

**LL.B. (HONS) SEMESTER-IV
HUMAN RIGHTS LAW AND PRACTICE**

UNIT – I : CONCEPT

1. Historical Development and concept of Human Right
2. Human Right in India ancient, medieval and modern concept of rights
3. Human Right in Western tradition
4. Concept of natural law and natural rights
5. Human Right in legal tradition: International Law and National Law
6. UN and Human Rights
7. Universal Declaration of Human Rights (1980) - individual and group rights
8. Covenant on political and Civil Rights (1966)

MEANING OF HUMAN RIGHTS

Human beings are rational beings. They by virtue of their being human possess certain basic, inherent and inalienable rights which are commonly known as **human rights**. Human Rights are defined as all those rights which are essential for the protection and maintenance of dignity of individuals and create conditions in which every human being can develop his personality to the fullest extent. Human rights become operative with the birth of an individual. These are moral claims which are inalienable and inherent in all individuals by virtue of their humanity alone, irrespective of caste, colour, creed, and place of birth, sex, cultural difference or any other consideration. Because of their immense significance to human beings; human rights are also sometimes referred to as **fundamental rights**, **basic rights**, **inherent rights**, **natural rights** and **birth rights**. They are not created by any legislature through legislation and are not subject to amendment.

DEFINITION OF HUMAN RIGHTS

Dr. Justice Durga Das Basu defines-

"Human rights are those minimal rights, which every individual must have against the State, or other public authority, by virtue of his being a 'member of human family' irrespective of any consideration."

The Universal Declaration of Human Rights (UDHR), 1948 defines human rights as-

"Rights derived from the inherent dignity of the human person."



Section 2 (1)(d) of the Protection of Human Rights Act,1993 defines "human rights" as-

"Human Rights are 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".

CHARACTERISTICS AND NATURE OF HUMAN RIGHTS

1. **Human Rights are Inalienable** - Human rights are conferred on an individual due to the very nature of his existence. They are inherent in all individuals irrespective of their caste, creed, religion, sex and nationality. Human rights are conferred to an individual even after his death. The different rituals in different religions bear testimony to this fact.
2. **Human Rights are Essential and Necessary** - In the absence of human rights, the moral, physical, social and spiritual welfare of an individual is impossible. Human rights are also essential as they provide suitable conditions for material and moral upliftment of the people.
3. **Human Rights are in connection with human dignity** - To treat another individual with dignity irrespective of the fact that the person is a male or female, rich or poor etc. is concerned with human dignity. For eg. In 1993, India has enacted a law that forbids the practice of carrying human excreta. This law is called Employment of Manual Scavengers and Dry Latrines (Prohibition) Act.
4. **Human Rights are Irrevocable** - Human rights are irrevocable. They cannot be taken away by any power or authority because these rights originate with the social nature of man in the society of human beings and they belong to a person simply because he is a human being. As such human rights have similarities to moral rights.
5. **Human Rights are Necessary for the fulfillment of purpose of life** - Human life has a purpose. The term "human right" is applied to those conditions which are essential for the fulfillment of this purpose. No government has the power to curtail or take away the rights which are sacrosanct, inviolable and immutable.
6. **Human Rights are Universal** - Human rights are not a monopoly of any privileged class of people. Human rights are universal in nature, without consideration and without exception. The values such as divinity, dignity and equality which form the basis of these rights are inherent in human nature.
7. **Human Rights are never absolute** - Man is a social animal and he lives in a civic society, which always put certain restrictions on the enjoyment of his rights and freedoms. Human

rights as such are those limited powers or claims, which are contributory to the common good and which are recognized and guaranteed by the State, through its laws to the individuals. As such each right has certain limitations.

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8. ***Human Rights are Dynamic*** - Human rights are not static, they are dynamic. Human rights go on expanding with socio-eco-cultural and political developments within the State. Judges have to interpret laws in such ways as are in tune with the changed social values. For eg. The right to be cared for in sickness has now been extended to include free medical treatment in public hospitals under the Public Health Scheme, free medical examinations in schools, and the provisions for especially equipped schools for the physically handicapped.
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9. ***Rights as limits to state power*** - Human rights imply that every individual has legitimate claims upon his or her society for certain freedom and benefits. So human rights limit the state's power. These may be in the form of negative restrictions, on the powers of the State, from violating the inalienable freedoms of the individuals, or in the nature of demands on the State, i.e. positive obligations of the State. For eg. Six freedoms that are enumerated under the right to liberty forbid the State from interfering with the individual.

HISTORICAL DEVELOPMENT AND CONCEPT OF HUMAN RIGHTS

Even though the origin of human rights is ancient, the international concern with human rights may be said to be of comparatively recent origin. The United Nations Charter marks the advent of systematic human rights protection within the International system.

The idea of human rights is as old as humanity, its systematic proclamation and declaration are more recent.

*The origin of human rights can be traced back to the times of ancient Greeks. The fact that human rights are recognized as natural rights of man is illustrated by a Greek play "**Antigone**". In this play, Sophocles describes that Antigone's brother, while he was rebelling against the king, was killed and his burial was prohibited by the King Creon. In disobedience of the order Antigone buried her brother. When she was arrested for violating the order she pleaded that she had acted in accordance with the 'immutable, unwritten laws of heaven' which even the king could not override.*

The world's first bill of human rights was discovered on a clay tablet dating back from the reign of Cyrus the Great (555- 529 BC).

The documents which form the historical foundation of modern human rights jurisprudence are the **English Bill of Rights (1688)**, **the American Declaration of Independence (1776)** and **the French Declaration of Rights of Man (1789)**. The legal process in the universality of human rights effectively commenced with the Universal Declaration of Human Rights, 1948 (UDHR).

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. These and other decrees were recorded on a baked-clay cylinder in the Akkadian language with cuneiform script. 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.

The Spread of Human Rights - 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.

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.

THE 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:

- No taxes may be levied without consent of Parliament,
- No subject may be imprisoned without cause shown (reaffirmation of the right of habeas corpus),
- No soldiers may be quartered upon the citizenry, and
- Martial law may not be used in time of peace.

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.

THE CONSTITUTION OF THE UNITED STATES OF AMERICA (1787) & 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.

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 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.”



THE FIRST GENEVA CONVENTION (1864)

treatment of wounded soldiers in combat.

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

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.

HUMAN RIGHT IN INDIA- ANCIENT, MEDIEVAL AND MODERN CONCEPT OF RIGHTS

India got its independence in the year 1947, just a year before the United Declaration of Human Rights was adopted. The founding fathers of Indian constitution were all aware that India’s

freedom struggle had taken place in the context of the demand for basic human rights. Yet economic backwardness of the country would make it impossible to immediately satisfy all the aspirations of people. So, they adopted a pragmatic approach. They described certain rights as “fundamental rights” and laid down certain other rights as fundamental duties of a citizen were also enumerated.

The Supreme Court of India is the guarantor of the rights according to the Constitution. The court takes into account fundamental duties while interpreting the constitutional right. Human rights in India is an issue complicated by the country's large size, its tremendous diversity, its status as a developing country and a sovereign, secular, democratic, republic.

All human rights are indivisible, whether they are civil and political rights, such as the right to life, equality before the law and freedom of expression; economic, social and cultural rights, such as the rights to work, social security and education, or collective rights, such as the rights to development and self-determination, are indivisible, interrelated and interdependent. The improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others.

FUNDAMENTAL RIGHTS IN INDIAN CONSTITUTION

The various civil and political human rights and also the economic, social and cultural human rights have been guaranteed by the Constitution of India and re-christened as the “Fundamental Rights”.

The provisions of Part III of the Constitution (Articles 12 – 35) enshrine the Fundamental Rights, which are more elaborate than those of any other existing written constitutions dealing with Fundamental Rights. The constitution as amended by Forty fourth Amendment Act, 1979, classifies Fundamental Rights under the six categories. The fundamental rights are elaborated as follows:

Article 12 defines the “**State**” as-

State includes the ***Government and Parliament of India*** and ***the Government and the Legislature of each of the States*** and ***all local or other authorities within the territory of India or under the control of the Government of India.***

Article 13 lays down certain restriction on violating fundamental right. The important significance of this provision lies in the fact that it makes explicit provision for judicial review of legislative enactments and executive actions as to their conformity with guaranteed fundamental rights.

RIGHT TO EQUALITY (ARTICLES 14 – 18)

Equality before law and equal protection of law (Article 14)

Article 14 consists of two parts namely equality before law and equal protection of the laws. Equality before law means that no individual should be given any special privilege by the state. Equal protection of the laws means the right to equal treatment in equal circumstances. Equality before the law also means treating unequal unequally. For example, the Supreme Court has recommended that the ‘creamy layer’ of the Other Backward Classes’ (OBC) should not be given the benefit of reservation.

- **Prohibition of discrimination on ground of religion, race, caste, sex or place of birth (Article 15)**

There are four aspects of this right mentioned in following Clauses of this Article.

1. **Prohibition of discrimination [Article 15, Clause (1)]**- This article prohibits the state from discrimination against any individual or group of individuals. The principle of non-discrimination is based on equality and dignity.
 2. **Access to public places [Article 15, Clause (2)]**- This right provides that no citizen can be denied access to public places, places of entertainment or the use of wells, tanks, and roads that are maintained out of State funds.
 3. **Protective laws for women and children [Article 15, Clause (3)]**- A positive discrimination for women and children is made in the Indian context. Thus provision for reservation for women, free education for children etc. is provided.
 4. **Reservation for backward classes [Article 15, Clause (4)]**

The constitution recognizes the Scheduled Caste, Scheduled Tribes and Other Backward Classes as weaker sections of the population. It authorizes the state to make special provisions for the advancement of these sections of the society.
- **Equality of opportunity in matters of public Employment (Article 16)**

The aim of article 16 of Indian Constitution is to provide equal opportunity to all citizens in employment offered by the state or its agencies. This article has five clauses

 1. **Equality of opportunity [Article 16, Clause (1)]**- Wherein it is stated that equality of opportunity should be given to all citizens in matters relating to employment or appointment to any office under the state.
 2. **Prohibition of discrimination [Article 16, Clause (2)]**

This clause prohibits discrimination on grounds only of religion, race, caste, sex, descent, and place of birth, residence or any of them in respect of any employment of the state.
 3. **Residential requirements [Article 16, Clause (3)]**

It allows the Parliament to make laws that require residential (domicile) requirements in a State for public employment or appointment.
 4. **Protective laws [Article 16, Clause (4)]**

This Clause allows the Parliament to make protective laws for appointment of backward classes of citizens who are not adequately represented in the services of the state.
 5. **Preference to certain persons in religious institutions [Article 16, Clause (5)]**

This clause prescribes that the Parliament can make laws which require only a person professing a particular religion to be appointed in a body or institution of that religion. For example, a Hindu can only be appointed as a priest in a Hindu temple.

Abolition of Untouchability (Article 17)

This is a unique article that has been incorporated only in the Constitution of India. Article 17 declares that not only Untouchability has been abolished but it also makes any practice and propagation of Untouchability in any form punishable in accordance with the law.

- **Abolition of Titles (Article 18)**

The Clause of the Article prohibits the State from conferring any title at all upon any person. However the State is not prevented from awarding military distinctions, such as Mahavir Chakra, Param Vir–Chakra etc. for honouring men for their acts of valour or academic distinctions.

RIGHT TO FREEDOM (ARTICLES 19 – 22)

Article 19 (1), as amended by the Constitution (Forty Fourth) Amendment Act, 1979, guarantees to all citizens the following six freedoms:

- (a) Freedom of speech and expression
- (b) Freedom of peaceful assembly
- (c) Freedom of forming associations or unions
- (d) Freedom of movement throughout the territory of India
- (e) Freedom of residence and settlement in any part of the territory of India, and
- (f) Freedom of profession, occupation, trade or business.

Article 20- Protection in respect of conviction for offences

This right guarantees protection in respect of conviction for offences, to those accused of crimes. There are three clauses to this article-

1. **Protection against ex-post facto legislation** – It means that a person cannot be punished under such a law, for his actions which took place before the passage of the law.
2. **Protection against double jeopardy** – It says that no person shall be prosecuted and punished for the same offence more than once.
3. **Protection against self incrimination** – This clause states that no person accused of an offence shall be compelled to be a witness against himself.

Article 21- Protection of life and personal liberty

Article 21 of the Indian Constitution recognizes the right to life and personal liberty. It provides that “no person shall be deprived of his life or personal liberty except according to procedure established by law.”

Article 22- Protection against arrest and detention in certain cases

The provisions of Article 22 are complimentary to those of Article 21. Article 22 has two parts; the first part consisting of clauses (1) and (2), deals with persons, who are arrested under ordinary criminal law and the various rights they are entitled to; and the second part consisting of the remaining clauses (3) to (7), is concerned with persons, who are detained under a law of preventive detention.

RIGHT AGAINST EXPLOITATION (ARTICLES 23-24)

Article 23- Prohibition of traffic in human beings and forced labour

This Article prohibits traffic in human beings and 'begar' and other similar forms of forced labour.

Article 24- Prohibition of employment of children

Article 24 of the constitution prohibits child labour. Children below fourteen years of age cannot be employed in any factory or mine or in any other hazardous employment.

RIGHT TO FREEDOM OF RELIGION
(ARTICLES 25-28)

Article 25- Freedom of Conscience and Religion

Article 25 reflects the spirit of secularism and recognized freedom of religion to everyone in India.

Article 26- Freedom to manage religious affairs

It recognizes the right of every religious order to establish and maintain institutions for religious and charitable purposes and manage its own affairs in matters of religion.

Article 27- Freedom as to payment of taxes for promotion of any particular religion

The state shall not compel any person to pay any taxes for the promotion of maintenance of any particular religion or religious denomination.

Article 28- Freedom to attend religious instruction in education Institution

This article prohibits imposition of religious beliefs by educational institutions on those who are attending them.

CULTURAL AND EDUCATIONAL RIGHTS
(ARTICLE 29)

Article 29- Cultural right of the individual as well as of minorities

This Article states that every section of the society has the right to conserve its distinct language, script or culture.

Article 30- Right of minorities to establish and administer Educational institution

The State cannot discriminate in granting aid to any educational institution on the ground that it is under the management of a religious or linguistic minority.

RIGHT TO CONSTITUTIONAL REMEDIES (ARTICLE 32)

Article 32 provides for the Constitutional remedies, under which, one can move the Supreme Court for the enforcement of the Fundamental Rights and this provision itself is made one of the Fundamental rights.

UNITED NATIONS AND HUMAN RIGHTS

The United Nations (1945)

World War II had ranged from 1939 to 1945, and as the end drew near, cities throughout Europe and Asia lay in smouldering ruins. Millions of people died, 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.

On **October 24, 1945**, in the aftermath of World War II, delegates from fifty countries met in San Francisco full of optimism and hope, and with the purpose of saving future generations from the devastation of international conflict. It was there when the United Nations came into being as an intergovernmental organization. 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 people 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.**

The Charter of the United Nations established six principal bodies, including the **General Assembly, the Security Council, the International Court of Justice**, and in relation to human rights, an **Economic and Social Council (ECOSOC)**.

The UN Charter empowered ECOSOC to establish "commissions in economic and social fields and for the promotion of human rights..." One of these was the **United Nations Human Rights Commission**, which, under the chairmanship of Eleanor Roosevelt, saw to the creation of the **Universal Declaration of Human Rights**.

The Declaration was drafted by representatives of all regions of the world and encompassed all legal traditions. Formally adopted by the United Nations on December 10, 1948, it is the most universal human rights document in existence, delineating the thirty fundamental rights that form the basis for a democratic society.

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 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.**

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 called "the universal declaration of human rights". In consequence, many of these rights, in various forms, are today a part of the constitutional laws of democratic nations.

CLASSIFICATION OF HUMAN RIGHTS

1. CLASSIC AND SOCIAL RIGHTS

One classification used is the division between ‘classic’ and ‘social’ rights. ***‘Classic rights’ are often seen to require the non-intervention of the state (negative obligation), and ‘social rights’ as requiring active intervention on the part of the state (positive obligations).***

In other words, classic rights entail an obligation for the state to refrain from certain actions, while social rights oblige it to provide certain guarantees. Lawyers often describe classic rights in terms of a duty to achieve a given result (***‘obligation of result’***) and social rights in terms of a duty to provide the means (***‘obligations of conduct’***).

The evolution of international law, however, has led to this distinction between ‘classic’ and ‘social’ rights becoming increasingly awkward. Classic rights such as civil and political rights often require considerable investment by the state. The state does not merely have the obligation to respect these rights, but must also guarantee that people can effectively enjoy them. Hence, the right to a fair trial, for instance, requires well-trained judges, prosecutors, lawyers and police officers, as well as administrative support. Another example is the organisation of elections, which also entails high costs.

On the other hand, most ‘social’ rights contain elements that require the state to abstain from interfering with the individual’s exercise of the right. As several commentators note, the right to food includes the right for everyone to procure their own food supply without interference; the right to housing implies the right not to be a victim of forced eviction; the right to work encompasses the individual’s right to choose his/her own work and also requires the state not to hinder a person from working and to abstain from measures that would increase unemployment; the right to education implies the freedom to establish and direct educational establishments; and the right to the highest attainable standard of health implies the obligation not to interfere with the provision of health care.

2. CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Civil rights

The term ‘civil rights’ is often used with reference to the rights set out in the ***first eighteen articles of the UDHR***, almost all of which are also set out as binding treaty norms in the ICCPR. From this group, a further set of ‘physical integrity rights’ has been identified, which concern the right to life, liberty and security of the person, and which offer protection from physical violence against the person, torture and inhuman treatment, arbitrary arrest, detention, exile, slavery and servitude, interference with one’s privacy and right of ownership, restriction of one’s freedom of movement, and the freedom of thought, conscience and religion. The difference between ‘basic rights’ and ‘physical integrity rights’ lies in the fact that the former include economic and social rights, but do not include rights such as protection of privacy and ownership.

Another group of civil rights is referred to under the collective term ‘due process rights’. These pertain, among other things, to the right to a public hearing by an independent and impartial tribunal, the ‘presumption of innocence’, freedom from double jeopardy and legal assistance.

Political rights

In general, political rights are those set out in ***Articles 19 to 21 of UDHR*** and also codified in the ICCPR. They include freedom of expression, freedom of association and assembly, the right to take

part in the government of one's country and the right to vote and stand for election at genuine periodic elections held by secret ballot.

Economic and social rights

The economic and social rights are listed in **Articles 22 to 26 UDHR**, and further developed and set out as binding treaty norms in the ICESCR. These rights provide the conditions necessary for prosperity and wellbeing. Economic rights refer, for example, to the right to property, the right to work, which one freely chooses or accepts, the right to a fair wage, a reasonable limitation of working hours, and trade union rights. Social rights are those rights necessary for an adequate standard of living, including rights to health, shelter, food, social care, and the right to education (see Articles 6 to 14 ICESCR).

Cultural rights

The UDHR lists cultural rights in **Articles 27 and 28**- the right to participate freely in the cultural life of the community, the right to share in scientific advancement and the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which one is the author (see also Article 15 ICESCR and Article 27 ICCPR).

The alleged dichotomy between civil and political rights, and economic, social and cultural rights

Traditionally it has been argued that there are fundamental differences between economic, social and cultural rights, and civil and political rights. These two categories of rights have been seen as two different concepts and their differences have been characterised as a dichotomy.

According to this view, civil and political rights are considered to be expressed in very precise language, imposing merely negative obligations which do not require resources for their implementation, and which therefore can be applied immediately. On the other hand, economic, social and cultural rights are considered to be expressed in vague terms, imposing only positive obligations conditional on the existence of resources and therefore involving a progressive realisation.

As a consequence of these alleged differences, it has been argued that civil and political rights are justiciable whereas economic, social and cultural rights are not. In other words, this view holds that only violations of civil and political rights can be adjudicated by judicial or similar bodies, while economic, social and cultural rights are 'by their nature' non-justiciable.

Over the years, economic, social and cultural rights have been re-examined and their juridical validity and applicability have been increasingly stressed. During the last decade, we have witnessed the development of a large and growing body of case-law of domestic courts concerning economic, social and cultural rights. This case-law, at the national and international level, suggests a potential role for creative and sensitive decisions of judicial and quasi-judicial bodies with respect to these rights.

Many international forums have elaborated on the indivisibility and interdependency of human rights. As stated in the **1993 Vienna Declaration and Programme of Action: 'All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.'**

The European Union (EU) and its member states have also made it clear on numerous occasions that they subscribe to the view that both categories of human rights are of equal importance, in the sense that an existence worthy of human dignity is only possible if both civil and political rights and economic, social and cultural rights are enjoyed.

The adoption of the **Optional Protocol** on the 60th anniversary of the UDHR, **on 10 December 2008**, represents an historic advance for human rights. **Firstly**, economic, social and cultural rights - historically demoted to an inferior status with limited protection - are now finally on an equal footing with civil and political rights. **Secondly**, through an individual complaints procedure the meaning and scope of these rights will become more precise, facilitating efforts to respect and guarantee their enjoyment. **Thirdly**, the existence of a potential 'remedy' at the international level will provide an incentive to individuals and groups to formulate some of their economic and social claims in terms of rights. **Finally**, the possibility of an adverse 'finding' of the Committee on Economic, Social and Cultural Rights will give economic, social and cultural rights salience in terms of the political concerns of governments; which these rights largely lack at present.

3. FUNDAMENTAL AND BASIC RIGHTS

Fundamental rights are taken to mean such rights as the right to life and the inviolability of the person. Within the UN, extensive standards have been developed which, particularly since the 1960s, have been laid down in numerous conventions, declarations and resolutions, and which bring already recognised rights and matters of policy which affect human development into the sphere of human rights. Concern that a broad definition of human rights may lead to the notion of 'violation of human rights' losing some of its significance has generated a need to distinguish a separate group within the broad category of human rights. Increasingly, the terms 'elementary', 'essential', 'core' and 'fundamental' human rights are being used.

Another approach is to distinguish a number of 'basic rights', which should be given absolute priority in national and international policy. These include all the rights which concern people's primary material and non-material needs. If these are not provided, no human being can lead a dignified existence. Basic rights include the right to life, the right to a minimum level of security, the inviolability of the person, freedom from slavery and servitude, and freedom from torture, unlawful deprivation of liberty, discrimination and other acts which impinge on human dignity. They also include freedom of thought, conscience and religion, as well as the right to suitable nutrition, clothing, shelter and medical care, and other essentials crucial to physical and mental health.

4. OTHER CLASSIFICATIONS

Freedoms

Preconditions for a dignified human existence have often been described in terms of freedoms (e.g., freedom of movement, freedom from torture and freedom from arbitrary arrest). United States President Franklin D. Roosevelt summarised these preconditions in his famous '**Four Freedoms Speech**' to the United States Congress on 26 January 1941:

- Freedom of speech and expression;
- Freedom of belief (the right of every person to worship God in his own way);
- Freedom from want (economic understandings which will secure to every nation a healthy peace-time life for its inhabitants); and
- Freedom from fear (world-wide reduction of armaments to such a point and in such a thorough fashion that no nation would be able to commit an act of physical aggression against any neighbour).

Civil liberties

The concept of 'civil liberties' is commonly known, particularly in the United States, where the American Civil Liberties Union (a non-governmental organisation) has been active since the 1920s. Civil liberties refer primarily to those human rights which are laid down in the United States Constitution: freedom of religion, freedom of the press, freedom of expression, freedom of association and assembly, protection against interference with one's privacy, protection against torture, the right to a fair trial, and the rights of workers. This classification does not correspond to the distinction between civil and political rights.

Individual and collective rights

Although the fundamental purpose of human rights is the protection and development of the individual (individual rights), some of these rights are exercised by people in groups (collective rights).

Freedom of association and assembly, freedom of religion and, more especially, the freedom to form or join a trade union, fall into this category. The collective element is even more evident when human rights are linked specifically to membership of a certain group, such as the right of members of ethnic and cultural minorities to preserve their own language and culture. One must make a distinction between two types of rights, which are usually called collective rights: individual rights enjoyed in association with others, and the rights of a collective group.

The most notable example of a collective human right is the right to self-determination, which is regarded as being vested in peoples rather than in individuals. The recognition of the right to self-determination as a human right is grounded in the fact that it is seen as a necessary precondition for the development of the individual. It is generally accepted that collective rights may not infringe on universally accepted individual rights, such as the right to life and freedom from torture.

First, second and third generation rights

The division of human rights into three generations was first proposed by **Karel Vasak** at the **International Institute of Human Rights in Strasbourg**.

His division follows the principles of **Liberté, Égalité and Fraternité** of the French Revolution.

First generation rights are related to liberty and refer fundamentally to civil and political rights. The second generation rights are related to equality, including economic, social and cultural rights. Third generation or 'solidarity rights' cover group and collective rights, which include, inter alia, the right to development, the right to peace and the right to a clean environment.

The only third generation right which so far has been given an official human rights status - apart from the right to self-determination, which is of longer standing - is the right to development. The Vienna Declaration confirms the right to development as a collective as well as an individual right, individuals being regarded as the primary subjects of development. Recently, the right to development has been given considerable attention in the activities of the High Commissioner for Human Rights.

Types of state duties imposed by all human rights treaties:

The tripartite typology

The early 1980s gave rise to a useful definition of the obligations imposed by human rights treaties, which blurred the sharp dichotomy between economic, social and cultural rights, and civil and political rights.

Specifically, in 1980, Henry Shue proposed that for every basic right (civil, political, economic, social and cultural) there are three types of correlative obligations-

- ✓ ***'to avoid depriving',***
- ✓ ***'to protect from deprivation' and***
- ✓ ***'to aid the deprived.'***

Since Shue's proposal was published, the 'tripartite typology' has evolved and scholars have developed typologies containing more than three levels. While there is no consensus on the precise meaning of the different levels, the 'tripartite typology' presented by Shue is known today in more concise terms as the obligations '*to respect*' '*to protect*', and '*to fulfil*'.

Obligations to respect: In general, this level of obligation requires the state to refrain from any measure that may deprive individuals of the enjoyment of their rights or of the ability to satisfy those rights by their own efforts.

Obligations to protect: This level of obligation requires the state to prevent violations of human rights by third parties. The obligation to protect is normally taken to be a central function of states, which have to prevent irreparable harm from being inflicted upon members of society. This requires states:

- (a) to prevent violations of rights by any individual or non-state actor;
- (b) to avoid and eliminate incentives to violate rights by third parties; and
- (c) to provide access to legal remedies when violations have occurred in order to prevent further deprivations.

Obligations to fulfil: This level of obligation requires the state to take measures to ensure, for persons within its jurisdiction, opportunities to obtain satisfaction of the basic needs as recognised in human rights instruments, which cannot be secured by personal efforts. Although this is the key state obligation in relation to economic, social and cultural rights, the duty to fulfil also arises in respect to civil and political rights. It is clear that enforcing, for instance, the prohibition of torture (which requires, for example, police training and preventive measures), the right to a fair trial (which requires investments in courts and judges), the right of free and fair elections or the right to legal assistance, entails considerable cost.



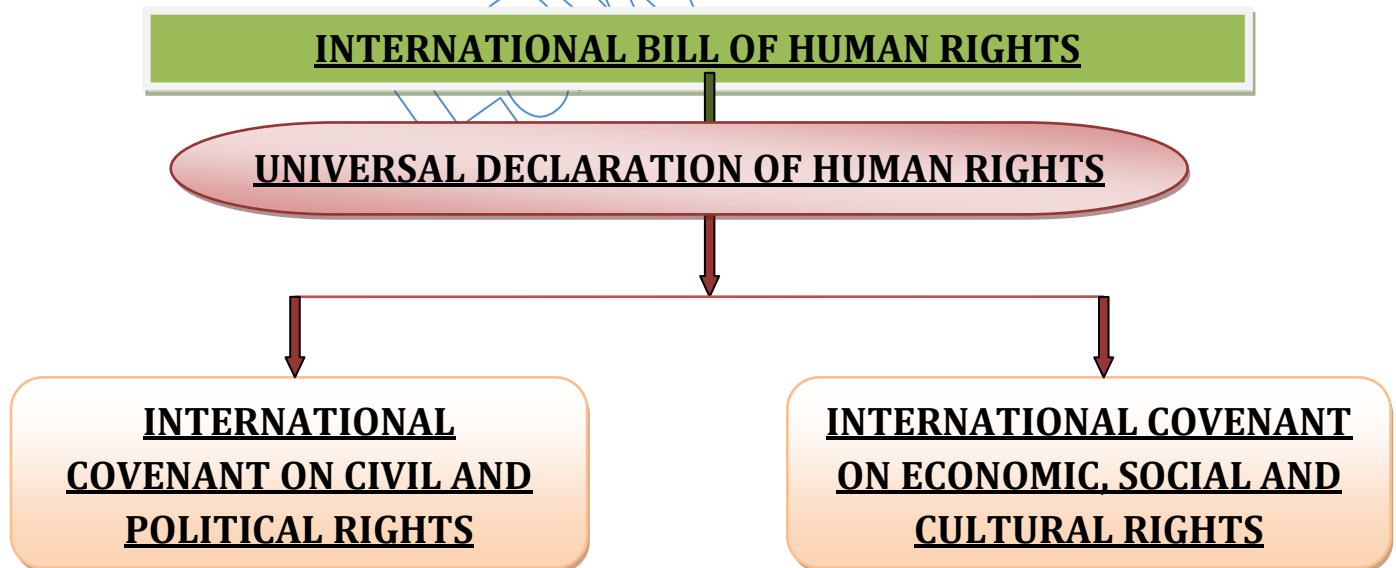
On **10 December 1948**, the General Assembly of the United Nations adopted and proclaimed **the Universal Declaration of Human Rights**. The General Assembly called upon all Member countries to publicize the text of the Declaration and “to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories.” **The Universal Declaration of Human Rights is the cornerstone for modern day**

human rights within the framework of the United Nations.

Contents of the UDHR

The general explanation of human rights states that civil, political and social rights belong to human beings in order to preserve one’s dignity. The Declaration consists of thirty articles which have been elaborated in subsequent international treaties, regional human rights instruments, national constitutions, and other laws.

These 30 Articles of the Universal Declaration of Human Rights guarantees protection of the person, of procedural law (claim of effective legal remedy), classical freedom rights such as freedom of expression, as well as economical, social and cultural rights. These rights should apply to all people irrespectively of their race, gender and nationality, as all people are born free and equal.



The International Bill of Human Rights consists of ***the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights,*** and ***the International Covenant on Civil and Political Rights and its two Optional Protocols.***

In 1966, the General Assembly adopted the two detailed Covenants, which complete the International Bill of Human Rights. In 1976, after the Covenants had been ratified by a sufficient number of individual nations, the Bill took on the force of international law.

PREAMBLE OF UNIVERSAL DECLARATION OF HUMAN RIGHTS

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

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

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

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

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

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

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

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1 All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2 Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3 Everyone has the right to life, liberty and security of person.

Article 4 No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5 No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6 Everyone has the right to recognition everywhere as a person before the law.

Article 7 All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8 Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9 No one shall be subjected to arbitrary arrest, detention or exile.

Article 10 Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12 No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

(1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

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

Article 16

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

Article 17

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

Article 18 Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19 Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

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

Article 21

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

Article 22

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

Article 23

- (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- (2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24 Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

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

Article 27

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28 Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30 Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

The ***International Covenant on Civil and Political Rights (ICCPR)*** is a multilateral treaty ***adopted by the United Nations General Assembly on 16 December 1966***, and ***in force from 23 March 1976***.

It commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. ***As of April 2014, the Covenant has 74 signatories and 168 parties.***

The ICCPR is monitored by the United Nations Human Rights Committee (a separate body to the United Nations Human Rights Council), which reviews regular reports of States parties on how the rights are being implemented. States must report initially one year after acceding to the Covenant and then whenever the Committee requests (usually every four years). The Committee normally meets in Geneva and normally holds three sessions per year.

Genesis of ICCPR

The ICCPR has its roots in the same process that led to the Universal Declaration of Human Rights. A "Declaration on the Essential Rights of Man" had been proposed at the ***1945 San Francisco Conference*** which led to the founding of the United Nations, and the Economic and Social Council was given the task of drafting it.

Early in the process, the document was split into a declaration setting forth general principles of human rights, and a convention or covenant containing binding commitments. The former evolved into the UDHR and was adopted on 10 December 1948.

Drafting continued on the convention, but there remained significant differences between UN members on the relative importance of negative Civil and Political versus positive Economic, Social and Cultural rights. These eventually caused the convention to be split into two separate covenants, "one to contain civil and political rights and the other to contain economic, social and cultural rights." The two covenants were to contain as many similar provisions as possible, and be opened for signature simultaneously. Each would also contain an article on the right of all peoples to self-determination.

The first document became the International Covenant on Economic, Social and Cultural Rights and the second the International Covenant on Civil and Political Rights. The drafts were presented to the UN General Assembly for discussion in 1954, and adopted in 1966. As a result of diplomatic negotiations the International Covenant on Economic, Social and Cultural Rights was adopted shortly before the International Covenant on Civil and Political Rights.

PREAMBLE OF INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The States Parties to the present Covenant,

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

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

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

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

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

Agree upon the following articles:

PART I

Article 1

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

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
 - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
 - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
 - (c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3 The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.
3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

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

PART III

Article 6

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

Article 7

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

Article 8

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

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
- 2.(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;
(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11 No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13 An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

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

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16 Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

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

Article 21 The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

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

Article 23

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

Article 24

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

Article 25

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

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

Article 26 All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27 In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

Article 28

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

Article 29

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

Article 30

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

the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

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

Article 32

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

Article 33

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

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.
2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.
3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35 The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36 The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

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

Article 38 Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

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

Article 40

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

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:
 - (a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;
 - (b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;
 - (c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;
 - (d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

- i. If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
- ii. If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1.(a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

- (a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;
- (b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;
- (c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;
- (d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43 The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44 The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45 The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46

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

Article 47 Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

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

Article 50 The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

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

Article 52

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

Article 53

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

Many right specifically mentioned in the Indian Constitution (called specified Fundamental Right) are also laid down in the Covenant on Civil and Political Right. The following table shows the Article of the Indian Constitution and those of the Covenant where similar rights have been enshrined.

RIGHT	INDIAN CONSTITUTION	COVENANT ON CIVIL & POLITICAL RIGHT
Equality before Law	Article14	Article14(1)
Prohibition of discrimination	Article15	Article26
Equality of opportunity to public service	Article16(1)	Article25(a)
Freedom of speech and expression	Article19(1) (a)	Article19(1)&(2)
Right for peaceful assembly	Article19 (1) (b)	Article21
Right to freedom of association	Article19 (1)(a)	Article22(1)
Right to move freely within the territory of a state	Article19(1)(d)& (e)	Article22(1)
Protection in respect of conviction for offences	Article 20(1)	Article15 (1)
Protection from prosecution and punishment	Article20(2)	Art .14(7)
Not to be compelled to testify against himself	Article20(3)	Article14(3) (g)
Right to life and liberty	Article21	Article6(1) & 9 (1)
Protection against arrest and detention in certain cases	Article22	Article19 (2) (3)& (4)
Forced labour	Article23	Article 8(3)
Freedom of conscience and religion	Article25	Article18(1)
Right to effective and remedies	Article32	Article3

THE CORE INTERNATIONAL HUMAN RIGHTS INSTRUMENTS AND THEIR MONITORING BODIES

There are ten core international human rights instruments. Each of these instruments (9 human rights treaties and the Optional Protocol to the CAT) has established a committee of experts to monitor implementation of the treaty provisions by its States parties. Some of the treaties are supplemented by optional protocols dealing with specific concerns.

	DATE	MONITORING BODY
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	21 Dec 1965	CERD
International Covenant on Civil and Political Rights (ICCPR)	16 Dec 1966	CCPR
International Covenant on Economic, Social and Cultural Rights (ICESCR)	16 Dec 1966	CESCR
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	18 Dec 1979	CEDAW
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	10 Dec 1984	CAT
Convention on the Rights of the Child (CRC)	20 Nov 1989	CRC
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)	18 Dec 1990	CMW
International Convention for the Protection of All Persons from Enforced Disappearance (CPED)	20 Dec 2006	CED
Convention on the Rights of Persons with Disabilities (CRPD)	13 Dec 2006	CRPD
Optional Protocol to the Covenant on Economic, Social and Cultural Rights (ICESCR-OP)	10 Dec 2008	CESCR
Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP1)	16 Dec 1966	CCPR
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (ICCPR-OP2)	15 Dec 1989	CCPR
Optional Protocol to the Convention on the Elimination of Discrimination against Women (OP-CEDAW)	10 Dec 1999	CEDAW

Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OP-CRC-AC)	25 May 2000	CRC
Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	25 May 2000	CRC
Optional Protocol to the Convention on the Rights of the Child on a communications procedure (OP-CRC-IC)	14 Apr 2014	CRC
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT)	18 Dec 2002	SPT
Optional Protocol to the Convention on the Rights of Persons with Disabilities (OP-CRPD)	12 Dec 2006	CRPD

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Law College

LL.B. (HONS) SEMESTER-IV
HUMAN RIGHTS LAW AND PRACTICE
UNIT - II : CONVENTIONS

1. Convention on economic social and cultural Rights, 1966
2. Convention on the elimination of all forms of discrimination against women
3. Convention on the rights of the child

CONVENTION ON ECONOMIC SOCIAL
AND CULTURAL RIGHTS, 1966



The **International Covenant on Economic, Social and Cultural Rights (ICESCR)** is a multilateral treaty adopted by the United Nations General Assembly on **16 December 1966**, and **in force from 3 January 1976**.

It commits its parties to work toward the granting of economic, social, and cultural rights (ESCR) to the Non-self-governing and Trust Territories and individuals, including labour rights and the right to health, the right to education, and the right

to an adequate standard of living. As of 2015, the Covenant had 163 parties.

The ICESCR is part of the Declaration on the Granting of Independence to Colonial Countries and Peoples, International Bill of Human Rights, along with the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), including the latter's first and second Optional Protocols. The Covenant is monitored by the UN Committee on Economic, Social and Cultural Rights.

The International Covenant on Economic, Social and Cultural Rights (1966), together with the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966), make up the International Bill of Human Rights. In accordance with the Universal Declaration, the Covenants recognize that the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

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

PART II

Article 2

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

Article 3

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

Article 4

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

Article 5

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

PART III

Article 6

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

productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

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

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

Article 8

1. The States Parties to the present Covenant undertake to ensure:
 - (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - (b) The right of trade unions to establish national federations of confederations and the right of the latter to form or join international trade-union organizations;
 - (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.
2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.
3. Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in the Convention.

Article 9

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

Article 10

The States Parties to the present Covenant recognize that:

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

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11

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

Article 12

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

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
 - (a) Primary education shall be compulsory and available free to all;
 - (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by ever appropriate means, and in particular by the progressive introduction of free education;

- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
 - (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
 - (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.
3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.
 4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

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

Article 15

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

PART IV

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.
 - (a) All reports shall be submitted to Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;
 - (b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts thereof, from States Parties to

the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17

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

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19

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

Article 20

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

Article 21

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

Article 22

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

Article 23

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

Article 24

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

Article 25 Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART V

Article 26

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

Article 27

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

Article 28

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

Article 29

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

Article 30

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

1. Signatures, ratifications and accessions under article 26;
2. The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

Article 31

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

<u>CIVIL AND POLITICAL RIGHTS (CPR)</u>	<u>ECONOMIC, SOCIAL, AND CULTURAL RIGHTS (ESCR)</u>	<u>RATIONALE FOR CHALLENGING THE DISTINCTION</u>
Objective is to ensure freedom	Objective is to ensure equality	Freedom requires both types of rights, and equality must be assured in both
Negative (freedom from=droit attribut)	Positive (right to=droit créance)	Obligation to respect, protect, and fulfil apply to all rights.
Cost-free (individual freedom)	Resources required (welfare)	Requirement of resources is dependent on the type of obligation not on the type of right.
Justiciable	Political or programmatic	All rights eventually become justiciable as better they are defined
Immediate implementation	Progressive implementation	Elements of immediate and progressive implementation apply to all rights in varying degrees

Absolute, immutable	Relative, responsive to changing conditions	All rights have a core of which the implementation is indispensable
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CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)



The Convention on the elimination of all forms of discrimination against women (CEDAW) adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. Consisting of a preamble and **30 Articles**, constitutes discrimination

it defines what

against women and sets up an agenda for national action to end such discrimination.

By accepting the Convention, States commit themselves to undertake a series of measures to end discrimination against women in all forms, including:

- to incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;
- to establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and
- to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.
- The Convention provides the basis for realizing equality between women and men through ensuring women's equal access to, and equal opportunities in, political and public life--including the right to vote and to stand for election -- as well as education, health and employment. States parties agree to take all appropriate measures, including legislation and temporary special measures, so that women can enjoy all their human rights and fundamental freedoms.
- The Convention is the only human rights treaty which affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations. It affirms women's rights to acquire, change or retain their nationality and the nationality of their children. States parties also agree to take appropriate measures against all forms of traffic in women and exploitation of women.

- Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice. They are also committed to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations.

PART I

Article 1

For the purposes of the present Convention, the term "***discrimination against women***" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

- 1) Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards, these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.
- 2) Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5

States Parties shall take all appropriate measures:

- (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;
- (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the

upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

Part II

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Article 9

- 1) States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
- 2) States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programs and the adaptation of teaching methods;
- (d) The same opportunities to benefit from scholarships and other study grants;
- (e) The same opportunities for access to programs of continuing education, including adult and functional literacy programs, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- (f) The reduction of female student drop-out rates and the organization of programs for girls and women who have left school prematurely;
- (g) The same opportunities to participate actively in sports and physical education;

- (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
- (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures;

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
- (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child care facilities;
- (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 12

- 1) States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
- 2) Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to family benefits;
- (b) The right to bank loans, mortgages and other forms of financial credit
- (c) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 14

- 1) States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including

their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

- 2) States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:
 - (a) To participate in the elaboration and implementation of development planning at all levels;
 - (b) To have access to adequate health care facilities, including information, counselling and services in family planning;
 - (c) To benefit directly from social security programs;
 - (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
 - (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment;
 - (f) To participate in all community activities;
 - (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
 - (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV

Article 15

- 1) States Parties shall accord to women equality with men before the law.
- 2) State Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
- 3) States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
- 4) States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- (c) The same rights and responsibilities during marriage and at its dissolution;
- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
 - (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
 - (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.
2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V

Article 17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.
2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.
3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.
4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.
6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.
7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.
8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

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

Article 18

1. States Parties undertake to submit to the Secretary- General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

(a) Within one year after the entry into force for the State concerned.

(b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfillment of obligations under the present Convention.

Article 19

1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

Article 20

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.

2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

Article 21

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

Article 22

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

PART VI

Article 23

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

(a) In the legislation of a State Party; or

(b) In any other international convention, treaty or agreement in force for that State.

Article 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

Article 25

1. The present Convention shall be open for signature by all States.

2. The Secretary-General of the United Nations is designated as the depository of the present Convention.

3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 26

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 27

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.
3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary General of the United Nations.

Article 30 The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary General of the United Nations.



**CONVENTION
ON THE RIGHTS
OF THE CHILD**

In **November 1989**, after nearly a decade of negotiations, the United Nations General Assembly unanimously adopted **the**

Convention on the Rights of the Child—the CRC. For the first time in history, an international treaty recognized that children are not possessions, but people who have human rights. It also recognized the incredible importance of parents and families in providing the best environment for children to grow. The CRC is the most widely accepted human rights treaty in history. **To date, 193 nations have ratified**

this important treaty. The only two UN member states that have not ratified the CRC are Somalia and the United States. The Convention deals with the child-specific needs and rights. It requires that states act in the best interests of the child. This approach is different from the common law approach found in many countries that had previously treated children as possessions or chattels, ownership of which was sometimes argued over in family disputes.

Although the CRC includes over 50 separate Articles, the entire document is based on four foundational principles: ***children should be free from discrimination; government policies should be based on the best interests of the child; children should survive and develop to their full potential; and children's views and perspectives are important and need to be heard.*** The CRC refers to the family as the fundamental group of society and the natural environment for the growth and well-being of its members, particularly children.

Two optional protocols were adopted on 25th May 2000. The First Optional Protocol restricts the involvement of children in military conflicts, and the Second Optional Protocol prohibits the sale of children, child prostitution and child pornography. Both protocols have been ratified by more than 150 states.

The Convention acknowledges that every child has certain basic rights, including the right to life, his or her own name and identity, to be raised by his or her parents within a family or cultural grouping, and to have a relationship with both parents, even if they are separated.

The Convention obliges states to allow parents to exercise their parental responsibilities. The Convention also acknowledges that children have the right to express their opinions and to have those opinions heard and acted upon when appropriate, to be protected from abuse or exploitation, and to have their privacy protected, and it requires that their lives not be subject to excessive interference. The Convention also obliges signatory states to provide separate legal representation for a child in any judicial dispute concerning their care and asks that the child's viewpoint be heard in such cases.

PART I

Article 1 For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 2, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others; or
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or

public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

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

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that

the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

4. States Parties shall promote, in the spirit of international co-operation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations cooperating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

- (a) To diminish infant and child mortality;
- (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
- (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
- (d) To ensure appropriate pre-natal and post-natal health care for mothers;
- (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents;
- (f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living; the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30 In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 35 States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36 States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
 - (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
 - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 - i. To be presumed innocent until proven guilty according to law;

- ii. To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
 - iii. To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
 - iv. Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
 - v. If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
 - vi. To have the free assistance of an interpreter if the child cannot understand or speak the language used;
 - vii. To have his or her privacy fully respected at all stages of the proceedings.
3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
- (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
 - (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

- (a) The law of a State Party; or
- (b) International law in force for that State.

PART II

Article 42 States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.
2. The Committee shall consist of ten experts of high moral standing and recognized competent in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.
3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.
4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months

before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

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

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:

- (a) Within two years of the entry into force of the Convention for the State Party concerned;
- (b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

- (a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;
- (b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;
- (c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;
- (d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46 The present Convention shall be open for signature by all States.

Article 47 The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48 The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect and the date on which it is received by the Secretary-General.

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

Renaissance
Law College

LL.B. (HONS) SEMESTER-IV
HUMAN RIGHTS LAW AND PRACTICE

UNIT – III : IMPACT AND IMPLEMENTATION

1. Impact and Implementation of International Human Rights Norms in India
2. Human rights norms reflected in fundamental rights in the Constitution
3. Directive principles: legislative and administrative implementation of international human rights norms through judicial process

IMPACT AND IMPLEMENTATION OF
INTERNATIONAL HUMAN RIGHTS NORMS IN INDIA

India happens to be one of the few countries in the world having a chequered history of human rights movement. Though formidable antecedents 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 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 in the Constitution of independent India was taken for granted as the reflection of the cherished vision of the founding fathers of the Constitution since the times of the genesis of the national movement in the country.

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. Owing to certain inherent contradictions in the socio-economic system of the country, a large number of people found themselves out of the reckoning to enjoy 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 stark 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 archaic 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 in order to ameliorate their conditions met with stiff resistance not only by the vested interests of the society but also by the Indian state on numerous occasions.

Thus, over the years, the history of human rights movement in India has turned out to be a chronicle of the civil society initiatives in securing for the marginalized, exploited and politically persecuted people their due share and respectful place in socio-economic and political system of the country even in the face vehement resistance of the vested sections of the society and the government.

Seeds of Human rights in Ancient India

The earliest fragments of the human rights, not only in India but probably in the world as such, may arguably be found in the ancient Indian literary sources depicting the norms of the socio-economic and political life of the people in ancient times. For instance, the *Vedic* literature expressively proclaims the equality of all human beings and calls for the fostering of the sense of fraternity amongst them all. Moreover, it reiterates the equal claims of the human beings on the basic life supporting amenities like food, water, air and shelter and professes an egalitarian and fulfilling social order by calling for the ideal of '***Sarve Bhavantu Sukhinah***' across the board.

The essence of the human rights in the ancient times seems to lie in the timeless concept of '***Dharma***' (*righteousness*) which denotes the loftiest ideal underpinning the whole notion of good life for the people. As a perceptible expert clarifies, 'The *Vedas* including the *Upanishads* (*Shruti*) were the primordial source of '*Dharma*', a compendious term for all human rights and duties, the observance of which was regarded as essential for securing peace and happiness to individuals as well as society. The *Smritis* and the *Puranas* were collections of the rules of *Dharma* including civil rights and criminal liabilities (*Vyavahara Dharma*) as also *Raj Dharma* (Constitutional Law) which were developed on the basis of fundamental ideals incorporated in the *Vedas*.'

An authoritative glimpse of the nature and functions of the human rights in ancient times is also found in the monumental work of Kautilya, the *Arthashastra*. Rooting his concept of rights and duties in the notion of *Dharma*, Kautilya reiterated the civil and legal rights as propounded by the law giver of ancient times, the Manu. Moreover, he also insightfully tried to supplement the civil and legal rights of people with the formidable economic rights presumably in order to evolve a comprehensive notion of the human rights of the common people.

Unfortunately, with the growing complexity of life on the one hand, and the degeneration of the moral values of life, on the other, the pious ideals of the Varna System started getting perverted into the cruel and inhuman caste system. Subsequently, during the middle-ages, with the arrival of the Muslim rulers, newer elements seemed to have been introduced in the socio-economic and political life of the country which impacted on the realization of the human rights by the common people adversely. As a result, by the time of the British arrival in India, a vast mass of the people were abjectly deprived of their human rights at the hands of the dominant sections of the people. With no perceptible initiative forthcoming on the part of the government of the day to restore the human rights of the common people, the responsibility for the same appeared to have fallen on the social reformers and the enlightened individuals to strive for the promising or favourable circumstances in which the common people are able to enjoy their human rights freely and adequately.

Genesis of Human Rights Movement in India

In modern times, the genesis of the human rights movement in India may be traced to the colonial period. The long years of throttling and dehumanizing colonial rule has ensured that the majority of Indians remain oblivious to the ideas of human rights, respect for common people and enjoyment of a dignified life by all even as late as 1820's. However, for obvious reasons of their own, two sets of people started to rekindle the urge for human rights amongst the people impliedly, if

not directly, via media of asking for social reforms in the Indian society on the one hand, and adoption of a more liberal attitude by the colonial government towards the issues dear to Indians like the freedom of press etc., on the other. While the first set of people consisted of those having sincere concern for the indigenously conceptualized social reforms in India so as to secure the human and livelihood rights for the hitherto marginalized sections of the society, the second category of people included a number of Indians as well as the Westerners who looked upon the British government to bring about the necessary positive transformations in the society and the polity of the country.

The pioneering efforts leading to the eventual germination of the human rights movement in India appeared to have come from the relentless social reformer Raja Rammohan Roy. Having strong critical faculties right from his childhood, Rammohan Roy's powerful training in the Indian scriptures on the one hand, and his deep erudition of English moral and political literature on the other, ingrained in him a unique blend of critique and creation on almost everything theoretician and anti-liberal in Indian society and polity.

Consequently, Ram Mohan Roy became one of the bitterest critics of the redundant religious rituals demeaning the human rights of all the people in general, and those of the women in particular. Advancing a well-reasoned plea for the abolition of the cruel and inhuman practices like *Sati*, he presented a comprehensive outline of reforms to revolutionize the conditions of women in India. He decried the general environment of violence against the rights of women and called for eradicating all such social practices like polygamy, child marriage, *devadasi* system etc., which appeared to have denigrating effect on the dignity and respect of women. Moreover, providing creative solutions to the problems facing women in India, he advocated a number of progressive measures like widow remarriage, equal rights of women to property and fixation of a ripe age of marriage for women. Though most of such ideas of Rammohan Roy seemed to be much ahead of his time and, therefore, could not bear fruit so soon, two positive outcomes of his efforts remain remarkable. One, with the support of the humanist Governor-Generals like William Bentick, he indeed succeeded in stamping out the most heinous crimes against humanity in terms of the abolition of the Sati system by 1823. Two, irrespective of the successes or failures of his efforts, he was able to arouse the passions of other humanist elements in the Indian society who picked up from where he left and, thus, kept the flame of the struggle for human rights alighted throughout since then in the country.

Besides waging a sustained struggle for the rights of women, Rammohan Roy also strived hard for the protection of the civil and political right of the Indians. Hence, despite holding the colonial rule in India in high esteem, he did not hesitate to take on the British government at least on two occasions when he found the moves of the government infringing upon the civil and political rights of the natives.

First, in 1823, when the British attempted to curb the freedom of Press in the country by putting unreasonable restrictions on it, Rammohan Roy happened to be one of the most vocal opponents of such a move and called for freeing of the Press from all draconian and unreasonable regulations passed by the colonial government.

Second, the move on the part of the British Parliament to introduce certain discriminatory and illogical provisions in the Indian judicial system aimed at compromising the civil liberties of the Indians also earned the intense rage of Rammohan Roy.

Opposing the insertion of a clause by the Jury Act of 1827 which envisaged that 'natives, either Hindu or Muslims, are subject to judicial trial by Christians, either European or native, while Christians are exempted from being tried either by a Hindu or Muslim juror,' he campaigned forcefully against it. Not only that, he submitted a petition against this piece of legislation, signed by both Hindus and Muslims, in the two houses of the British Parliament arguing for the abandonment of such a discriminatory legislation. In nutshell, it may be argued that the idea of human rights movement in India appears to have found its genesis in the thoughts and actions of Rammohan Roy. His passion for the protection and promotion of human rights of various sections of society, in particular

women, probably inadvertently began a wave upon which the subsequent movements for human rights may have been built up in India.

HUMAN RIGHTS ELEMENTS IN SOCIAL REFORM MOVEMENTS

As argued earlier, the genesis and growth of human rights movement in India seem to be trapped in the various socio-religious reform movements championed by the great social reformers from time to time. Indeed, the exhibition of concern for the human rights of individuals by the leaders of the national movement came quite late. Civil liberties of individuals, within the concern of India's liberation struggle, manifested itself as late as in the 1930's when Nehru started the Civil Liberties Union to provide legal aid to the freedom fighters accused of treason. The Congress Party, only at its **Karachi session of 1931**, passed the first resolution demanding civil liberties and equal rights for citizens. Therefore, in order to have an unbroken sequence of growth of human rights movement in India, it is important to critically grasp the human rights elements in the socio-religious reform movements waged in the country during the late second half of the nineteenth and the early first half of the twentieth century.

In the sphere of socio-religious reform movements, Bengal happens to be the pioneering state. Drawing upon the lead given by the torch-bearers of European Renaissance in India like William Carey and Joshua Marshman, 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.

While in Bengal the social reform movements drew their intellectual inspiration from the European Renaissance, in Maharashtra, they appeared predominantly, if not exclusively, out of an indigenous awakening amongst the people having a vision for the amelioration of the miserable condition of the masses. **For instance, though remaining quite active in the affairs of the Indian National Congress, 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.** The routine understanding of the problems facing people by Justice Ranade induced him to conceptualize such conditions of life for the people where the enjoyment of civil and political rights is supplemented by the adequate availability of the social, economic and cultural rights to the 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 patronage 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 for *sanskritizing* the norms and customs of the Irava community in Travancore. Yet, numerous other socio-religious movements were also launched in different parts of the region which sought to either protect or promote the socio-religious rights of the hitherto marginalized sections of society belonging to lower castes.

The other socio-religious reform movements having pointers for the growth of human rights movement in the country included the ones spearheaded by *Arya Samaj of Swami Dayanand Saraswati, the Ramakrishana Mission of Swami Vivekanand* and *the Aligarh School founded by Syed Ahmad Khan*. 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 perceptible 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, in a way, may be argued to be some sort of human rights movement keeping in mind the demand of the Indians for bestowing of basic civil and political rights to the common people of India as the short term perspective and the complete independence for the country as the long term vision of the nationalist leaders.

The human rights movement during the phase of nationalist struggle appears to have taken shape only during the decade of 1930's. **The biggest momentum 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. For instance, while the Constitution of India Bill drafted by it in 1895 called for guaranteeing certain specified civil and political rights as the fundamental rights of the people in any future Constitution for India, the Madras session of the Congress adopted a resolution calling for the inclusion of a Declaration of Fundamental Rights in the future Constitutional arrangement for the country. 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.

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, 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 INDEPENDENT INDIA

The functional narrative of human rights movement in the post independent times presents a story of belied promises on the one hand, and the emergence of a powerful civil society initiative to keep the flames of human rights movement alight despite all odds, on the other. The portents of the future shape of human rights in independent India became obvious with the context in which the Constituent Assembly set on to fine-tune the provisions on fundamental rights of the people.

The foundational fetters of the Constituent Assembly, including the historical factors conditioning its origin like the limited social base, vortex of partition and associated clamouring amongst various princely states for independence, etc. went a long way in determining the broad contours of thinking of the Assembly on the issue of fundamental rights. Hence, despite the liberal moorings of the members of the Constituent Assembly, the circumstantial dynamics constricted the deliberations of the Assembly so much so that it could not resolve on anything other than a strong governmental apparatus even at the cost of the basic human rights of the people. The agenda of nation building, national security and the unity and integrity of the nation was so overbearing in the minds of the framers of the Constitution that they could not rise above the routine offerings to the people by way of the fundamental rights. What was however heartening was that not only draconian provisions like those of 'preventive detention' were introduced, even the routine fundamental rights were placed so much of 'reasonable restrictions' that any government would have find a reasonable cause to put restrictions on the enjoyment of such rights.

While the Constitution making process was underway in India, an international event of profound significance took place in December 1948 when the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR).

Though the adoption of the UDHR had its own political underpinnings, reflecting the existing reality of the time in terms of ensuing cold war, it gave new impetus to the human rights movement in the newly independent countries like India. The Declaration, in a very subtle manner, morally, if not materially, impressed upon most of the countries to have a comprehensive framework of human rights for people in their constitutions on the pattern presented in the UDHR. Consequently, almost all

the countries, including those not very anxious to have human rights as defining feature of their political system, found it somewhat compelling to not only sign the UDHR but also make matching arrangement in their own laws or constitutions to reflect the ethos of the Declaration. In such propitious circumstances, the task of the Constitution makers in India became more daunting keeping in mind the requirements of the UDHR on the one hand, and the imperatives of the national unity and integrity on the other.

As the final product, the Constitution of India incorporates a number of valuable provisions having profound implications for the human rights movement in the country. The three important sections where direct or indirect references have been made with regard to the rights of the people are the Preamble, the Fundamental rights and the Directive Principles of State Policy (DPSP). Indeed, though the Preamble articulates the holistic vision of the founders of the Constitution on certain vital aspects of the political system of the country, the subtle reference to the various rights and freedoms of the citizens at the very outset clearly indicates the salience which the framers apparently sought to dovetail in the Constitution. However, when it came to providing for the specific rights to the people, the Constitution makers thought of making a clear distinction between the first and the second generation of human rights, owing to the prevailing socio-economic conditions in the country. Hence, given the firm decision of the framers to have the democratic system of governance in the country, it was obvious that elaborate provisions are made for the guaranteeing to the citizens certain fundamental rights, mainly in the nature of civil and political rights, in order to give functional vibrancy to democracy in India.

Thus, as given in Part III of the Constitution, there exists **six sets of fundamental rights** i.e. **right to equality, right to freedom, right against exploitation, right to religious freedom, cultural and educational rights and the right to constitutional remedies.** As against these justiciable rights for the enjoyment of which the citizens are also entitled to go to court, the second generation of human rights are envisaged in Part IV of the Constitution in the nature of directive principles which are to remain critical in the formulation of governmental policies and programmes on the condition of the availability of resources and social awareness amongst the people.

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 one 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 convince 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 be 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. 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.

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.

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 unique dimension of the human rights movement in India appears to be its diversification into hitherto uncharted domains due mainly to the felt needs of time. In other words, as and when, some public minded person noticed the violations of some rights of the people, he or she volunteered to take up the cudgels on behalf of the victims. The pioneering role in this regard has been played by Sundarlal Bahuguna who launched the Chipko Movement in the hills of Garhwal during 1980s for the protection and promotion of the inherent rights of the natives in the forest resources of the region. The movement not only thwarted the sinister government backed designs of the unscrupulous merchants to infringe upon the rights of the natives, it also brought about an electrifying consciousness in the minds of the people to be ever vigilant for the protection and enjoyment of their rights. The example set by the Chipko Movement later gave inspiration to other crusaders like Medha Patkar to begin the Narmada Bachao Andolan, Aruna Roy to start the campaign for the Right to Information to the people, B.D. Sharma to fight for the cause of the rights of the tribals of Bastar

region. The cumulative impact of all such movements has resulted into broadening of the domain and deepening of the ethos of 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.

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.

Issues and Challenges of Human Rights Movement

The onward march of the human rights movement in India carries its own share of issues and challenges that remain critical in shaping the future course of action for the same. The newer aspects of the movement seem to emanate from two interrelated underlining features of the human rights movement getting prominence from the decade of 1990s. First, with the deepening of democracy on the one hand, and concomitant intrusion of state/individual actors into the hitherto untouched areas like commercial ventures in the coastal areas, rising level of environmental

pollution in the metro cities, acquisition of land for industrial development from the unwilling farmers etc. have provided the propitious circumstances for the proliferation of human rights groups in most of the areas. Second, the growing professionalization of the human rights movement with the advent of numerous non-governmental organizations has raised doubts about the pious objectives with which the human rights movement was started in the country even before the dawn of independence.

As a result of the complex and rapid churning taking place in the socio-economic and political sphere of public life, a number of dislocations are introduced in the lives of the people. With ostensible purpose of providing support to the distressed people, the so called human rights bodies are proliferating in almost all walks of public life. Thus, the question of the legitimate domain of the human rights bodies becomes apparent. For example, with the rising threat of terrorism to all the people, the security agencies find themselves in the dilemma of either taking stern action against the perpetrators of such crime which would, to some extent, entails restrictions on the enjoyment of the rights of the people, or just remain silent spectator to the spectre of crimes against humanity being perpetrated by the terrorist groups. In nutshell, the human rights movement has to respond to the charge that the human rights groups are oversensitive to the acts of violations by the state agencies but turns a blind eye to the heinous crimes being committed by the terrorist organizations.

Another challenge having a deep impact on the working of the human rights groups in the country pertains to the adequacy of organizational structure and functional professionalism needed for the efficient and effective performance of their functions. With the rapid rise in the number of human rights bodies, sometimes happening to be one man army itself, it becomes pertinent to look into the issues of organizational structure and functional vibrancy of these bodies. For instance, there appears need for some sort of basic infrastructural facilities and functional skill enhancement for the human rights bodies so that they are able to discharge their functions of acting as watchdog for the protection and promotion of human rights of the people effectively.

In the contemporary times, a subtle threat to the sanctity and respect to the human rights bodies seems to have come from the growing cases of corruption and misappropriation of funds by few such bodies. Though, undoubtedly, most of the human rights organizations in the country grew out of the missionary zeal of their founders to work selflessly and sometimes even by spending money from one's own pocket, it is alleged that the same things no longer remain true to the mushrooming number of human rights NGOs. Today, a number of human rights bodies have been charged with coming into existence to provide a lucrative career option to its founder. Moreover, having remained into existence for a few years as crusaders for the cause of human rights, many of such bodies turn into money minting machine for their custodians, keeping in mind the huge amount of money coming in the form of grants and financial assistance to these NGOs. Hence, it is of utmost importance that the human rights NGOs remain rooted to the missionary spirit of the old times rather than turning out to be career option and money minting machine for their promoters.

The human rights movement also faces the challenge of taking a balanced view of the things in cases where the vital interests of society at large seem to be at stake in face of the opposition being mounted by the miniscule people. This assertion becomes not truer in other cases as in the cases of socio-economic development of a particular region or sections of people. For instance, the opposition to a number of projects like Singur in West Bengal, no doubt, emanate from the callousness of the government to look into the issues of the displaced people seeking adequate compensation and rehabilitation. However, the resistance to such projects by the human rights groups should focus only upon the redressal of the genuine grievances of the people by the government as well as the promoters of the projects. Having secured the protection of the legitimate grievances of the people, the human rights groups need to afford space to the government to effect substantial economic gains for the people of region and outside as well.

Finally, with the installation of a number of governmental agencies like the National Human Rights Commission, State Human Rights Commissions, the National Commissions for Women, Minorities etc, for the ostensible purpose of promoting and protecting the human rights of

their targeted people, the human rights movement in the country is likely to face the challenge of retaining their credibility as well as exposing the dysfunctionalities of these bodies. It will be quite obvious now that the cases of violations of human rights would be reported to these bodies. After investigation and assessment of facts, the commissions are likely to give their verdict on the matters which on certain occasions are likely to be against the complainant or the victim. In such cases, the human rights bodies would need to exercise extra caution in highlight the other part of the story because the verdict of the governmental commission is also likely to carry credibility in the eyes of the people. Therefore, in order to keep their credibility intact, the human rights NGOs must put forth their case with irrefutable evidence and keeping the public good in mind. However, this must not dissuade these NGOs to become a passive recipient of the verdicts given by one or the other governmental commission. If they find that the governmental machinery seems to have failed to address the issues of the violations of the human rights adequately, they must carry out their own investigations and put before the public the real facts and issues of the case. Thus, in the form of the governmental agencies, the human rights bodies have found a sort of competitor in espousing the cause of promotion and protection of human rights in the country.

HUMAN RIGHTS AND THE CONSTITUTION OF INDIA

The constitution of India is known as one of the most right-based Constitutions in the world. It was drafted around the same time when the Universal Declaration of Human Rights by the United Nations came into force (1948). Indian constitution provides the spirit of human rights in its preamble and the sections on Fundamental rights and Directive Principle of State Policy.

Individual partly and wholly expects that he/she should be provided the good environment for his/her overall development. Rights provide that environment. Rights have been defined as those claims of an individual that are necessary for the development of his/her ownself and recognized by state or society. Some of the rights provided by the state and enshrined in the constitution are known as fundamental rights. Fundamental rights are those rights that are enforceable through the court of law.

The Indian constitution is based on the theory that guided India's struggle against British colonialism, which was marked by the violation of civil, political, social, economic and cultural rights of the people. Therefore, after independence the framers of the constitution provided some fundamental rights to the citizens which are enshrined in the part III of the constitution. These fundamental rights are defined as basic human freedom for a proper and harmonious development of personality of every Indian citizen. These fundamental rights apply to all Indian citizens, irrespective of caste, creed, colour, sex, race or place of birth. They are also enforceable by the courts, subject to certain restrictions. The rights have their origins in many sources including England's Bill of Rights, the United States Bill of Rights and France's declaration of the Rights of Man.

India's Independence Movements, Human Rights and the Constituent Assembly

The development of constitutionally guaranteed fundamental human rights in India was inspired by England's Bill of Rights (1689), the United States Bill of Rights (approved on September 17, 1787, final approval on December 15, 1791) and France's Declaration of the Rights of Man (created during the revolution of 1789, and ratified on August 26, 1789).

The **Rowlatt Act of 1919** provided extensive powers to the British government. It allowed the officials to indefinite arrest, detention of individuals and armed them with warrant-less searches and seizures. It also restricted people for public gathering and censored the media. Therefore, the extensive powers given to the officials resulted into the gross violation of Human rights of masses. In response to this the public opposition grew and there was a widespread demand of guaranteed civil liberties and limitations on the powers of government. Prior to this Act, there were Vernacular Press Act of 1878, Indian Council Act, 1892, Indian Council Act 1909 etc, which faced political and public opposition. The regime of Lord Curzen (1892-1909) was marked by the violation of basic human rights of individuals. Thus it can be said that the leaders of freedom movement were not only fighting for the independence but they were also fighting for the basic human rights of Indian masses.

Another major development during that period was the Nehru Commission Report of 1928 (with Motilal Nehru as its Chairman). It proposed constitutional reforms for India. It apart from demanding a dominion status for India and elections under universal suffrage laid emphasis on the rights deemed fundamental, representation for religious and ethnic minorities and suggested to limit the power of government. It also proposed to protect the fundamental rights of the people, which were denied most frequently by the colonial administration.

In 1931, the Indian National Congress approved several resolutions committing itself to the protection of fundamental civil rights and economic-social rights for example, the minimum wage and the abolition of untouchability and serfdom. The Karachi Resolution adopted by Congress was also a landmark as it demanded to include the economic freedom with political freedom to end the exploitation of the people and lastly the Sapru Committee recommended the political and civil rights, equality of liberty and security, freedom to practice a religion, worship etc to the people. When India achieved independence on 15 August 1947, the task of framing a constitution was undertaken by the Constituent Assembly. It consisted of elected representatives with Rajendra Prasad as its President. While members of Congress composed of a large majority, some persons from diverse political backgrounds were appointed with a responsibility to frame the constitution and national laws. Dr. Bhimrao Ambedkar became the chairperson of the drafting committee, while Jawaharlal Nehru and Sardar Vallabhbhai Patel became chairpersons of committees and sub-committees responsible for different subjects. A notable development during that period took place on 10 December 1948 when the United Nations General Assembly adopted the Universal Declaration of Human Rights and called upon all member states to adopt these rights in their respective constitutions, this development has a significant impact on the Constitution of India.

The Fundamental Rights were included in the 1st Draft Constitution (February 1948), the 11nd Draft Constitution (17 October 1948) and the 111rd and final Draft Constitution (26 November 1949), being prepared by the Drafting Committee.

Human Rights and the Constitution of India

The Constitution as said above provides some Fundamental Rights to its citizens. The Fundamental Rights are included in Part III of the Constitution (Articles 12-35), these rights were finalized by a committee of the Constituent Assembly headed by Sardar Vallabhbhai Patel.

NATURE OF RIGHTS

These rights have not been defined in the Constitution. But it is agreed that they are described as fundamental because they are superior to ordinary laws; they can be altered only through constitutional amendment. Furthermore they are vital for the full development of the human personality, promoting an individual's dignity and welfare.

These rights unlike other justifiable rights are protected by the constitutional remedy by way of an application direct to the Supreme Court under Article 32, which is itself included in Part III. The Fundamental Rights are not absolute; they can be subject to certain restrictions. While some of these restrictions are spelt out by the Constitution, other restrictions may be imposed by the

government. However, the reasonableness of such restrictions is to be decided upon by the courts. Thus a balance is struck between individual liberty and social control. The Fundamental Rights can be suspended during emergency. The rights are available against the State and not against private parties.

FUNDAMENTAL RIGHTS IN INDIA

The Fundamental Rights included in the Indian constitution are guaranteed to all Indian citizens. These civil liberties take primacy over any other law of the land. They include individual rights common to most liberal democracies, such as equality before the law, freedom of speech and expression, freedom of association and peaceful assembly, freedom of religion, and the right to constitutional remedies for the protection of civil rights such as habeas corpus. In addition, the Fundamental Rights for Indians are aimed to topple the inequities of past social practices. They abolish the practice of untouchability; prohibit discrimination on the grounds of religion, race, caste, sex, or place of birth; and prohibit traffic in human beings and forced labour. They even protect cultural and educational rights of minorities by ensuring them to preserve their distinctive languages and establish and administer their own education institutions.

There are six fundamental rights enshrined in the Indian Constitution. Right to equality is included in Articles 14, 15, 16, 17 and 18 of the Constitution. It is the principal foundation of all other rights and liberties.

Article 14 describes that all citizens of India shall be equally protected by the laws of the country.

Article 15 of the constitution provides that no individual shall be discriminated on the basis of caste, colour, language etc. However, the State may make any special provision for women, children, and for socially or educationally backward class or scheduled castes or scheduled tribes.

Article 16 of the constitution defines that the State cannot discriminate against anyone in the matters of employment. However, there are some exceptions, the parliament has the right to enact law/s describing that certain jobs can only be filled by the applicant/s who are domiciled in the area for the post that require knowledge and the language of the locality or the area. The state may also reserve posts for members of educationally and economically backward classes, scheduled castes and tribes for their adequate representation in the jobs.

Article 17 abolishes the practice of untouchability. Article 18 of the constitution prohibits state from conferring any titles. This means that the citizen of India cannot accept titles from a foreign state. But Military and academic distinctions can be conferred on the citizens of India and also the awards of *Bharat Ratna* and *Padma Vibhushan* cannot be used by the recipient as a title.

Except the right to equality, the Constitution of India provides the right to freedom, given in articles 19, 20, 21 and 22.

Freedom of speech and expression (it includes the freedom of press), freedom of assemble peacefully without arms, freedom to form associations or unions, freedom to move freely throughout the territory of India, freedom to reside and settle in any part of the territory of India, freedom to practice any profession or to carry on any occupation, trade or business are some of the freedoms which are provided to Indian citizen.

However, at the same time these freedoms can be restricted in the interests of public order, morality and the sovereignty and integrity of India. Freedom of speech and expression, generally interpreted to include freedom of the press, can be limited "in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence"

The constitution also guarantees the right to life and personal liberty under article 20 and 21.

Article 20 states that no individual can be awarded punishment which is more than what the law of land prescribes at that time. This legal axiom is based on the principle that any criminal law cannot be made retrospective. Therefore, the essential condition for an act to become a crime or offence is that it should have been an offence legally at the time of committing it. It also provides that no person can be convicted twice for the same offence. Article 21 declares that no citizen can be denied his/her life and liberty except by law. Therefore, an individual's personal liberty can only be disputed if the person has committed a crime. This right does not include the right to die thus suicide or an attempt thereof is an offence.

Rights of a person arrested under ordinary circumstances are laid down in the right to life and personal liberty. No person can be arrested without being informed about the grounds for his/her arrest. If arrested the person has the right to defend himself by a lawyer of his choice and also the arrested citizen has to be brought before the nearest court within 24 hours

In 2002, Article 21 (A) was incorporated by the 86th constitutional amendment act. The primary education has been made a fundamental right under the right to life and personal liberty. It says that "to the children in the age group of six to fourteen years shall be provided free and compulsory education" by the state.

There are provisions that state can impose restrictions on these rights for the interest of independence, sovereignty and integrity of India. Nevertheless, the right to life and personal liberty cannot be suspended. The six freedoms described above are suspended automatically or bear some restrictions imposed on them during the state of emergency.

Article 23 and 24 provides the right against exploitation.

It has two provisions, one being, the abolition of trafficking in human beings and Begar (forced labour) and other the abolition of employment of children below the age of 14 years in dangerous jobs like factories and mines.

Articles 25, 26, 27 and 28 of the constitution cover the right to freedom of religion.

The objective of this right is to maintain secular nature of Indian state. Thus all religions are considered equal before the state and no religion shall be given preference over other. Citizens are free to preach, practice and propagate any religion of their choice. It also includes the freedom not to practice a religion and to propagate such views. However, the state can restrict certain practices of religions in the interests of public order, morality and health, say for example the wearing and carrying of *Kirpans* in the profession of the Sikh religion can be restricted by the state. There are some other provisions like religious communities can set up charitable institutions and no Individual shall be compelled to pay taxes for the promotion of a particular religion. It should also be noted that the institution/s run by the state cannot impart education that is pro-religion

Article 29 and 30 provides special measures to protect the rights of the minorities.

While Article 29 applies to all the citizens of India, article 30 deals with the rights of minorities. Any religious or linguistic community that has a language and a script of its own has the right to conserve and protect them. State cannot discriminate any citizen against for admission in State or State aided institutions.

All minorities, religious or linguistic, can set up their own educational institutions in order to preserve and develop their own culture. In granting aid to institutions, the State cannot discriminate against any institution based on the fact that it is administered by a minority institution. Although, state can interfere in case of mal-administration.

Article 32 of the Constitution deals with right to constitutional remedies. It empowers the citizens to seek a court of law in case of any denial of the fundamental rights, by asking the courts to preserve or safeguard the citizen's fundamental rights. It can be done in various ways, for example the courts can issue various kinds of writs.

These writs are ***habeas corpus, mandamus, prohibition, quo warranto and certiorari***. This right can be suspended by the central government in case of a national or state emergency is declared.

Except this there was a provision for right to property under Articles 19 and 31. Article 19 guaranteed to all citizens the right to acquire, hold and dispose off property. Article 31 provided that "no person shall be deprived of his property save by authority of law. The 44th constitutional amendment act of 1978 deleted the right to property from the list of fundamental rights. A new article (Article 300 A) was introduced which says that 'no person shall be deprived of his property save by authority of law'. Therefore, if a legislature makes a law that deprives a person of his property, there would be no obligation on the part of the State to pay anything as compensation. The aggrieved person shall have no right to move the court under Article 32. Thus, the right to property is no longer a fundamental right, but a constitutional right.

Rights simply mean the freedom which is necessary for the individual good and at the same time for the good of the community. The fundamental rights guaranteed under the Constitution of India have been incorporated into the *Fundamental Law of the Land* and are enforceable in a court of law. However, this does not mean that they are absolute or that they are immune from Constitutional amendment.

Critical Analysis of the Fundamental Rights in India

These rights have been criticized for a number of reasons. There is criticism of the provisions of preventive detention and suspension of Fundamental Rights in times of Emergency. The provisions of acts like MISA (*Maintenance of Internal Security Act*) and NSA (*National Security Act*) are criticized as a means of attacking the fundamental rights. These acts sanction excessive powers to fight the internal, cross-border terrorism and political violence, but do not safeguards the civil rights. The phrases like "security of State", "public order" and "morality" have a wider implications. The meaning of phrases like "reasonable restrictions" and "the interest of public order" have not been explicitly defined in the constitution, and this ambiguity leads to unnecessary litigation. The freedom to assemble peacefully and without arms is also criticized due to use of force by police (in some instances) to break up the meetings. The fundamental rights does not include freedom of press in the right to freedom, which is necessary for formulating public opinion and to make freedom of expression more legitimate.

Some critiques feel that the rights benefit only a few in the country, mainly the rich. The Constitution makes no difference between the rich and the poor, but in practice the poor are unable to demand or fight for their rights, as they do not have the money to go to court. The rich with the capacity to go court are able to stand up for their rights. Besides, many of these rights obstruct progressive legislation in the interest of socio-economic development. If one subscribes to the idea of a democratic polity, one cannot quite agree with the idea of removing the rights to facilitate social welfare. The Fundamental Rights chapter does check State tyranny which could ensue in the name of social welfare measures. The right way is to empower the disadvantaged sections of the population with free legal aid and educate all people about their rights (as well as duties).

Fundamental Rights are basic to a democratic polity, and, with all the shortcomings of their enunciation in the Indian Constitution, their inclusion in the Constitution has protected the basic human rights of the individual well.

DIRECTIVE PRINCIPLES OF STATE POLICY

Part IV of the Constitution (Article 36-51) contains the Directive Principles of State Policy. Finalized by the Sapru Committee, these Directives are in nature of directions to the legislative and executive wings of the government to be observed while formulating laws and policies. Most of them aim at the establishment of economic and social democracy which is pledged for in the preamble.

A summary of the Directive Principles

Articles 36 and 37 define the term state and lay down that the provisions in Part IV shall not be enforceable by courts.

Article 39 of the constitution requires the state to direct its policy towards securing adequate means of livelihood for all citizens, the citizens, men and women equally, have the right to an adequate means of livelihood, the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good, the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

Article 39A added by the 42nd Amendment. It wants the state to ensure equal justice and free legal aid to poor.

Organization of village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government is suggested in Article 40.

Article 41, 42, and 43 suggest the right to work, to education and to public assistance in certain cases, provision for just and humane conditions of work and maternity relief, living wage, etc., (for workers), and the participation of workers in management of industries.

Article 44 deals with the concept of Uniform civil code for the citizen, means that all religions should be governed by one uniform law.

Article 45 and 46 suggest for free and compulsory education for children, and promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections of the society.

Article 47 expects the state to raise the level of nutrition and the standard of living and to improve public health. While **Article 48** deals with the organization of agriculture and animal husbandry, **Article 48A** suggests for the protection and improvement of environment and safeguarding of forests and wild life.

Article 49 concerns with the protection of monuments and places and objects of national importance and **Article 50** expects the separation of judiciary from executive.

At last, **Article 51** of the Directive Principle deals with the concept of promotion of international peace and security

The State shall endeavour to promote international peace and security, maintain just and honourable relations between nations, foster respect for international law and treaty obligations in the dealings of organized people with one another; and encourage settlement of international disputes by arbitration. Many of the Directive Principles are influenced by Gandhian philosophy.

IMPLEMENTATION OF THE DIRECTIVE PRINCIPLES

While the Directive Principles have not been fully translated into action, it cannot be denied that the various governments have put in some effort in this direction. The Directive in Article 39(b) has influenced legislation to fix land ceilings and remove intermediaries such as Zamindars; Article 40 has led to several laws for organizing village panchayats; Article 43 is seen working in the formation of several boards to help develop cottage industries; legislations for compulsory education at primary level exists as directed by Article 45; various measures have been taken to protect historical monuments, forests and wild life. Efforts have been made to organize agriculture along modern and scientific lines. Cow slaughter is banned in many states. A legal aid system has been established.

However, on the whole, implementation of the legislations giving importance to the Directive Principles has been slow and has not shown desired effect of removing economic, social and political injustices, nor has the tendency of wealth being concentrated in a few hands been retarded. Prohibition has proved a sad experience as states find themselves caught in the dilemma of practical difficulties and loss of revenue. Political parties are reluctant to agree to structural changes in the existing property relations because they do not want to hurt their vote banks.

SIGNIFICANCE OF THE DIRECTIVE PRINCIPLES

The Directive Principles are not enforceable in courts. So what is the utility of including them in the Constitution? How can a Government be made to implement them? It may be pointed out, however, that no Government can afford to ignore them without running the risk of apply these principles in making laws. The Directives amplify what is said in the Preamble, that the goal of Indian polity is a welfare state. They are 'moral precepts' and the courts are increasingly talking the Principles into consideration while interpreting the Constitution.

FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES **A COMPARISON**

There is no doubt that both the Fundamental Rights and the Directive Principles of State Policy are important features of the constitution. However, they differ from each other in certain points.

For example, the Fundamental Rights seek to protect the individual from state encroachment but the Directive Principles are aimed at the promotion of the general welfare of the society. The Fundamental Rights constitute some limitations upon the State action and the Directive Principles are positive instruction to the Government to take steps to establish a just social, economic and political order.

The Fundamental Rights are justifiable, any citizen can seek court's assistance if he/she is denied the rights guaranteed to them or if their rights are violated by individual or state but the Directive Principles are not enforceable by the courts if the state has not implemented them. If there is no law enacted to carry out the policy stipulated in any of the Directives, no individual or the state, for that matter, can violate any existing law under the pretext of following a Directive. In other words, legislation is required before any Directive is implemented. The Fundamental Rights, on the other hand, are guaranteed by the constitution.

HUMAN RIGHTS AND INDIAN JUDICIARY

The Indian judiciary occupies a unique place in Indian democratic set up. As an interpreter of the Constitution, the Indian judiciary is an independent organ of state and contains the power to strike down executive, quasi judicial and legislative actions as unconstitutional. The Supreme Court's interpretation of the law is binding to all the higher or lower courts within the Indian territory. Except this, all authorities like civil or judicial in India shall act in aid of the Supreme Court. It is armed with the power to punish for contempt of the law or court and also reinforces the position of the judiciary as a Constitutional authority that enforces accountability and answerability of the other organ of the state.

In recent years, it is witnessed that the court has emerged as a dynamic institution which play active role in the task of expanding the scope and content of individual and collective rights of the citizens in civil and political spheres and in the economic, social and cultural spheres.

Nature of Court Orders

The enforcement of orders declared by courts is heavily dependent on the nature of its orders; primarily there are two aspects of court's order

- a) ***Declaratory and***
- b) ***Mandatory***

While *declaratory* orders and judgments (without substantial directions to the state authorities) have to await the acceptance of their binding nature under Article 141 & 144 by the state and the *mandatory* orders, on the other hand, are grounded on the general indifference displayed by the executive to move to action and spell out a plan of action as well as a time schedule within which compliance with court orders is expected.

The **Unnikrishnan JP v. State of Andhra Pradesh** is the example of declaratory orders, in which the court held that the right to education is implicit in and flows from the right to life guaranteed under Article 21 of the constitution, which includes that a child who is a citizen of India has the fundamental right to free education upto the age of 14 years. After nine years of this jurisdiction, the nineteenth constitutional amendment act came into force as a response providing Article 21 A which entitles free education to every child between ages of 6- 14 years.

The **Bandhua Mukti Morcha Case** is the example of Mandatory orders by court. In this case the court pronounced that the non-enforcement of welfare legislation like the Minimum Wages Act, 1948 and the Bonded Labour (Abolition) Act, 1976 would equivalent to denial of the right to live with human dignity enshrined under Article 21 of the Constitution. The **Asiad Working Case and the Olga Telis Case** are also the examples of this mandatory order, where the court clearly describes these incidents as the violation of Article 21 and gave judgments in favor of the sufferers. Ban on Child labour can also be referred as an example of this category.

Positive Implications

In the case of **Vishaka** on the issue of sexual harassment of women in the workplace, the Supreme Court provided recognition and enforcement of the right to access judicial remedy against the injury caused to women at the work place. The Supreme Court’s jurisdiction of free education to every child between ages of 6-14 years protects the basic rights to education of every child of India.

In the **Paschim Banga case** the right to emergency medical care for accident victims, the court protects the right to health of every citizens of India and lastly the environmental issues enabled the court to develop and apply the polluter pays principle, the precautionary principle and the principle of restitution.

Negative Implications

Because of this court’s intervention, there may be a situation of conflicts of rights, for example, the court’s decision to close a polluting abattoir in Delhi has also affected the livelihoods of butchers. This intervention may lead a negligence of accounting for competing public interests. For example, while ordering the closing of a polluting industry or ban of child labour, the workmen and their families may be affected adversely and their issues may go unheard or unnoticed. There may be instances of challenges to the legitimacy of court’s order due to continued non-implementation of a declaratory judgment. It is debatable question whether the use of contempt of power (due to problem/s of lack of resources), is indeed the best or only way of guaranteeing implementation of the orders.

In spite of some shortcomings, Indian judiciary is playing an active role in implementing and protecting the basic rights of its citizens. The court is also providing a platform for the state, civil society organizations (like NGOs or some other social organizations), activists or institutions of human rights to engage in the scheme for realization and protection of human rights of Indian citizens.

HUMAN RIGHT AND INDIAN CONSTITUTION COMPARED WITH UDHR

Equality before law	Article 7	Article 14
Equality of opportunity in matters of public Employment	Article 21 (2)	Article 16 (1)
Protection of certain rights regarding freedoms of speech, etc,	Article 19	Article 19 (a)
Protection in respect of conviction for Offences	Article 11 (1)	Article 20 (1)
Protection of life and personal liberty	Article 9	Article 21

Prohibition of trafficking in human beings and forced labor	Article 14	Article 23
Freedom of conscience and free Profession practice and propagation of religion	Article 18	Article 25 (1)
Protection of Interests of minorities	Article 22	Article 29 (1)
Right of minorities to establish and administer Educational Institutions	Article 20 (3)	Article 30 (3)
Right to property	Article 17 (2)	Article 300 (a)
Remedies for enforcement of rights conferred by this part	Article 8	Article 32

SIMILARITIES BETWEEN COVENANT ON CIVIL AND POLITICAL RIGHTS AND INDIAN CONSTITUTION

Prohibition of trafficking in human beings and forced labour	Article 8 (3)	Article 23
Equality before law	Article 14 (1)	Article 14
To assemble peaceably and without arms	Article 21	Article 19(1) (b)
Prohibition of discrimination on ground of religion, race, caste, sex or place of birth	Article 26	Article 15
Equality of opportunity in matters of public Employment	Article 25 (c)	Article 16 (1)
Protection of certain rights regarding freedom of speech	Article 19 1 (2)	Article 19
To form association or unions	Article 22 (1)	Article 19 (1) (c)
To move freely throughout the territory of India	Article 12 (1)	Article 19 (1) (d e g)
Protection in respect of conviction for Offences	Article 15 1) 1) 4) 7)	Article 20 1) 2)
No person accused of any offence shall be compelled to be a witness against himself	Article 14 (3) (g)	Article 20 (3)(d)
Protection of life and personal liberty	Article 6 (1) Article 9 (1)	Article 21
Protection against arrest and detention in certain cases	Article 9 (2,3,4)	Article 22
Freedom of conscience And free profession, practice and propagation of religion	Article 18(1)	Article 25

SIMILARITIES BETWEEN COVENANT ON ECONOMICS, SOCIAL AND CULTURAL RIGHTS AND INDIAN CONSTITUTION

Equal pay for equal work	Article 7a (1)	Article 39(d)
Provision for just and humane conditions of work and maternity relief	Article 7(b)	Article 42
Right to work, to education and public assistance in certain cases	Article 6(1)	Article 41

Opportunity for children	Article 10 (3)	Article 41(f)
Compulsory education for children	Article 13 (2a)	Article 45
Living wage, etc, for workers	Article 7(a)(11) Article 7 (d)	Article 43
Nutrition and standard of living	Article 11	Article 47

Renaissance
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LL.B. (HONS) SEMESTER-IV
HUMAN RIGHTS LAW AND PRACTICE
UNIT -IV DISADVANTAGED GROUPS

1. Human Rights and disadvantaged Groups – women, prisoners, child, Dalits, Aid victims and Minorities
2. Enforcement of Human Right in India

Disadvantaged or the Marginalized groups refer to those categories of people in a society who remain in a state of deprivation and subjugation for centuries as a result of which they are not able to attain a position of parity with the other sections of society in contemporary times. Denied of their equal share in the social, economic and political rights, privileges and resources of the country for obvious reasons over the years, such groups continue to remain in a vulnerable position even after country gains independence and marches ahead on the path of progress and development. In India, for instance, such groups of people included the vulnerable sections of the society like dalits, adivasis, women, minorities, unorganized workers etc.

The discourse of human rights for such groups of people differs from the discourse of human rights for other sections of society for at least two reasons.

First, owing to their long drawn social, economic and political deprivation, these groups become some sort of marginalized lot in the society in comparison to the mainstream sections as a result of which the notion, standards and exercise of the general human rights do not remain valid and meaningful for such groups.

Second, each of the marginalized groups carries certain distinct physiological, social, economic, cultural, religious and related traits which distinguish them from the rest of the people in society whose obvious result is that the norms of human rights for latter could not be applied uniformly to the former.

Hence, a discussion on the issue of the human rights of the marginalized groups becomes an exercise in diagnosing the ills and evaluating the remedies in action for the time being with a view to evolve a holistic perspective on the human rights of these groups.

DALITS

Dalits or the Scheduled Castes have been the largest marginalized section of the Indian society. Indeed, Caste has remained as one of the predominant paradigms of the Indian social system. Emerging out as the perverted off-shoot of the classical and puratan varna-system of the ancient times, it has introduced a variety of cleavages in the Indian society which in the course of time turned out to be the most cruel and inhuman traits of glorious Indian civilization.

For the last many centuries, the Indian society if fragmented into hundreds of castes and sub-castes neatly ordered into a hierarchical pyramidal form.

Broadly, three distinct levels of hierarchy in the caste system can be discerned:

- a) the so-called forward castes people occupying not only the superior echelon of the social hierarchy but also the power, privileges and false ego,
- b) the middle order of the caste system consists of those people who own a part of the parameters of position and distinguished by their profession and vocational acumen. This category of people is generally termed as other backward castes (OBCs).

- c) *The lowest rung of the social order is occupied by the people who have neither social status nor economic powers and properties.*

Known as dalits, in the contemporary political discourses and badly bereft of necessary resources and rights, these people have been suffering from various despised social stigmas like slavery, indenture and the curse of untouchability.

CHALLENGES IN ABOLISHING THE CASTE- BASED STIGMAS

Ensuring the enjoyment of human rights for the vulnerable groups of people continues to be the biggest challenge for the Indian democratic ethos. Various disadvantages faced by these people are, though, common to both the OBCs and the dalits, it is the latter that has been at the receiving end of the inequitable Indian social order.

Owing to the pollution and purity praxis, the Indian social set-up permitted the recognition and acceptance of untouchability which is probably the greatest crime against the humanity. Efforts to overcome the curse of untouchability were precious little till independence, *Things started changing as a result of the strong reservations expressed by Mahatma Gandhi and Dr. B. R. Ambedkar whose pressure was so strong that the constitution makers had to enshrine its prevention under the chapter of the fundamental rights. Article 17 of the Constitution declared that untouchability is abolished and its practice in any form is prohibited.* It gave a clear mandate to the state to eliminate the practice of untouchability with all the forces at its command and with ruthless will.

Despite of the **Article 17** coming into practice with the inauguration of the Constitution on 26 January 1950, no-serious attempts were made to translate the spirit of the Constitution into practice. However, with the enactment of the **Untouchability (Offences) Act, in 1955**, the things were assumed to look up. But in spite of certain merits in arresting the practice of untouchability, it failed to make a significant impact on the society due to certain inherent constraints and deficiencies. Hence in order to make an improvement over this legislation, a parliamentary committee was appointed to look into the matter.

Based on the recommendations of this committee, the Parliament, in 1974, effected major changes in the principal Act which was redesigned as the **'Protection of Civil Rights Act, 1955'**. A little later, the Parliament enacted one more piece of legislation to include certain additional issues not covered under the previous Act. The new Act, known as the **'Scheduled Castes, Scheduled Tribes (Prevention of Atrocities) Act, 1989'**, has gone a long way in protecting the human rights of these people. This Act was further strengthened with the passage of the **SC and ST (Prevention of Atrocities) Rules, 1995**.

Among others, the **National Commission for Backward Classes Act, 1993** and the **National Commission for Safai Karamcharis Act, 1993**, are the major enactments to provide for a holistic approach to ameliorate the conditions of the people to ensure the basic human rights to them.

In the face of these legal guarantees, one could naturally expect the demolition of the monolith growth of the monster of untouchability. However, the result has not been as expected due to the lack of awareness among the people about these legislations.

Without awareness, neither the victims get relief nor the oppressors stop victimizing the hapless people. In view of the plethora of legal enactments and the subsequent administrative measures, a large section of the people sitting in the urban areas tends to assume that the practice of untouchability has ceased to exist. But the social realities come to the fore when one goes to the grass

root level of the Indian society. Direct or indirect practice of untouchability, more so in rural areas, can be encountered in the spheres of entry into hotels, temples and religious processions, drawing drinking water from tank, tap or other sources, social mixing, economic activities etc. The females of these castes are often subjected to eve-teasing and the males are normally forced to act as the bonded labour.

WOMEN AND HUMAN RIGHTS

Women's human right is a revolutionary notion. This radical renovation of humanity and the corollary insistence that women's rights are human rights have profound transformative potential. The incorporation of women's perspectives and lives into human rights standards and practices forces recognition of the dismal failure of counties worldwide to accord women the human dignity and respect that they deserve simply as human beings. A women's human rights framework equips women with a way to define and analyze and articulate their experiences of violence, degradation and marginality.

HUMAN RIGHTS FRAMEWORK FOR WOMEN

In the late eighties and early nineties, women in diverse countries took up the human rights framework and began developing the analytic and political tool that together constitute the ideas and practices of women's human rights. Taking up the human rights framework has involved a double shift in thinking about human rights and talking about women's lives. In other words, it has entailed examining the human rights framework through a gender perspective and describing women's lives through a human rights framework.

In looking at the human rights framework from women's perspectives, women have shown how current human rights definitions and practices fail to account for the ways in which already recognized human rights abuses often affect women differently because of their gender and their vulnerability. This approach acknowledges the importance of the existing concepts and activities, but also points out that there are dimensions within these received definitions that are gender specific and that need to be addressed if the mechanism, programs and the human rights framework itself is to include and reflect the experiences of the female half of the world's populations. When people utilize the human rights framework to articulate the vast array; of human rights abuses that women face, they bring clarifying analyses and powerful tools to bear on the women's experiences. This strategy has been pivotal in efforts to draw attention to human rights that are specific to women and that heretofore have been seen as women's rights but not recognized as human rights.

ISSUES IN HUMAN RIGHTS FOR WOMEN

The genealogy of the women's human rights originates with a need to articulate and collaborate around broad and similar concerns about the status of women in the civil and political realm of the women's life. By the dawning of the early nineties, it was unanimously recognized that more important and basic, than the issues of status and prestige, are the issues pertaining to the personal possessions like and body of the women. Their personal possessions were subjected to the insidious endeavours of the people in general , most profound and universal reflection of which has seen in the whole range of violence's against women as well as a negation of the reproductive rights to the women exclusively.

In contemporary times, violence against women has emerged as the cardinal issue to epitomize the human rights of the women. This is so because violence against women takes a dismaying variety of forms, ranging from domestic abuse and rape to child marriages and female circumcision, all of which constitute the most fundamental violations of the human rights. ***The ambit of the violence against women is amplified in Article 2 of the Declaration on the Elimination of Violence against women as follows:***

1. Physical, sexual and psychological violence that occurs in the family including battering; sexual abuse of female children in the household; dowry-related violence; marital rape; female genital mutilation and other traditional practices harmful to women; non-spousal violence; and violence related to exploitation.
2. Physical, sexual and psychological violence that occurs within the general community including rape; sexual abuse; sexual harassment and intimidation at work, in educational institutions and elsewhere; trafficking in women; and forced prostitution; and
3. Physical, sexual and psychological violence perpetrated or condoned by the state, wherever it occurs.

In addition to these, violence against women consists also of all forms of gender biases in the administration of justice and of any conflicts arising between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism. Any comprehensive endeavour to safeguard the women's human rights must have at its centre the pre-condition of eliminating all forms of violence against women.

POSITION IN INDIA

The pursuits of women's emancipation in India may be traced back to the nineteenth century when various socio-religious reforms organizations persuaded and joined hands with the colonial rulers to get the prevalent heinous practices pertaining to women declared illegal on the one hand and ingrain in the social psyche the values of women's empowerment and well being, on the other. After independence, the state, backed by the constitutional mandate, emerged as an important sphere for grasping the contentious issues concerning women. The major determinants of the role of state in relation to women included constitutional provisions, legislations and the dynamics of public policy, though the efforts of the non-governmental organizations and international agencies are no insignificant.

The Constitution of India does not provide for elaborate and specific provisions pertaining to the issues of women. The general principles embodied under the rubric of the right to equality apply to women also as any discrimination only on the basis of sex is absolutely forbidden.

Article 15(3) suggests State action in the interest of women and children. Rather specific provisions regarding women are placed in the Directive Principles of State Policy which includes maternity benefits, health and moral well-being of the mother and the child, equity provisions like equal pay for equal work for both men and women and a common civil code. However, even after more than fifty years of independence, a number of these provisions have remained only in the constitution.

The deficiency of the constitutional provisions regarding women was sought to be made up through a string of legislations. Though law has never been considered an adequate means of transforming social structures, institutions and attitudes, it is still considered an indispensable method of social engineering. Hence, the state, also under pressure from the women's organizations, has brought about several legislations on the women's issues like dowry prohibition, child marriage restraint, equal remuneration, the indecent representation of women and pre-natal diagnostic

techniques etc. Two important pending bills relate to reservation of seats for women in the higher elected bodies.

Though the constitutional-legal framework affirms and promotes the principles of equity and equality of women and takes care of their special needs, the practical shape to the doctrinal pronouncements has been accorded through the successive five –year plans. Till the fifth five-year plan, the governmental approach was to provide welfare measures for the women.

The **sixth plan** for the first time shifted this welfare approach to the development one with the focus being on health, education and employment. The **seventh plan** broke new grounds with 'beneficiary-oriented programmes' which extended direct benefits to women. The **eighth plan** shifted the thrust from development to empowerment. The **ninth plan** committed itself to empowering women as agents of social change and development to enable them to exercise their rights both within and outside the home as equal partners with men.

The **tenth plan** refers to the need to gender sensitize the various organs of the government and proposes to continue with the strategy of women empowerment as agents of social change and development with a threefold strategy of-

- (i) social empowerment
- (ii) economic empowerment with adoption of the concept of Gender Budgeting and Auditing, and
- (iii) gender justice to end gender discrimination and to allow women enjoy freedom on par with men in all spheres of life.

In the wake of the renewed efforts, originating from both the governmental and non-governmental quarters aimed at women empowerment came with attitudinal changes in policy and perspective resulting into legal reforms, remedial measures at the level of public policy and institutional arrangement along with greater focus on socio-economic problems.

Consequently, **the National Commission for Women was set up in 1992 to act as the nodal agency to look after the general well-being of the women including the protection of women's human rights.** It has been given a comprehensive mandate to tackle the issues like economic empowerment through transfer of technology and vocational training and wage equality; political empowerment through representation in the legislative and decision-making bodies from the grass roots level to parliament; legal issues such as the need for the review of laws, speedy justice, custodial justice, redressal of grievances and the need for sensitization of the police and the judiciary; health and social issues such as tackling female foeticide and infanticide, trafficking in women and children; the problem of SC and ST women; the plight of the widows, specially in religious places; women victims of domestic violence and improving the status of women in India, among others.

The performance of the Indian government on the issue of protection and promotion of human rights of the women betrays the high sounding promises made in policy pronouncements and programme formulations. The increasing incidents of violence and crime against women bear testimony to the stark reality of the wide gap between the theory and practice. The way out, definitely, seems to be a holistic approach to the problem leading to attitudinal change in policy and perspective which in turn should lead to legal reforms, remedial measures at the level of public policy and institutional arrangement along with a greater focus on socio-economic problems faced by the women.

HUMAN RIGHTS OF THE MINORITIES

Minorities are defined as groups of people numerically inferior to the rest of the population of a state, whose members being citizens of the state possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only

implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.

Thus in Indian context, religious minorities are found in the form of various non-Hindu religious groups, ethnic minorities are found in the states of Assam West Bengal etc. and linguistic minorities are found in various states in relative context, i.e. Hindi speaking people being linguistic minority in the states like Punjab, Jammu and Kashmir as well as various southern states of the country on the one hand and non-Hindi speaking people become linguistic minority in Hindi-belt states on the other.

Conceptually, the most important right of members of a minority group is right to equality, through which it is ascertained that ethnic, religious or linguistic differences cannot form the basis for discrimination against minorities. At the same time, members of minority groups need special rights to enable them to preserve and develop their ethnic, religious or linguistic characteristics. In other words, these people should be entitled to enjoy their own culture, practice their own religion and use their own language.

Statutory provisions for minorities

For the promotion and protection of the human rights of the minorities, an elaborate provision has been made in the Constitution of India.

At the very outset, **Article 14** of the Constitution declares that “**the state shall not deny to any person equality before law or equal protection of laws within the territory of India**”, **thereby preventing discriminatory practices to be followed by the state.** Not content with a more general declaration of the right to equality and fully conscious of the types of discrimination prevalent in the country, the framers of the constitution went a step further in **Article 15** to propound that the state shall not discriminate against any citizen on the grounds only of religion, race, caste, sex, place of birth or any of them. Further, **Article 16**, equality of opportunity in matters of public employment has been ensured. In addition to the various provisions to ensure right to equality, the basic civil and political rights have been provided to the minorities under **Article 19 to 22**.

However, the framers of the Constitution were not satisfied with such provisions alone and under **Article 25 to 28**, provided for the most generous rights to religious minorities in order to infuse a sense of complete confidence in them. While **Article 25** provides that all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion, **Article 26** goes a step further to guarantee the freedom to manage the religious affairs and institutions. **Article 27** enshrines an additional protection to religious activity by exempting funds appropriated towards the promotion or maintenance of any particular religion from the payment of taxes. **Article 28** prohibits religious instruction in any educational institution wholly maintained out of state funds, to provide a secular orientation to the polity.

Ethnic and linguistic minorities are bestowed with distinct set of cultural and educational rights under **Articles 29 and 30 of the constitution**. **Section (1) of Article 29** guarantees the right of any section of the citizen residing in any part of the country having a distinct language, script or cultures of its own, to conserve the same. Further, section (2) of the same Article prohibits any discrimination based only on religion, race, caste, language or any of them in the matter of admission to state of state-aided educational institutions. **Section (1) of Article 30** provides that all minorities, whether based on religion or language shall have the right to establish and administer educational institutions of their choice. According to section (2) of the said Article, the state shall not, in granting aid to educational institutions, discriminate against any educational institutions on the ground that it is under the management of a minority, whether based on language or religion. Thus, we find that when provisions under **Article 29 and 30** are considered along with other provisions in the chapter on fundamental rights and elsewhere in the constitution, safeguarding the rights of religious, linguistic and ethnic minorities, it becomes clear that the purpose of these provisions is to reassure the

minorities that certain special interests of theirs which they cherish as fundamental to their life, are safe under the constitution.

LAW PROTECTING CHILDREN'S RIGHTS

The children of our country are the most underprivileged in our society. The poverty in our country is of such great magnitude that children from underprivileged section of the society are forced to work resulting in child labour. According to National Sample Survey, the number of child workers have increased manifold in the society. Further the condition in which a child is forced to work is no better than that of slavery. **The government of India have enacted the following thirteen Acts to provide legal protection to all children-**

1. The Child Marriage Restraints Act, 1929.
2. The Children Act, 1933.
3. The Employment of Children Act, 1938.
4. The Minimum Wages Act, 1948.
5. The Factories Act, 1951.
6. The Plantation Labour Act, 1951.
7. The Indian Factories Act and Mines Act, 1952.
8. The Merchant Shipping Act, 1958.
9. The Apprentices Act, 1961.
10. The Atomic Energy Act, 1962.
11. The Beedi and Cigar Workers (Condition of Employment) Act, 1966.
12. The Shops and Establishments Acts, 1969 (Statewise)
13. The Child Labour (Prohibition and Regulations) Act, 1986.

Of these, the 1986 law is the most important one, wherein the Act lists occupations and processes in which employment of children is prohibited. Few of the hazardous occupations where a child cannot be employed are as domestic servants, workers in dhabas, restaurants, hotels, motels, teashops, resorts, spas or other recreational centres. Further the working hours for a child are also specified. It states that a child can work to six hours, including an interval of at least one hour and children are not permitted to work between 7 P.M. to 8 P.M.

ENFORCEMENT OF HUMAN RIGHT IN INDIA

India has been one of the oldest civilizations in the world having a chequered history of the existence of some sort of human right precepts and values to secure a dignified and contented life for the people. Though at a certain point of time in her history a rupture occurred in this rich tradition resulting in the snatching away of the human rights of few sections of people in the society, the sense of appreciation for the ideals and values of human rights as the primary foundation stone for the modern and democratic life for the people remained intact amongst the national leaders of the country. As a result, even during the course of the freedom struggle, the national leadership never failed to emphasize the bestowing of basic human rights on all the people of the country irrespective of any distinction in the form of fundamental rights once the country becomes independent. Hence, in the post-independence times, the Constitution of India became the chief instrument for the national leaders to redeem their pledge of securing for the people the basic human rights through the provisions like the fundamental rights and the directive principles of state policy, along with the others. Moreover, stipulations were also made with the futuristic vision to

enable the government to enact law for the constitution of certain bodies and institutions for the purpose of protecting and promoting the human right in the country.

Human rights laws in India

Conceptually, human rights laws in almost all parts of the world are relatively recent phenomenon. Given the philosophical roots of the human rights being traced back to the sixteenth century social contract theory which evolved the idea of natural rights of the people as being ordained by birth without any positivist intervention on that count, the initial take on human right considered it to be a notion existing even in the absence of any positivist law being framed on the subject. However, with the growing complexity of life on the one hand, and varying understanding of the concept of human rights by various countries and people on the other, sometimes even to the detriment of the notion of human rights itself, arguments were advanced for the clear-cut stipulations of the idea of human rights through the means of constitutional and statutory provisions. **Following the lead given by the United Nations mandated Universal Declaration of Human Rights, 1948, various countries in the world have strived to make elaborate provisions for the enjoyment of the human rights by their people through the constitution and other statutory enactments.**

The inauguration of a liberal democratic political system in the country after independence ensured that India becomes one of the foremost countries in the world to have an elaborate system of human rights laws. The body of human rights laws in the country could be conveniently categorized into two segments: Constitutional and statutory laws.

The constitutional laws pertaining to the human rights are spelt out in varying measures in the chapters and provisions dealing with the preamble to the Constitution, the fundamental rights, and the directive principles of state policy. The statutory laws on human rights are provided for in the form of various enactments to ensure the social and economic justice to the marginalized sections of the society like women, children, disabled people, weaker sections of society etc. **Important among such enactments include the Protection of Human Rights Act, 1993, Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995 etc. Apart from these, the corpus of human rights laws in India also consist of the numerous international covenants, conventions, treaties signed, ratified and acceded to by the government of India.** Such international legal documents not only include the general documents like the Universal Declaration of Human Rights but also various target-specific legal frameworks aimed at protecting the human rights of the specified groups of people like women, children, disabled, minorities, refugees etc.

LL.B. (HONS) SEMESTER-IV
HUMAN RIGHTS LAW AND PRACTICE

UNIT- V : REMEDIES

1. Role of courts: the Supreme Court, High Courts and other courts
2. Statutory commissions- human rights, women, minority and backward class

THE CONTRIBUTION OF THE
SUPREME COURT OF INDIA

In a democratic set-up like India, judiciary being one of the pillars of the democracy is the supreme authority in the sense that it is the guardian of the Constitution and the rights of the citizens. **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 attaining a welfare state where various rights of people can be assured and protected.

The **Constitution (Forty Second Amendment) Act, 1976** explicitly incorporated environmental protection and improvement as part of Directive Principles of State policy through the insertion of **Article 48A**.

Article 51A (g) imposed a similar responsibility on every citizen **“to protect and improve the natural environment including forests, lakes, rivers, and wildlife and to have compassion for all living creatures.”** One of the main objections to an independent right or rights to the environment lies in the difficulty of definition. It is in this regard that the Indian Supreme Court has made a significant contribution. When a claim is brought under a particular provision or Article of the Constitution, this allows an adjudicating body such as the Supreme Court to find a breach of this Article, without the need for a definition of an environmental right as such. All that the Court needs to do is what it must in any event do; namely, define the Constitutional right before it. Accordingly, a Court prepared to find a risk to life, or damage to health, on the facts before it, would set a standard of environmental quality in defining the right litigated.

The judiciary must therefore adopt a creative and purposive approach in the interpretation of Fundamental Rights and Directive Principles of State Policy (DPSP's) 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 twofold:**

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.

This is well illustrated by the cases that have come before the Supreme Court, in particular in relation to the broad meaning given to the **Right to Life under Article 21 of the Constitution**. The right to life has been used in a diversified manner in India. It includes, inter alia, the right to survive as a species, quality of life, the right to live with dignity and the right to livelihood.

Article 21 of the Indian Constitution states:

'No person shall be deprived of his life or personal liberty except according to procedures established by law'

The Supreme Court expanded this negative right in two ways. Firstly, **any law affecting personal liberty should be reasonable, fair and just**. Secondly, **the Court recognized several unarticulated liberties that were implied by Article 21**. It is by this second method that the Supreme Court interpreted the right to life and personal liberty to include the right to the environment.

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.

The right to move to the Supreme Court to enforce Fundamental Rights which are in a way a reiteration of the Human Rights only, is itself a **Fundamental Right under Article 32 of the Constitution of India**. This remedial Fundamental Right has been described as “the Cornerstone of the Democratic Edifice” as the protector and guarantor of the Fundamentals Rights. It has been described as an integral part of the Basic Structure of the Constitution. Whenever, the legislative or the executive decision result in a breach of Fundamental Right, the jurisdiction of the Supreme Court can be invoked. Hence the validity of a law can be challenged under Article 32 if it involves a question of enforcement of any Fundamental Rights.

The Right to Constitutional remedy under **Article 32** can be suspended as provided under **Articles 32(4), 358 and 359** during the period of promulgation of emergency. Accordingly, in case of violation of Fundamental Rights, the petitioner under **Article 32** for enforcement of such right cannot be moved during the period of emergency. However, as soon as the order ceases to be operative, the infringement of rights made either by the legislative enactment or by executive action can be challenged by a citizen in a court of law and the same may have to be tried on merits, on the basis that

the rights alleged to have been infringed were in operation even during the pendency of the presidential proclamation of emergency. If, at the expiration of the presidential order, the parliament passes any legislation to protect the executive action taken during the pendency of the presidential order and afford indemnity to the execution in that behalf, the validity and effect of such legislation may have to be carefully scrutinized.

Under Article 226 of the Constitution of India, the High Courts have concurrent jurisdiction with the Supreme Court in the matter granting relief in cases of violation of the Fundamental Rights, though the High Courts exercise jurisdiction in case of any other rights also.

The Supreme Court observed that where the High Court dismissed a writ petition under **Article 226** after hearing the matter on merits, a subsequent petition in the Supreme Court under **Article 32** on the same facts and for the same relief filed by the same parties will be barred by the rule of Res judicata. The binding character of the judgment of the court of competent jurisdiction is in essence, a part of the rule of law on which, the administration of justice is founded. Thus the judgment of the High Court under **Article 226** passed after hearing the parties on merits must bind the parties till set aside in the appeal as provided by the Constitution and cannot be permitted to be avoided by a petition under **Article 32**.

Article 226 contemplates that **notwithstanding anything in Article 32, every High Court shall have power, throughout the territorial limits in relation to which it exercises jurisdiction to issue to any person or authority including the appropriate cases, any government, within those territories, direction, orders or writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-warranto and Certiorari or any of them for the enforcement of Fundamental Rights conferred by part-III and for "any other purpose".**

Hence, the jurisdiction of a High Court is not limited to the protection of the Fundamental Rights but also of the other legal rights as is clear from the words "**any other purpose**".

The concurrent jurisdiction conferred on High Courts under Article 226 does not imply that a person who alleges the violation of Fundamental Rights must first approach the High Court, and he can approach the Supreme Court directly. This was held in the very first case **Ramesh Thapper v. State of Madras**. But in **P.N. Kumar v. Municipal Corporation of Delhi** the Supreme Court expressed the view that a citizen should first go to the High Court and if not satisfied, he should approach the Supreme Court. Innumerable instances of Human Rights violation were brought before the Supreme Court as well as the High Courts. Supreme Court as the Apex Court devised new tools and innovative methods to give effective redressal.

Rule of Locus Standi vis-a-vis Public Interest 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. Locus standi means "**authority under which a person approaches a 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.

In **S.P. Gupta v. Union of India and others**, the seven member bench of the **Supreme Court held that any member of the public having “sufficient interest” can approach the court for enforcing the Constitutional or legal rights of those, who cannot go to the court because of their poverty or other disabilities. A person need not come to the court personally or through a lawyer. He can simply write a letter directly to the court complaining his sufferings.**

Speaking for the majority Bhagwathi, J. said that any member of the public can approach the court for redressal where, a specific legal injury has been caused to a determinate class or group of persons when such a class or person are unable to come to the court because of poverty, disability or a socially or economically disadvantageous position.

In the instant case, the court upheld the right of lawyers to be heard on matters affecting the judiciary. By this judgement Public Interest Litigation became a potent weapon for the enforcement of “public duties” where executive inaction or misdeed resulted in public inquiry. While expanding the scope of the “Locus Standi”, Bhagwathi, J. expressed a note of caution and observed “but we must be careful to see that **the member of the public, who approaches the court in case of this kind, is acting bonafide and not for personal gain or private profit or political motivation or other consideration. The court must not allow its process to be abused by politicians and other**”. Hence the court was aware that this liberal rule of Locus Standi might be misused by vested interests.

As a result of this broad view of Locus Standi permitting Public Interest Litigation or Social Action Litigation, the Supreme Court of India has considerably widened the scope of **Article 32 of the Constitution**. The Supreme Court has jurisdiction to give an appropriate remedy to the aggrieved persons in various situations.

Protection of pavement and slum dwellers of Bombay, improvement of conditions in jails, payment of Minimum Wages, protection against Atrocities on Women, Bihar blinding case, Flesh trade in protective home of Agra, Abolition of Bonded Labourers, Protection of Environment and Ecology are the instances where the court has issued appropriate writs, orders and direction on the basis of Public Interest Litigation.

The strategy of Public Interest Litigation has been evolved by this court with a view to bringing justice within the easy reach of the poor and disadvantaged sections of the community. In **Peoples Union for Democratic Rights v. Union of India**, the Supreme Court held that Public Interest Litigation is brought before the court not for purpose of enforcing the right of one individual against another as happened in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of Constitutional or legal rights of large number of people who are poor, ignorant or in a socially or economically disadvantageous position should not go unnoticed and unredressed.

In **Bandhu Mukti Morcha v. Union of India**, the Apex Court held that the power of the Supreme Court under Article 32 includes the power to appoint Commission for making enquiry into facts relating to the violation of Fundamental Rights. The Apex Court further held that Public Interest Litigation through a letter should be permitted, but expressed the view that, in entertaining such petitions, the court must be cautious so that, it might not be abused. The court suggested that all such letters must be addressed to the entire court and not a particular judge and secondly it should be entertained only after proper verification of materials supplied by the petitioner. This is known as **epistolary jurisdiction**.

The advent of Public Interest Litigation (here in after referred to as PIL) is one of the key components of the approach of “Judicial Activism” that is attributed to the higher judiciary in India. The verdict of Bhagwati, J. in **M.C.Mehta v. Union of India**, opened the doors of the Apex Court of India for the oppressed, the exploited and the down-trodden in the villages of India or in urban slums. The poor in India can seek enforcement of their Fundamental Rights from the Supreme Court by writing a

letter to any judge of the court even without the support of an Affidavit. The court has brought legal aid to the door steps of millions of Indians which the executive has not been able to do despite that, a lot of money is being spent on new legal aid schemes operating at the central and state level.

The Supreme Court of India has used the strategy of Public Interest Litigations as an aid to enforce the rights of prisoners, workers, pensioners, victims of environmental pollution and others. The Public Interest Litigation plays an important role in ensuring the Principle of Rule of Law by making the administration accountable to the people.

In the recent past, Public Interest Litigation has acquired a new dimension. Apart from securing several non-justifiable socio-economic rights as guaranteed under the Fundamentals Rights, the Supreme Court has frequently resorted to a novel feature in the field of Human Rights jurisprudence such as compensatory jurisprudence, judicial law making with a view to secure justice to the down-trodden and also to the oppressed people. **Public Interest Litigation is a weapon which has to be used with care and caution. The judiciary has to be extremely careful to see that whether it contains public interest or private vested interest.**

Prisoners and the Human Rights

The Supreme Court of India in the recent past has been very vigilant against encroachments upon the Human Rights of the prisoners. In this area an attempt is made to explain the some of the provisions of the rights of prisoners under the International and National arenas and also as interpreted by the Supreme Court of India by invoking the Fundamental Rights.

As **Article 21** of the Constitution of India provides that **"No person shall be deprived of his life and Personal Liberty except according to procedure established by law"**. The right to life and Personal Liberty is the back bone of the Human Rights in India. Through its positive approach and activism, the Indian judiciary has served as an institution for providing effective remedy against the violations of Human Rights.

By giving a liberal and comprehensive meaning to "life and personal liberty," the courts have formulated and have established plethora of rights. The court gave a very narrow and concrete meaning to the Fundamental Rights enshrined in Article 21.

In **A.K.Gopalan's Case**, the court had taken the view that each Article dealt with separate rights and there was no relation with each other i.e. they were mutually exclusive. But this view has been held to be wrong in Maneka Gandhi case and held that they are not mutually exclusive but form a single scheme in the Constitution, that they are all parts of an integrated scheme in the Constitution. In the instant case, the court stated that "the ambit of Personal Liberty by Article 21 of the Constitution is wide and comprehensive. It embraces both substantive rights to Personal Liberty and the procedure prescribed for their deprivation" and also opined that the procedures prescribed by law must be fair, just and reasonable.

The Supreme Court of India has considerably widened the scope of Article 21 and has held that its protection will be available for safeguarding the fundamental rights of the prisoners and for effecting prison reforms. The Supreme Court by its progressive interpretation made Article 21, which guarantees the Right to Life and personal liberty, the reservoir of prisoner rights. Under the seventh schedule of the Constitution of the India, the prison administration, police and law and order are to be administered by the respective states. The states have generally given low priority to prison administration. In fact, some of the decisions of the Supreme Court on prison administration have served as eye-openers for the administrators and directed the states to modernize prison administration.

Rights against Solitary Confinement and bar fetters

The courts have strong view against solitary confinement and held that imposition of solitary confinement is highly degrading and dehumanizing effect on the prisoners. The courts have taken the view that it could be imposed only in exceptional cases where the convict was of such a dangerous character that he must be segregated from the other prisoners. The Supreme Court in **Sunil Batra Case** considered the validity of solitary confinement.

The Constitutional validity of solitary confinement prescribed under **section 30(2) of the Prisons Act, 1894** was considered. **Section 30(2)** of the Act provides the solitary confinement when prisoner is under sentence of death, while **section 56** of the said Act permits the use of bar fetters for the safe custody of the prisoners.

The Supreme Court has reacted strongly against putting bar fetters to the prisoners. The court observed that continuously keeping a prisoner in fetters day and night reduced the prisoner from human being to an animal and such treatment was so cruel and unusual that the use of bar fetters was against the spirit of the Constitution of India. On the question of the validity of the use of bar fetters, the court in Sunil Batra Case observed that **subjecting a prisoner to bar fetters for an unusually long period, without due regard to the safety of the prisoner and the security of the prisoner would violate basic Human Dignity and is hence impermissible under the Constitution of India. The court while approving section 56 of the Prisons Act and declared that bar fetters can be used subject to the following procedural safeguards:**

- a. It must be absolutely necessary to use fetters;
- b. The reasons for doing so must be recorded;
- c. The basic condition of dangerousness must be well-grounded;
- d. Principles of natural justice must be observed;
- e. The fetters must be removed at the earliest opportunity;
- f. There must a daily review of the absolute need for bar fetters;
- g. Continuance of bar fetters beyond a day is subject to the direction of a District Magistrate or session judge.

Rights against Hand Cuffing

In **Prem Shanker v. Delhi Administration**, the Supreme Court added yet another projectile in its armoury to be used against the war for prison reform and prisoners rights. In the instant case the question raised was whether hand-cuffing is constitutionally valid or not? The Supreme Court discussed in depth the hand cuffing jurisprudence. It is the case placed before the court by way of Public Interest Litigation urging the court to pronounce upon the Constitution validity of the “hand cuffing culture” in the light of **Article 21 of the Constitution**. In the instant case, the court banned the routine hand cuffing of a prisoners as a Constitutional mandate and declared the distinction between classes of prisoner as obsolete. The court also opined that “hand cuffing is prima-facie inhuman and, therefore, unreasonable, is over harsh and at the first flush, arbitrary.

Rights against Inhuman Treatment of Prisoners

In **D.K.Basu v. State of West Bengal**

Supreme Court laid down detailed guidelines as preventive measures as follows.

- a) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.
- b) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.
- c) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed as soon as practicable that he has been arrested and is being detained at the particular place unless the attesting witness of the memo of arrest is himself such a friend or relative of the arrestee.
- d) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through legal aid organizations in the district and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
- e) The person arrested must be aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
- f) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
- g) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. "Inspection Memo" must be signed both by the arrestee and the police officer affecting the arrest and its copy provided to the arrestee.
- h) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.
- i) Copies of all the documents including the memo of arrest, referred to above should be sent to the area Magistrate for his/her record.
- j) The arrestee may be permitted to meet his lawyer during interrogation though not throughout the interrogation.
- k) A police control room should be provided at all district and state head quarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

RIGHT TO LEGAL

The main object of the Free Legal Aid scheme is to provide means by which the principle of equality before law on which the edifice of our legal system is based. It also means **financial Aid provided to a person in matter of legal disputes. In the absence of Free Legal Aid to the poor and needy, Fundamental Rights and Human Freedoms guaranteed by the respective Constitution and International Human Rights covenants have no value.**

Though, the original draft of the Constitution of India does not expressly provide the Right to Legal Aid, but the judiciary has shown its favour towards poor prisoners because of their poverty and are not in a position to engage the lawyer of their own choice. The **42nd Amendment Act, 1976 has included Free Legal Aid as one of the Directive Principles of State Policy under Article 39A in the Constitution.**

RIGHT TO SPEEDY TRIAL

The speedy trial of offences is one of the basic objectives of the criminal justice delivery system. Once the cognizance of the accusation is taken by the court then the trial has to be conducted expeditiously so as to punish the guilty and to absolve the innocent. Everyone is presumed to be innocent until the guilty is proved. So, the quality or innocence of the accused has to be determined as quickly as possible. **It is incumbent on the court to see that no guilty person escapes, it is still more its duty to see that justice is not delayed and the accused persons are not indefinitely harassed.** It is pertinent to mention that “delay in trial by itself constitute denial of justice” which is said to be “justice delayed is justice denied”. It is absolutely necessary that the persons accused of offences should be speedily tried so that in cases where the bail is refused, the accused persons have not to remain in jail longer than is absolutely necessary.

Article 21 should be properly reflected in the provisions of the code. For this purpose in **A.R. Antulay v. R.S. Nayak** the Supreme Court has laid down following propositions which will go a long way to protect the Human Rights of the prisoners.

The concerns underlying the right to speedy trial from the point of view of the accused are:

- a. The period of remand and pre-conviction detention should be as short as possible. In other words, the accused shall not be subjected to unnecessary or unduly long detention point of his conviction.
- b. The worry, anxiety, expense and disturbance to his vocation and peace resulting from an unduly prolonged investigation, in query or trial shall be minimal; and.
- c. Undue delay may result in impairment of the ability of the accused to defend himself whether on account of death, disappearance or non-availability of witnesses or otherwise.

COMPENSATORY JURISPRUDENCE AND HUMAN RIGHTS

A significant contribution of judicial activism in the post Maneka Gandhi period has been the development of compensatory jurisdiction of the Supreme Court and the High Courts under **Articles 32 and 226 of the Constitution.** **The scope of writ jurisdiction has also been expanded to uphold the Human Dignity and other Fundamental Human Rights. Consequent upon the expansion of writ**

jurisdiction, the Compensation as a mode of redressal of violation of Human Rights gained importance. The Supreme Court made a departure from the ordinary civil law, where the right to claim compensation is only through a civil suit instituted by the aggrieved party before the court of first instance.

Currently, the writ jurisdiction of higher judiciary and the original jurisdiction of the civil court regarding the award of compensation invoked upon infraction of Human Rights are based upon distinct Constitutional and legal principles. The development of the remedy of monetary compensation as to Constitutional and civil law remedies for violation of Human Rights is analysed through the judicial pronouncements expanding their respective nature, extent and limitations.

MONETARY COMPENSATION AND HUMAN RIGHTS

It is internationally recognized principle that right to compensation is not alien to the concept of enforcement of guaranteed right. The development of the remedy of monetary compensation for the enforcement of Human Rights may be discussed with reference to writ jurisdiction of the higher judiciary and the ordinary original jurisdiction of the civil court.

Compensation through writs is a recent development and an extension of the prerogatives of the Supreme Court and High Courts in the field of Constitutional remedies. Even though, there was much criticism on the payment of compensation under Article 32 of the Constitution, because this Article as such itself does not expressly empowers the courts to award such relief. It is important to mention here that the seed of compensation for the violation of the rights implicit in Article 21 is first sowed in **Veena Sethi v. State of Bihar** and **Khatri v. State of Bihar**.

The decision of the Supreme Court in **Rudul Shah case** made it clear that, through the exercise of writ jurisdiction, the Supreme Court or the High Courts have powers to award compensation for the violation of Fundamental Rights and this decision has been followed in a number of decisions by the Supreme Court and the High court in the similar situations of violation of the Right to Life and liberty of a person.

In **Nilabati Behara v. state of Orissa and others**, the Supreme Court struck down the doctrine of sovereign immunity in the arena of public law. This is the case of the custodial death of a person.

Nature of the Constitutional Remedy

A perusal of the above judicial panorama in the foregoing discussion makes it clear that, at present, the power to grant compensation through the writs is an established remedy. Compensation has been awarded by the Supreme Court by referring to its different concept like "**Exemplary costs**", "**palliative measures**", "**solarium**" or "**exemplary damages**".

On the basis of the above discussion it can be inferred that the development of Constitutional remedy affords an effective remedy in the form of monetary compensation on infraction of Human Rights.

CHILD LABOUR AND HUMAN RIGHTS

The evil of employment of children in agriculture and industrial sectors in India is a product of economic, social and among others, inadequate legislative measures. The founding fathers of the

Constitution, being aware of the likely exploitation by different profit makers for their personal gain specifically prohibited employment of children in certain employment. **Article 24 of the Constitution deals with the Child Labour directly, where as Articles 15(3), 21A, 39 (e), 39 (f) and 47 deal with Child Labour indirectly.**

Article 24 of the Constitution prohibits the employment of children below the age of fourteen years in any factory or mine or engaged in any other hazardous employment. **Article 15(3)** of the Constitution enables the State to make special provisions for the welfare of children.

- The directive principle of State policy contained in **Article 38 (e)** directs the state to safeguard the tender age of children from entering into jobs unsuited to their age and strength forced by economic necessity.
- **Article 38(f)** imposes a duty on the state to secure facilities for the healthy development of children, and to protect childhood and youth against exploitation as well as moral and material abandonment.
- Whereas **Article 21 A** directs the state shall provide free and compulsory education to all children of the age of 6 to 14 years.
- **Article 47** imposes a duty upon the state to raise the levels of nutrition and standard of living of its people and improve public health.

The government of India has enacted various welfare legislation for the working children from time to time. The basic aim of the legislation is to prohibit the employment of children in certain employments and regulate the conduct of the employers of child workers in such a way that, these poor innocent children are not exploited any more. The protective provisions of the enactments do not cover children employed in smaller establishment. However, the Government of India enacted the **Child Labour (Prohibition and Regulation) Act, 1986** which prohibits the employment of children in hazardous work and also regulates the conditions of work in certain other employment where the employment is not prohibited. The Act has many provisions to be welcomed, but at the same time, it has lacunas and its own limitations.

BONDED LABOUR AND HUMAN

This is unfortunate that even after so many years of independence and more, certain obnoxious practices like caste system, untouchability, bonded labour and forced labour continue in the Indian Society. They are now been questioned and challenged by the present day society in the changed context of the social order in the welfare society, where rational and sophisticated thinking, human dignity, liberty and equality are considered more important than ever before.

In India, the bonded labour system continues to be the most pernicious form of human bondage. Under such system a worker continues to serve his master in consideration of debt obtained by him or his ancestors. Bonded labour can be intergenerational or child bondage or loyalty bondage or bondage through land allotment. Most of these labourers come from lowest strata of the society such as the untouchables, Adivasis, or agricultural laborers. Bonded labour became a mere play thing in the hands of few privileged persons. Attempts have been made both at National and International Level from time to time to eradicate forced labour. Every International instrument dealing with the Human Rights has prohibited the use of Forced or Compulsory Labour.

The Constitution of India guarantees Fundamental Rights against exploitation. Article 23 of the Constitution of India prohibits "Traffic in human beings and begar and other similar forms of forced labour". The contravention of this Constitutional provision is made an offence punishable in

accordance with the law. To give effect to this Constitutional mandate parliament has enacted **Bonded Labour System (Abolition) Act, 1976**. Efforts were thereafter initiated for identification, release and rehabilitation of bonded labourers in different states.

STATUTORY COMMISSIONS

National Human Rights Commission

The National Human Rights Commission (NHRC) of India is an autonomous public body constituted on 12 October 1993 under the Protection of Human Rights Ordinance of 28 September 1993. It was given a statutory basis by the Protection of Human Rights Act, 1993 (TPHRA). The NHRC is the national human rights institution, responsible for the protection and promotion of human rights, defined by the Act as "rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants".

COMPOSITION

The NHRC consists of:

- A Chairperson
- One Member who is, or has been, a Judge of the Supreme Court of India
- One Member who is, or has been, the Chief Justice of a High Court
- Two Members to be appointed from among persons having knowledge of, or practical experience in, matters relating to human rights
- In addition, the Chairpersons of four National Commissions (i.e. of Minorities Commission, SC Commission, ST Commission, Women's Commission) serve as ex officio members.

Requisite qualifications:

Chairperson needs to be a former Chief Justice of India, two of its members again need to be of judicial background– one a sitting or former judge of the Supreme Court and the other a sitting or former Chief Justice of a High Court. As per the Act, the other two full time members of the Commission should be 'persons having knowledge of, or practical experience in, matters relating to human rights.'

APPOINTMENT

Sections 3 and 4 of TPHRA lay down the rules for appointment to the NHRC. **The Chairperson and members of the NHRC are appointed by the President of India, on the recommendation of a committee consisting of:**

- The Prime Minister (chairperson)
- The Home Minister
- The Leader of the Opposition in the Lok Sabha (House of the People)
- The Leader of the Opposition in the Rajya Sabha (Council of States)
- The Speaker of the Lok Sabha (House of the People)
- The Deputy Chairman of the Rajya Sabha (Council of States)

FUNCTIONS OF NHRC

Section 12 of the Act provides for the main functions of the NHRC which includes the following:

1. To inquire suo moto or on petition presented to it by a victim or any other person on behalf of the victims, into complaints against the public servants regarding the violation of human rights, or abetment thereof, or negligence in the prevention of such violations.
2. To have an interjection in a Court of law, with the approval of the Court, where any issue of human rights violations are involved in the proceedings of a pending case.
3. To conduct inspections to study the conditions of life of the inmates, and presenting its recommendations thereof, confined in any jail or any other institution meant for cure, reforms or protection of such people under the control of a state government with the prior information to the concerned state government.
4. To review the provisions in the Indian Constitution or any other law or provisions under such law regarding the protection of human rights and making recommendations for effective implementation of such laws and provisions of the Constitution.
5. To examine the factors that curtails or circumscribes the enjoyment of human rights, including the acts such as terrorism and suggesting suitable remedial measures for them.
6. To study the international treaties and other related covenants or documents pertaining to human rights and making suggestions for their effective implementation.
7. To undertake research in the field of human rights in order to promote human rights in India.
8. To promote awareness regarding the human rights in different sections of the society and disseminating awakening on the measures for the protection and promotion of human rights through the methods of publications, media, seminars and other available mediums.
9. To encourage the endeavours of the non-governmental organizations and other such organizations which are involved in the field of human rights protection and promotion.
10. To perform such other functions as are deemed necessary for the promotion of the human rights.

In addition to the membership of the Commission, the Act also made provisions for **two statutory administrative offices in the Commission**, viz., **the Secretary General** and **the Director General (Investigations)** to afford an adequate administrative support so that the functions of the Commission are carried out in an impartial and efficient manner.

POWERS OF NHRC

(1) The Commission shall, while inquiring into complaints under this Act, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and in particular in respect of the following matters, namely :

- (a) Summoning and enforcing the attendance of witnesses and examining them on oath;
- (b) Discovery and production of any document;
- (c) Receiving evidence on affidavits;
- (d) Requisitioning any public record or copy thereof from any court or office;
- (e) Issuing commissions for the examination of witnesses or documents;
- (f) Any other matter which may be prescribed.

(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code.

(3) The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies there from subject to the provisions of section 100 of the Code of Criminal Procedure, 1973, in so far as it may be applicable.

(4) The Commission shall be deemed to be a civil court and when any offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973.

(5) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code, and the Commission shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

(6) Where the Commission considers it necessary or expedient so to do, it may, by order, transfer any complaint filed or pending before it to the State Commission of the State from which the complaint arises, for disposal in accordance with the provisions of this Act; Provided that no such complaint shall be transferred unless the same is one respecting which the State Commission has jurisdiction to entertain the same.

(7) Every complaint transferred under sub-section (6) shall be dealt with and disposed of by the State Commission as if it were a complaint initially filed before it.

Autonomy of the NHRC

Keeping in mind the significance of the NHRC as the principal national agency for the protection and promotion of the human rights in the country, adequate provisions have been made by the TPHRA, 1993 to ensure the functional autonomy of the Commission.

To begin with, the Chairperson and the members of the Commission are appointed by the President on the recommendations of a Committee consisting of the Prime Minister as the chair, and the Speaker of the Lok Sabha, Deputy Chairman of the Rajya Sabha, the Union Minister of Home Affairs, and the leaders of Opposition in both the houses of the Parliament.

The recommendations of such a committee would probably go a long way to ensure that the Commission retains a high degree of neutrality and impartiality and remains the bastion of justice in the eyes of the people whose human rights have been violated.

Further ***the appointment of the Commission's members for a fixed term of five years*** also ensure that they function during this period without any fear or favour as their appointment is final and their service conditions cannot be varied during their tenure of office nor can they be subjected to any other sort of undue stress or disadvantage during this period of time.

Moreover, the independence of the Commission has also sought to be protected by making the process of their removal from office quite cumbersome. *Generally, a member of the Commission may be removed from office only by an order of the President on the grounds of proved misbehaviour or incapacity after a duly constituted and thorough inquiry to be conducted by the Supreme Court.* As such cases of inquiry by the Supreme Court are very fair and impartial; there exists no reason for an

honest and fearless member of the Commission to buckle under the pressure of the government for the apprehension of being removed from office in an arbitrary and partisan manner.

Achievements of the NHRC

The successful functioning of the NHRC for the past so many years has gone well to remove the apprehensions of the sceptics regarding the whole idea of a human rights commission in the country to promote and protect the human rights of the people. Indeed, an effective functioning of the NHRC has enabled it to come out with flying colours in so far as the inculcation of a culture of respect for human rights is concerned in most of the circles of government as well as in the minds of common people in the country.

In fact, the Commission has turned out to be true custodian of the protection and promotion of human rights in India with its sincere and spontaneous efforts to not only redress the grievances of the victims on a petition but quite often, it has also taken suo moto cognizance of any incident of violation of human rights and promptly took remedial steps in order to provide relief to the aggrieved persons. Consequently, the Commission has not only been able to command a high degree of respectability and moral ground amongst the people but also amongst the government functionaries whose positive outcome has been in the form of the recommendations of the Commission getting due respect by the concerned departments. Thus, the Commission has been able to create a niche for itself in the country due to its sheer hard and honest work.

A welcome departure in the functioning of the NHRC has come in the form of turning the work culture of the Commission from that of a purely governmental agency to that of a novel organization having strong public-private partnership in dealing with the issues of the protection and promotion of human rights in the country. Thus, there appears to have developed a tendency on the part of the NHRC to involve the civil society organizations, in addition to the educational and public oriented organizations, in its endeavours for protection and promotion of the human rights of those people who either suffer from some sort of social stigma or they are faced with the vested interest bent upon sabotaging the efforts of the Commission for the same. Hence, **the problems pertaining to the child prostitution, prison reforms, rehabilitation of the persons displaced by the ongoing mega projects, child labour, bonded labour, iron deficiency among pregnant women and problems of the mentally disabled etc. have been able to attract the attention of the Commission whose efforts would supposedly have gone in vain had it not received the insightful input and active support of the non-governmental organizations.** These activities seemed to have given a philanthropic outlook to the functioning of the Commission.

Another significant achievement of the NHRC happens to be in the field of spreading the human rights literacy and awareness amongst the different sections of society in accordance with one of its statutory obligations. Indeed, the informed public opinion in the country on the issues pertaining to the human rights of various sections of the people is a tribute to the efforts of the Commission almost every section of people are quick to seek a redressal of their problems if they feel aggrieved by any act of omission or commission by both the governmental or non-governmental sectors, whose reflection has been found in the ever increasing number of complaints received by the Commission on the issues pertaining to the violations of human rights. Moreover, by succeeding to make the lessons of human rights as part of the school curriculum for educating the young minds the value of protecting and promoting human rights, the Commission seems to be sowing the seeds of a vibrant society marked by unflinching devotion to the cause of human rights rooted in the ancient Indian dictum of live and let live. Thus, the efforts of the Commission are sure to make the vital contribution of inculcating the value of human rights in the young minds of the country.

In the end, performing its role in both letter and spirit of the provisions of TPHRA, 1993, the Commission has been able to enhance its acceptability as the apex body for the protection and promotion of human rights even to those government agencies which have the ill reputation of violating the human rights of the people more often than not.

The Commission has been able to formulate guidelines and issue directions to the concerned agencies on a number of issues including the misuse of police powers, especially arbitrary arrests, setting up of human rights cells in state and city police headquarters, prison reforms, elimination of child labour, compulsory education, caste and communal violence, rights of persons with disability, human rights of mentally ill, abolition of manual scavenging, quality assurance in hospitals, review of certain laws and statutes affecting human rights of citizens, implementation of international treaties and instruments of human rights, protection of human rights and dignity of AIDS affected patients and sex workers, institutional changes in the legal system etc.

The cumulative effect of all such measures has been that the concern for human rights informs almost all the spheres of human activity in the Indian society due to efforts of the NHRC. In other words, the Commission's endeavour to leave no stone unturned in its urge for the protection and promotion of the human rights of the people has gained for itself a place of respect and dignity in the eyes of the informed public in the country.

STATE HUMAN RIGHTS COMMISSIONS

The State Human Right Commissions (SHRCs) have been stipulated by TPHRA, 1993 presumably **in order to decentralization the structure and functioning of the mechanism for the protection and promotion of the human rights to the state level on the one hand, and streamline the working the state level agencies with regard to their attitude towards the human rights of the people by having a body in the state itself to monitor their functioning on the other.**

The structure of the SHRCs has been laid down on the pattern of the structure of the NHRC with the only variation that the members of the SHRC are appointed by the Governor of the state. These bodies have also given the functions similar to the ones given to the NHRC with the condition that their operational domain remains confined to the geographical limits of the concerned state. Thus the SHRCs become a sort of miniature of the NHRC at the state level to cater to the needs of the protection and promotion of the human rights at the state level.

Despite the specific advice from the Central Government to all the states for the creation of the SHRCs, only ten states have been able to constitute their human rights commissions so far.

Moreover, what is more distressing is the fact that the defaulters in the formation of the SHRCs happen to be those states whose records in the protection and promotion of the human rights have been most deplorable. For instance, the State of Uttar Pradesh which has the dubious distinction of being the state with the highest number of cases of human rights violations had desisted from setting up the SHRC till recently when it was impressed upon by the central government to go for setting up of the human rights commission in the state. It would still be interesting to know the way the SHRCs function in order to meet the challenges entrusted to them. Though the NHRC has already set a bench mark for the human rights bodies in the country to attain a distinct level of efficiency, impartiality and effectiveness in carrying out its function of protecting and promoting human rights in the country, how far the SHRCs go to emulate NHRC on this count remains to be seen.

CONCLUSION

The institutional arrangement towards the protection and promotion of human rights in India got a new impetus with the establishment of the National Human Rights Commission as a statutory body. However, over the years, the functioning of the Commission has exposed the inherent weaknesses in the governmental agencies like the NHRC which are not able to blow the whistle on each and every incident of human rights violations in the country. For instance, while the Commission has been able to address the issues of human rights violations being perpetrated

by the societal forces or individuals, it seems to have utterly failed to provide adequate solution to the victims of the human rights violations being perpetuated by state apparatus and the security agencies.

The situation appears to be more dismal at the level of provinces where either the State Human Rights Commission itself has not been set up, or if established, it is not bestowed with sufficient powers and administrative support system so as to enable it to work as the true custodian for the protection and promotion of human rights in the state. The establishment of the human rights commissions, both at the central as well as state levels must, therefore, be seen as the beginning in the right direction. Yet the basic objective in setting up these commissions would only be served when at least two propitious conditions are met. One, they are bestowed with sufficient powers and administrative support to take prompt and effective step in case of the violation of human rights. Two, a sense of responsibility also need to be developed amongst such bodies to see them not as part and parcel of the governmental machinery to serve the interests of governmental agencies. Rather, they must see themselves as the statutory bodies existing to serve the cause of the hapless citizen of the country whose human rights have been violated and she finds herself in a helpless position to seek adequate redressal of her problems.

NATIONAL COMMISSION FOR WOMEN (NCW)

In our country there is largely a patriarchal structure of a society. In this set up, women have been considered as inferior and given a secondary status. They have been subject to various legal and social discriminations. There is a need to remove such inequalities and to make a provision for solving her problems.

'The need was felt for structure to uphold the rights and implement the provisions of beneficial legislations, in an organized and institutionalized manner'. So with this view **National Commission for Women (NCW)**, was set up as statutory body **in January 1992** under new Act 1990.

Purpose of the NCW is –

- To review constitutional & legal safeguards for women
- To recommend remedial legislative measures
- To facilitate redressal of grievances &
- To advice government on all policy matter affecting women.

In keeping with its mandate, the Commission initiated various steps to improve the status of women and worked for their economic empowerment. During the visits to the states it received a large number of complaints. The commission acted suo-moto in several cases to provide speedy justice.

It took up the issue of child marriage, sponsored legal awareness programmes, Parivarik Mahila Lok Adalats and reviewed laws such as Dowry Prohibition Act, 1961, PNDT Act 1994, Indian Penal Code 1860 and the National Commission for Women Act, 1990 It organized workshops/consultations, constituted expert committees on economic empowerment of women, for gender awareness and took up publicity campaign against female foeticide, violence against women, etc.

The commission shall consist of:

- 1) A Chairperson, committed to the cause of women, to be nominated by the Central Government.
- 2) Five Members to be nominated by the Central Government from amongst persons of ability, integrity and standing who have had experience in law or legislation, trade unionism, management of

an industry potential of women, women's voluntary organisations (including women activist), administration, economic development, health, education or social welfare;

Provided that at least one Member each shall be from amongst persons belonging to the Scheduled Castes and Scheduled Tribes respectively:

3) A Member-Secretary to be nominated by the Central Government who shall be:-

- i. an expert in the field of management, organisational structure or sociological movement, or
- ii. an officer who is a member of a civil service of the Union or of an all-India service or holds a civil post under the Union with appropriate experience.

Tenure- Section 4(1)

The Chairperson and every member shall hold office for such period, **not exceeding three years**, as may be specified by the Central Government in this behalf.

Functions of NCW:-

The commission shall perform all or any of the following functions, namely:-

- a) Investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws;
- b) present to the Central Government, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguard;
- c) make such reports recommendations for the effective implementation of those safeguards for improving the conditions of women by the Union or any state;
- d) review, from time to time, the exiting provisions of the Constitution and other laws affecting women and recommend amendments thereto so as to suggest remedial legislative measures to meet any lacunae, inadequacies or shortcomings in such legislations;
- e) take up cases of violation of the provisions of the Constitution and of other laws relating to women with the appropriate authorities;
- f) look into complaints and take suo moto notice of matters relating to:-
- g) deprivation of women's rights; non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development;
- h) non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women, and take up the issues arising out of such matters with appropriate authorities;
- i) call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal;
- j) undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement participate and advice on the planning process of socioeconomic development of women;
- k) evaluate the progress of the development of women under the Union and any State;
- l) inspect or cause to inspected a jail, remand home, women's institution or other place of custody where women are kept as prisoners or otherwise and take up with the concerned authorities for remedial action, if found necessary;
- m) fund litigation involving issues affecting a large body of women;
- n) make periodical reports to the Government on any matter pertaining to women and in particular various difficulties under which women toil;
- o) Any other matter which may be referred to it by Central Government.