination with each other.

1 Administration Division

This Division is headed by a Joint Secretary, assisted by a Director, under-secretaries, section officers and other secretarial staff, and functions under the overall guidance of the Secretary General. This Division looks after the administrative, personnel, establishment and cadre matters of the staff and officers of the Commission.

2 Law Division

The Division is headed by Registrar (Law). For the sake of convenience, the Law Division has been divided in two classes. One is Scrutiny Branch 1 which deals with the cases which comes from Uttar Pradesh and Uttarakhand and another branch, i.e. Scrutiny Branch 2 which deals with rest of India and foreign related complaints.

3. Report Branch

After that Report Branch sends the notices as to the concerned authority as directed by the member of the commission in a proper format and report branch also receives the reply of those notices and thereby coordinate with presenting officer.

4. Investigation Division

When the Commission requires an independent inquiry to be conducted, it is done through the Investigation Division, which is headed by an officer of the rank of Director General of Police. It analyses the intimations and further reports from the State authorities regarding deaths in police and judicial custody, encounter deaths and advising the Commission.

5. Training Divisions

The Division has been created to disseminate information and focus attention on sensitizing various agencies and NGOs, civil society to heighten respect for human rights by organising human rights training programmes. This Division is headed by a Chief Coordinator, who is a joint secretary rank officer. The Chief Coordinator is assisted by a senior Research Officer and other secretarial staff.

6. Policy research, Projects and Programmes division

Whenever the Commission, on the basis of its hearings, deliberations or otherwise, arrives at a conclusion that a particular subject is of generic importance, it is converted into a project/programme to be dealt with by this Division. It also undertakes and promotes research in human rights and organised seminars, workshops and conferences on pertinent issues. It is headed by the Joint Secretary and consists of two Directors, a Senior Research Officer and Secretarial staff.

7. Information and Public Relations Division

This Division disseminates information relating to the activities of the Commission through the print and electronic

media and is headed by an Information and Public Relations Officer. This Division is responsible for the website and publications of the Commission. It also has an Assistant Information Officer. A Public Information Officer has also been appointed for the purpose of facilitating information under the Right to Information Act. The Appellate Authority is the Joint Secretary.

Procedure for handling complaints by NHRC

Promoting good complaint handling is a key part of your work if you receive complaints from time to time. Good complaint handling can make the people to have more faith on NHRC.

Some Illustrative Cases in connection with NHRC

1. National Human Rights Commission v. State of Arunachal Pradesh, AIR 1996 SC 1234

The Commission under article 32 of the Constitution of India has filed a writ petition as a public interest petition before the Supreme Court of India. The Commission filed this petition mainly for the enforcement of fundamental rights of about 65,000 *Chakma\ Hajong* tribals under article 21 of the Constitution. In this case a large number of refugees from erstwhile East Pakistan were displaced in 1964 due to *Kaptain Hydel* Project. These displaced *Chakmas* had taken shelter in North-Eastern States of India, namely, in Assam and Tripura. There were two main issues involved in this case;

1. conferring of citizenship;
2. fear of persecution by certain sections of the citizens of

Arunachal Pradesh. Largely to these two issues NHRC was approached by two different NGOs.

In this case the Commission contended before the Court that the Commission found serving of quit notices by All Arunachal Pradesh Students Union (AAPSU) to *Chakmas* and their attempted enforcement appeared to be supported by the officers of Arunachal Pradesh. The State government deliberately delayed the disposal of the matter by not furnishing the required response to NHRC and in fact assisted in the enforcement of eviction of the *Chakmas* from the State through its agencies. The Court after hearing the argument directed the government of Arunachal Pradesh to ensure the life and personal liberty of each and every Chakma residing within the State. The significance of this judgement also lies in clearing the doubts regarding the applicability of fundamental rights to refugees. This decision rules that foreigners are entitled to enjoy the protection of right to life and liberty under article 21 of Constitution. Timely intervention by the Commission has saved the life of thousands of innocent *Chakma* refugees from AAPSU.

2. Indian Council of Legal Aid and Advice and others

On 3rd December, 1996, the Commission took cognizance of a letter from Chaturanan Mishra, then Union Minister for Agriculture regarding starvation deaths due to the drought in *Bolangir* district of Orissa. In similar matter a writ petition was filed on 23 December 1996 by the Indian Council of Legal Aid and Advice and others before the Supreme Court of India under article 32 of the Constitution.

The petition alleged that deaths by starvation continued to occur in certain districts of Orissa. The Supreme Court of India on 26th July 1997 directed that since matter is seized with the NHRC and is expected to deliver some order, the petitioner can approach to the Commission. Realizing the urgency of the matter the Commission acted quickly and initially prepared an interim measure for the two years period and also requested the Orissa State Government to constitute a Committee to examine all aspects of the Land Reform question in the KBK Districts.

The Commission observed that as starvation deaths reported from some pockets of the country are invariably the consequence of mis-governance resulting from acts of omission and commission on the part of the public servant. The Commission strongly supported the view that to be free from hunger is a Fundamental Right of the people of the country. Starvation, hence, constitutes a gross denial and violation of this right. The Commission organized a meeting with leading experts on the subject, in January, 2004 to discuss issues relating to Right to Food. The Commission has approved the constitution of a Core Group on Right to Food that can advise on issues referred to it and also suggest appropriate programmes, which can be undertaken by the Commission. By this decision it is firmly established in the context of India that economic, social and cultural rights are treated par with the civil and political rights before the India Courts and the Commission. India is amongst the view countries in the world, which have accorded justifiability of

economic, social and cultural rights.

3. Punjab Mass Cremation Order

Two writ petitions were filed before the Supreme Court of India containing serious allegations about large-scale cremations resorted to by the Punjab Police of persons allegedly killed in what were termed as “encounters”. The main thrust of the Writ Petitions was that there were extra-judicial executions and hasty and secret cremations rendering the State liable for action. These petitions were largely relied on a press note of 16th January 1995 by the Human Rights Wing of the *Shiromani Akali Dal* under the caption “Disappeared” “cremation ground”. The note alleged that the Punjab Police had cremated a large number of human bodies after labelling them as unidentified. The Supreme Court after examining the report submitted to the Court by Central Bureau of Investigation (CBI), relating to cremation of dead bodies observed that report indicates 585 dead bodies were fully identified, 274 partially identified and 1238 unidentified. The report discloses flagrant violation of human rights on a large scale. On 12 December 1996 the Court requested the Commission to have the matter examined in accordance with law and determine all the issues related with the case. Though matter is still pending before the Commission for final consideration, however, the Commission granted in some cases compensation amounting of Rupees Two Lakh Fifty thousand (Rs. 2,50,000/-) to the next of kin of the 89 deceased persons. While granting the compensation the Commission relied on the laws developed by the Courts in India in the field

of evolving legal standards for remedial, reparatory, punitive and exemplary damages for violation of Human Rights.

The Commission observed, it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right of life of a citizen by the public servants and the State. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation.

4. Gujarat Communal Riot

The Commission took *suomotu* action on communal riot which took place in Gujarat in early 2002, the decision to take action was based of media reports, and both print and electronic. The Commission also received an e-mail communication requesting the Commission to intervene. A team of the Commission had visited Gujarat between 19 to 22 March 2002 and prepared a confidential report, which is later made to the public. The release of the confidential report was initially withheld to provide an opportunity to the Gujarat government to comment on its contents, given the sensitivity of the allegations contained in it. Unfortunately, the State government did not bother much about this report. The Commission observed that the State has failed to discharge its primary and inescapable responsibility to protect the rights to life, liberty, equality and dignity of all of those who constitute

it. The principle of *res ipsa loquitur* (the affair speaking for itself) applies in this case in assessing the degree of State responsibility in the failure to protect the Constitutional rights of the people of Gujarat. The responsibility of the State extended not only to the acts of its own agents, but also to those of non-State players within its jurisdiction and to any action that may cause or facilitate the violation of human rights.

Shortcomings of National Human Rights Commission

Though the NHRC has been functioning since 1993, yet millions of people in different walks of life suffers human rights violations every day in different part of the country. Due to some glaring defects and lacunae in the Protection of Human Rights Act, 1993, role and functioning of NHRC in protecting and promoting human rights is seriously affected. There is a dire need for certain radical modifications in the 1993 Act in order to make it more effective and so as to achieve the desired objectives in true manner.

1. The method of selection of the members of the Commission needs attention. The selection of the members is wholly weighed towards the ruling party and the principal opposition, both at the centre and state level. The NHRC does not have power to appoint its own staff.
2. The composition of NHRC is least balanced as three out of five members must be judges both, in the National as well as the State Commission and all would have to be political appointees. So, at least two members are required to be

appointed from among the person having knowledge of, or practical experience in the matters related to human rights. Representations should be given to the NGO and human rights activists to instil confidence in the minds of people.

3. The relation between NHRC and the State Commissions should be made amply clear because sometimes questions arise over jurisdiction and control. The revisional powers over the State Commission should be enumerated as of the powers of NHRC. The essence of the revisional power is to have control by way of supervision, especially the power to call for records. The need is to make special provision to make clear cut demarcation in the areas of their functioning and their administrative relation with each other.

4. Another major drawback is the lack of independent budget of the NHRC. The present scenario is that the purse of NHRC is totally dependent on the government to meet the expenses of investigation and research apart from the allowance and salaries. Actually there should be provision for drawing the salaries directly from the consolidated funds so as to ensure greater autonomy and transparency. The financial independence will make the NHRC independent in the true sense of the term. It will ensure smooth and effective performance of NHRC.

5. There is inherent drawback in Section 12(c) of the Act. The necessity of intimation severely inhibits and defeats the investigation of the Commission. It is such a loophole that makes the whole exercise eyewash. It is therefore recommended that the requirement of informing the State

government about the Commission's visit to such place should be waived off. This shall certainly help the Commission to make spot inquiries and present the true picture of human rights violation.

6. Further Section 13 of the Act deals with powers of NHRC relating to inquiries. There is nothing in this section regarding the transfer of cases, it is suggested that NHRC may be given the power to transfer any of the complaints filed or pending before it to the State Commission of the State from where the complaint arises, whenever it considers expedient.

7. The Commission suffers from the limitation on its own function. It can intervene in any proceedings pending before a court regarding violation of human rights as and when any matter is reported to it but it has to seek prior approval of concerned authority. This hinders its functioning as the concerned authority may linger it unnecessarily to avoid the commission. Therefore in the interest of discouraging the human rights violations, an amendment should be made in the Act to the effect that the prior approval should be time bound or the requirement of approval should be completely waived off.

8. Section 36(1) of the Act provides that the NHRC shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force. This obstacle should be removed by the amendment in 1993 Act, because many a time government deliberately hands over the case to another Commission for side-lining the Commission. For any reason

whatsoever, if the government intends to deprive the Commission of the jurisdiction to inquire into any violation of human rights, it can do so by constituting a separate Commission under any law in force. Another major impediment in the working of NHRC is imposed by Section 36(2) of the Act.

The Commission under the 1993 Act is not empowered to take any punitive action against the violator. It is also not bestowed with any contempt power for defying its order by the government officials. It can only make recommendations for the action to be taken by the concerned authority. For getting better results from the working of NHRC, it should be given wider powers to call for the explanation, initiate the proceedings for prosecution against the violator and take appropriate action including the awarding of compensation to the victim.

Another provision that needs attention is that the Commission under the 1993 Act merely acts as an instrumentality between the victim and the government for lawful solution to the violation of human rights, and make its own recommendations, leaving the results to the government or the courts. The Commission does not have any authority to award compensation or extend any other relief immediately required by victim especially in terms of monetary assistance. The government is also not being obliged to accede to the recommendations made by the Commission. Thus due to lack of effective mechanism recommendations of the Commission are not being taken seriously. This is one of the most glaring

drawbacks in the 1993 Act which makes the Commission toothless and non-effective. If the working of the Commission is to be made good and effective, an amendment should be made in the 1993 Act so that the Commission's recommendations must be totally accepted by the Government and implemented accordingly.

Conclusion

Inspite of its glaring defects in the Act, NHRC has made significant contributions to bring a human rights approach to legislation, policy and programs in our country. It would not be out of place to mention that NHRC as a watchdog had done reasonable work in propelling and protection of human rights. Its contributions in India have gone beyond the expected role of investigating alleged violations, conducting public inquiries, exercising advisory jurisdiction, providing advice and assistance to governments, creating awareness, promoting interaction, exchange, and better coordination among other state and international human rights institutions and publishing annual reports. It has been pertinent towards strengthening the Human Rights Jurisprudence in our country. NHRC has set the agenda towards a rights based approach at an international level as well. In the era of globalization the NHRC has a key role to play in ensuring that the all sections of society can productively engage with the expansion of opportunities. By ensuring equal opportunities and protecting citizens against discrimination and inaction, the NHRC can provide a level playing field to all our citizens and help in shaping our country protecting citizens against

discrimination and inaction. The objective assessment of the Commission's endeavours must come from the people of India, whom it seeks to serve in all of their rich diversity and varying circumstances. The performance of a national institution has to be assessed in terms of not only its successes in achieving its stated objectives, but also the constraints within which it has worked.

Media and Human Rights in India

Media has been entrusted with the responsibility of guarding the rights of the people in a democratic political system. This points towards the pivotal role that media can play in ensuring that the people who make a political system enjoy its positive outcome. However, it is important to come out of the visionary discourse of media and critically look at its role and function in our present socio-political context.

Media as the promoter of human rights in India

Since media are the eyes and ears of any democratic society, their existence becomes detrimental to the sustenance of all democratic societies. Unless a society knows what is happening to it and its members, the question of protecting or promoting rights does not emerge. Hence, it is in fulfilling this function that media justifies its existence. No doubt in India, media especially the print, has played an important role in educating and informing citizens of their rights as well as the violations of such rights. One cannot forget that the origin of newspapers in India itself lay in challenging the denial of rights. Hicky's Bengal Gazette was begun in 1780 to challenge

the autocratic rule of the East India Company. Of course, James Augustus Hicky paid dearly for fighting for the rights and against their violations. In South India, *The Hindu*, we are given to understand, constantly attracted the wrath of the then British government, because it drew attention of the readers to the gross violation of people's dignity and rights. In the post – independence India too the newspapers have constantly attracted the anger of and harassment by the governments for trying to take the truth to the people. Significant section of the national press has dared to oppose events that have changed the course of history in India – Emergency, Babri Masjid demolition, murder of Graham Steins and his children, the Godhra carnage, and recently Nandigram.

However, one cannot forget that for much of the press, the rights of the dalits, women, rural poor, urban poor, and workers in the unorganised sector increasingly remained outside the purview of human rights. Further, only the human rights violations by the state against the middle class became violations of human rights for media.

Media as promoter of human rights violations

Although it sounds paradoxical, it is true that contemporary media driven by numbers is increasingly becoming a cause for violations of human rights. Media is not only a witness but also a promoter of violence. The then India Today reporter Shyam Tekwani involved in covering Indian Peace Keeping Force (IPKF) operations in Sri Lanka took photographs of the Indian soldiers captured and killed by the LTTE only to realise they used to mutilate the bodies because

he would click the photographs. During the 1992 riots, ‘mobs’ burnt more houses and other building in order to create spectacle for the photographers. The Taliban in Afghanistan has also gone on to burn the dead bodies and mutilate them in order to get better publicity through the so called foreign journalists. A lot of child welfare NGOs in India have spoken about how European and American documentary film makers have subjected street children to inhuman conditions to get better visual impact. Communally insensitive reporting in the name of truth has not only claimed a number of innocent human lives, but also created and perpetuated numerous stereo types. The way media harassed and treated Sabeel’s pregnant wife in Bangalore calls for serious reconsideration of media as fourth estate. The above instances demand a close and serious questioning of numerous media practices which violate or cause human rights violations.

Rethinking human rights and the role of media

Contrary to the belief that human rights are an uncontested terrain, there is a vibrant history of challenging them. The questioning has been there right from the time of the conception of human rights to the post-globalised world. The momentum perhaps built up with signing of trade related treaties by the ‘developing and third world countries’ which expedited the process of globalisation and the emergence of post national societies. The most important critique of human rights has been, what Upendra Baxi calls, ‘authorship,’ in other words human rights have been seen as ‘the gift of the West to the rest’. He says that the while such a meta narrative has

disabled ‘any intercultural, multi-civilisational discourse on the genealogy of human rights, it has also imparted ‘a loss of reflexivity in the terms of intercultural learning, for the Euro American traditions (Baxi, 2002). Post-GATT, many thinkers see human rights as the strategy of neo-colonialism to further the economic and political interests of the ‘first’ world countries. As Susan Kosy argues “Neo colonial strategies of power are increasingly articulated ... through a new universalist ethics of human rights, labor standards, environmental standards, and intellectual property rights.

While such claims are valid one needs to pay attention to the politics of claims which have significant consequences in the modern-day postcolonial societies. I wish to draw attention to only three such issues. First, there are conceptual problems in the ‘authorship’ meta narrative. Such a conceptualisation denies the historical experience to a society and does not acknowledge that the present is transformed and acted upon by modernity, thereby proposing a sanitised and linear culture, denying the plurality of culture and societies. By so doing, such claims also land them into the same trap of non-self-reflexivity that they accuse the West of. Through such claims there is also a greater danger of hampering intercultural learning for a culture. The claim also does not take into account the fact that with the eleventh hour exit by the US from being a part of shaping UDHR, the UDHR became socialist in its outlook, incorporating many a concern of the third world nations.

Second, it is important to see who is articulating such

claims. In the last two decades one notices that such claims have been increasingly voiced by Hindutva organisations in India, and dictatorial regimes in the neighbouring countries in Asia and Africa which have a record of human rights violations themselves. Baxi says, “the originary stories about human rights equip dictatorial regimes in the Third World to deny wholesale, and in retail, even the most minimal protection from human rights violations and serves such regimes with an atrocious impunity of power (Baxi, 2002). In India such claims hide the pre- and post - independent nationalist politics of creating a homogenous Hindu identity, at the cost numerous communities and cultures within the subcontinent. This also masks the larger political equation that Nandi and many other scholars have pointed out of -Indian =Hindu = upper caste male Hindu. Third, human rights discourse emerges in the mid-twentieth century in the background of the experience of the two World Wars, the fear of nation-states exploiting their subjects. However, with globalisation multinational corporations becoming more powerful than nation-states, shouldn't there be a serious rethinking of human rights? If one has a look at the instances of protest against violations of human rights in India, they have largely been against the violations of human rights by the state. However, there is hardly any protest against the violation of human rights by the MNCs, who are mostly invisible in our imagination of human rights violations. It is in this context that I propose for the media a newer role. Media needs to develop a critique of existing frameworks human rights, and develop a plural and more nuanced discourse of human rights in the

public domain.

Rethinking media

Media has largely become mass information rather than mass communication. Media needs to communicate with the governments, NGOs, human rights activists and the public the critical discourse of human rights and the violations. May be a paradigm shift is required to look at media communication as community interaction rather than mass communication. Such a shift would then justify the sacred role that media has been called upon to play. If the media does not take up the role of enabling protection of human rights of the citizens, then it would become an accomplice to the violation of human rights.

However, since media cannot be completely trusted, thanks to the changes brought about by the economic and political developments, especially post liberalisation, we need to strengthen advocacy groups, citizen groups and media watch groups. Due to various historical reasons our imagination of media has largely been dominated by print media. With print media increasingly losing its foothold in forming public opinion, there is a pressing need to look at recent developments in new media, especially the cyberspace, and mobile phone convergence and the consequent possibilities, to engage with discourses of human rights through these media. Media is increasingly getting concentrated in the hands of a few. While such a concentration will reduce media spaces for plural voices, they also make such voices look non-significant. With media becoming an industry, and profits becoming a priority, audience, who are increasingly referred to as

‘eyeballs,’ become merely numbers to determine the amount of advertisement revenue that will flow into the organisation.

While media has played a significant role in the promoting the cause of human rights in India, it has largely been by the print medium. There is an increasing need for the various other media which have emerged post-independence to also engage with the discourse of humanrights. This calls for a departure from our own obsession with print medium as the medium, with marginal inclusion of news-based television channels. There is also a critical need to engage with and problematise the present binary discourse of human rights as well as the conception of mass media. An inquiry and experimentation with alternative ownership and communication patterns of media are also the need of the hour.

Public Interests litigation

The traditional rule is that the right to move the Supreme Court is only available to those whose Fundamental Rights are infringed. A person who is not interested in the subject matter of the order has no Locus Standi to invoke the jurisdiction of the court. But the Supreme Court has now considerably liberalized the above rule of Locus Standi. The court now permits the “public spirited persons to file a writ petition for the enforcement of Constitutional and statutory rights of any other person or a class, if that person or a class is unable to invoke the jurisdiction of the High Court due to poverty or any social and economic disability. The widening of the traditional rule of Locus Standi and the invention of Public Interest Litigation by the Supreme Court was a significant

phase in the enforcement of Human Rights.

It is a great opportunity to public spirited persons to file a writ petition for the enforcement of rights of any other persons or a class, if they are unable to involve the jurisdiction of the court due to poverty or any social and economic disability. In this case person can write a letter to the court for making complain of violation of rights. PIL is an opportunity to make basic rights meaningful to the deprived and vulnerable sections of the community. To assure vulnerable sections social economic and political justice, any public spirited person through PIL can approach the court themselves due to their vulnerable conditions. Therefor PIL has become the tool for the protection of human rights in India.

The oppressed sections of the society includes children, women and socially weaker sections of the society. Children are prone to exploitation and abuse. For this reason United Nations Conventions on the Rights of the child was adopted in 1989. This conventions brings together children's human rights as children require safety and protection for their development.

Human rights is inalienable rights of human being irrespective of caste, creed, religion, place of birth. The agencies such as Judiciary and National Human Rights Commission will act as the watch dog. If the instruments are weak and incapable of ensuring human rights, the people could not lead a dignified life. In India both the formal agencies such as the judiciary and NHRC played its respective role in protecting human rights as well preventing the violators. The informal agencies such as the media can or could played

respective role in the society. This can be more visible during emergencies. The instrument such as PIL sharpened the armoury of human rights.

MODULE V

HUMAN RIGHTS AND SOCIAL GROUPS: SCHEDULED CASTE AND SCHEDULED TRIBE, MINORITIES, WOMEN AND CHILDREN

Human rights are the rights of human beings and, self-evidently, each human being is an individual being. Groups may have rights of some sort, but, whatever those rights might be, they cannot be human rights. Human rights must be rights borne by human individuals. An individual can have a right to join a group, such as a trade union, only if there is a group for him to join. Having joined the group, that individual may have rights that he possesses only as a member of the group. In both instances, however, these typically will be rights held in an individual capacity rather than rights that belong to the group. But in some groups individual automatically become members if they are interested in joining or not. Such groups are called scheduled castes, scheduled tribes, other backward classes, women and children. These group of people are leading distinctive style of life which requires certain condition and things. The following description will clearly indicate the what are their rights and what are the major challenges.

Human Rights of Scheduled Caste and Scheduled Tribe

Scheduled Castes and Scheduled Tribes have been, for centuries, the most neglected, marginalized and exploited people in the country. The scourge of untouchability was a scar on the Indian civilization. Despite the constitutional

declaration of its abolition under Article 17 of the Constitution, it persists in many subtle and not so subtle ways. It has been an unmitigated tale of prejudice, discrimination and exploitation. At stake, in the ultimate analysis, is the very integrity and survival of Indian society. Without transforming vertical inequality in society into horizontal equality, democracy will have no meaning.

The position of schedule caste and schedule tribe is always a question mark for the society. Being a developing country, we are claiming that, we are giving an equal status to scheduled castes and scheduled tribes as compared with other caste. But in reality, it is not like this. In modern time also they are facing problem but we can say that the extent of exploitation is less as compared to previous time. For improving their conditions government are taking various steps like specific laws are being made for them, commissions were made only for their betterment and by means of reservation also, the government is trying to improve their condition.

Specifically, Our Constitution guarantees justice and equality of opportunity to all its citizens. It also recognizes that equal opportunity implies a competition between equals, and not 'un-equals'. Recognizing the inequality in our social structure, the makers of the Constitution argued that weaker sections have to be dealt with on a preferential footing by the state. A special responsibility was, thus, placed upon the state to provide protection to the weaker sections of society. Accordingly, the Constitution provided for protective discrimination under various articles to accelerate the process

of building an egalitarian social order.

Introduction

Dalits, literally meaning “broken people” or “oppressed” in Hindi, are the lowest members of the Hindu caste system in India. The caste system is a Hindu hierarchical class structure with roots in India dating back thousands of years. In descending order, the caste system is considered of Brahmins (priests), Kshyatriyas (warriors), Vaisyas (farmers), Shudras (laborer-artisans), and the Dalits, who are considered so polluted they are beyond caste. Traditionally, caste, determined by birth, defined whom one could marry and the occupation one could pursue.

Dalits are known by different names. Mahatma Gandhi called them *Harijan*, the children of God. Ambedkar called them “depressed classes”. However since 1970 the term Dalit has been widely used. Dalit is a Marathi word first used by Mahatma Jotiba Phule, a 19th century social reformer who led a movement for the upliftment of untouchables, which means broken people. The Government of India officially calls them “Scheduled Castes”. „Scheduled“ means they are on a government schedule that entitles them to certain protections and affirmative action. In Indian languages, the term.

The Dalits are Caste traditional India’s principal category of social ordering and control is the most exhaustive and of noxious of all known exclusionary systems. The Hindu social order, particularly its main pillars, the caste system, and untouchability presents a unique case. As a system of social,

economic and religious governance, it is founded not on the principle of the liberty (or freedom), equality and fraternity, the values which formed the basis of universal human rights, but on the principle of inequality in every sphere of life. The social order is based on three interrelated elements, namely, predetermination of social, religious and economic rights of each caste based on birth; the unequal and hierarchical (graded) division of these rights among castes; and provision of strong social, religious and economic ostracism supported by social and religious ideology to maintain the order[1]. Among the Backward Castes, Scheduled Castes are socially, economically, politically, religiously, and culturally oppressed. In the past, many Scheduled Castes embraced Christianity during the British rule in India, these converts were given free food, clothes, and education by the missionaries. Many of them got good educations and jobs[2]. Some made an attempt, in the 19th century, to disassociate themselves from the traditional callings of the community. They began to imitate the dress and rituals of the Upper Castes[3] in order to avoid ill-treatment, Scheduled Castes have often preferred to change their religion.

With the legacy of Dr. B R Ambedkar, the Indian constitution guaranteed to all citizens the fundamental rights and equal protection before the law. It provides a number of safeguards to Scheduled Castes to ensure their all-round development and protection against all kinds of the discriminations in India. But most of the provisions of the constitution have remained only on paper because their

implementation has been faulty, half-hearted and inadequate and inequality, discrimination, exclusion, and stigmatization can jointly contribute to the utter marginalization in India. They account for 2 percent of Tamilnadu's population, and the Socio-economic and Caste Census has now found that Dalits households in rural Tamil Nadu touch 25.55 percent. However, Dalits in the state continue to be a receiving end; and there seems to be no in atrocities against them. "Historically, the political discourse in Tamil Nadu revolved around the Brahmins versus non-Brahmins question. Now, it has become Dalits versus non-Dalits.

Major safeguards of Dalit Right in India

Indian Law: Beyond these provisions in the Constitution of India some special provisions are made for the Scheduled Castes. Article 17 has abolished to the practice of untouchability. Article 330 and 332 gave provision for the reservation of seats to appointments, Article 338 has made provision for the special officer to investigate all matters relating to the safeguards for the Scheduled Castes and Article 46 relates to special care about the educational and economic interest of the Scheduled Castes.

1. National Commission for Scheduled Castes and Scheduled Tribes

Establishment of National Commission for Scheduled Castes and Scheduled Tribes under Article 338 of the constitution for better protection of the rights of the members of the Scheduled Castes and Scheduled Tribes. Originally

Article 338 of the constitution provided for the appointment of a special officer for scheduled castes to investigate all matter relating to the constitutional safeguards for the SC to report to the President on their working. He was designated as the commissioner for SCs and STs and to report to the president on their working. He was designated as the commissioner for SCs and STs and assigned the said duty.

2. Caste Disabilities Removal Act 1950:

The Act provides that when in a civil suit the parties belong to different persuasions, the laws of the religions of the parties shall not be permitted to operate to deprive such parties of any such parties of any property but for the operation of such laws, they would have been entitled.

3. Protection of Civil Rights Act 1955:

By this Act, enforcement of any disability arising out of untouchability has been made an offence punishable in accordance with the relevant provisions.

4. The Bonded Labour System (Abolition) Act, 1976

5. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989:

An Act to prevent the Commission of atrocities against members of the Scheduled Castes and the Scheduled Tribes for Constitution of special courts for trial of such offenses, and to provide relief and rehabilitation to the victims.

6. Protection of Human Rights Act 1993:

The Act provides for the Constitution of a National

Human Rights Commission, State Human Rights Commission, and Human Rights Courts for better protection of Human Rights. In 1978, the government (through a resolution) set up a non-statutory multi-member commission for SCs and STs; the office of commissioner for SCs and STs also continued to exist. In 1987, the government (through another resolution) modified the function of the commission for SCs and STs. Later, the 65th constitutional amendment act of 1990 provided for the establishment of a high level multi-member national commission for SCs and STs in the place of a single special officer for SCs and STs. This constitutional body replaced the commissioner for SCs and STs as well as the commission set up under the resolution of 1987. Again, the 89th constitutional amendment act of 2003 bifurcated the combined national commission for SCs and STs into two separate bodies, namely, national commission for scheduled castes (under article 338) and the national commission for scheduled tribes (under article 338A). The separate national commission for SCs came into existence in 2004. It consists of a chairperson, a vice-chairperson, and three other members. They are appointed by the president by warrant under his hand and seal. Their conditions of service and tenure of office are also determined by the president.

Various challenges facing Dalits India

Apart from the above mentioned protective measures there are provisions of reservation and representation (political reservation in various bodies, reservation in government services, admission to educational institution and several other

areas) to member of Scheduled Castes and scheduled Tribes, in order to improve their access and participation in the economic, social and political spheres, which come under the category of promotional or developmental measures. But it is worthwhile to note here that discrimination in private sphere – social or economic – is not covered by such measures. The percentage of the Dalit community literacy (37.41%) is for below that of the national average (52.21%) in the 1991 Census. Be it private employment, school dropout rates, literacy or health indicators, access to higher education or even government jobs, Dalits are most disadvantageously placed.

In view of Dalit's enormous contribution to society in terms of labor, art and culture, their share of the country's resources and riches is disproportionately lower. They are mainly landless and where they won land, it is marginal and usually of low quality as well as non- irrigated. An overwhelming majority (nearly 77%) of the Dalit's workforce is in the primary or agricultural sector of the economy. The Dalits, due to higher incidence of wage labor associated with high rate of under-employment. Suffer from low income and consumption and a resultant greater level of poverty. They work as agricultural laborer, share croppers and self-cultivators. They do not get work throughout the year and live in vulnerable condition. There are a few agricultural laborers that work on a yearly basis and are attached to one master. Their wages are lower than those earned by casual labors. On the other hand, their jobs are secure and they get prerequisites

such as clothing and shelter. But the unfortunate part is that they are thoroughly exploited as they are at the back and call of the master. Dalits constitute a sizeable number among the bonded laborers as well. Such laborers are bonded against the debt that they incurred for marriage or other day-to-day expenses. The primary or agricultural sector being an unorganized sector, these workers are thoroughly exposed to the worst kinds of violations of their basic human rights. Some of them work for the same master for several years or in certain cases, even for life.

The reports of the *National Commission on Scheduled Castes and Scheduled Tribes* have every year reflected on increase in the number of crimes against the Scheduled Castes. Most of the Dalit women are the victims of rape by upper castes by usurping their lands, giving them low wages, using them as bonded labor, so on and so forth. For checking this exploitation, a set of comprehensive guidelines covering preventive measures have been formulated and communicated by the central government to the state for necessary action. In spite of these guidelines the exploitation of Dalits, especially Dalit women, continues to exist in almost all states of the country. The increase in the number of crimes against the Scheduled Castes recorded by the police is evidence from the fact that as against 180 cases registered with the police in 1955, the number of cases increased to 509 in 1960, to 18,336 in 1991 to 24, 973 in 1993 and to 33,908 in 1994. The highest number of crime against Scheduled Castes are reported in Uttar Pradesh, followed by Rajasthan, Madhya Pradesh,

Gujarat, Tamil Nadu, Andhra Pradesh, Bihar, Kerala, Karnataka and Maharashtra. For example, of the total crimes against Scheduled caste reported in 1994-47.7 percent were reported in Uttar Pradesh, 14.1 percent in Rajasthan, 11 Percent in Madhya Pradesh, 5.7 percent in Gujarat, 4.3 percent in Tamil Nadu, 3.5 percent in Andhra Pradesh and 13.17 percent in other States and Union Territories. Further 13.4 percent of cases were reported as cases of hurt, 44.1 percent as Prevention of Atrocities (SC/ST), 2.9 percent as rape cases and 1.6 percent as murder cases. The rate of conviction in cases of atrocities against Dalits is very low. According to information provided by the Inspector General of Police (Social Justice and Human Rights), there were 18, 752 cases- 4,445 fresh cases and 14,307 “brought forward” cases – involving SCs before special courts between 2003 and 2009. Of these only 412 ended in conviction, where as there were 3,354 acquittals. In 2009, alone, there were 420 acquittals against 29 convictions; 2,656 cases were pending at the close of the year. Official sources acknowledged the prevalence of injustices such as denial of rights to Dalits to worship in temples, bury or burn their dead in common burial or cremation grounds, denial passage to graveyards; and denial of land, water and promotions.

Yet another category of violations is their disenfranchisement during elections throughout the country. There are cases of their being routinely threatened and beaten by the gundas of the political party and compelled them to vote for certain candidates. Those who run for political office in

village councils and municipalities (through seats that have been constitutionally reserved for them) have also been threatened to get them to withdraw from the campaign.

ACHR report reveals the failure of the central government and state level authorities to address societal violence and discrimination faced by religious ethnic minorities, indigenous and tribal peoples and members of the Dalit community. The abuses include the failure of the state to address economic and social grievances. The government has regularly failed to provide adequate public security for these groups and failed to prevent non-state actors from taking the law into their own hands and allowed the space for armed opposition groups to proliferate.

Conclusion

Traditionally, the different Scheduled Castes were employed in the various types of occupations and with their varying social and economic positions, were assigned different ranks in the overall ritual and social hierarchy of the caste system. One might think of these castes, not as part of the organization of a village society contrary that the Scheduled Castes were associated in certain ways with social organization but their touch either with a person or a commodity belonging to a Caste Hindu was avoided as far as possible. Thus, there existed strata of castes on the basis of their farness from the clean castes. What governs the daily life of a Scheduled Caste is discrimination on the basis of caste manifests itself through visible practices such as a separate drinking water wells, segregated housing colonies, separate

burial grounds, segregated places of worship, separate seating of children during mid-day meals at school, denial of taking food from scheduled caste cooks in mid-day meals at schools, prohibition of dressing like others do, prohibition of intercaste dining and marriages, or mounting a horse during a wedding, amongst scores of other forms. Discrimination also manifests itself through non-visible forms in the shape of caste prejudices that can be heard in the spoken language through idioms and phrases. The failure of the Indian state and its instruments to cope with the problems arising in the process of socio-economic change in a society with adult suffrage and equality of opportunity and status, among other similar objectives provided in our constitution, has led to rising expectations on the one hand, and growing consciousness of the exploitation and indignity in social relations, on the other. Such a combination has inevitably led to strong resentment expressing itself in violence. Unless these infirmities are removed and progress madetowards the creation of a truly just society and non-exploitative social order, violence is not only likely to continue but may get aggravated.

In 1991 census reveals the data of 68 million people ST population represents 8% of India's population . This is more than the entire population of East Asia (excluding China), and roughly equivalent to the total populations of Canada, Australia, Sweden and Belgium. Four states – Madhya Pradesh (15.4 million), Maharashtra (7.32 million), Orissa (7.03 million) and Bihar (6.62 million) – account for almost 50% of India's Scheduled Tribe population. Forty districts in India

(Appendix X) account for 50% or more of Scheduled Tribe population. 35 districts have no Scheduled Tribe population. Five States/Union Territories - Chandigarh, Delhi Haryana, Pondicherry and Punjab (Appendix VI) - report no Scheduled Tribe populations. Scheduled Tribe populations are not a 'minority' in all States and Union Territories. The States - Mizoram (95%), Lakshadweep (93%), Nagaland (88%), Meghalaya (86%), Dadra and Nagar Haveli (79%), Arunachal Pradesh (64%), Manipur (34%) and Tripura (31%) - have 30% or more of Scheduled Tribe population.

Human Rights of Minorities

Article 30, of the Indian constitution aim at protecting interests of minorities by stating that, communities with distinct culture, script, language are entitled to conserve the same. The article also mention that, based on factors like religion, caste, race, and language no citizen is deprived of admission in educational institutions maintained by states or receiving aid from state. However, physical violence and rape institutions on minorities are common, along with attacks on minority educational.

In a multicultural society, for the preservation of distinct cultural traits and patterns, exclusive rights may be recognised as fundamental for religious denominations and cultural and linguistic minorities. Such special rights may include educational rights. Religious, cultural or linguistic organisations provide a forum to co-ordinate the demands of individual members. These collective rights can be better exercised only by the use of freedom of speech, expression,

assembly, association, and religion and right to property. Protection against effacement of identity is made possible more by an active assertion of their distinct characteristics through the use of freedom rather than by mere artificial insulation by the state. Insofar as members of these minority communities are concerned, the guarantee of conservation of cultural and educational rights extends several advantages to them including means of livelihood.

Amidst fundamental rights, cultural rights occupy a unique place as they enable both cultural pluralism and compositeness of culture. The social and political fabric of a nation, instead of reflecting a sum total of collective intolerances of various culture-specific communities, would be tending to unite their insight for co-existence and tolerance in the backdrop of a guarantee of cultural and educational rights. The UN Declaration of Minority Rights 1993 believes that constant promotion and realization of the rights of ethnic, religious and linguistic minorities as an integral part of the development of society as a whole, and within a democratic framework based on the rule of law, would contribute to the strengthening of friendship and cooperation among peoples and states.

The Indian cultural tradition of protecting the insular minorities against exclusion ‘from the shores of a vast sea of humanity’, ultimately culminated in the constitutional guarantee of collective right. The principled approach so emerged is one of equal opportunity for conservation of culture and protection of linguistic and religious minorities

against coerced assimilation in the educational front. The cherished aim was to hold India's many peoples, languages, culture and religion into an atmosphere of tolerance and intellectual growth.

Who are 'Minorities'

Although the term 'minorities' is not defined in the Constitution, from the Constituent Assembly Debates, it can be gathered that the Constitution Makers used it to connote numerically vulnerable group in the power equation of State population. In the background of territoriality of dominant linguistic groups with an interspersing of other numerically less linguistic groups within the State territory, the concept of numerical test with reference to religion in State like Punjab, Jammu and Kashmir and Nagaland makes Sikhism, Islam and Christianity, the majority religions in those States respectively. It is submitted, as the state action in the sphere of lower and general education flows from the member of a federal organisation, the numerical test is objective and rationally distinguishes between the dominant and the vulnerable groups. It also conforms to the UN definition of minority, which looks to the minority as a distinctly vulnerable group and to its rights as collective rights. Ever since *In re, Kerala Education Bill*, the Supreme Court has been applying the numerical test, which poses the question whether the population of a linguistic or religious community claiming the minority status is below 50 per cent of the State population. Accordingly, in *D.A.V. College, Bhatinda* Hindu religion was regarded as a minority religion in Punjab. The expression 'All minorities' suggest the

implied existence of equality amidst minorities about their entitlement under Article 30(1). Hence, a government rule which provides for separation between girls school and boys school and compels the girls of one minority community to study in a school of another community in the same vicinage instead of studying in its own MEI is unconstitutional *vis-à-vis* minorities, as held in *Mark Netto*.

In *TMA Pai Foundation* the Eleven Judges Bench of the Supreme Court confirmed the position that the minority status of a community is to be decided with reference to the State population. RUMA PAL, J. expressed the sole dissent on this point on the ground that since education is presently a legislative subject coming under Concurrent List, the matter must be determined in relation to the source and territorial application of the particular legislation against which protection is to be claimed.

For the Constitution Makers, initially, the sources of inspiration for a guarantee of the minority language educational right were the Nehru Committee Report and a resolution of Government of India 1948. The relevant part of the Nehru Committee Report stated, “Adequate provision shall be made by the state for imparting public instruction *in primary schools* to the children of members of minorities through the medium of their own language and in such script, as is in vogue among them”. The Resolution of Government of India stated, “The principle that a child should be instructed *in the early stages of its education* through the medium of the mother tongue has been accepted by the

Government”.

Right to Freedom of Religion

Article 25 reads – Freedom of conscience and free profession, practice and propagation of religion-

- Subject to public order, morality, and health and to other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.
- Nothing in this Article shall affect the operation of any existing law or prevent the State from making any law –
- regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice
- providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

This Article provides every person the right to the freedom of conscience and the right freely to profess, practice and propagate religion. Freedom of conscience connotes a person’s right to entertain beliefs and doctrines concerning matters, which are regarded by him to be conducive to his spiritual well-being. The right is not only to entertain such religious beliefs as may be approved by his judgment or conscience but also to exhibit his sentiments in overt acts as are enjoined by his religion. To profess a religion means the right to declare freely and openly one’s faith.

A person may propagate freely his religious views for the edification of others. It is immaterial whether the propagation is made by a person in his individual capacity or on behalf of a church or institution. The right to religion includes the right to seek a declaration that the Church is episcopal.

Freedom to manage religious affairs

Article 26 reads – Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-

1. to establish and maintain institutions for religious and charitable purposes;
2. to manage its own affairs in matters of religion;
3. to own and acquire movable and immovable property; and
4. to administer such property in accordance with law.

Article 26(a) as the basis for an educational right, the Supreme Court in *Brahmachari Siddeshwa*, ruled that religious denominations could establish institutions for charitable purpose subject to limitations prescribed under Article 26(1). But it did not decide whether it provided protection to educational institutions established and maintained by religious denomination for general education. The *TMA Pai Foundation* judgment made a significant contribution in this sphere by holding, “The right to establish and maintain educational institutions may also be sourced to Article 26(a), which grants, in positive terms, the right to every religious denomination of any section thereof to establish and maintain

institutions for religious and charitable purposes, subject to public order, morality, and health. Education is recognized as the head of charity. Therefore, religious denominations or sections thereof, which do not fall within the special categories carved out in Article 29(1) and 30(1), have the right to establish and maintain religious and educational institutions”. This enables the religious denominations of majority religious community also to set up any educational institution.

Freedom as to payment of taxes for promotion of any particular religion

Article 27 reads – No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination. In *Suresh Chandra Chiman Lal Shah v. Union of India*, the court held that commemoration of distinguished persons, who had contributed to India’s cultural heritage, was done with a view to focusing attention on their ideals, to kindle in our younger generation an awareness of our heritage and to promote international understanding, and that the celebrations involved no religious rites or ceremonies hence no infringement of Article 27.

Also in the case of *K. Reghunath v. State*, expenditure from the State fund for the reconstruction, among others, of the religious and educational places damaged during communal riots was upheld notwithstanding the fact that the damaged places belonged to any one religion. Acquisition of land for construction of a temple has also been upheld.

Cultural and Educational Rights

Article 29 reads – Protection of interests of minorities-

- Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.
- No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.
- Article 30 reads – Right of minorities to establish and administer educational institutions-
- All minorities, whether based on religion or language, shall have the right to set up and administer educational institutions of their choice.
- In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.
- The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

The right of any section of citizens, under Article 29(1) having distinct language, script or culture of their own to conserve the same entitles them to establish and maintain an educational institution for this purpose. The right of religious and linguistic minorities to establish and administer educational institutions of their choice under Article 30(1) also provides a basis and opportunity for education. Although *TMA Pai Foundation* has expanded the scope for establishing educational institutions especially by liberal interpretation of Articles 19(1)(g) and 26(a), groups of people neither belonging to religious denomination nor to an occupation of teachers nor even coming under Articles 29 and 30 seem to be left out.

Facilities for instruction in mother-tongue at primary stage

Article 350A reads – It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities. The learning and communicative processes involved in the conservation of culture, language, and script are animated by the constitutional policy of mother tongue instruction contemplated in Article 350A. According to Article 350A, “It shall be endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups, and the President may issue such direction to any State

as he considers necessary or proper for securing the provision of such facilities.”

Although Article 350A is a special directive to the State, its function of strengthening the rights under Article 29(1) suggests receiving instruction in the mother-tongue at the primary stage of education. As observed by MOHAN, J. in *English Medium Students Parents Association v. State of Karnataka*, “ where the tender minds of children are subject to an alien medium the learning process becomes unnatural. It inflicts a cruel strain on the children which makes the entire transaction mechanical. The basic knowledge can be gathered through the mother tongue. The introduction of a foreign language tends to threaten to atrophy the development of mother tongue.”

Special Officer for linguistic minorities

Article 350B reads –

- There shall be a Special Officer for linguistic minorities to be appointed by the President.
- It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under the Constitution and report to the President upon these issues at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament, and sent to the Governments of the States concerned.

Right to education

It is universally accepted that education empowers the

people for the full development of human personality, strengthens the respect of human rights, and helps to overcome exploitations and the traditional inequalities of caste, class, and gender. Learning liberates from ignorance, superstition, and prejudice that blind the vision of truth.[According to Dr S. Radhakrishnan, the process of education is the slow conquering of the darkness of faults in our inward being. “To lead us from darkness to light, to be free us from every kind of domination except that of reason, is the aim of education”. It is a preparation for living in a better way in future with an ability to participate successfully in the modern economy and society. As viewed by B.N. KIRPAL, J. it is the single most powerful tool for the upliftment and progress of the society. Education is empowerment for socio-economic mobility, an instrument for reducing socio-economic inequalities, and an equipment to trigger growth and development. The linkage of the right to educational to the right to dignified life, equality, freedom and cultural and minority right has made it highly intricate and the extent of regulations relating to it from different perspectives, quite complex.

The right to education has a relation of mutual assistance with other positive rights of life and with various liberties. As viewed by B.N. KIRPAL, CJI. In *TMA Pai Foundation Case*, “India is a land of a diversity of different castes, communities, languages, religions and culture. Although these people enjoy complete political freedom, a vast part of the multitude is illiterate and lives below the poverty line. The single most powerful tool for the upliftment and

progress of such diverse communities is education.”

Conservation of Distinct Language and Culture

Conservation of language and culture is a complex and continuous process of manifestation and transmission of cultural traits and nurturing of creative abilities. As stated by K.T. Shah in the Constituent Assembly, “whether we think of the arts, the learning, the sciences, the religion or philosophy, culture includes them all, and much else besides. As such, it is progressive and should be regarded as being capable of constant growth as any living organism”. Culture, as a sense of ultimate value possessed by a particular society, and expressed in its collective institutions, endeavours and dispositions, designates a way of life, and deeply influences human behaviour. Eminent thinkers and writers have regarded attainment of perfection in, or through culture as a desirable social practice. Irrespective of the controversial questions, whether it is the state or the concerned cultural community that should monitor the process and direction of refinement, or what shall be the parameters for such reforms, the immense help that the expressional and other freedoms render towards enlightened cultural reforms or at least avoidance of cultural fault lines is significant. Unlike conservation of material resources, which relies on strategies of non-user and lesser user, conservation of language and religion is done by more and more application. Since the life of thought is very much inherent in the life of language symbols of that thought, language serves as a cultural grid to receive and respond to human experiences. Its essence is communication. Therefore,

the assistance that Article 29(1) right gathers from freedom of speech, expression, assembly, association, religion and the right to establish and administer educational institutions of their choice is greatly wide and significant. It is because of such relations that in countries like America where cultural and language rights are not constitutionally enumerated, invoking of due process clause or of First Amendment is resorted to. Sometimes equal protection clause is also reward fully employed.

Conclusion

Though minorities are those whose are numerically less based on their language and culture, it is evident from the above arguments that the Indian Constitution provides certain rights to the minorities residing in several parts of Indian territories. The Constitution of India has not defined the term 'minority', but had provided them with all the opportunities needed for their survival in the form of fundamental rights. Since India is a secular country, it is important to maintain the integrity of nation by maintaining a status of equality as because of its rich cultural values and tolerance. Besides this, there are also certain fundamental duties under Article 51A given in Part IV-A of the Constitution of India for every citizen. The main focus of the law is to create confidence in the mind of such minorities that they are protected by the law of the Constitution and also they are treated equally on par with the majority so that there would be no any kind of discrimination among the citizens.

Human Rights of women and children

Women are the victims of violence, sexual assault, and gender discrimination in different spheres of life. Women are also marred by intense poverty at the 21st century CE, it is reported that, around 56% of married women are often found under-nourished. In the first decade of the 21st century, 57% of pregnant women were found to be anemic. Along with the above-mentioned constitutional provisions to safeguard the interests of women in different fields. Nevertheless, violations of human rights of women, various legislations were framed to cater to the rise in contemporary Indian society. In this context, Devaki Jain, rightly mentions that growing consumerism, increasing criminalization of society, explicit display of violence in media are some of the reasons for victimization of women in male dominated Indian society.

Women and children are faced with political, economic and educational problems. They face severe social, economic and political discrimination. Children do not enjoy their childhood and their little shoulders carry the burden of adulthood in their tender years. Children are innocent, trusting and full of hope. Their childhood should be happy and loving. Their lives should mature gradually, as they gain new experiences. But for many children, the reality of childhood is altogether different. In India, two million Indian babies die before they celebrate their first birthday. More than one million girl children are killed before their birth. About thirty-five million children aged 6-14 years do not go to school and approximately seventeen million children in India work. The

main reason for widespread female foeticide and the continued prevalence of female infanticide in parts of India was the dowry system, which although prohibited by law, continues unabated in India. Throughout history, children have been abused and exploited. They work in harmful conditions; suffer from hunger and homelessness, high infant mortality, poor health care and limited opportunities for basic education. Children have the right to survive, develop, be protected and participate in decisions that impact their lives. Children are citizens in their own right, entitled to the full spectrum of human rights. They will only attain these rights guaranteed to them if each person believes in making this dream come true as parents, neighbours, consumers, employees, businesspeople, teachers, politicians, journalists, professionals, bureaucrats, activists and most importantly as citizens.

The Child in Society

The Child Labour (Prohibition & Regulation) Act, 1986 prohibits the engagement of children below the age of fourteen years in certain employments and regulates the conditions of work of children in shops, commercial establishments, workshops, farms, residential hotels, restaurants, eating-houses, theatres or other places of public amusement or entertainment. Apart from this, we see everyday children aged 3-4 years trained for begging, not only in big cities but also in small towns. Parents are paid for the exploitation of their children for begging purp Women also face a similar situation. Despite concerted efforts by non-governmental organizations (NGOs) and civil society, the

overall status of women and their lack of legal entitlements still call for a struggle. Even today, women occupy a devalued position in society. This is manifested in different forms of grave human rights violations such as domestic/sexual violence, sexual harassment at the workplace, identity-based gender violence and sex selective abortions, to name a few. These forms of violence result in the negation of equality rights of women and their exclusion from all public spaces and spheres of activities such as meaningful employment. In the absence of a state-sponsored social security network and unemployment guarantees, they become dependent on their male relatives for protection and support. Laws guarantee the human rights of women and children, but without proper implementation they would not solve the problem. WCWS was established to become a single platform to address the root causes of violation of women's and children's rights and work towards their social and economic development.

In spite of many legal measures, India is infested with rampant child labour. Article 39, of the Indian constitution explicitly addresses the issue of child labor. To deal with the rights of child, especially to confront the menace of child labour, 'The National Commission for Protection of Child Rights' was formed to ensure education of children and states are mandated to provide compulsory free primary education with mid-day meal. Nevertheless, there is considerable amount of school dropouts especially in economically disadvantaged sections of the society. Amidst various legal measures,

children are also victims of human rights violation in other spheres of life: child marriage, child trafficking, illegal adoptions, and prenatal tests to abort girl child. Apart from the menace of child labour, children are denied proper nutrition. 'National Family Health Survey' reported that, nearly 49% of the children below three years, amounting to 45 million, are malnourished.³ 'Integrated Child Development Services' was started by the central government for meeting the nutritional needs of undernourished children, it has been reported that, in 2011 CE, 60% of the annual budget was diverted to some other projects. Malnutrition and Child labour deprive children their rights for education.

MODULE VI

HUMAN RIGHTS MOVEMENTS IN INDIA

Human Rights are described as all those rights which are indispensable for the defence and maintenance of self-esteem of individuals and create conditions in which every human being can develop his personality to the fullest extent. Human rights become operative with the birth of an individual. Human rights are intrinsic in all the individuals regardless of their caste, religion, sex and nationality. Because of their vast significance to human beings; human rights are also called fundamental rights, basic rights, inherent rights, natural rights and birth rights. Human rights are the unchallengeable rights of a person by virtue of being a human. All or some of these may or may not be written in the Constitution and laws of a country. These rights are considered to be widespread and have been concretised in various categories. These may be political, economic, social, or cultural. Theoretically, human rights belong to each individual, they are indivisible, and valid for all times. Human rights are, no doubt, the inalienable of individuals. But it should be protected. For maintaining or preserving human rights, there are large number of movements appeared in different walks of life. Before going into detail about human rights movement in the country, first of all let us make a comprehensive look about the civil liberties movement.

Civil Liberties Movement

Civil liberties are associated with basic rights and freedoms that are guaranteed either explicitly identified in the Bill of Rights and the Constitution or deduced through the years by courts and legislators. Civil liberties are personal assurances and freedoms that the government cannot curtail, either by law or by judicial interpretation without due process. The evolution of civil liberties movement in India can be traced back in the pre independence era, where, the national liberation struggle was rousing up against the British tyranny. Main focus of these movements was on indefinite detention without trial initiated by the British Government and which ultimately posed a serious threat to the civil liberties. Hence civil liberty movement got momentum as a part of national movement. As a consequence, Indian civil liberty union was established by Pandit Jawahar Lal Nehru in 1931. Though the range of the term differs from country to country but the basic of Civil liberties include similar things. These include:

- Freedom of speech
- The right to privacy
- The right to be free from unreasonable searches of your home
- The right to a fair court trial
- The right to marry
- The right to vote

Other civil liberties include the right to own property, the right to defend oneself, and the right to bodily integrity.

Within the distinctions between civil liberties and other types of liberty, distinctions exist between positive liberty/positive rights and negative liberty/negative rights.

The civil and democratic rights movement in India, with its very obvious influences drawn from western democracies, had rather fortuitous beginnings in India. From a largely limited activist base from the emergency period of the 1970s, it has since moved into newer areas, with newer sources of support especially among more marginalised sections. But the movement, unlike its counterpart in the west, remains constantly challenged by prevailing complexities of the political process. The emergence of newer identities and shifting quality of these identities shaped by the very nature of politics and electoral processes in India coupled with the paucity of similar experiences in western liberal democracies, ensures that civil and democratic rights movement has to often formulate its own responses, make its own theoretical and conceptual innovations to meet such challenges.

Human Rights Movement in India

India happens to be one of the few countries in the world having a checked history of human rights movement. Though formidable background of the protection and promotion of human rights may be traced to the ancient literature and life of the people, the foundations of the modern human rights movement seem to have been laid in India only during the course of the anti-colonial struggle. In fact, in order to provide for a holistic critique of colonialism in the country, the leaders of the national movement found it convenient to

denounce the British government in India for its utter disregard and disrespect even to the basic human rights of the Indians while trying to perpetuate the colonial rule in the country. Thus, the provision for the highest order of human rights for the citizens of the country were inserted in the Constitution of independent India by the founding fathers of the Constitution.

Several social and political activist groups use the term 'human rights' in the context of the rights of an individual which are 'natural', inherent in our nature 'and without which we cannot live as human beings'. These rights should not be violated by the state. In other words, they require to be protected against the authority of the state. Simultaneously, ironically, it is anticipated that they need to be protected and enhanced by the state. These rights are generally included in 'civil' and 'democratic' rights. As the time passed from ancient period, these rights came with different philosophical roots. Their meanings have undergone change from time to time and in different contexts. For traditionalists, human rights include the rights personified in religion which validate ownership of private property including the system of slavery and bonded labour. Liberals and leftists believed that equality and dignity of all individuals to sustain life are the main human rights. There is intense debate among political philosophers and jurists to explain human rights .

The dialog on rights of an individual and movements around these philosophies were heated from ancient time and rooted in western society. The movements that developed in the west during the French and American revolutions during

the eighteenth century influenced a small section of Indian intellectuals. Social transformation and political movements of different groups and the Congress provided base for debate and declaration of the rights. The advocates of the rights were social reformers, liberal political leaders championing for equality of Indians as 'citizens' with the British before law and there were also the defenders primarily concerned with shielding the economic interests of the landed class.

Social reformers attempted to involve for reforming social customs and traditions so as to protect women and the lower layers of society. The liberals were concerned with individual freedom of expression and association and the recognition of equality before law for all citizens. One of the many factors which led to the organisation of the Indian National Congress in 1885 was the disappointment of Indians to get the Ilbert Bill passed in its original form proposing to give Indian magistrates the power to try British subjects in criminal cases. In the end of century, this consciousness crystallised in a new generation. Congress leader stated that 'with new thoughts and new ideas, impatient of its dependent position and claiming its rights as free citizens of the British Empire' . Sitharamam Kakarala discerned that the rights consciousness was concomitant to the advent of organized landed gentry and middle class. They tended to observe 'civil liberties' as something that only advanced sections of the natives can enjoy and appreciate. It can be said that 'rights' became 'advantages' conferred by the colonial rule on the advanced part of India. This attitude was further consolidated

by the leaders of the Indian National Congress (INC) during the first three decades of its practice.

In the year of 1918, the Congress made a declaration of rights submitted to the British parliament. It encompassed the freedoms of speech, expression and assembly, the right to be tried according to law, and above all, freedom from racial discrimination . Later, the Motilal Nehru committee of 1928 claimed all fundamental rights to Indians 'which had been denied to them'. Though the demands were overruled by the British government, the Congress passed a resolution on fundamental rights in the Karachi session in 1931.

The first human rights group in the country, the Civil Liberties Union was formed by Jawaharlal Nehru and some of his associates in the early 1930s with the aim of providing legal support to nationalists accused of sedition against the colonial authorities. In 1936, Jawaharlal Nehru came forward to form the first civil liberties organisation. The Indian Civil Liberties Union (ICLU) was established in Bombay in 1936 with Rabindranath Tagore as its president. Nehru said in his address to the founding conference of the ICLU, that the notion of civil liberties is to have the right to oppose the government. In 1945, Sir Tej Bahadur Sapru brought forth a constitutional proposal emphasising the importance of fundamental rights. They were integrated in the Indian constitution. Thus, liberties and rights protected in the Indian constitution were product of the freedom struggle of the people of India. The historical interpretation of the civil rights movements during the colonial period is vague and very brief.

It has been observed recently that there are several groups in different states working on human rights. The most important and famous are the People's Union for Civil Liberties (PUCL) and the People's Union for Democratic Rights (PUDR). They have their formal or informal branches and/or network organisations in many states with the same names, though autonomous. Moreover, the important and active state-level organisations are as under:

- The Andhra Pradesh Civil Liberties Committee (APCLC)
- The Committee for the Protection of Democratic Rights (CPDR) in Maharashtra
- The Association for Democratic Rights (AFDR) in Punjab
- The Naga People's Movement for Human Rights in Nagaland
- Lok Adhikar Sangh in Gujarat
- Citizens for Democracy in Delhi, Mumbai and other places.

These organisations are not membership-based. They have office bearers such as the convenor, president, secretary, etc. In some places, the executive committee functions jointly. They do not have definite objectives or constitutions to lay down their functions. When there is requirement, they form committees and subcommittees to carry out certain functions.

Committees of Concerned Citizens have been formed in several states from issue to issue and time to time. Sometimes, they try to intercede between the state and political

groups engaged in direct actions and become the victims of so-called 'encounter' actions of the police or military. They have a temporary character in terms of organisation and functioning. Such loose organisational structures may provide flexibility for undertaking activities. But they may lack stability of members and activities. Several observers represented that these groups are often limited to a small group of individuals largely from the academia, media, writers, artists, lawyers and other professionals. Except in Andhra Pradesh, where APCLC and APDR have enticed relatively huge numbers of participants, human rights groups are mainly from the middle class (Ray 1986; Kakarala 1993).

Many reports have shown that human right movements face a constant predicament on the issue of violence practiced by the strugglers and activists as well as the violence of the state. In 1948 the Civil Liberties Committee of West Bengal which protested against the repression of the state on the communist activists faced the question of its stand on the violence practised by the mass movement. Dutta observes that: Most of the communist activists, whose rights were under attack, were accused of practicing violence, and the liberals, who joined the CLC, had to answer the government's charge that they were condoning violence. On this issue, the CLC leaders took a stand that was, in fact, an extension of the ideal that the primary task of the movement was to oppose the authoritarian tendencies of the state. In defending the communists, they presumed that the state violence was more harmful to civil society than the violence against the state practiced by the revolutionaries (1998: 280-81).

Human rights elements and in social reform movements in India

It is found that, the genesis and growth of human rights movement in India could be found in the various socio-religious reform movements championed by the great social reformers from time to time. It can be say that the exhibition of concern for the human rights of individuals by the leaders of the national movement came quite late. It was manifested during 1930s when Nehru started the Civil Liberties Union to provide legal aid to the freedom fighters accused of treason. Indian National Congress founded in 1885, only realised the importance of human rights in its Karachi session of 1931, passed the first resolution demanding civil liberties and equal rights for citizens. In the realm of socio-religious reform movements, Bengal happens to be the pioneering state. Drawing upon the lead given by the torch-bearers of European Renaissance, the social reformers like Raja Rammohan Roy and Ishwar Chandra Vidyasagar waged relentless struggle for upliftment in the social status of certain sections like women. They not only tried to protect the human rights of these people by calling for the abolition of inhuman social and religious practices that unleashed untold miseries on them, they also tried to persevere for the protection of their human rights by empowering them through the medium of education and generating awareness amongst them for their rights and responsibilities in society. The social reformers in Bengal received immense support and help from a number of western social reformers and educationists such as David Hare, Sister

Nivedita and Darezio, as also certain humanist British officials like Governor-General Lord William Bentick in getting their efforts eventually bearing fruit.

Justice M.G. Ranade founded the Indian Social Conference in 1887 precisely for the purpose of working towards the realization of a dignified and respectful life for the socially disadvantaged sections of society by eradicating the socio-religious practices violating the human rights of such people. Another formidable social reform movement in Maharashtra, having deep-rooted implications for the growth of human rights movement in the country, was launched by Jyotiba Phule under the auspices of *Satyasodhak Samaj* to seek the protection and promotion of the human rights of the people belonging to the oppressed castes.

Early leads for the growth of human rights movement in India also came from the various socio-religious reform movements initiated in various parts of the south India. The prominent amongst such movements appears to be the movement launched by Sri Narayan Guru safeguarding the norms and customs of the Izhava community in Travancore. Apart from this, numerous other socio-religious movements were also launched in different parts of the region, which sought, either to protect or to promote the socio-religious rights of the hitherto marginalized sections of society belonging to lower castes.

The other socio-religious reform movements such as Arya Samaj of Swami Dayanand Saraswati, the Ramakrishana Mission of Swami Vivekanand and the Aligarh School

founded by Syed Ahmad Khan added pace for the growth of human rights movement in the country. These were basically religious reform movements having repercussions on the social standing of the people as well. Thus, while the first two movements worked hard to reform the Hindu society, the last one was aimed at bringing about some sort of awakening amongst the Muslim society. The impact of these movements was remarkable in bringing about a appreciable social awakening amongst the masses as a result of which they became vigilant warriors of demanding basic liberties from the colonial rulers.

Human rights movement during the freedom struggle

The long span of anti-colonial movement in India for the preservation of basic civil and political rights to the common people of India was also, human rights movement for attaining independence for the country. Human rights movement during the phase of nationalist struggle appears to have taken shape only during the decade of 1930s. The biggest impetus in this direction came in the form of the Congress adopting a comprehensive resolution on the theme of 'Fundamental Rights and duties and Economic and social Change' in 1931 at its Karachi session. The passage of this resolution was seemingly the culmination of a series of subtle moves made the Congress to seek the civil and political rights for the native people. Moreover, the various committees like the Nehru Committee, in their reports categorically ingrained certain civil and political rights in the discourse of freedom struggle in the country.

However, the institutional beginning in this regard is arguably made by the setting up of the Indian Civil Liberties Union (ICLU) in 1934 at the behest of mainly Nehru to ensure legal assistance to those freedom fighters who remained undefended while facing trial under the charges of treason. Functioning in a very limited and rudimentary fashion, the major activities of the ICLU remained confined to ‘gathering information about violations of civil liberties, particularly regarding the conditions of prisoners and people in detention, police brutality, proscriptions on literature and restrictions on the press.’ Nonetheless, the foundation of the ICLU marked the formal and distinct initiation of the human rights movement in the country.

Unfortunately, the institutional experiment of civil rights movement by way of the ICLU started facing rough weather from various quarters. Though the initial euphoria created by the setting up of the ICLU led to the formation of a number of civil liberty unions like the Bombay Civil Liberties Union, the Madras Civil Liberties Union and the Punjab Civil Liberties Union, such enthusiasm remained only ephemeral. The real challenge to these unions came with the inauguration of Congress led provincial governments in 1937 under the provisions of the Government of India Act, 1935. Loud noises made by certain Congress leaders in support of civil and political rights of the people started being lost in the din of the governance dynamics. When such betrayal of a noble cause was exposed and objected to by the ICLU and other such unions, they came in direct conflict with the powerful vested

interests in the Congress party. Subsequently, growing tension between the ICLU and the Congress led governments found its articulation in the founders of the ICLU started arguing for the redundancy of the bodies like ICLU at a time when the country has got some sort of self-rule. Eventually, with the support and patronage from its founders being withdrawn due to seemingly autonomous and vigorous style of functioning of the body, the ICLU could not sustain itself for long and met with an untimely demise. In final analysis, the experiment of the ICLU exposed the hypocrisy of the some of the Congress leaders in espousing the cause of civil and political rights of the people vehemently as long as they remain outside the corridors of power, and becoming the willing partner of the colonial government in grossly violating the same rights when absorbed in the ruling dispensation of the time.

An analysis of the development of human rights movement during the phase of nationalist movement in India reveals two interesting features having a powerful influence on the march of the movement in the post-independence times. Firstly, despite having a very rich and ancient tradition of the enjoyment of some sort of human rights, if not the ones identical to the modern ones, the nationalist leaders in the country appeared more prone to look at the western, more particularly the British liberal traditions of human rights to argue for the same to be given to the native people by the colonial rulers. Consequently, the entire discourse of human rights during the freedom struggle boiled down to only the civil and political rights, as in the case of the western

countries, to the marginalization, if not total exclusion, of the social and economic rights of the people which might have gone to create a more socially egalitarian and economically equitable order in the post independent times. Secondly, and more importantly, the concern of the many, if not all, of the nationalist leaders for the human rights of the people seemed to be more cosmetic than deep rooted. In other words, arguing for the human rights of the people as one of the intellectual high points from which to browbeat the colonial rulers as an overall package of their anti-colonial strategy, the leaders very conveniently forgot the struggles waged and the promises made for guaranteeing certain basic fundamental rights to the people once they come to power in the country. The empirical evidences to substantiate the dismal record of the leaders on the front of the protection and promotion human rights are galore right from the establishment of first Congress led ministries in the provinces in 1937 through the interim government of Jawaharlal Nehru till the functioning of various democratically elected governments even in the post independent times.

Human Rights movement in the post independent period

The human rights movement in the post-independence period is normally divided into two phases: pre- and post-Emergency. There is no account of this phase of the movement. The major civil liberties movement began in the late 1960s with the cruel attack by the state on the naxalites. The movement elevated the issue of democratic rights of the oppressed sections of society for justice and equality. While

detailing the struggle, Kakarala contended that democratic rights are needed by those who have to struggle for justice while the fundamental rights are adequate for the privileged. The struggle for democratic rights is the struggle to assert the rights already guaranteed formally but not ensured in practice. Denial of democratic rights takes the form of a spasm on the right to assert rights already guaranteed.

Human Rights in the pre emergency period

The functioning of human rights movement in independent India provides a mixed bag of results on a closer scrutiny. There is not much to be surprised that the violations of the human rights of the people would remain a blot on political system even in the democratic countries like India. What was surprising were the intensity and scale of such violations during the two years of emergency during 1975-77. However, with the untiring efforts of the human rights groups, some degree of lost space in the realm of human rights was recovered even during the decade of 1970s itself. Yet, the newer forces and events that not only strengthened but also gave new vitality to the human rights movement in the country came during the decade of 1980s and 1990s when both governmental as well as non governmental efforts made sure that the discourse of human rights movement gets a new narrative in India.

In the post-independence times, despite having one of the most elaborate exhibition of the fundamental human rights of the people, the operationalization of the human rights in the country became quite problematic. The inherent contradictions

in the socio-economic system of the country alienated large number of people for the enjoyment of even the basic human rights guaranteed to the citizens of India. Moreover, with the disappearance of the euphoria attached to the attainment of the independence for the country, the harsh realities of running a democratic system of government in a heterogeneous country started having a telling effect on the enjoyment of the human rights by the people. With claims and counter claims started being made on the social status, economic resources and political positions of the country, the Indian state began to find it in an utterly helpless position to accommodate the aspirations of all the sections of the society. Consequently, multiple types of violations of human rights appeared on the Indian landscape. For instance, while the old-fashioned and exploitative socio-economic system continued to permit the exploitation of one section of society at the hands of the few. Any radical move on the part of the marginalized people to either seek their dues in the socio-economic and political life of the country or claim preferential treatment by the government met with stiff resistance not only by the vested interests of the society but also by the Indian state on numerous occasions.

Despite having elaborate provisions on political and civil rights of the people, the operationalization of such provisions started exposing the inherent structural as well as concomitant functional deformities of the human rights from the very beginning. Structurally, for instance, the loftier provisions on the freedoms given to the people appeared to

be severely constrained by the draconian provisions such as preventive detention. Functionally, the first two decades of the working of the Constitution was marked by the predominance of the Congress party in the political system of the country on the hand, and the gradual emergence of local and regional voices of dissent which started questioning the functional efficacy of the democratic institutions in the country. In response to growing aspersions being cast on the human rights record of the government, two pronged strategy seemed to be evolved by the government. First, most of the issues of micro human rights violations, say, in cases of the displacement of the people in the wake of the establishment of heavy industries and big multipurpose projects, were sought to be brushed aside in the name of nation building and bringing about a turnaround in the socio-economic life of the people. But when the inherent fallacy of such an emotive bogey failed to convinced the proponents of human rights of the citizens, the government started showing its true colours by taking repressive actions against those agitating for the human rights of the common man. Consequently, two kinds of reactions seemed to forthcoming in face of the growing violations of the human rights of the people at the hands of the government. The radicals, who would not retain their faith in the efficacy and effectiveness of the democratic constitution to bring about any substantive transformations in the socio-economic and political life of the common people, floated a violent mode of struggle in the form of Naxalite movement. However, the moderate elements amongst the crusaders for the human rights opted for the democratic and peaceful method of setting up civil liberties

groups in order to raise the issues of human rights violations.

Human Rights Movement in the post emergency period

In the regime of Smt. Indira Gandhi, who imposed emergency on 25 June 1975 brought a negative impetus to the civil rights movement. She suspended the fundamental rights suing that they were used by the privileged section to prevent her from carrying out programmes in the interest of the 'majority'. The liberal intellectuals were surprised by the realisation of the 'built- in authoritarian tendencies within the political system, and the drawbacks endemic in any assumption of the durability of the democratic process, as heretofore. This formed the intellectual and political setting that led to the origin of the civil and democratic rights movement. Numerous civil liberties organisations were emerged during this period to fight for civil and democratic rights. Arguably, the most formidable assault on the human rights of the people came in the wake of the imposition of national emergency in the country by the government of Mrs. Indira Gandhi in June 1975.

With most of democratic institutions and liberal laws in the country under suspension, the brutality of the governmental machinery resulted into one of the most comprehensive and flagrant violations of the human rights of the people in the history of India. However, the unbridled and revengeful repression actions of the government paved the way for the emergence of equally determined and democratic associations in various parts of the country to take up the cudgels on behalf of those whose human rights were violated during the 1975-77.

Under the leadership of certain die hard democrats, the bodies like the Peoples Union for Democratic Rights (PUDR) and the People's Union for Civil Liberties (PUCL) became the leading organizations putting up a brave and effective front to defend the human rights of the people in the face of growing wrath of the state machinery against the human rights of one and all.

In fact, the span of two years of emergency led to a natural proliferation of numerous human rights groups in various parts of India with the common agenda of fighting for the protection of the human rights of the people in the face of the violations being carried out by the state agencies. Thus, while Bombay witnessed the setting up of the Committee for the Protection of Democratic Rights, Association for the Protection of Democratic Rights was established in Punjab. Even amongst the marginalized sections of society like the tribals, the urge for protecting the human rights led to the foundation of formidable bodies like Banavasi Panchayat in West Bengal to fight for the cause of human rights.

Consequently, the groups such as Association for the Protection of Democratic Rights (APDR) and Andhra Pradesh Civil Liberties Committee (APCLC) were set up in 1972 and 1974 respectively, though in course of time, their functional domain remained confined to identification, investigation, documentation and in certain cases campaign against cases of the violations of human rights. Significantly, the strengthening of human rights movement in India owes, in main, to the untiring efforts of numerous non-governmental organizations (NGOs) as well as public spirited individuals working in

diverse spheres of public life. Indeed, the proliferation in the number of human rights NGOs is a tribute to the vitality of civil society in India which is able to stem the tide of repression and marginalization of certain sections of society for partisan, and in some cases pernicious considerations. It's the result of the ceaseless efforts of these organizations that the human rights movement in India has not only solid ground but also achieving newer milestones in the field of protection and promotion of the human rights in the country. Moreover, these organizations and individuals are now turning their attention to those spheres of life which hitherto remained out of focus of the human rights crusaders. For instance, the human rights movement has gradually encompassed the spheres like social and cultural rights, environmental degradation, rights of women and other marginalized sections of society, in addition to working in the field of civil and political rights of the people with renewed vigour, giving a sort of all inclusive character to the human rights movement in the country.

A plausible product of the human rights movement, which has also added a new vigour in the movement, seems to be the emergence of the concept of 'Public Interest Litigation' (PIL). It evolved in the wake of a petition filed in the Supreme Court by the Delhi chapter of People's Union for Democratic Rights on behalf of the unorganized workers hired by the private contractor, demanding the implementation of the provisions of the Minimum Wages Act, by the government. The decision of the Supreme Court in this case afforded some sort of legal sanctity to the efforts of the human rights groups

in fighting for the cause of the protection and promotion of the rights of the helpless and vulnerable sections of society. Moreover, it has motivated a number of people seeking judicial recourse to set the things right for the rights of the people. For instance, the efforts of H.D. Shouri through his NGO 'Common Cause' to protect the rights of the consumers, and the attempts by Lawyer M.C. Mehta and the NGO 'Centre for Science and Environment' (CSE) to get solutions to the environmental problems of Delhi are illustrative of the utility of PIL as a formidable instrument in the hands of the individual and organizations to get the rights of people protected.

Another remarkable highpoint in the efforts of the human rights organizations came when the government of India decided to set up the National Human Rights Commission (NHRC) in 1993. Interestingly, though a number of statutory commission and institutions existed for the protection and promotion of the rights of certain sections of society like Scheduled Castes and Scheduled Tribes, it was realized that such bodies neither have the mindset nor logistical support to effectively protect the rights of even their target groups. Moreover, the necessity was felt for some sort of dedicated national as well as provincial bodies that can comprehensively look into the issues of protection and promotion of human rights of all sections of society with adequate powers and administrative support system. Consequently, setting up of the NHRC came as a welcome step for the cause of human rights in the country. However,

showing its propensity to play to the gallery, the government also constituted a number of other commissions like National Commission for Women, the National Commission for Minorities, and the National Commission for Safai Karamcharis etc. with the declared purpose of protecting and promoting the human rights of these sections of society. Yet, the functioning of these bodies for over a decade leaves much to be desired on the functional efficacy and effectiveness of these bodies, including the NHRC.

India was actively participating in all these developments, Finally, Government of India introduced the Human Rights Commission Bill in the Lok Sabha on 14th May 1992. On 28th September 1993, President of India publicised an ordinance namely Protection of Human Rights Ordinance. This ordinance was replaced by the Protection of Human Rights Act 1993 which was passed by both the Houses of Parliament. The bill became an Act, having received the assent of the president and it was published in the Gazette of India, Extra ordinary part II, section-I. In India, the Protection of Human Rights Act, 1993 stated that "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India. Fundamental rights include freedom of expression, association, religious freedom, equality before law, and directive principles are related to socio-economic rights, such as, rights to education, equal wages, and dignity of an individual indiscriminate before laws. The former are justiciable while

the latter remain guidelines for legislation. They both include broad range of different civil and democratic rights. Justice P.N. Bhagwati elaborated the scope of Article 21 of the constitution to incorporate the right to food, clothing and shelter in term 'life' in the Article.

Environmental Movements in India

According to Rootes, Christopher The environmental movements are conceived as broad networks of people and organizations engaged in collective action in the pursuit of environmental benefits. Environmental movements are understood to be very diverse and complex, their organizational forms ranging from the highly organized and formally institutionalized to the radically informal, the spatial scope of their activities ranging from the local to the almost global, the nature of their concerns ranging from single issue to the full panoply of global environmental concerns. Such an inclusive conception is consistent with the usage of the term amongst environmental activists themselves and enables us to consider the linkages between the several levels and forms of what activists call 'the environmental movement.

Environmental movements appeared in India during 1970s. This period witnessed the emergence of a series Movements that vibrate different parts of India. These movements collectively called new social movements. People in different walks of life protested for certain safeguards to their life which was threatened as a result of the development process initiated by independent Indian Government. Indian constitution is considered one of the finest constitutions in the

world containing elaborate provisions of rights of the people across different sections of people. In the constitution we have Fundamental Rights, Directive Principles of State Policy, and Fundamental Duties, aimed to give a decent and meaningful life. The constitution of India is really a wonderful document safeguarding the multi-faceted structure of the country. The framers of the constitution spend two years eleven months and eighteen days to complete the constitution, and examined sixty constitutions of the world. But around seven decades of its working, it is desperate to say that most of the people are not completely satisfied with the working of the constitution. This could be clearly seen early part 1970s and persistent throughout India. People in different strata of society organised and protested for their basic rights. This resulted the emergence of different movements such as environmental movements, women movement, and movement of marginalised sections. The prominent among this movement was environmental movements. Though the people in different walks of life raised different demands, they have something in common. But all these movements raised some common demands. The important similarity we can find amongst them was their form of agitation and the question they raised. All these movement questions the concept of developmental paradigm. Before going into detail about the environmental issues and environmental movement, let us have a look at the developmental process introduced in the country by Jawahar Lal Nehru Government.

Environmental movements have an important place in

the studies related to water, air, natural resources or explicitly to have a clean environment are all part of the third generation rights. Environmental movement emerged as a by-product of the development paradigm which totally ignored the importance of nature in human life. The massive destruction of nature affected the life of the people of the world in a number of ways. The problems ranging from deforestation, water scarcity, pollution, ozone depletion, soil erosion, acid rains, species extinction, desertification, unequal access resources etc. Got large scale movements having their base on natural protection.

Environmental movements revolve around competing claims over renewable natural resources. Resources like land, forests, and water had been locally controlled and used collectively for centuries. With the introduction of new technology after India's encounter with colonial rule, a different framework was established for the use of these natural resources. Colonial domination brought with it a systematic transformation of these resources into commodities that would generate profits and government revenue; this transformation also paved the way for disputes between the new owner and the original user of the resource base.

Important environmental movements in India were the Silent Valley Movement, the Chipko Movement, APPIKO movement, Anti-Tehri Dam movement, Narmada Bachavo Andolan, Mithani Village Movement, Jharkanthi organization against radiation, National Fish Workers Forum, Beej Bachao Andolan etc. Among these movements, a few are anti-Dam movements.

Chipko Movement

Chipko movement began in 1971 in the hills of Uttarakhand (now in the state of Uttaranchal). The term Chipko means 'embrace' or 'hug', referring to the first action of the movement at Mandal village in the Alakananda valley. The movement appeared as a result of government's decision to allot a plot of forest land to a sports goods company and denying the villagers to use the local timber to make the agricultural tools. Women community were the great sufferers in the deal between the government and the sports company. The tree plants in the area were a great benefit for Sports Company. The sports company had this objective. But the villagers use the twigs of these trees as burning fuel for cooking and killing the bitter cold in the winter season. Though the environment degradation and the privatization of the basic resources played a prominent and decisive role. The company with the silent support of the government tried to divert the attention of the men, the womenfolk stepped in to save their environment and their livelihoods. They started hugging trees in order to prevent them from being axed. This simple action transformed into an organized and peaceful movement under the leadership of Chandi Prasad Bhatt. The movement largely inspired by Gandhian principles of non-violent satyagraha. This was the first movement of its kind, not just in post independent India, but also across the world. Finally Prime Minister Indira Gandhi, declared a ban on tree logging in the 5000-kilometre trans-Himalayan region. The most active participants of the movement included Sundar Lal Bahuguna,

Chandi Prasad Bhatt, Doom Singh Negi Ghanasyam Raturi and Indus Tikeker. Sundarlal Bhahuguma, the prominent leader, coined the word ‘Ecology is permanent Economy’. Infact, the Chipko Movement inspired Vandana Siva for the development of a new theory called as ‘Ecofeminism” which especially explains the link between the women and the ecology.

Appiko Movement

Followed the success of Chipko Movement, the people of Karnataka started Appiko Chatewali Movement. The appiko in Kannada language mean to hug. The people of northern Canara district organised and protested when the natural forests were cleared by the contractors which led to soil erosion and drying up of perennial water resources. In the Salkani village in Sirsi , the people were deprived of the only patch of forest left near their surrounding villages to obtain fuelwood , fodder and honey etc. In September 1983 this led youth and women to launcha Chipko movement in Karnataka. Youth and children from Salkami and surrounding villages walked five miles to a nearby forest and hugged trees there. They stopped the axe man who was felling trees pursuing the order of the forest department of the state. The people demanded ban on felling trees. they were ready to sacrifice their lives for this cause. The protest continued 38 days, which forced the government to withdraw the felling orders.

Silent Valley Movement

This movement was came into lime light in by Kerala Sastra Sahitya Parishad (KSSP) an NGO raised their voice to

stop the silent valley Hydral Project in 1978. Silent valley is rich in tropical forest with enormous bio-reserve. The state Govt. of Kerala wanted a hydroelectric project for the power hungry state inside a deep tropical forest in silent valley. This tropical forest was the only remaining one in the country. The environmentalist objected to the project and field a case in High court, which they lost project was cancelled by the help of Mrs. Indira Gandhi. The Silent Valley movement was one of the successful movements which prevented the construction of hydro project in the river.

The Silent Valle is situated in the high mountains of the Western Ghats is about 45 k.m. away from Manarkadu of Palghat distict in Kerala state .It forms a part of the core area of Nilgiri biosphere. Silent valley movement is a remarkable people's movement that saved the moist evergreen forest in Kerala from being destroyed by a hydro electric project by Kerala State Electricity Board in 1970 across Kunthi river and would submerge 8.3sq.km of untouched moist evergreen forest. The importance of silent valley rests not its evergreen scenery but its entangleness to peoples life. This area is rich in natural resources, wild life and a cool climate. More than hundred variety of orchids can be seen in the area, plants of high medicinal values also have its presence there. The valley is a home of 25 species of mammals, 95 species of butterflies ,12 species of fish, 35 species of reptiles and 255 species of moth guar ,the largest wild cat, lion tailed macaques and Niligiri langurs are found in the valley. So this valley is not only important for the people of Niligiri biosphere, but for

other animals too. This was the reason people across different fields of life such as poets, scientists, educationalist, common man and the nongovernmental organisation in toto protested and agitated and this resulted the dropping of this project by the government.

Narmada Bachao Andolen

In the state Madhya Pradesh Gujarat, it was started to protest the construction of dam around thirty in numbers on the river Narmada to produce hydroelectricity and irrigation facility to the drought prone area of Kutch: Gujarat social activist Baba Amte and Environmentalist. Madha Patkar is the two leaders to fight against the Govt. and judiciary for the benefits of tribal of that affected region. Noted writer Arundhati Ray also joined the movement. It was estimated that two big dams construction on the river Narmada costs Rs.30,923 cores and Rs. 8190 cores by way of environmental loss. Besides this the project will submerge about 130482 Hectors of which 55681 hectors are prime agricultural land arid 56066 hectors are forests. The two dams namely Sardar Sarovar Project and Narmada Sagar Project have enormous utilities to the people for supply of electricity and irrigation but the estimated environmental cost is too much to ignore according to the report by environment scientist. The Mittani movement was movement focused on the issues of displacement and rehabilitation in relation to the expansion of NTPC in the village of Sonbhadr. The movement successfully gained a large compensation package. JOAR a movement which was started as a movement for rehabilitation and

settlement of VCIL in Jharkhand, later turned to a movement which also addressed issues like radioactive waste management, and health hazards caused by radio activity. Beej Bacho Andolan stands for the protection of variety of indigenous seeds from extinction.
