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HUMAN RIGHTS

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UNIT- I

INTRODUCTION

History:

Human rights are moral principles or norms that describe certain standards of human behaviour, and are regularly protected as legal rights in national and international law. They are commonly understood as inalienable fundamental rights "to which a person is inherently entitled simply because she or he is a human being," and which are "**inherent in all human beings**" regardless of their nation, location, language, religion, ethnic origin or any other status. They are applicable everywhere and at every time in the sense of being universal. They should not be taken away except as a result of due process based on specific circumstances, and require freedom from unlawful imprisonment, torture, and execution.

Evolution :ORIGIN AND BASIS OF HUMAN RIGHTS

The emergence of rights in political thought is generally regarded as relatively recent. Human rights are considered the offspring of natural rights, which themselves evolved from the concept of natural law. Natural law, which has played a dominant role in Western political theory for centuries, is that standard of higher-order morality against which all other laws are adjudged. To contest the injustice of human-made law, one was to appeal to the greater authority of God or natural law.

Eventually this concept of natural law evolved into **natural rights**; this change reflected a shift in emphasis from society to the individual. Whereas natural law provided a basis for curbing excessive state power over society, natural rights gave individuals the ability to press claims against the government.

The modern conception of rights can be traced back to Enlightenment political philosophy and the movement, primarily in England, France, and the United States, to establish limited forms of representative government that would respect the freedom of individual citizens.

John Locke, in his Second Treatise on Government (1690), described a "state of nature" prior to the creation of society in which individuals fended for themselves and looked after their own interests. In this state, each person possessed a set of natural rights, including the rights to life, liberty and property. Locke's philosophy, known as classical liberalism, helped foster a new way of thinking about individuals, governments, and the rights that link the two. Locke's principles were adopted by the founding fathers of the United States in the Declaration of Independence (1776), which stated:

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed..."

These principles were further expounded and enshrined in the U.S. Constitution (1787) and Bill of Rights (1789).

The innovation of human rights in the twentieth century extended the idea of individual rights to include all human beings, regardless of citizenship or state affiliation. Human rights helped reconstitute individual identity and freedom as something transcending national borders. As the atrocities of the World Wars made clear, there were times when the state became the citizen's greatest enemy and outside protection was his or her best and only hope. Before examining universality and other ideological conflicts concerning the idea of human rights, let us turn our attention now to the development of human rights.

GROWTH OF HUMAN RIGHTS

1. The Cyrus Cylinder (539 B.C.)

In 539 B.C., the armies of Cyrus the Great, the first king of ancient Persia, conquered the city of Babylon. But it was his next actions that marked a major advance for Man. He freed the slaves, declared that all people had the right to choose their own religion, and established racial equality.

Known today as the Cyrus Cylinder, this ancient record has now been recognized as the world's first charter of human rights. It is translated into all six official languages of the United Nations and its provisions parallel the first four Articles of the Universal Declaration of Human Rights.

DEVELOPMENT

From Babylon, the idea of human rights spread quickly to India, Greece and eventually Rome. There the concept of "natural law" arose, in observation of the fact that people tended to follow certain unwritten laws in the course of life, and Roman law was based on rational ideas derived from the nature of things.

Documents asserting individual rights, such as the Magna Carta (1215), the Petition of Right (1628), the US Constitution (1787), the French Declaration of the Rights of Man and of the Citizen (1789), and the US Bill of Rights (1791) are the written precursors to many of today's human rights documents.

2. The Magna Carta (1215)

The Magna Carta, or "Great Charter," was arguably the most significant early influence on the extensive historical process that led to the rule of constitutional law today in the English-speaking world.

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.

3. Petition of Right (1628)

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.

4. United States Declaration of Independence (1776)

On July 4, 1776, the United States Congress approved the Declaration of Independence. Its primary author, Thomas Jefferson, wrote the Declaration as a formal explanation of why Congress had voted on July 2 to declare independence from Great Britain, more than a year after the outbreak of the American Revolutionary War, and as a statement announcing that the thirteen American Colonies were no longer a part of the British Empire. Congress issued the Declaration of Independence in several forms. It was initially published as a printed broadsheet that was widely distributed and read to the public.

Philosophically, the Declaration stressed two themes: individual rights and the right of revolution. These ideas became widely held by Americans and spread internationally as well, influencing in particular the French Revolution.



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5. The Constitution of the United States of America (1787) and Bill of Rights (1791)

Written during the summer of 1787 in Philadelphia, the Constitution of the United States of America is the fundamental law of the US federal system of government and the landmark document of the Western world. It is the oldest written national constitution in use and defines the principal organs of government and their jurisdictions and the basic rights of citizens.

The first ten amendments to the Constitution—the Bill of Rights—came into effect on December 15, 1791, limiting the powers of the federal government of the United States and protecting the rights of all citizens, residents and visitors in American territory.

The Bill of Rights protects freedom of speech, freedom of religion, the right to keep and bear arms, the freedom of assembly and the freedom to petition. It also prohibits unreasonable search and seizure, cruel and unusual punishment and compelled self-incrimination. Among the legal protections it affords, the Bill of Rights prohibits Congress from making any law respecting establishment of religion and prohibits the federal government from depriving any person of life, liberty or property without due process of law. In federal criminal cases it requires indictment by a grand jury for any capital offense, or infamous crime, guarantees a speedy public trial with an impartial jury in the district in which the crime occurred, and prohibits double jeopardy.

6. Declaration of the Rights of Man and of the Citizen (1789)

In 1789 the people of France brought about the abolishment of the absolute monarchy and set the stage for the establishment of the first French Republic. Just six weeks after the storming of the Bastille, and barely three weeks after the abolition of feudalism, the Declaration of the Rights of Man and of the Citizen (French: La Déclaration des Droits de l'Homme et du Citoyen) was adopted by the National Constituent Assembly as the first step toward writing a constitution for the Republic of France.

The Declaration proclaims that all citizens are to be guaranteed the rights of “liberty, property, security, and resistance to oppression.” It argues that the need for law derives from the fact that “...the exercise of the natural rights of each man has only those borders which assure other members of the society the enjoyment of these same rights.” Thus, the Declaration sees law as an “expression of the general will,” intended to promote this equality of rights and to forbid “only actions harmful to the society.”

7. The First Geneva Convention (1864)

In 1864, sixteen European countries and several American states attended a conference in Geneva, at the invitation of the Swiss Federal Council, on the initiative of the Geneva Committee. The diplomatic conference was held for the purpose of adopting a convention for the treatment of wounded soldiers in combat.

The main principles laid down in the Convention and maintained by the later Geneva Conventions provided for the obligation to extend care without discrimination to wounded and sick military personnel and respect for and marking of medical personnel transports and equipment with the distinctive sign of the red cross on a white background.

8. The United Nations (1945)

World War II had raged from 1939 to 1945, and as the end drew near, cities throughout Europe and Asia lay in smouldering ruins. Millions of people were dead, millions more were homeless or starving. Russian forces were closing in on the remnants of German resistance in Germany's bombed-out capital of Berlin. In the Pacific, US Marines were still battling entrenched Japanese forces on such islands as Okinawa.

In April 1945, delegates from fifty countries met in San Francisco full of optimism and hope. The goal of the United Nations Conference on International Organization was to fashion an international body to promote peace and prevent future wars. The ideals of the organization were stated in the preamble to its proposed charter: "We the peoples of the United Nations are determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind."

The Charter of the new United Nations organization went into effect on October 24, 1945, a date that is celebrated each year as United Nations Day.

9. The Universal Declaration of Human Rights (1948)

By 1948, the United Nations' new Human Rights Commission had captured the world's attention. Under the dynamic chairmanship of Eleanor Roosevelt—President Franklin Roosevelt's widow, a human rights champion in her own right and the United States delegate to the UN—the Commission set out to draft the document that became the Universal Declaration of Human Rights. Roosevelt, credited with its inspiration, referred to the Declaration as the international Magna Carta for all mankind. It was adopted by the United Nations on December 10, 1948.

In its preamble and in Article 1, the Declaration unequivocally proclaims the inherent rights of all human beings: "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...All human beings are born free and equal in dignity and rights."

The Member States of the United Nations pledged to work together to promote the thirty Articles of human rights that, for the first time in history, had been assembled and codified into a single document. In consequence, many of these rights, in various forms, are today part of the constitutional laws of democratic nations.

UNIT- II

UN CHARTER AND HUMAN RIGHTS

INTRODUCTION: UDHR

The international legal protection of human rights has undergone dramatic growth and evolution since the end of the Second World War, the founding of the United Nations (UN) in 1945, and the subsequent adoption, by the UN General Assembly, of the Universal Declaration of Human Rights (UDHR) on 10 December 1948. Although the historical origins of the concept of human rights are often linked with the idea of natural rights and there had been legal instruments adopted earlier in different states aimed at acknowledging and ensuring the protection of human rights by the rule of law, the proclamation and adoption of the UDHR on 10 December 1948 marked the real beginning of the momentous international journey towards ensuring that human rights are protected universally by the rule of law. Thus, the UDHR is considered today as the legal baseline for modern international human rights law, and 10 December 2008 marked the 60th anniversary of the setting of that legal baseline.

Although not intended as a legally binding instrument at the time of its adoption, the UDHR clearly acknowledged in its preamble, as quoted at the beginning of this chapter, the essential need to protect human rights through the rule of law.

From that humble beginning in 1948, international human rights law has evolved tremendously in different perspectives over the last six decades. Commemorating the 60th anniversary of the UDHR in 2008, the former UN high Commissioner for human rights, Louise Arbour, observed that 'it is difficult to imagine today just what a fundamental shift the Universal Declaration of Human Rights represented when it was adopted 60 years ago'.

There has also been significant growth in the jurisprudence of different bodies and tribunals responsible for the interpretation and implementation of human rights law, and the human rights role of non-state entities such as non-governmental organizations (NGOs) has increased tremendously. New perspectives have also evolved regarding responsibilities and remedies for human rights violations relating to individual criminal responsibility for serious human rights violations, among others. This tremendous evolution of international human rights law in the past six decades calls for in-depth reflective analyses on the subject.



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UN CHARTER AND THE DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

The UN has been the major international institution that has consistently promoted, within the context of its Charter, the protection of international human rights through the rule of law. The drafting and adoption of the UDHR was itself undertaken within the context of the UN Charter. Thus, the significance of the UDHR as the baseline for international human rights law would be better appreciated with a brief analysis of the UN Charter in relation to the background and development of international human rights law prior to the adoption of the UDHR.

Prior to the creation of the UN after the second world war in 1945, earlier attempts at including specific human rights provisions in the Covenant of the League of Nations after the First World war in 1919 were unsuccessful.

The atrocities committed during the Second World War further provoked significant humanitarian concerns and moved the world community to call for formal international measures aimed at ensuring the legal protection of human rights and achievement of world peace and security. Thus, the allies determined even before the end of the war that an international commitment to the protection of human rights should be a part of the post-war settlement.

Consequently, in the preamble of the UN Charter that emerged after the war, the member states, after declaring their determination 'to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind', also declared their determination 'to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small'.

The Charter also provided substantively in its **Article 1(3)** that one of the purposes of the UN would be 'to achieve international co-operation in ... promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion'.

Furthermore, **Article 55** provided that:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote... [Inter alia] universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

The UN member states then pledged themselves under **Article 56** of the Charter 'to take joint and separate action in co-operation with the organization for the achievement of the purpose stated in article 55'.

Although the Charter did not list the specific contents of the human rights and fundamental freedoms referred to, it signalled the dawn of the international human rights legal regime. To take the international human rights initiative forward, the Charter provided for the establishment of an **Economic and Social Council (ECOSOC)** whose functions included

making 'recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all', and the powers to 'set up commissions ... for the promotion of human rights, and such other commissions as may be required for the performance of its functions'.

The basic objective of the (now disbanded) **International Trusteeship System** created under the Charter for the administration of the trust territories also included the requirement 'to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world'.

By virtue of these Charter provisions, the UN member states are obliged to observe, promote and encourage universal respect for human rights. Today, the UN Charter is widely considered as the basis of an international 'constitutional order' that imposes obligations on member states to uphold international co-operation in promoting and encouraging respect for human rights.

As noted above, apart from the Charter's prohibition of discrimination as to race, sex, language, or religion, it did not clearly define what human rights states were obliged to promote and protect. Efforts by some countries and non-governmental organizations (NGOs) attending the San Francisco conference for the inclusion of an international bill of rights in the UN Charter failed mainly because they were opposed by the major powers. Soon after the adoption of the UN Charter, ECOSOC, acting on its mandate and powers under the Charter, established a Commission on Human Rights in 1946 with the mandate to develop the framework for an international bill of rights that set out clearly the specific contents of the international human rights recognized under the Charter. The Commission, appointed a Drafting Committee chaired by Eleanor Roosevelt, which drafted the UDHR between January 1947 and December 1948 as the first part of the so-called international bill of rights.

THE UDHR AS A COMMON STANDARD OF ACHIEVEMENT

The UDHR was the first UN instrument adopted that contained a list of internationally recognized human rights. It was adopted unanimously as a simple resolution of the UN general assembly on 10 December 1948, and it has served, since its adoption, as a framework for subsequent international human rights treaties as well as many regional human rights instruments and national constitutions.

As a common standard of achievement, the rights covered by the UDHR are the following:

- Right to life, liberty and security of person (Art. 3); prohibition of slavery or involuntary servitude (Art. 4);
- prohibition of torture or cruel, inhuman or degrading treatment or punishment (Art. 5);
- right to recognition as a person before the law (Art. 6);



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- right to equality before the law, non-discrimination, and equal protection of the law (Art. 7);
- right to an effective legal remedy (Art. 8);
- right to freedom from arbitrary arrest, detention, or exile (Art. 9);
- right in full equality to a fair and public hearing by an independent and impartial tribunal (Art. 10);
- right to be presumed innocent until proved guilty according to law, right not to be held guilty for any act or omission which did not constitute an offence at the time committed, and right not to be punished with a heavier penalty than applicable at the time of committing an offence (Art. 11);
- right to freedom from arbitrary interference with privacy, family, home or correspondence and attacks on one's honour and reputation (Art. 12);
- right to freedom of movement and residence within state borders and right to leave any country and to return to one's own country (Art. 13);
- right to seek and enjoy asylum (Art. 14);
- right to nationality and right to change nationality (Art. 15);
- right to marry and found a family (Art. 16);
- right to property (Art. 17),
- right to freedom of thought, conscience and religion (Art. 18);
- right to freedom of opinion and expression (Art. 19);
- right to freedom of peaceful assembly and association (Art. 20);
- right to take part in the government of one's country, have access to public service, and take part in elections (Art. 21);
- right to social security (Art. 22);
- right to work, to equal pay for equal work, and to form and join trade unions (Art. 23);
- right to rest and leisure, limitation of working hours, and periodic holidays with pay (Art. 24);
- right to a standard of living adequate for health and well-being, including food, clothing, housing and medical care, and necessary social services, and right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond one's control (Art. 25);
- right to education (Art. 26);
- right to participate freely in cultural life and to enjoy the arts and share in scientific advancement, and right to protection of the moral and material interests resulting from any scientific, literary or artistic production of which one is the author (Art. 27);
and
- Right to a social and international order in which the rights and freedoms can be fully realized (Art. 28).

Significantly, as can be noted from the above list, the UDHR covered both civil and political rights(**Article 3 to 21**), as well as economic, social and cultural rights (ESC) rights(**Article 22 to 27**) without distinction, and thus recognized indivisibility, interdependence and interrelatedness of all human rights from the beginning.

Although the UDHR at the time of its adoption was not a legally binding instrument, over time it has evolved to the extent that some of its provisions now either constitute customary

international law and general principles of law or represent elementary considerations of humanity. As noted above, its greatest significance is that it provides an authoritative content, adopted by the UN General Assembly, to the interpretation of the UN Charter in respect of its human rights provisions.

Its considerable practical importance, in that regard, has been demonstrated through its invocation by the International Court of Justice (ICJ), the International Criminal Court (ICC), regional and domestic courts as an aid to interpretation of relevant human rights treaties, and national constitutional provisions protecting human rights. The Declaration has also been referred to in a number of cases involving human rights issues.

This confirms the view that over the years the UDHR has indeed acquired a legal or normative character as envisaged by its designation as 'a common standard of achievement for all peoples and all nations' in its preamble when it was adopted in 1948.

INTERNATIONAL BILL OF HUMAN RIGHTS

In continuance of its mandate of drafting the international bill of rights, the UN Commission on human rights commenced, in earnest after the adoption of the UDHR, the drafting of a legally binding international human rights treaty under the UN system. Eventually, two binding covenants were produced after nearly 20 years of drafting debates and disagreements regarding whether or not to combine civil and political rights and ESC rights in one single covenant. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on economic, Social and Cultural Rights (ICESCR) were adopted in 1966 and both entered into force in 1976. **As noted above, the two covenants, together with the UDHR, constitute the so-called International Bill of rights.** The rights protected in the two covenants cover and enlarge most of the rights recognized under the UDHR and thereby protect nearly all the basic values cherished by all states and every human society.

In addition, many other ancillary international treaties and declarations on the rights of women, children, refugees, stateless persons, diplomatic agents, minorities, persons with disabilities, etc., have been adopted under the UN system. There are also specific international human rights treaties for the protection of a person against atrocities such as genocide, racial discrimination, apartheid, slavery, forced labour, torture, etc. today, every state in the world (despite a wide variety of historical, political, religious, social and cultural differences) has ratified at least one of these international human rights treaties, indicating the increasing trend towards universal acceptance of human rights in the international legal system.

COVENANTS of 1966:

The Universal Declaration was bifurcated into two different covenants:

- Covenants on Civil and Political Rights and
- Covenant on Economic, Social and Cultural Rights.



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The drafters of the Covenants initially intended to declare only one instrument. The original drafts of the covenant included only political and civil rights, but economic and social rights were added early. Due to this, the Western States insisted that economic and social rights were fundamentally aspirations or plans, not rights, since their realization depended on availability of resources and on controversial economic theory and ideology. These, they said, were not suitable subjects for binding obligations and should not be allowed to weaken the legal character of the provisions. There was wide consensus and clear recognition that the means required to enforce the compliance with socio-economic undertakings were different from the means required for civil-political rights.

Therefore due to the divisions and controversy over which rights to include, and because some states denied to ratify any treaties including certain specific interpretations of human rights, and at the same time, the Soviet bloc and a number of developing countries argued strongly for the inclusion of all rights in their joint effort commonly known as the Unity Resolution. This led the rights which were enshrined in the UDHR to split into two separate covenants, allowing states to adopt some rights and derogate others. The **ICESCR** and the **ICCPR** came into existence with the same process that led to the Universal Declaration of Human Rights.

As the UDHR was not implemented to impose binding obligations, the United Nations Commission on Human Rights drafted a pair of binding Covenants on human rights intended to impose concrete obligations on their parties. These two covenants are known as **The International Covenant on Economic, Cultural and Social Relations (ICESCR)** and **The International Covenants on Cultural and Political Rights (ICCPR)**.

These two covenants were presented to the UN General Assembly in 1954, and adopted in 1966.

THE INTERNATIONAL COVENANTS ON CULTURAL AND POLITICAL RIGHTS. (ICCPR)

The ICCPR is a key international human rights treaty, providing a range of protections for civil and political rights. The ICCPR, together with the Universal Declaration of Human Rights and the International Covenant on Economic Social and Cultural Rights, are considered the International Bill of Human Rights.

The ICCPR obligates countries that have ratified the treaty to protect and preserve basic human rights, such as: the right to life and human dignity; equality before the law; freedom of speech, assembly, and association; religious freedom and privacy; freedom from torture, ill-treatment, and arbitrary detention; gender equality; the right to a fair trial, and; minority rights. The Covenant compels governments to take administrative, judicial, and legislative measures in order to protect the rights enshrined in the treaty and to provide an effective remedy.

The Covenant was **adopted by the U.N. General Assembly in 1966 and came into force in 1976**. As of December 2013, **167** countries have ratified the Covenant.

Under **Art 2(2)** of the ICCPR, states parties undertake to take the necessary steps to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the ICCPR.

Article 2(1) of the ICCPR contains a right to non-discrimination in the enjoyment of the rights contained in the ICCPR. This right is reiterated in art 26, though in the latter case it is a stand-alone right to non-discrimination, and is therefore of broader application.

Aside from the right to non-discrimination, the substantive rights of the ICCPR are contained in Part III. **Articles 6 to 11** are aimed at the **protection of a person's life, liberty and physical security**. These articles contain the prohibitions on torture and 'cruel, inhuman or degrading treatment or punishment' (art 7), the prohibitions on slavery and forced labour (art 8), and provisions that deal with the rights of a person who has been deprived of their liberty (for example, by arrest or other detention) (arts 9 and 10).

Articles 12 and 13 set out provisions that deal with the movement of people into, out of and within a state.

Articles 14 to 16 provide for the fair treatment of people by the judicial system. The right to a fair trial is covered by art 14 (an important provision given the right to an effective remedy enshrined in art 2), while **Arts 15 and 16** respectively prohibit retrospective punishment of crime and confer the right to be recognised as a person under the law.

Articles 17 to 22 enshrine various freedoms which should be enjoyed without unjustified intervention:

- The individual's right to privacy (art 17);
- the freedom of thought and religion (art 18);
- the freedom of opinion and expression (art 19) (although art 20 places limits on this right in the context of expressions of national, racial or religious hatred, and advocacy of war);
- the right to peaceful assembly (art 21); and
- the right to freedom of association (notably including trade unions) (art 22).

Articles 23 and 24 deal with family issues and the rights of children.

Article 25 enshrines the right to political participation, including the rights to vote and to be elected at genuine elections.

Article 26, together with arts 2 and 14, is fundamental to the ICCPR. Article 26 gives the right to equality under the law, equal protection by the law, and non-discrimination.

Part IV of the Covenant requires states parties to regularly report to the HRC. The HRC issues 'Concluding Observations' on these states' reports as well as 'General Comments' which are important sources of jurisprudence on the ICCPR.

The ICCPR is monitored by the Committee, now superseded by the Human Rights Council, to consider periodic reports submitted by member States on their compliance with the treaty. The members of the Human Rights Committee are elected by member states, but they do not represent any State.

Optional Protocols

The Covenant contains two **Optional Protocols**:

- The **first optional protocol** provides **individual complaints mechanism** whereby individuals in member States can submit complaints, which is known as communications, to be reviewed by the Human Rights Committee.
- The **second optional protocol** abolishes the **death penalty**, but at the same time, the countries were permitted to make a reservation which allows them the use of death penalty for the most serious crimes of a military nature, committed during wartime.

THE INTERNATIONAL COVENANT ON ECONOMIC, CULTURAL AND SOCIAL RELATIONS (ICESCR)

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is a multilateral treaty which was adopted by the United Nations General Assembly on December 16, 1966, and came into force on January 3, 1976. It commits states parties to work toward the granting of economic, social, and cultural rights (ESCR) to individuals.

It was introduced as a second generation human rights treaty which develops some of the issues listed in the Universal Declaration of Human Rights and at the same time as the International Covenant on Civil and Political Rights (ICCPR). The Committee on Economic, Social and Cultural Rights regards legislation as a vital means to realize the rights which is unlikely to be limited by resource constraints. The enacting of anti-discrimination provisions and the establishment of enforceable rights with judicial remedies within national legal systems are considered to be appropriate means for the implementation of these rights.

As with the ICCPR, the main substantive provisions are found in Part III of the ICESCR. The key economic, cultural and social rights specified are the rights to:

- work (art 6);
- Just and favourable conditions of work (art 7);
- form trade unions (art 8);
- Social security (art 9);
- Protection of the family (art 10);
- An adequate standard of living (art 11);
- Health (art 12);



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- Education (arts 13 and 14); and
- Participation in cultural life (art 15).

Each of these rights is explained in considerably more detail in the ICESCR than in the UDHR, as befits the ICESCR's nature as a legally-binding treaty. For example, Art 12 not only provides for a right to the highest attainable standards of health but also sets out several issues that should be addressed by states parties in realising this goal, including the improvement of all aspects of industrial and environmental hygiene. Similarly, the provision for the right to work in art 6 is accompanied by further detail as to health and safety, remuneration on public holidays, and equal promotion opportunities in Art 7. The right to education contained in arts 13 and 14 is another example. Unlike the UDHR, the ICESCR specifies the obligation to secure compulsory primary education free of charge and to take steps towards achieving free secondary and higher education.

The implementation of economic, social and cultural rights is discussed in Chapter 3.

Part IV requires all states parties to regularly report to the Economic and Social Council which, in 1985, created the Committee on Economic, Social and Cultural Rights ('CESCR') to monitor the implementation of the Covenant's terms. The CESCR issues Concluding Observations on the reports of states parties as well as General Comments, which are important sources of jurisprudence on the ICESCR. There is not, as yet, an Optional Protocol to the ICESCR establishing an individual complaints mechanism, although one has been drafted.

Human Rights Committee

The World Conference on Human Rights in 1993 adopted the Vienna Declaration and Programme of Action. The UN has set up a number of treaty-based bodies to observe and study the issue of human rights, under the leadership of the UN High Commissioner for Human Rights (UNHCHR). The bodies are the committees of independent experts that watch implementation of the core international human rights treaties.

The Human Rights Committee was established to monitor the implementation of the ICCPR. It is composed of 18 independent experts with recognized competence in the field of human rights. Committee members are elected for a term of four years and must be from countries that have ratified the Covenant. The current members of the Committee come from: Algeria, Argentina, Costa Rica, Egypt, France, Georgia, Germany, Israel, Japan, Romania, South Africa, Suriname, Switzerland, The Netherlands, Tunisia, the United Kingdom, and the United States.

The Human Rights Committee meets three times a year for sessions lasting three weeks, normally in March at the United Nations headquarters in New York, and in July and October at the United Nations Office in Geneva, Switzerland. Countries that have ratified the ICCPR are obliged to report to the Committee every four years. Three to five countries are invited to

present their reports at each session. The Committee examines the report and addresses its concerns and recommendations to the country in the form of "concluding observations."

The following are some of the main human rights committees which deal with the issue of human rights.

- The Human Rights Committee (established in 1976) endorse the effective participation as par the standards of the ICCPR. The eighteen members of the committee communicate opinions on member countries and make judgments on individual complaint/s against countries which have ratified the treaty. The judgments are not legally binding.
- The Committee on Economic, Cultural and Social Rights observes the ICESCR and issues general comments on ratifying countries performance. It does not have the power to receive complaints.
- The Committee on the Elimination of Racial Discrimination observes the CERD and carries out regular reviews of the performance of different countries. It can make judgments on complaints, but these are not legally binding. It issues warnings to attempt to prevent serious contraventions of the convention.
- The Committee on the Elimination of Discrimination against Women observes the CEDAW. It receives the reports of state/s on their performance and comments on them, and can make judgments on complaints against countries which are the part of 1999 Optional Protocol.
- The Committee against Torture observes CAT and accepts the reports on the issue/s of abuses of rights by state/s every four years and comments on them. It may visit and examine individual countries with their consent.
- The Committee on the Rights of the Child observes the CRC and issues comments on reports submitted by state/s every five years. It does not have the power to receive complaints.
- The Committee on Migrant Workers was established in 2004 and monitors the ICRMW and issues comments on reports submitted by state/s every five years. Each treaty body gets secretariat support from the Treaties and Commission Branch of Office of the High Commissioner on Human Rights (OHCHR) in Geneva excluding the CEDAW, which is supported by the Division for the Advancement of Women (DAW). CEDAW organizes its meetings at United Nations headquarters in New York; but the other treaty bodies generally meet at the United Nations Office in Geneva. The Human Rights Committee usually conducts its March session in New York City.

Human Rights Council

On 15 March 2006, the General Assembly established a new Human Rights Council. The higher level Council substitutes the Human Rights Commission, and reveals the current importance and centrality of human rights to the UN.

Functions of the Human Rights Council

The Council works as the main United Nations forum for discussion and collaboration and cooperation on human rights. It focuses on to assist member states to meet their human rights obligations through dialogue, capacity building, and technical assistance. The Council also makes recommendations to the General Assembly for further development of international law in the area of human rights. It comprises of 47 members, who are elected by the General Assembly by absolute majority (96 votes). The Council meets at least three times a year for a minimum of ten weeks. It can assemble to address urgent situations and can hold special sessions. The new feature of the HRC is that it will carry out a universal periodic review (UPR) of each UN member state's fulfilment of its human rights requirements. The first meeting of the Council was held for two weeks from 19-30 June 2006.

Special Procedures

Special procedures” is the general name given to the instruments established by the Human Rights Council to address either specific country situations or thematic issues. The special procedures are a means for the Council to be persistently engaged on an issue of concern throughout the year. Although they may be formed in any manner, special procedures normally are either an individual, called a Special Rapporteur or representative or an independent expert, or a group of individuals, called a Working Group. Special Procedures are assigned with the mandate (through resolutions of the Human Rights Council) to examine, monitor, advise and publicly report on human rights conditions in particular countries or on major human rights themes and phenomena worldwide.

CONCLUSION

In democratic societies fundamental human rights and freedoms are placed under the guarantee of law and thus, their protection becomes an obligation of those who are assigned with the task of their protection. These rights can be classified into civil and political rights on the one hand and economic, social and cultural rights on the other. While the former are more in the nature of restriction against the authority of the State from impinging upon the inalienable freedoms of an individual, the latter are regarded as the demands on the State to supply positive conditions to capacitate the individual to exercise the former. The objective of both sets of rights is to make individual/s an efficient participant in the affairs of the society. Unless both sets of rights are available to individuals, neither development of the human personality can be achieved nor can true democracy be said to exist. The promotion and protection of both sets of human rights has been a major concern for the United Nations since 1945, when the Organization's founding nations determined that the horrors of The Second World War should never be allowed to reappear. The General Assembly declared three years later in the Universal Declaration of Human Rights that respect for human rights and human dignity "is the foundation of freedom, justice and peace in the world". Over the years, a whole network of human rights mechanism has been developed to guarantee the primacy of human rights and to deal with the incidents of human rights violations wherever they occur.

UNIT- III

INTRODUCTION: Fundamental Rights

The nature of polity envisaged by the Constitution of India appears from the objective specified in the Preamble which contains the basic structure of our Constitution. Justice, liberty, equality and fraternity are promised to be secured to all citizens assuring the dignity of the individual and the unity and integrity of the nation. The Constitution has been framed to embody these principles of the Indian polity, respecting human rights and providing the guiding principles of the envisaged governance.

The Directive Principles of State Policy are the principles fundamental in governance of the country (Article 37). The Directive Principles are a supplement to the Fundamental Rights for achieving a welfare state, and this is how the scope and content of the Fundamental Rights, which are justiciable, have been enlarged.

These Directive Principles are a mandate to the state indicating the nature of polity envisaged, while the Fundamental Rights in Part-III are the guarantee of human rights to the individuals protecting their invasion by the state. The two are to be read together for a proper perspective of the nature of polity.

The Fundamental Rights in Part-III (Articles 14 to 32) guarantee the civil and political rights of the individuals, the Directive Principles in Part-IV (Articles 38 to 51) mandate the state to constitute a welfare state wherein the economic, social and cultural rights of the people are realised. Parts-III and IV of the Constitution correspond to the provisions of the Universal Declaration of Human Rights.

Human Dignity – A core value

It is obvious that dignity of the individual being a core value, and the aim of a welfare state through human development being fundamental to governance, the essence of constitutional governance is emphasis on human rights, and that is our constitutional philosophy. The enactment of Article 51A – Fundamental Duties, indicates the emphasis on the participatory role of the people in governance to make it truly representative in character. The bond between Fundamental Rights, Directive Principles and Fundamental Duties has also been judicially recognized in India by resort to some Directive Principles and fundamental duties to enlarge the content and scope of some Fundamental Rights, namely, right to equality (Article 14) and right to life (Article 21).

Our Constitution provides for restriction on the Fundamental Rights only in exceptional situations, and then too, Articles 20 and 21 are expressly made non-derogable by Article 359.

These exceptional situations, which give rise to the need to curb human rights in national interest, are themselves the result of misgovernance or aberration in constitutional governance. The need is to remember that the constitutional governance, as envisaged, respects basic human rights and promotes human development in all situations.

INDIAN CONSTITUTION AND HUMAN RIGHTS

In **Keshavananda Bharti v. State of Kerala**, the Supreme Court observed, "The Universal Declaration of Human Rights may not be a legally binding instrument but it shows how India understood the nature of human rights at the time the Constitution was adopted."

In the case of **Jolly George Varghese v. Bank of Cochin** the point involved was whether a right incorporated in the Covenant on Civil and Political Rights, which is not recognised in the Indian Constitution, shall be available to the individuals in India. Justice Krishna Iyer reiterated dualism and asserted that the positive commitment of the State Parties ignites legislative action at home but does not automatically make the Covenant an enforceable part of the 'Corpus Juris' in India. Thus, although the Supreme Court has stated that the Universal Declaration cannot create a binding set of rules and that even international treaties may at best inform judicial institutions and inspire legislative action. Constitutional interpretation in India has been strongly influenced by the Declaration.

In the judgement given in the **Chairman, Railway Board and others v. Mrs. Chandrima Das**, the Supreme Court observed that the Declaration has the international recognition as the Moral Code of Conduct having been adopted by the General Assembly of the United Nations. The applicability of the Universal Declaration of Human Rights and principles thereof may have to be read, if need be, into the domestic jurisprudence. In a number of cases the Declaration has been referred to in the decisions of the Supreme Court and State High Courts.

India ratified the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights on March 27, 1979. The Optional Protocol to the International Covenant on Civil and Political Rights, 1989, however, was not ratified by India.

Fundamental Rights and Human Rights:

The judicially enforceable fundamental rights which encompass all seminal civil and political rights and some of the rights of minorities are enshrined in part III of the Constitution (Articles 12 to 35). These include, the right to equality, the right to freedom, the right against exploitation, the right to freedom of religion, cultural and educational rights and the right to Constitutional remedies.

Fundamental rights differ from ordinary rights in the sense that the former are inviolable. No law, ordinance, custom, usage, or administrative order can abridge or take them away. Any law, which is violative of any of the fundamental right, is void. In **ADM Jabalpur v. Shukla**, Justice Beg observed "the object of making certain general aspects of rights fundamental is to guarantee them against illegal invasion of these rights by executive, legislative, or judicial organ of the State."

Earlier, Chief Justice Subba Rao in **Golak Nath v. State of Punjab** had rightly observed, "Fundamental rights are the modern name for what have been traditionally known as natural rights,"

The Supreme Court of India recognises these fundamental rights as 'Natural Rights' or 'Human Rights'. While referring to the fundamental rights contained in Part III of the Constitution, Sikri the then Chief Justice of the Supreme Court, in **Keshavananda Bharati v. State of Kerala**," observed, "I am unable to hold these provisions to show that rights are not natural or inalienable rights. As a matter of fact India was a party to the Universal Declaration, Rights . . . and that Declaration describes some fundamental rights as inalienable."

The Chief Justice Patanjali Shastri in **State of West Bengal v. Subodh Gopal Bose**, referred to fundamental rights as those great and basic rights, which are recognised and guaranteed as the natural rights inherent in the status of a citizen of a free country.

Article 14 of the Indian Constitution proclaims the general right of all persons to equality before the law, while **Article 15** prohibits the State from discriminating against any citizen on grounds of religion, race, caste, sex or place of birth, and prohibits any restriction on any citizen's access to any public place, including wells and tanks. Equality of opportunity for all citizens in matters of public employment is guaranteed under **Article 16**. **Article 17** abolishes untouchability and makes its practice an offence punishable under law. Both Articles 15 and 16 enable the State to make special provisions for the advancement of socially and educationally backward classes, for such castes and tribes as recognized in the Constitution (known as the Scheduled Castes and Scheduled Tribes) require very special treatment for their advancement. **Article 18** abolishes all non-military or non-academic titles.

The right to freedom guaranteed to all citizens under **Article 19** encompasses the right to freedom of speech and expression, the right to assemble peaceably without arms, the right to form associations or unions, the right to move freely throughout the territory of India, the right of residence, and the right to practise any profession, or to carry on any occupation, trade or business. The protection of a person in respect of conviction of offences under **Article 20** includes protection against ex-post-facto criminal laws, the principle of **autre fois** convict and the right against self-incrimination. **Article 21**, the core of all fundamental rights provisions in the Indian Constitution, ordains: "No person shall be deprived of his life or personal liberty except according to procedure established by law."

Article 21A was added to the Constitution by the **Eighty Sixth Constitutional Amendment Act 2002**. Article 21A proclaims "the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."

The rights of a person, arrested and detained by the State authorities, are provided in **Article 22**. These include the, right to be informed of the grounds of arrest, the right to legal advice and the right to be produced before a magistrate within 24 hours of arrest (except where one is arrested under a preventive detention law). The right against exploitation includes prohibition of trafficking in human beings and forced labour **Article 23**, and prohibition of employment of children below 14 years of age "to work in any factory or mine or in any other hazardous employment."

Subject to public order and morality, all persons are equally entitled to freedom of conscience and the right to profess, practise and propagate religion **Article 25**. Every religious denomination or section also has the right to establish and maintain religious institutions and manage their religious affairs **Article 26**. No one may be compelled to pay any religious taxes **Article 27**. The wholly State-funded educational institutions are barred from imparting religious instructions **Article 28**.

The rights of any section of citizens or a minority to promote its distinct language, script or culture, to have access to State-funded educational institutions **Article 29**, and to establish and maintain educational institutions of its choice **Article 30** are also guaranteed.

The right to Constitutional remedies is essentially the right to move the Supreme Court of India for enforcement of the above rights **Article 32**. The Supreme Court is vested with wide Constitutional powers in this regard. They include the power to issue directions, orders or writs for the enforcement of the fundamental rights Article 32(2). State (i.e. provincial) High Courts too have identical powers **Article 226**. As laws inconsistent with or in derogation of the rights conferred by part III of the Constitution are void **Article 13**, the Courts have the power to adjudge the Constitutional validity of all laws.

Furthermore, by virtue of **Article 141**, the law declared by the Supreme Court shall be binding on all courts in India.

Directive Principles of State Policy and Human Rights

(Judicially non-enforceable rights)

Judicially non-enforceable rights in Part IV of the Constitution are chiefly those of economic and social character. However, **Article 37** makes it clear that their judicial non-enforceability



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does not weaken the duty of the State to apply them in making laws, since they are nevertheless fundamental in the governance of the county. Additionally, the innovative jurisprudence of the Supreme Court has now read into Article 21 (the right to life and personal liberty) many of these principles and made them enforceable.

The duties of the State encompass securing a social order with justice, social, economic and political, striving to minimize and eliminate all inequalities (**Article 38**), securing for "the citizens, men and women equally" the right to an adequate means of livelihood (**Article 39 (a)**), distribution of ownership and (control of community resources to sub serve the common good (**Article 39(b)**), prevention of concentration of wealth and means of production to the common detriment (**Article 39(c)**), securing equal pay for equal work for both men and women (**Article 39(d)**), preventing abuse of labour, including child labour (**Article 39(e)**), ensuring of child development (**Article 39(f)**), ensuring of equal justice and free legal aid (**Article 39 A**), organisation of village democracies (**Article 40**), provision of the right to work, education and public assistance in case of unemployment, old age sickness and disability (**Article 41**), provision of humane conditions of work (**Article 42**), living wage and a decent standard of life (**Article 43**), securing participation of workers in the management of industries (**Article 43A**), provision of a uniform civil code for the whole country (**Article 44**), provision for early child care and education to children below the age of six years. The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years (**Article 45**), promotion of educational and economic interest of the weaker sections of the people and their protection from injustice and all forms of exploitation (**Article 46**), raising the standard of living, improving the level of nutrition and public health and prohibition of intoxicating drinks and of drugs (**Article 47**), scientific reorganisation of animal husbandry and agriculture (**Article 48**) conservation of environment, forests and wildlife (**Article 48A**), protection of monuments and things of artistic or historical importance (**Article 49**), separation of judiciary from the executive (**Article 50**) and promotion of international peace and security(**Article 51**).

It would appear that parts III and IV of the Constitution heavily depend upon the judiciary for their interpretation and application. The various 'reasonable restrictions' clauses in Part III, Article 21, and the seldom-used Part IV-A has given the judiciary ample scope for the Judicial Review of administrative and legislative action. Indeed, Article 21 has allowed it to act as a catalyst in prodding the State to implement the directive principles in so far as they directly bear upon "life and personal liberty."

UNIT-IV

INTRODUCTION(NHRC)

The judiciary is presided over by the Supreme Court. The State judiciary is under the control of a High Court, which in certain respects enjoys even broader powers than the Supreme Court, although the law declared by the Supreme Court binds it. In the scheme of the Constitution, there exists a separation of powers among the legislature, the executive and the judiciary, with the judiciary being fiercely independent of the other two, charged with the task of enforcing the constitutional norms, including human rights, and adjudicating upon all inter-individual, inter-institutional disputes.

To monitor the implementation of the Constitutional objectives for the welfare of the weaker sections of the nation, the Central Government has appointed a National Commission for Minorities, a National Commission for Scheduled Castes and Scheduled Tribes and a National Commission for Women. The National Human Rights Commission (N.H.R.C.) came into being in 1993 by virtue of the Protection of Human Rights Act.

N.H.R.C. has become an agency to reckon with, and has carved out a place for itself in the mosaic of Indian national institutions for implementation of human rights

Active Role of Judiciary

The Judiciary with no doubt has played a vital role in protection of Human rights over the decades. Some of the most unpleasant violation of human rights like Sati, Child Marriage, Honour Killings, Slavery, Child labour etc., have been abolished wholly owing to widespread awareness and strict implementation measures taken by the Judiciary.

The status of human rights is fairly high under the Constitution of India which makes provision for fundamental rights and empowers Supreme Court of India and High Courts to enforce these rights. Equally important is the fact that India is a signatory to international conventions on economic, social, cultural, civil and political rights. In Part IV of the Constitution, the Directive Principles of State Policy i.e. the duties of the State or the socio-economic rights, have been envisaged which are non-justiciable in any court of law but complementary.

The Indian judiciary with its widest interpretation in observance of Human Rights has contributed to the progress of the nation and to the goal of creating India as a vibrant State. The definition of Human Rights can be found under **Section 2(d)** of the Protection of Human Rights Act, 1993 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 Court of India.” So it is evident that Courts have a major role to play in enforcing the rights.

PIL is an excellent example to refer to at this moment. During our lifetime we've seen plethora of injustices being dealt with using the mechanism of PIL. However, PIL is a delicate instrument which ought to be used with utmost care. For PILs to become really effective, PIL should not be allowed to become a routine affair which is not taken seriously by the Bench and most importantly by the masses.

PIL is just one way of protecting human rights. It certainly isn't the only way. Various other legal systems and procedure have to work simultaneously to enable the attainment of the ultimate objective which is to ensure that everyone's human rights are safeguarded.

Some Cases:

- The Supreme Court in **Hussainara Khatoon and others vs. Home Secretary State of Bihar** AIR 1979 SC 1360 expressed anguish at the “travesty of justice” on account of under-trial prisoners spending extended time in custody due to unrealistically excessive conditions of bail imposed by the magistracy or the police and issued requisite corrective guidelines, holding that “the procedure established by law” for depriving a person of life or personal liberty (Article 21) also should be “reasonable, fair and just”.
- In **Prem Shankar Shukla vs. Delhi Administration** (1980) 3 SCC 526 the Supreme Court found the practice of using handcuffs and fetters on prisoners violating the guarantee of basic human dignity, which is part of the constitutional culture in India and thus not standing the test of equality before law (Article 14), fundamental freedoms (Article 19) and the right to life and personal liberty (Article 21). It observed that “to bind a man hand-and-foot’, fetter his limbs with hoops of steel; shuffle him along in the streets, and to stand him for hours in the courts, is to torture him, defile his dignity, vulgarise society, and foul the soul of our constitutional culture”. Strongly denouncing handcuffing of prisoners as a matter of routine, the Supreme Court said that to “manacle a man is more than to mortify him, it is to dehumanize him, and therefore to violate his personhood...”. The rule thus laid down was reiterated in the case of **Citizens for Democracy vs. State of Assam & Ors.** (1995) 3 SCC 743.
- In **Ichhu Devi Choraria vs. Union of India** (1980) 4 SCC 531 the court declared that personal liberty is a most precious possession and that life without it would not be worth living. Terming it as its duty to uphold the right to personal liberty, the court condemned detention of suspects without trial observing that “the power of preventive



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detention is a draconian power, justified only in the interest of public security and order and it is tolerated in a free society only as a necessary evil”.

- In **Smt. Nilabati Behera @ Lalita Behera vs. State of Orissa & Ors.** (1993) 2 SCC 746 the Supreme Court asserted the jurisdiction of the judiciary as “protector of civil liberties” under the obligation “to repair damage caused by officers of the State to fundamental rights of the citizens”, holding the State responsible to pay compensation to the near and dear ones of a person who has been deprived of life by their wrongful action, reading into Article 21 the “duty of care” which could not be denied to anyone. For this purpose, the court referred to Article 9 (5) of the International Covenant on Civil and Political Rights, 1966 which lays down that “anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation”.
- In **Joginder Kumar vs. State of UP and Others** (1994) 4 SCC 260 the court ruled that “the law of arrest is one of balancing individual rights, liberties and privileges on the one hand and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties of the single individual and those of individuals collectively.....”.
- In **Delhi Domestic Working Women’s Forum vs. Union of India & Others** (1995) 1 SCC 14 the Court asserted that “speedy trial is one of the essential requisites of law” and that expeditious investigations and trial only could give meaning to the guarantee of “equal protection of law” under Article 21 of the Constitution.
- In **People’s Union for Civil Liberties [PUCL] vs. Union of India** and another AIR 1997 SC 568 the dicta in Article 17 of the International Covenant on Civil and Political Rights, 1966 was treated as part of the domestic law prohibiting “arbitrary interference with privacy, family, home or correspondence” and stipulating that everyone has the right to protection of the law against such intrusions.
- In **D.K. Basu vs. State of West Bengal**, AIR 1997 SC 610 the Court found custodial torture “a naked violation of human dignity” and ruled that law does not permit the use of third degree methods or torture on an accused person since “actions of the State must be right, just and fair, torture for extracting any kind of confession would neither be right nor just nor fair”.
- In **Vishaka & Ors. vs. State of Rajasthan & Ors.**, (1997) 6 SCC 241 Supreme Court said that “gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognized basic human right. The common minimum requirement of this right has received global acceptance. In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the contents of international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity



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in Articles 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein and for the formulation of guidelines to achieve this purpose.... in the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly, guidelines and norms are hereby laid down for strict observance at all workplaces or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 for enforcement of the fundamental rights and it is further emphasized that this would be treated as the law declared by the Supreme Court under Article 141 of the Constitution.”

The aforesaid cases are only few examples from numerous judgments concerning human rights.

Playing a pro-active role in the matters involving environment, the judiciary in India has read the right to life enshrined in Article 21 as inclusive of right to clean environment. It has mandated to protect and improve the environment as found in a series of legislative enactments and held the State duty bound to ensure sustainable development where common natural resources were properties held by the Government in trusteeship for the free and unimpeded use of the general public as also for the future generation. The Court has consistently expressed concern about impact of pollution on ecology in present and in future and the obligation of the State to anticipate, prevent and attach the causes of environmental degradation and the responsibility of the State to secure the health of the people, improve public health and protect and improve the environment.

National Human Rights Commission

The Government of India did realise the need to establish an independent body for promotion and protection of human rights. The establishment of an autonomous National Human Rights Commission (Commission) by the Government of India reflects its commitment for effective implementation of human rights provisions under national and international instruments. The Commission came into effect on 12 October 1993, by virtue of the Protection of Human Rights Act 1993.

The Commission shall consist of:

- (a) A Chairperson who has been a Chief Justice of the Supreme Court;
- (b) One Member who is, or has been a judge of the Supreme Court;
- (c) One Member who is, or has been the Chief Justice of the High Court;

(d) Two members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

The Chairpersons of the National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Women shall be deemed to be Members of the Commission for the discharge of functions specified in clauses (b) to (j) of section 12.

There shall be a Secretary-General who shall be the Chief Executive Officer of the Commission and shall exercise such powers and discharge such functions of the Commission as it may delegate to him.

The headquarters of the Commission shall be Delhi and the Commission may, with the previous approval of the Central Government, establish offices at other places in India.

Functions and Powers of the Commission

Wide powers and functions have been given to the Commission under **section 12** of the Act.

Section 12(a) provides, that the Commission can enquire suo motu action against any public servant against whom a complaint has been registered for violation of human rights.

Section 12(b) provides that the Commission can intervene in any proceeding involving any allegation of a violation of human rights pending before a Court with the approval of such Court.

Section 12(c) empowers the Commission to visit any jail or other institution prior intimation to the State Government, for the purpose of mainly monitoring prison or custodial jurisprudence. The Commission can make recommendations to State Governments on the basis of such visits.

The Commission found after visiting many jails that pathetic conditions prevailed in jails in which prisoners are forced to live. In its view this is not due to a lack of ideas but due to apathy and lack of priority accorded to prison conditions and the rights of prisoners and under trials.

The Commission has already initiated action to improve prison conditions in India, and started studying all prevailing reports related with prisons. The Commission has recommended the preparation of a new All India Jail Manual and also suggested the revision of the old Indian Prison Act of 1894. The Commission sought help from all who believe that human dignity must not be left when a person enters the gates of a prison.

Section 12(d) empowers the Commission to review the safeguards provided under the Constitution or any law for the time being in force for the protection of human rights and also to recommend measures for their effective implementation.

Section 12(e) there is a separate provision to review the causes of terrorism, which inhibits the enjoyment of human rights, and to recommend appropriate remedial measures.

Section 12(f) provides for the study of all treaties related with international human rights instruments and the making of recommendations for their effective implementation.

Section 12 (g) provides for promotion of research in the field of human rights.

Section 12(h) empowers the Commission to spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publication, the media, seminars and other available means.

Section 12(i) empowers the Commission to encourage the efforts of Non- governmental organisations (NGOs) working in the field of human rights.

Lastly, **Section 12(j)** provides, such other functions as it may consider necessary for the promotion of human rights.

NGOs:

Functional Approach of the Commission and the role played by NGO's

The responsibility entrusted to the Commission under the Act of 1993 cannot be adequately fulfilled without the development of close ties between the Commission and NGOs. For the Commission, it is not just a matter of statutory obligation under Section 12(i) of the Act. The Commission recognised that the cause of human rights has much to gain both from the practical help and from the constructive criticism that NGOs and the Commission can bring to bear in their mutual interaction and growing relationship. The Commission from very beginning associated NGOs with the inquiry of complaints. In several places, during visits by the Commission, NGOs have boldly come forward with evidence of wrong-doing in relation to specific complaints addressed to the Commission.

The Commission acknowledged that the promotion and protection of human rights requires the courage and commitment that NGOs bring to bear in their endeavours and that it is for this reason that the country has much to gain by encouraging their efforts, whether the NGOs are national or international.

Inquiry into Complaints

A considerable increase in public awareness of the work of the Commission has been observed. This is reflected in the vast increase in the number of the complaints of human rights violations received by the Commission over the years. Many of the cases received by the Commission were of great poignancy, but they could not be entertained by the Commission because of the Regulation 8 of the Commission.

The Commission broadly divides the cases in these following categories: (1) Custodial deaths; (2) Police excesses (Torture, Illegal detention\ unlawful arrest, false implication etc.; (3) Fake encounters; (4) Cases related to Women and Children; (5) Atrocities on Dalits\Members of Minority community/ Disabled (6) Bonded labour (7) Armed forces\ para military forces and (8) other important cases.

Once the Commission accepts a complaint, it seeks comments from the concerned government or authority regarding complaint. After receiving the comments of the concerned authority a detailed note on the merits of the case is prepared for the consideration of the Commission.³⁰After this, directions and recommendations of the Commission are communicated to the concerned government under Sections 18 and 19 of the Act.

Illustrative Cases

National Human Rights Commission v. State of Arunachal Pradesh

The Commission under Article 32 of the Indian Constitution has filed a writ petition as a public interest petition before the Supreme Court of India.⁴⁰ 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.⁴¹ In this case a large number of refugees from erstwhile East Pakistan⁴² were displaced in 1964 due to Kaptain Hydrel 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 the Indian Constitution. Timely intervention by the Commission has saved the life of thousands of innocent Chakma refugees from AAPSU.

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 petition⁴⁴ 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. Realising 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. A Special Rapporteur has been regularly monitoring the progress of implementation of its directions.

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.

Gujarat Communal Riot

The commission took suo motu action on communal riot which took place in Gujarat in early 2002, the decision to take action was based of media reports, 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 latter 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.⁶¹ Recently the US government has revoked visa to Chief Minister Narendra Modi because of the Commission's report on Gujarat.

Conclusion

The Indian Constitution is a document rich in human rights jurisprudence. This is an elaborate charter on human rights ever framed by any State in the world. Part III of the Indian Constitution may be characterised as the 'Magna Carta' of India. The Judiciary in India plays

a significant role in protecting human rights. The Indian Courts have now become the courts of the poor and the struggling masses and left open their portals to the poor, the ignorant, the illiterates, the downtrodden, the have-nots, the handicapped and the half-hungry, half-naked countrymen.

From its inception the Commission attracted much suspicion because of its status as a government institution. However, in past years it was able to establish its integrity and commitment. The Commission with the help of NGO was able to demonstrate its ability to work independently and impartially, which is borne out by its recommendations.

Even if the Commission is a very small step in the daunting task of the implementation of human rights at the national level, it remains a very significant step. Considering India's extensive territorial domain, the vastness of its population and the complexity of social structure, cases of violation of rights, whether attributable to the agencies of the State or to the private individuals or groups, may occur despite its best efforts.

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