

HUMAN RIGHTS IN INDIA

STUDY MATERIAL

V SEMESTER

OPEN COURSE

For

**candidates with core course other than
Political Science
(2015 Admission)**



UNIVERSITY OF CALICUT

SCHOOL OF DISTANCE EDUCATION

Calicut university P.O, Malappuram Kerala, India 673 635.

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SYLLABUS- OPEN COURSE HUMAN RIGHTS IN INDIA

Module I: (A) Human Rights: Concept and Evolution- Universal Declaration of Human Rights: A Brief Analysis (B) Approaches: Western, Marxian and Third World.

Module II: (A) Indian Constitution and Human Rights: Civil and Political Rights, Socio-Economic and Cultural Rights. (B) Agencies for protecting Human Rights: Judiciary, Public Interest Litigation (PIL), National Human Rights Commission.

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UNIT 1

HUMAN RIGHTS: CONCEPT

The concept of Human Right is based on the assumption that human beings are born equal in dignity and rights. These are moral claims which are inalienable and inherent in all human beings by virtue of the member of the humanity alone. Today these claims are articulated and formulated then called as human rights.

Equal dignity of all persons is the central concept of all human rights. These rights have been designated to be universal in application, inalienable in exercise and inherent to all persons. Human beings are entitled to some basic and natural rights otherwise their life would be meaningless.

Human rights are those rights which are inherent in our nature and without which we cannot live as a living as a human being. Human Rights and Fundamental Freedoms allow us to fully develop and use our human qualities, our intelligence, our talents and our conscience and to satisfy our spiritual and other needs. They are based on mankind's increasing demand for a life in which the inherent dignity and worth of human being will receive respect and protection. Human rights are sometimes called fundamental rights or basic rights or natural rights. As fundamental or basic rights they are those which must not be taken away by any legislature or any act of the government and which are often set out in a constitution. As natural rights they are seen as belonging to men and women by their very nature. Another way to describe them would be to call them 'common rights', for they are rights which all men or women in the world should share, just as the common law in England. The legal duty to protect human rights includes the legal duty to respect them.

The idea of human right is as old as social life. Even from the ancient time, it was recognized that the values are essential for human life. Without these values, life of the man becomes meaningless. Rights are the most important values which a man cherishes. He enjoyed this for his fullest development. In the recorded history of mankind; he has fought for these rights whenever they have been challenged.

Human rights are rights that belong to a group or group of individuals as a consequence of being human. These rights are non-negotiable and inalienable. They are ethical norms for

the treatment of individuals. Human rights are indivisible and interrelated. They are certain minimal rights, which have come to be recognized as basic condition of civilized living and fullest development of human being.

All human beings are born free and equal in dignity and rights. But man has made him not equal in many ways. Some were made privileged and some were not. Oppression and slavery were there. It made him hundreds of years of toil and struggle to get legal protection of their basic human rights. Various laws were enacted for the protection of the rights relating to life, liberty, equality and dignity of the individual. They are made and unmade on the crucible of experience and through irreversible process of human struggle for freedom.

Human rights are those minimal rights which are available to every human being without distinction of language, religion, caste, nationality, sex, social and economic conditions of the society. Human rights are on the increasing demands of the mankind for a life in which the inherent dignity and worth of each human being will receive respect and protection. Human rights are broadly classified into civil and political rights on the one hand and economic social and cultural rights on the other. The object of both sets of rights is, to make an individual an effective participant in the affairs of the society. Unless both sets of rights are available, neither full development of the human personality can be achieved nor can true democracy be said to exist.

Human rights, as we understand the term right now, are considered as certain claims of the individuals to be enforced by the state and authorized by the society. Even though the human rights are common feature of all democratic political systems, there are variations in the nature and character of rights enforced by different government. It means that human rights comprised of a wide variety of rights all or which shall not be protected by all democratic governments equally. For example political, the political liberals are more in favour of civil and political rights. The political left generally prefer the socio- economic rights. The political parties and governments which are directed human rights as we understand the term right now, are considered as certain claims of the individuals to be enforced by the state and authorised by the society.

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protected by all democratic governments equally. For example political, the political liberals are more in favour of civil and political rights. The political left generally prefer the socioeconomic rights. The political parties and governments which are directed by cultural groupings and religious sections are more interested in protecting the group specific socio-cultural and religious rights than the other two categories of rights. by cultural groupings and religious sections are more interested in protecting the group specific socio-cultural and religious rights than the other two categories of right.

EVOLUTION OF HUMAN RIGHTS

Origin

There is no clear cut theory regarding the origin of human right. There exist different viewpoints regarding the origin of human right. Some scholars trace the origin of human rights to religious tradition.

Another argument is that human right is highly indebted to the enlightenment. The necessary condition for enlightenment, which combined to bring an end to the middle ages in Europe, includes scientific revolution, rise of mercantilism, launching of maritime exploration of the globe, the consolidation of the nation states and emergence of middle class. All these contributed the development of human rights.

It is also said that the roots of the rights can be traced in the Babylonian Law. Babylonian king Hammurabi issued a set of laws called Hammurabi's code. In India the drama of Vedic period created the moral basis for human rights.

Human rights are also based on the concept of Natural Law and Natural rights. The origin of the concept of natural law can be traced to the stoics. Stoics thinkers postulated a cosmopolitan philosophy, guided by the principle of equality of all men and universal application of natural law based on reason. In the evolution of human rights this concept of natural law played a prominent role. Cicero was the strong supporter of the stoic theory of natural law. Romans applied the stoic concept of natural law in the formation of body of legal rules for the administration of justice. They developed this body of rules on the basis of customs and by the application of reason.

The concept of human right was conspicuous in ancient Greece and in India. The ancient Kings in India cared for the welfare of the people. The rights of people is mainly recognized

and protected by moral and spiritual dictated and the whole thing got derived from natural law which was the ruling law In the evolution of human rights, the modern school of natural law, led by Hugo Grotius made great contributions. He made natural law and that natural law theory got transformed into the natural rights theory.

Natural Rights Theory

Proponents of natural rights explained that natural rights are rights belonging to a person by nature and because he was a human being, not by virtue of his citizenship in a particular country or membership in a particular religious or ethnic group. Thomas Hobbes (1588-1679), John Locke (1632-1704), Jean Jacques Rousseau (1712-1778) are the three main thinkers who developed the natural rights theory. John Locke who urged that certain rights are natural to individuals as human beings, having existed even in the ‘state of nature’ before the development of the societies and emergence of the state. Rousseau is regarded as the greatest master of Natural Law School. He proclaimed that men are bestowed with inalienable rights of liberty, equality and fraternity. His concepts became the basis for the French Declaration of the Rights of Man and of the citizen.

The American Independence Movement of 1776 and the French Revolution of 1789 were inspired by the ideal of natural rights and both movements were sought to challenge governments that curtailed the natural rights of the people. In addition to the contributions of the above three thinkers, we may make a mention of Thomas Paine (1731-1809). Thomas Paine, an American revolutionary thinker developed the doctrine of natural rights without linking it to Rousseau’s social contract theory. He held that rights are natural because they were bestowed upon man by God himself.

Development of human rights

The human rights which we are enjoying today is developed through various stages. The important landmarks in the development of human rights are the following documents and struggles:

1. Magna Carta of 1215
2. Influence of Social Contract Theory
3. English Bill of Rights of 1689

4. American Declaration of Independence of 1776
5. American Bill of Rights of 1791
6. French Declaration of the Rights of Man of 1789
7. The Bolshevik Revolution of Russia of 1917
8. Universal Declaration of Human Rights of 1948
9. International Covenants on Human rights.

Each of these declaration and the movement referred above, have made important contributions in advancing the concept of human rights. However, being product of their own time and specific circumstances, they lack totality of concept and were narrow in their scope and application. For instance in the Greek political system, rights existed only for the ‘citizens’ and not for the majority who were referred to as “aliens” and “slaves”. Magna Carta yield certain concessions only for the feudal lords (not for common man), though it set limitation to arbitrary rule and laid the foundation for the rule of law.

The American Declaration followed by constitutional amendments or Bill of Rights contain fairly exhaustive guarantees for the rights of man. But in practice their application was largely confined to those who constituted what was abbreviated as WASP (white, Anglo-Saxon, and protestant). Slavery continued to be a part of system; the blacks of African origin were referred to as “Negro” not as man.

It was in 1864 that slavery in America was legally abolished after a bitter civil war which threatened the unity of the United States. While American and the French declarations set the seal on the basic principles of freedom of thought , human dignity and democratic government , the countries undergoing rapid industrialization has experiencing the need for more social justice and economic security.

The Bolshevik Revolution in Russia (1917) went a step further. It emphasized that economic and social rights were as important as the civil and political rights.

Magna Carta

The Magna Carta is considered as the first charter of liberty. It was signed by the king John of England in 1215. The main theme of the Magna Carta was protection against the

arbitrary acts of the king. The 63 clauses of the charter guaranteed certain basic civil and legal rights to citizens and protected the barons from unjust taxes. The king was compelled to grant the charter, because the barons refused to pay heavy taxes unless the king signed the charter. In reality, the Magna Carta was merely a compromise of the distribution of powers between king and his nobles. It gave certain concessions (not rights as we understand them today), to clergy, landlords and nobles and consequently restricted the powers of the king to the extent of those concessions were concerned.

Influence of Social contract theory

The influence of social contract theory in the development of the Human Right was more profound in scope as well as in its impact. The doctrine of social contract was closely linked with the theory of natural law because the basis upon which the natural law theories were formulated was the same for the social contract also. These doctrines became popular during 16th and 17th century through the writings of Thomas Hobbes , John Locke, and Jean Jacques Rousseau.

Thomas Hobbes wrote his book *Leviathan* in 1651. According to Hobbes man entered into social contract and put the natural state to end. This contract led to the creation of common wealth or state. And the ruler was also the outcome of that contract. Since the ruler did not take part in the contract he was not bound to observe the conditions of the contract. After the contract the civil society came in to existence. According to Hobbes, the people surrounded all their power to the king through the contract, except the right of self-preservation Hobbes was an exponent of absolute monarchy.

John Locke wrote two books. They are 'Essays Concerning Human Nature' and 'Essays on civil government'. According to Locke, man entered into two contracts that is social and political. The social contract led to the creation of the society and the political contract led to the formation of the government. Locke believed that people did not transfer all their rights to the king through the contract. The king was given only the right to life, the right to property and the right to security. So the king is only trustee. The people reserve the right to dethrone the king if he fails to safeguard the security of the people.

Rousseau wrote the book 'the Social Contract'. According to Rousseau, people transferred all their rights to society and put the natural order to an end. Rousseau regarded the real will

of the society as the General Will. He considered General Will as sovereign. This General Will forms the basis of government. Rousseau regarded government is an institution functioning under the General Will of the people.

The English Bill of Rights

The Bill of Rights was signed in England in 1689, after the Glorious Revolution of 1688. After the Glorious Revolution, the power of the king was reduced and the British parliament declared its supremacy over the crown in clear terms. Soon after the coronation of William and Marry; the new rulers after revolution, summoned the convention parliament, accepted the declaration of the rights and passed it into law in the form of the “Bill of Rights”. The English Bill of Rights declared that the king has no overriding authority. Principles like Limited monarchy and parliamentary supremacy etc. was declared during that period. The Bill of Rights states that:-

1. The King of England should be an Anglican;
 2. The king should not exercise suspending or dispensing power;
 3. No standing Army should be maintained without the consent of the parliament;
 4. No taxation without the consent of the parliament;
 5. Parliament is the sole authority to decide who should rule England;
 6. The people should have the right to send petition to the king;
 7. Annual grants were to be given to the king by the parliament;
 8. Arbitrary courts are to be abolished;
 9. Parliament was to be freely elected and the members were to have freedom of speech
- . The toleration Act passed by the parliament granted religious freedom to the people.

American Declaration of Independence

America was the colony of Britain .There were 13 colonies in America. These colonies were revolted against England for their independence. The main reason for the revolt was

that the British government was of the view that the colonies also should share in the expenses incurred in their administration.

With this view the British government started to take various regulatory measures under which it introduced certain new taxes. This resulted into militant opposition by the American people. They argued that, since they did not have their representatives in British parliament, it had no right to impose taxes upon them. The state declared independence in 1776. The Declaration of Independence was done on July 4th 1776. This famous document was drafted by Thomas Jefferson. The document says:- “We hold these truths to be self-evident, that all men are created equal that they are endowed by their creator with certain inalienable rights , that among these are life , liberty, and pursuit of happiness , that to secure these rights governments are instituted among men deriving their just powers from the consent of the governed ;that whenever any form of government becomes destructive of these ends , it is the right of the people to alter or abolish it and institute new government ,laying its foundation on such principles and organizing its powers in such form , as to them shall seem most likely to affect their safety and happiness”.

Thus Americans made their claim for independence on the basis of inalienable rights of men, popular sovereignty and the right of revolution, but at the time of drafting the constitution in 1787 they did not include the bill of rights in the constitution. They did it in 1791 by adopting ten amendments to the constitution .These amendments are known as Bill of Rights and form part of their constitution.

US Bill of Rights

The first ten amendments of the American constitution constitute the American Bill of rights. James Madison proposed as many as twelve amendments in the form of a bill of rights in 1791. Ten of these were ratified by the State legislatures. These ten constitutional amendments came to be known as the Bill of Rights in America. The constitutional settlements in the US and the attached Bill of Rights provided a model for the protection of human rights. After 1791 many other amendments were also made in the constitution of America. Followings are the amendments.

The first amendment provides freedom of religion, freedom of press, freedom of expression and the rights of assembly. The fourth amendment provides protection of individual against

unreasonable search and seizure. The fifth establishes the right against the self-incrimination and the right to due process of law. The thirteenth amendment, adopted after the civil war, abolishes the practice of slavery. Fifteenth amendment (1870) grants the rights to vote to racial minorities. Nineteenth amendment (1920) extended the right to vote to women. By 26th amendment (1971) right to vote at 18 years of age and by 27th amendment (1972), the provision of equal rights and non-denial or non-abridgement of equality of rights on account of sex is included. It is worth noting that no rights ever been removed or abridged by the Congress.

The French declaration of the rights of man and of the citizens

The Declaration of the Rights of Man was a product of French Revolution. The revolution reached in climax in 1789; the National Assembly swept away the ancient feudalism and serfdom. The slogan of the revolution was liberty, equality and fraternity.

The French revolution gave a fatal blow to absolute monarchy and a death blow to feudalism and led to the establishment of French Republic. All the special privileges were abolished and the society came to be organized on the basis of equality. The French revolution enabled the people to enjoy different kinds of rights. The revolution established the novel ideas of Liberty equality and fraternity. The government should be not only “for the people” but also “by the people”.

On 17th august 1789, the National Assembly proclaimed the rights of man and of the citizens. The rights were formulated in 17 articles .It declared that “Men are born free and equal in rights.....The aim of all political association is to preserve the natural rights of man. These rights are liberty, property, security and resistance to oppression. The recognition of universality of these rights was the turning point in the evolution of human rights. The following rights that man and citizen have been recognized, among others, in the French declaration.

1. Men are born and remain free equal in rights
2. The aim of all political association is to preserve the natural right of man. These rights are liberty, property, security, and resistance to oppression
3. Sovereignty rests essentially in the nation

4. Liberty consists in the ability to do whatever does not harm another; hence the existence of the natural rights of each man has no limits except those which assure to other members of society the enjoyment of the same rights. Law can determine these limits.

5. No man can be indicted, arrested or detained except in cases determined by law.

6. All men should be presumed innocent until judged guilty.

7. No one may be disturbed for his opinion, even in religion, provided that their manifestation does not trouble public order as established by law

8. Free communication of thought and free opinion is one of the most precious rights of the man. Every citizen may therefore speak; write and print freely own his own responsibility

9. Taxes can be levied only with the consent of the citizens

10. Society has the right to hold accountable every public agent of administration

11. Property being a sacred right, no one may be deprived of it except for an obvious requirement of public necessity, certified by law and then on condition of a just compensation in advance.

The Russian revolution

The Russian was the greatest social uprising of the world since the French Revolution. Russian revolution took place in 1917. It was the first successful communist revolution of the world. The revolt was against the naked exploitation of the masses by the autocratic ruler and the wealthy feudal nobles. The revolution brought a though change in the political, social and economic life of the people and established the first proletariat government of the world.

H.G.Wells concerned it as “the greatest event after the advent of Islam”. It is true that the French Declaration proclaiming liberty, equality and fraternity for all. But liberty and equality were soon proving to be empty slogans for poor peasants and factory workers. Hence, beginning the mid-nineteenth century, the demand for social security and social justice, in addition to civil and political rights, appeared in the forefront of socialist movement.

The Bolshevik Revolution in Russia (1917) went a step further. It emphasized that economic and social rights were as important as the civil and political rights. Many economic and social rights had been included in the soviet constitution. It is gratifying to note that the socialist revolution in Russia introduced socio-economic dimensions to the concept of rights, which were neglected in the events and documents of English, American and French revolutions. While the three revolutions emphasized the first generation (civil and political) rights, the October Revolution of Russia popularized socio-economic rights; such as right to work, social security, protection of the family, right to adequate standard of living, right to education, health and right to join trade unions. These are second generation rights or positive rights.

Adoption of universal declaration of human rights

The Universal Declaration of Human Rights(UDHR) was adopted by the General Assembly of the United Nation on 10th December 1948. The declaration is not a legally binding document; It is an ideal for all mankind. In the words of Eleanor Roosevelt, it proclaims “a common standard of achievement for all people and all nations”. In its final form, it comprises of alert of civil, political, economic, social and cultural rights to which all persons are entitled.

Universal Declaration is a declaration of principles directed to the peoples of the world. This has been considered as one of the greatest achievements of the UN. It has been maintained that “International covenants on human rights.” The universal declaration of human rights has had a significant influence on the development of standards that states are not only expected but also has legal commitment to be respected”.

The meet the demand for a legally binding document for the protection of the human rights, two international covenants were approved by the General Assembly on 16th December 1966. These are

1. International Covenant on Civil and Political Rights
2. International Covenant on Economic Social and Cultural Rights.

What is more important about the two UN covenants is that they contain “international mechanism” to monitor and oversee that the obligation of human rights are observed by states parties to the covenants. Two supervisory bodies – that Human Right Committee

under ICCPR and committee on Economic, social and cultural Rights under ICESER consisting of 18 human rights experts are created to help States Parties to the covenants in fulfilling these obligations. Optional Protocol There is two Optional Protocols to the international covenant on civil and political rights. The two international covenants together with the universal declaration and the optional protocols comprise the international bill of rights.

UNO and human rights

The creation of UN was a sincere step to draw the nations together in proximity so that they develop a bond and a desire to live together. The charter of the UN recognized the inherent dignity of man. The Universal Declaration of Human Rights recognized that all human beings are endowed with inalienable rights .To convert the declaration into binding treaty, two covenants were prepared by the UN. They are the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights.

There were also optional protocols in connected with the covenant. There are two optional protocols to the ICCCR and one optional protocol on ICESCR. The Charter of the United Nations, gives due importance to the aim of promoting human rights and fundamental freedoms. One of the five declared purposes of the UN is the achievement of international cooperation in promoting and ensuring respect for human rights. Several articles in the Charter deal with the subject. For instance, Article 55, 56 require the United Nations to promote a high standard of living, full employment to create conditions of economic and social progress and development, promotion of universal respect for observation of human rights and fundamental freedoms.

Further Article 62 of the Charter provides for setting up of several commissions, including one for the promotion of human rights. Accordingly, the commission of Human Rights was duly constituted under the chairmanship of Mrs. Eleanor Roosevelt.

The Commission on Human rights is the main policy making body to deal with human rights. The concept of human rights can be traced from ancient Greece and Rome. The concept of human right is very old and based on natural law. However the expression 'Human Right' is relatively new, having come into everyday parlance only since world war second. That is after the founding of the United Nations in 1945 and the UDHR in 1948.

Although at the end of the First World War, some attempts on modest level were made through the Treaty of Versailles and Paris Peace Conference, to promote and universalize the human rights, but it met with no success. The formation of the International Labour Organization is the result of Treaty of Versailles. Under the League of Nations the ILO and the Permanent Court of International justice did something to promote the human rights although the League did not contain the word human rights in its covenant.

In 1929, Institute of International law adopted a declaration of the International Rights of Man, which recognizes the rights of life, liberty and prosperity irrespective of nationality, sex, race, language or religion. During the Second World War many conferences were convened in the various sides of the world to make international organization for the promotion of Peace and the recognition and the protection of the human rights. It was mainly for the universalization of the human rights and against the oppressive and brutal practices adopted by Nazi regime in Germany. It was believed that permanent peace could be established without securing international safeguards for human rights and fundamental freedom. In 1941, January 6, in his message to congress he referred to the four essential human freedom to which he looked forward as the foundation of a feature world. They are:-

1. Freedom of speech and expression
2. Freedom of worship,
3. Freedom from war,
4. Freedom from fear

The Atlantic charter

The freedom concept of the then American president Roosevelt reached in to some more concrete form in the Atlantic charter. The then president of the United States Franklin D. Roosevelt and the Prime Minister of Britain Winston Churchill met at the Atlantic sea in a ship and discussed about the future world and issued a joint declaration on august 1941. It is known as the Atlantic Charter. It was agreed among other things that “they respect the right of all people to choose the form of government under which they will live; and they wish to see sovereign rights and self-government restored to those who have been forcefully deprived of them” After the final destruction of the Nazi tyranny, “they hope to see established a peace which will afford to all nations the means of dwelling in safety within

their own boundaries, and which will afford assurance that all men in all the lands may live out their lives in freedom from fear and freedom from wants”.

Another important landmark was the UN declaration in January 1, 1942. The UN declaration clearly mentioned that “complete victory over their enemies was essential to defend life, liberty, independence, religious freedom and to preserve human rights and justice in their own land as well as other land”. This declaration was further supported by USA, USSR AND Britain in their conference on March, 1943 and again by ILO in its Philadelphia declaration. In 1945, at Yalta the great powers again issued a declaration supporting UN declaration of 1942, Jan1. At Sanfrancisco Conference of United Nations in 1945, the charter included provisions of the human rights for the first time. The UNO came into existence on 24th October 1945.

The purpose of the United Nation is to bring all nations of the world together to work for peace and development, based on the principles of justice, human dignity and the well-being of the people. In the preamble of the charter it is stated that it “reaffirm faith in fundamental human rights, in the dignity and worth of human person, in the equal rights of man and women and of nations large and small” The purpose of the UN was declared in article 1 of the Charter. It says “.....promoting and encouraging respect for human rights and for fundamental freedom for all without distinction as to race, sex, language or religion”. In furtherance of this objective of securing human rights the UN General Assembly adopted the Universal Declaration of Human Rights on 10th December 1948. It set up a Global standard for human rights that every state should grant to men and women all over the world. The UDHR was not in the nature of a binding treaty.

The UN therefore took steps for drafting covenants relating to human rights that would create binding obligations: Two separate covenants were created. They are:-

1. International Covenant on Civil and political Rights (ICCPR)
2. International Covenant on Economic, Social and Cultural Rights (ICESCR) ICCPR contains negative rights. These rights restrict or prohibit the state from abridging or taking away certain rights. These rights in here in every human being eg:- right to freedom speech belief, assembly etc. right to personal freedom, right to fair legal procedure etc. ICESCR enumerates positive rights. These rights expect and can take shape only when the state takes

some positive action .They cannot be realized in a day. They can materialize gradually depending on the action taken by the state. Examples are right to social security, to health and education. For conferring's these rights state has to create an infrastructure and a machinery to implement. It requires positive action from the state. In the UN there were considerable differences in viewpoints among the members on the inclusion of positive rights. Therefore the rights were split in two covenants ICCPR and ICESCR. Draft of these two was presented to the General Assembly for discussion in 1954 and was adopted in 1966

The ICCPR entered force on 23rd march 1976. Those states which have ratified it are bound by it. It is noteworthy that our neighbors China, Myanmar and Pakistan are not state parties to the covenant. The ICESR was adopted by the General Assembly on 16th December 1966and came in to force on 3rd January 1976. This covenant contains positive rights requiring positive action of national governments. A number of states have made Reservation and interpretative declarations in respect to this covenant. Belgium has interpreted that it does not imply that the foreigners have the same rights as the nationals. Egypt accepts the covenant to the extent it does not conflict with Islamic Law India understands that the right of self-determination applies only to people under foreign domination and not to sovereign nation states. Other clauses are to be read in the context of the constitution of India. The USA signed the covenant in 1979 but has not ratified it. Therefore it is not bound by it. Successive presidents from Carter onwards regarded these rights as merely desirable social goals and so they cannot be subject of binding treaties.

Rights contained in the ICCPR.

- 1 .Right to life
- 2 .Right of self determination
3. Right to liberty and security.
4. Freedom from torture or cruel, inhuman or degrading nature of Punishment
5. Freedom from slavery and servitude.
6. Right to liberty of movement.
7. Right to fair trial.
8. Freedom of thought conscience and religion

9. Freedom from arbitrary or unlawful interference with privacy, family, home or correspondence
10. Right to religion as a person before the law.
11. Right of peaceful assembly.
12. Right to freedom of association and expression.
13. Right to equality before the law and equal protection of law
14. Right to marry and found a family.
15. Right of detained person to be treated with humanity
16. Freedom from imprisonment for debt
17. Freedom of aliens from expulsion
- 18 Right to privacy.
- 19 The rights of the child
20. Political rights such as right to vote etc.

21. The rights of the minority

Rights contained in the ICESCR

1. Right to self determination
2. Right to work
3. Right to enjoy just and favorable condition of work
4. Right to form trade unions
5. Right to social security.
6. Right to an adequate standard of living including adequate food clothing and housing and to the continues improvement of living conditions
7. Right to enjoyment of the highest attainable standard of physical and mental health.
8. Right to education

9. Right to take part in cultural life.

10. Right to enjoy the benefits of scientific progress and its application.

11. Protection of family; including special assistance for mother and children. Our constitution, likewise divides the rights into two parts. Negative rights which are in the form of prohibition put in part III fundamental rights. The positive rights which require action by the state are called directive principles of state policy and are put in part IV of the constitution and courts are empowered to enforce the rights enshrined in part III, but not those in part IV.

Optional protocols

A Protocol is a treaty which amends, supplements or clarifies a multilateral treaty. It is a supplementary treaty to the covenants. ICCPR has two optional protocols. The first optional protocol created a human rights committee which any individual who lives in any member state may submit a complaint. The committee considers it and gives its ruling. This protocol entered force on 23rd march 1976. The second optional protocol abolishes the death penalty but states are permitted to make reservations. This protocol entered into force on 11th July 1991. The ICESCR has one optional protocol. It allows the states to recognize the jurisdiction of the committee on Economic, Social and Cultural Rights to consider complaints made by individuals. This optional protocol of ICESCR was adopted on 10th December 2008. It has not yet entered in force.

Reservations

A reservation is a statement made by a state party by which it modifies or others the legal effects of the provisions of a treaty in their applications to their state party. When a country eventually ratifies a convention it is permitted to make certain reservations to it. A reservation clearly means a unilateral statement, however phrased or named, made by a state, when signing, ratifying, accepting, approving or acceding to a treaty whereby to purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that state.

These reservations are permitted to enable as many states as possible, to ratify international instruments. Many States have entered the ICCPR subject to reservations. India interprets the right of self-determination as applicable to countries which are under foreign rule. It is

not applicable to India because India is a sovereign democratic state. India's view is that Article 4 and other Articles (regarding limitations to imposed on rights to be imposed on the rights) have to be construed according to the constitution. Similarly equal opportunity in the workplace (Article 7) is to be interpreted in the light of provisions contained in the constitution.

Egypt has accepted the covenant only so long as it does not conflict with Islamic law. Kuwait interprets the equal treatment clauses of article 2 and 3 subject to its constitution. Right to social security would apply only to Kuwait's strikes may not be permitted. Pakistan has made a general reservation to interpret subjects to the provisions of the constitution. The USA signed covenants in 1979 but has refrained from ratifying it. US feels that the rights conferred by this covenant are no rights; they are social goals which state must endeavor to achieve.

Derogations

In addition to the recourse of reservations, countries are also the option of "Derogating" from a treaty at times of emergence. That is "suspending" a provision of the treaty when conditions threaten the life of the nation. Derogations are considered temporary measures, put in place until the state of emergency of the country is lifted. There are five named non-derogable rights in the ICCPR, which country may not suspend under any circumstances even during times of war. These are the right to life, the right not to be subjected to torture and other cruel, inhuman, and degrading treatment, the right not to be enslaved, the prohibition of retroactive criminal legislation, the right to recognition under the law and the right to freedom of thought, conscience and religion. One of the main problems with derogations is that a nation may remain in a state of public emergency for years on end.

The ICCPR contains a "derogation clause" which permits the states parties "in time of public emergency that threatens the life of the nation" to suspend all but seven of the most fundamental rights contained in article 6,7,8 (paragraph 1&2) 11, 15, 16 and 18). The ICESCR also provides for permissible limitations in Article 4 (limitation applicable to all rights) and 5 and 8 of the covenant.

International bill of rights

The International Bill of Human Rights is an informal name given to one General Assembly resolution and two international treaties established by the United Nations. It consists of the Universal Declaration of Human Rights (adopted in 1948), the International Covenant on Civil and Political Rights (1966) with its two Optional Protocols and the International Covenant on Economic, Social and Cultural Rights (1966).

The two covenants entered into force in 1976, after a sufficient number of countries had ratified them. In the beginning, different views were expressed about the form the bill of rights should take. In 1948, General Assembly planned the bill to include UDHR, one Covenant and measures of implementation. The Drafting Committee decided to prepare two documents: one in the form of a declaration, which would set forth general principles or standards of human rights; the other in the form of a convention, which would define specific rights and their limitations. Accordingly, the Committee transmitted to the Commission on Human Rights draft articles of an international declaration and an international convention on human rights.

At its second session, in December 1947, the Commission decided to apply the term "International Bill of Human Rights" to the series of documents in preparation and established three working groups: one on the declaration, one on the convention (which it renamed "covenant") and one on implementation. The Commission revised the draft declaration at its third session, in May/June 1948, taking into consideration comments received from Governments. It did not have time, however, to consider the covenant or the question of implementation. The declaration was therefore submitted through the United Nations Economic and Social Council to the General Assembly, meeting in Paris.

The General Assembly adopted the Universal Declaration of Human Rights (UDHR) on 10th December 1948, which included the civil, political, economic, social and cultural rights. Subsequently, in 1966 the Assembly adopted two covenants, that are ICCPR and ICESER. Later Assembly passed optional protocols to these two Covenants. The UDHR and the two Covenants and the Optional Protocol are popularly known as the International Bill of Rights.

UNIVERSAL DECLARATION OF HUMAN RIGHTS: A BRIEF ANALYSIS

The Universal Declaration of Human Rights, which was adopted by the UN General Assembly on 10 December 1948, was the result of the experience of the Second World War. With the end of that war, and the creation of the United Nations, the international community vowed never again to allow atrocities like those of that conflict happen again. World leaders decided to complement the UN Charter with a road map to guarantee the rights of every individual everywhere. The Universal Declaration of Human Rights (Universal Declaration) is an international document that states basic rights and fundamental freedoms to which all human beings are entitled.

The Universal Declaration begins by recognising that ‘the inherent dignity of all members of the human family is the foundation of freedom, justice and peace in the world’. It declares that human rights are universal to be enjoyed by all people, no matter who they are or where they live. The Universal Declaration includes civil and political rights, like the right to life, liberty, free speech and privacy. It also includes economic, social and cultural rights, like the right to social security, health and education.

Preamble

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

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

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

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

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal

rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

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

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

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

Article.1.

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

Article.2.

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

Article.3.

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

Article.4.

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

Article.5.

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

Article.6.

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

Article.7.

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

Article.8.

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

Article 9.

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

Article 10.

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

Article 11.

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

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time

when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12.

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

Article 13.

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

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

Article 14.

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

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

Article 15.

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16.

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17.

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

Article 18.

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

Article 19.

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

Article 20.

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

Article 21.

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right of equal access to public service in his country.
- (3) The will of the people shall be the basis of the authority of government; this 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.

The Universal Declaration is not a treaty, so it does not directly create legal obligations for countries. However, it is an expression of the fundamental values which are shared by all members of the international community. And it has had a profound influence on the development of international human rights law. Some argue that because countries have consistently invoked the Declaration for more than sixty years, it has become binding as a part of customary international law.

Significance of the declaration-A Brief analysis

The Universal Declaration has received praise from a number of notable people. Charles Malik, Lebanese philosopher and diplomat, called it "an international document of the first order of importance," while Eleanor Roosevelt, first chairwoman of the Commission on Human Rights (CHR) that drafted the Declaration, stated that it "may well become the international Magna Carta of all men everywhere." 10 December 1948. In a speech on 5 October 1995, Pope John Paul II called the UDHR "one of the highest expressions of the human conscience of our time".

And in a statement on 10 December 2003 on behalf of the European Union, Marcello Spatafora said that "it placed human rights at the center of the framework of principles and obligations shaping relations within the international community." John P. Humphrey observes: "No other act of the United Nations has had the same impact on the thinking of our times, the best aspirations of which it incorporates and proclaims. It may well be that it will live in history chiefly as a statement of great moral principle. As such it influence in deep and more lasting than of any political document or legal instrument".

UDHR is one of the largest translated documents in the world

1. The Declaration of human Right was the first of its kind in the history of International organization.
2. The declaration became one of the most remarkable developments in the law of nations
3. The declaration acquired a political and moral authority.

4. The declaration has exercised profound influence on the constitution of new nations and regional agreements
5. The Indian constitution was also greatly influenced by the UDHR

The UN Commission on human rights

The UN commission on human rights was established in 1946 and is a subsidiary body of the Economic and Social Council (ECOSOC). At present it consists of 53 member governments elected by ECOSOC for a three-year term. The commission deals with the area of human rights more directly than any other charter-based body. Its jurisdiction of human rights protection was expanded by ECOSOC in the 1970's to extend to the entire world. Since its incorporation, the commission has influenced international human rights standards.

It made contributions to the Universal Declaration of Human Rights in 1948 as well as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. It has further developed norms and standards relating to civil and political rights, the right to development, the rights of minorities and indigenous people and economic, social and cultural rights.

The commission also monitors the implementation of the standards outlined. It has the authority to use any number of permanent or special procedures while examining a specific human rights issue. The role of UN specialized agencies in protecting human rights. The United Nations has its subsidiary organ under the ECOSOC, a few specialized agencies which are entrusted with the formulation and observation of economic, social and cultural rights and the creation of the conditions needed for their enjoyment.

These specialized agencies are:- UNESCO, United Nations Educational, Scientific and Cultural Organization was recognized as an agency of the United Nations by virtue of an agreement of December 14, 1946. Its constitution was initially drafted by the United Kingdom and France and later adopted by 43 members of the UN.

Functions:-

Article 1 of the constitution of UNESCO lays down the functions of the organization. It states that UNESCO shall contribute to peace and security by promoting collaboration among the nations through education science and culture in order to universal respect for justice for the rule of law and for the human rights and fundamental freedoms which are affirmed by the people of the world, without distinction of race, sex, language or religion by the charter of the United Nations. It has mainly three functions

- 1 .Educational functions
2. Research and Training in basic sciences
3. Social and cultural development.

UNESCO has played an active part in disseminating knowledge about the Universal Declaration of Human Rights through exhibitions and other methods. ILO The international Labour Organization was formed on April 11, 1919. It was dedicated to improving living and working conditions of workers throughout the world. During the inter war period it conducted thousands of studies, held hundreds of conferences and adopted conventions for reduction of working hours, holidays with pay, sickness and old age insurance, freedom of association, forbidding night work for women and their employment in mines. In 1946 ILO became the first specialized agency of the United Nations. Functions:- The major functions of the ILO are:-

1. Raising the standard of the workers.
2. Prevention of unemployment.
3. Provision for social security.
4. Improvement in the working conditions of the merchant sailors.
5. Right of Organization.
6. Safety regulation.
7. women welfare
8. welfare of children
9. Technical assistance

10. Improvement of the working condition of the Agricultural labour,
11. Promotion of the co-operatives
12. Research and education.

WHO

An international health conference held in June 1946, set up WHO which came in to existence in September 1946. The basic purpose of WHO is the attainment of all peoples of the world the highest possible level of health.

WHO defined health as “a state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity”. Health is the fundamental right of every human being and is considered necessary for the attainment of peace and security. Geneva is the headquarters of the WHO. Functions:- The followings are the main functions of the WHO.

1. Preventing the areas of disease and confining it in the boundaries of the state.
2. Curing the disease after it has spread.
3. Preventing the diseases,
4. Establishment of an environment promoting good health.

FAO

The Food and Agricultural Organization was formed in 1945 to promote international co-operation in the economic and social field. It tries to find out means for developing and maintaining adequate food supply by encouraging use of modern tools and methods, conserving existing food supplies, searching new sources etc.

Functions:-

It has international functions, technical functions , combating various animal and plant diseases, increase of production , check on children’s diseases, educational informational activities.

UNICEF

The United Nations International Children's Emergency Fund (UNICEF) was formed in December 1956.

Functions:-

The fund was placed a ferment footing in 1953. Its activities were also expanded to include emergency aid in areas affected by flood, droughts, wars and other disasters. The UNICEF is a trustee between the donor and the beneficiaries. It gives aids to the needy members without any discrimination. It provides supplementary meals for millions of children.

Further, the Universal Declaration has given rise to a range of other international agreements which are legally binding on the countries that ratify them. These include

- 1) International covenant on civil and political rights (ICCPR)
- 2) International covenant on economic, social and cultural rights (ICESCR)

The *International Covenant on Civil and Political Rights* (ICCPR) was adopted by the United Nations General Assembly on 16 December 1966. The ICCPR was to take effect ten years later in all nations that had become state parties. A sufficient number of states had become parties so the ICCPR took effect as planned in 1976.

- 3) The United States Senate ratified the ICCPR in June 1992. The Senate took exceptions to this treaty. Amongst those exceptions are the provision that the human rights recognized by this treaty shall not be enforceable in courts in the United States. Thus the United States Senate denied Americans the legal power to secure and enforce the human rights recognized by this international covenant.
- 4) CIRP presents selected articles. The full unabridged text is available elsewhere on the World Wide Web.
- 5) The ICCPR contains important articles which appear to protect the child from involuntary circumcision. Article 24 provides a right of every child to special protection. This is to be applied without regard to race, color, sex, religion, social origin or birth. The right is universal and protects every child without exception. Article 9 provides a right of security of person. Article 7 provides a right to freedom from torture, and cruel or degrading treatment. Article 26 provides a right to the equal protection of the law for all persons. Read together it appears that a child would have a right to special protection of the security of his

body, freedom from torture, and cruel and degrading treatment. The special protection of the law is to be applied universally for all persons. This would seem to mean that the child is entitled to protection from circumcision by law.

- 6) Article 18 provides that everyone has a right to adopt a religion. This means that children may adopt a different religion from their parents. A circumcision may interfere with this right of free choice of religion.
- 7) These articles may be enforceable in court in some nations other than the United States.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted on December 16, 1966 by the UN General Assembly and entered into force ten years later. The ICESCR, together with the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), constitute the International Bill of Human Rights. The ICESCR defines a broad set of rights related to the economic, social, and cultural elements of life that states must provide to their citizens. Specific rights relate to:

- Housing
- Education
- Labor
- Environment
- Health
- Cultural rights (including language and religion)
- Self-determination

The ICESCR also requires state parties to submit reports on their implementation of the Covenant. Initially, the Economic and Social Council (ECOSOC) of the UN was responsible for the review of state parties' reports.

However, in 1985, the ECOSOC established the Committee on Economic, Social, and Cultural Rights ("the Committee") to assume all monitoring functions of the implementation of the ICESCR. The Committee is a group of 18 independent experts on economic, social, and cultural rights who meet twice a year in Geneva.

The Committee provides guidance for and also monitors each state party's compliance with the ICESCR by drafting general comments on the scope of treaty obligations and conducting reviews of state parties' progress in implementing the treaty. In accordance with the Optional Protocol to the ICESCR, the Committee may also accept individual complaints and communication alleging a state party's violation of rights under the ICESCR.

However, since China is not a party to the Optional Protocol, the Committee may not accept individual complaints related to China.

To comply with the review process, each state party must submit a report to the Committee every five years on steps taken in implementing the Convention, but, in practice, reports are often combined and reviewed less frequently.

To prepare for a state party's review, the Committee designates a "Country Rapporteur," who undertakes a detailed review of the state party report and further facilitates and coordinates the entire review process, including the preparation of all associated documents. One such document is the "list of issues and questions," prepared by the Country Rapporteur and a pre-sessional working group of four other experts that is convened six months prior to the full Committee's review. The list of issues and questions highlights the Committee's major areas of concern and additional information the state party is strongly urged to provide prior to the review. After considering all the materials, the Committee conducts an interactive dialogue with representatives of the state party.

Following the dialogue, the Committee adopts concluding observations which include final remarks and recommendations. The state party is welcome to submit comments to the Committee regarding the concluding observations, which are then made public on the Committee's website.

Civil society members may provide input to the Committee at various points by submitting reports, making oral statements, and participating in briefings for Committee members. The Committee also encourages state parties to consult and incorporate information from civil society members in their national reports and follow-up procedures, and requires that the concluding observations are widely disseminated following the review.

In addition, the Committee also considers information from civil society and other stakeholders, such as UN agencies and national human rights institutes.

Other binding agreements which expand on the rights contained in the Universal Declaration include:

The Convention on the Elimination of All Forms of Racial Discrimination 1965

The Convention on the Elimination of All Forms of Discrimination against Women 1979

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984

The Convention on the Rights of the Child 1989

The Convention on the Rights of Persons with Disabilities 2006

UNIT 2

APPROCHES TO THE STUDY OF HUMAN RIGHTS

Approaches are the method for analyzing the concept. Approaches are the analyses of any idea or social phenomena by the use of a particular theory or intellectual principles. Historical background, socio- cultural conditions, social and economic system, ideology, government and its relations to the people all these considerably influenced in the origin and development of the human rights. There are mainly three approaches to the study of human rights. They are

1. Western or Liberal approach.
2. Marxian or socialist approach.
3. Third world approach.

Western or liberal approach

The Western approach is also known as the liberal democratic approach. It is based on the idea of liberalism which defends the principles of competitive individualism, private property, and market ethics. It cherishes the individual liberty, development and human progress through the functioning of the above principles.

The liberal approach is based on the natural law and natural rights view of human rights. The advocates of liberal approach agree with the Locke's understanding on the natural rights of life, liberty and property. They argue the duty of the government is just to maintain

law and order so that everybody will get a chance to enjoy their rights. Liberal approach prefers a minimum or night watchman state.

Thomas Hobbes, John Locke, J.S, Mill were the ardent advocates of the liberal approach. The main principles of the liberal approach are the personal liberty, private property, open market, open competition; It laid emphasis for the creation of a good society and state based on personal liberty.

Characteristics

1. It gave more importance to the individual liberty. It also laid stress on the Civil and Political Rights.
2. The civil rights are made by the state and implemented through the laws made by the state.
3. Those who are not ready to obey these laws shall be punished,
4. Rights are person centered and useful for creating a welfare state.
5. It believes in an economic system where there is free trade commerce and competition.
6. It states that rights are static not changes.
7. The liberal approach is against the important human right principles like economic equality and social justice.
8. Every individual has the natural and inalienable rights

Marxian or socialist approach

The Marxist approach of the human rights can be seen in the writings of Karl Marx, the Engels and Lenin. The Marxian approach gives more importance to the social rights than the individual rights. It states that the personality development is possible only through the society. Therefore more importance should be given to the social rights rather than the individual rights. Therefore the duty of the state is to guarantee the civil and economic rights to its citizens.

According to Marx personal rights and personal liberty makes a man more selfish and exclude him from the society. Therefore social rights should be given priority. The developing and underdeveloped nations believe in the Marxian approach to the human

rights. According to Marx natural rights are not seen in history therefore they are the creation of the human mind.

The natural right theory is made for the protection of the interest of the bourgeoisie. Marx state that man is a social animal and therefore they should utilize their abilities qualities and work for the society. To achieve the social good the people should do their duties and responsibility to the society.

At the same time it is the duty of the state to provide social welfare and development to the people. Marx maintained that inequality existing in the society due to the existence of the classes. In a capitalist society, there is no equal enjoyment of rights.

The capitalist will enjoy all the rights and majority working class is deprived of the rights and they are exploited. Therefore only in a classless society the people can enjoy the rights in its full meaning. The rights can be exist and succeed in a society where there is social economic liberty and equality. The marginalized section can prevent the exploitation and develop their condition through creation of new rights in the society.

Third world approach

The approach of the Third World countries on human rights was not very different from the western concept. But since most of the Afro-Asian, Latin American countries were under colonial rule there were human rights violations in that part of the world.

The nationalist movements in all these countries were for the protection of their basic rights. Among the Third World countries, India was the pioneer in the formulation of the concept of the human rights. In India a large section of people such as Harijans, Girijans and landless labours have not only suffered economic exploitation but have been subjected to all sorts of exploitation. However with the independence of the country, the framers of the constitution formulated programmes for the welfare of those who were neglected.

The Third World countries never agree with the universality of the human rights. They believe that the universality of the human right is the impositions of the western countries .The third world countries have their own problems, values and culture. Therefore they give more importance to the socio- economic equality and development. For this purpose, they believe the individual liberty may be limited.

The diverse socio-cultural matrix of developing countries does not permit them to approach the promotion and protection of human rights in a through and unified way. The developing countries are faced with tremendous problems of state building, economic reconstruction and regional, sub regional and ethnic conflicts .

These conflicts are making threats to the nation. Even with the third world there remains a sharp disagreement on the exact scope and nature of the basic human rights and on the treatment of the substantive human rights and the methodology of protecting the human rights. Human rights are illusory to the large sections of populations of the third world countries.

In the process of pursuing socio-economic goals the developing countries do not show the desired respect to civil and political rights. Human Rights violation is a common feature in most of the third world countries. The criminalization of politics and lack of accountability has become common in these countries. The brutalization of state power is reflected in the form of state repression. Judiciary, press, human rights activists and non- governmental organization etc. gives some relief to the people. There is an extremely close nexus between human rights and peace, freedom national self- determination economic cultural and technological development.

Classification of human rights

Human rights are generally classified into first, second and third generation rights. Human rights have evolved and developed as a reaction to oppressive institutions, policies and practices of the rulers. These are the first generation rights.

The second and third generation rights are concerned to be responses to the economic and political oppression that was the by-product of colonialism and industrial capitalism. Karel Vasek, a former director of Human Rights and Peace Division of the UNESCO was the major proponent of the classification of rights in to three generations. He stated that civil and political rights constitute the first generation rights. Social, economic and cultural rights constitute the second generation rights .

The group rights, such as the right to development and environment al rights formed the third generation of rights. The first generation rights i.e. civil and political rights provide for certain basic rights guarantees for an individual in relation to state; they involve the

inviolability of the individual against any invasive action by the state. These are distinct from second generation rights, which generally require action by the state to provide certain basic needs or amenities to the individual.

In other words civil and political rights demand freedom from coercive action by the state against an individual; while economic, social and cultural rights necessitate certain actions and provisions by the state in order for it to fulfill its obligations. First generation rights are included in the Articles 3 to 21 of the UDHR while Article 22 to 27 deal with second generation rights. Demands have come from some developing countries to focus on some group rights, as it is claimed that their societies are less individualistic than western countries. Consequently third generation rights have been developed to provide for the relation between individuals, the collectivity and the state.

Third generation Rights include: the right to self-determination, right to development, right to participate in and benefit from the common heritage of mankind ;and the right to a healthy environment ;amongst many other collective rights. Civil and political rights cannot be enjoyed in the absence of basic social economic and cultural rights .The interdependence of the rights must be acknowledged and provided for so as to ensure a better life. In short we can say that first generation rights are related to liberty; second generation rights to equality; and third generation rights are related to fraternity.

Classification

I .Civil and Political Rights

Right to life and liberty Freedom of Speech and Expression etc.

II. Economic social and cultural rights

Right to education Right to work Right to food and housing etc.

III. Group or Collective rights

Right to development Environment related rights Solidarity rights etc. First generation rights are mainly related with protection rather than realization. Therefore they are known as 'negative rights'. Whereas second generation rights are concerned with realization of economic social and cultural rights ensure by the government for the people. So it is

positive rights. It is the duty of the government to ensure these rights to people. In order to ensure these rights state is responsible to provide social provision or services.

So that all human beings can enjoy these rights which is related to adequate wage, food, clothing, health care, education etc. As per the view of S.W. Pinto the 'third generation' or 'solidarity rights' only make sense if defined as a collective level. He further says these rights include the rights to economic development, environmental rights, right to peace, humanitarian rights etc.

The World Conference on Human Rights of 1993, proclaimed the Vienna Declaration and Programme of Action. That declaration asserted that 'all human rights are universal, indivisible, interdependent, and inter-related. This declaration also stated that human rights and fundamental freedom would have to be respected and promoted by all states irrespective of their political, economic and cultural systems.

The International Covenant on Civil and Political Right-

The first generation Human rights The UN prepared International Covenant on Civil and Political Right of 1966 contains a lot of civil and political rights. The various rights contained in the covenant on the civil and political rights are not new rights. These are the rights that had; developed in course of a long period of time since the time of Greek city states and concretized in the form of Magna Carta of 1215, the Bill of Rights of the American Declaration of Independence and the French Declaration of the rights of man and of the citizen.

These rights were also included in the European Convention on Human Rights and in Inter-American and African instruments. It also manifested in the constitutions of many countries.

The International Covenant on Economic Social and Cultural Rights-

The second Generation Human Rights

The international covenant on economic social and cultural rights is signed in 1966. As the main source of the origin of the civil and political rights is considered to be the American and French revolution so economic and social rights are considered to be originated in the Russian Revolution of 1917 and in the Paris peace conference of 1919.

The significance of the Paris peace conference was the establishment of the International Labour Organization which laid emphasis upon the concept of social justice by proclaiming that “ peace can be established only if it is based upon social justice.”, and that “the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries”.

The former American President Roosevelt was the first man who put an hope for an instrument dealing with the economic and social rights. In his message to congress in 1944, President Roosevelt referred to the four essential freedoms, i.e. freedom of speech and expression, freedom of any person to worship in his own way, freedom from want and freedom from fear to which he looked forward as the foundation of future world.’ Freedom from ‘want’ it may be argued, formed the basis on which the concept of economic and social rights were formulated. He stated that “people who are hungry and out of job are the stuff of which dictatorships are made”. In his opinion, true individual freedom cannot exist without economic security and independence.

Collective Rights –

Third Generation Human Rights

Louis B Sohn has argued that individuals are also members of such units groups or communities as a family, religious community. social club trade union , professional association, racial group, people ,nation and state.

Therefore that international law not only recognizes inalienable rights of individuals but also recognize certain collective rights exercised jointly by individuals who are grouped in to larger communities including people and nation Karek Vasak says the collective rights can be realized only “through the concerted efforts of all the actors on the social scene; the individual, the state, public and private bodies and the international community”. The effective exercise of collective rights is precondition to the exercise of other rights political or economies or both. The most cherished belonging to the third generation rights are the right to self- determination, the right to development and right to peace.

UNIT 3

INDIAN CONSTITUTION AND HUMAN RIGHTS

The framers of the Indian Constitution were very much influenced by the concept of human rights contained in the Universal Declaration of Human Rights and guaranteed many of those rights in our constitution part III and part IV, though separate, carry the common theme of human rights. When Human rights are guaranteed by a written constitution they are known as fundamental rights. Fundamental rights are the modern name for what has been traditionally known as natural rights. They are fundamental because an ordinary legal right is enforced by the ordinary law of the land and may be changed by the legislature of the country, but the fundamental rights cannot be altered in the same way. It can be changed only by amending the constitution itself. Fundamental rights are enforceable against the state. Pundit Jawaharlal Nehru has said that "a fundamental right should be look upon, not from the point of view of any particular difficulty of the movement but has something that you want to make permanent in the constitution".

Fundamental rights are dealt in part IIIrd of the constitution, while directive principles of state policy are in part IVth in the constitution. While civil and political rights have been incorporated in the part IIIrd of the constitution, economic social and cultural rights have been incorporated in part IVth of the constitution. They are divided on the ground of enforceability of the former and non-enforceability of the latter in the quotes. Otherwise, the rights included in both are equally important. Neither of these parts is superior or inferior to

the other. They are complimentary of each other because together they constitute the human rights reign, including respectively the civil and political rights and the social and economic rights. Without one, the rights in the other are not only incomplete, but also unattainable; together they have been called the conscience of the constitution.

In India humanitarian ideas become popular from the beginning of the nineteenth century .The abolition of sati (1829) ,abolition of slavery(1843),and abolition of female infanticide (1870), the formation of torture commission in the Madras presidency (1855), introduction of widow remarriage by legislation (1856), and prohibition of child marriage (1929),were restrains imposed tradition and the beginning of humanization legislation. The enactment of Indian Penal Code in 1860 and a series of prison and jail reforms by legislation and acts were based on reformist's tendencies. For preserving the rights of female children, the age of consent act of 1891 and the Abolition of Child Marriage act of 1929 were passed. In addition the Madras Government passed the Madras Children's Act and the Madras Elementary Education act in 1920 to safeguard children and provide better education at primary level. This humanitarian legislation prepared the ground for an awareness of human rights during war years.

The work for drafting a constitution for India was done during the time of the Universal Declaration of Human Rights. With the inspiration from the UDHR the framers of the constitution incorporated a list of rights, what is known as fundamental rights in the Indian constitution. We adopted the Patten of American Bill of Rights. The fundamental rights, that are guaranteed under the constitution have a close similarity with those in the U. N .Declaration of human Rights in form and content in Article 14,15, 16,19,20,21,23, 25, 29,31 and 32.

Preamble of the Constitution

The preamble of the constitution also explains the nature of Indian constitution and that states it upholds the dignity and rights of the people. The preamble reads like this :-

We, the people of India, having solemnly resolved to constitute India into a sovereign, socialist, secular, democratic republic and to secure its all citizens: Justice, Social economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all Fraternity, assuring the dignity of

individual and the unity and integrity of the nation. In our Constituent Assembly this twenty sixth day of November, 1949, do hereby adopt, enact and to give to ourselves this constitution. In the preamble we can see it declares supremacy and sovereignty of the people and establishes a democratic, secular, socialistic republic.

The constitution ensures justice for all .It provides liberty, equality and protecting the dignity of the people. Equality of status and opportunity is secured by abolishing all kinds of discrimination. The preamble also promises that all individuals have dignity, which is an important human right, and there is no high or low individual. It promises fraternity, which is very necessary for a peaceful prosperous social life. Thus the preamble itself is the basic root of all rights and justice.

Civil and political rights

(Fundamental Rights)

The rights of the people are enumerated in the part III and part IV of the constitution. Part III mentions the civil and political rights whereas the part IV mentions the social economic and cultural rights. Part III is known as the fundamental rights which are justiciable rights. The part IV is known as the Directive Principles of State Policy contains the non-justiciable rights.

In other parts of the constitution also we can see the rights of the people. For example article 300A is for the right to property which is not a fundamental right now. Article 12- 35 deals with Fundamental right .Fundamental rights were finalized by a committee of the constituent assembly headed by Sardar Vallabhai Patel. These rights have not been defined by the constitution. They are described as fundamental for they are superior to ordinary laws; they can be altered only through constitutional amendment.

Over all they are vital for the full development of the human personality, promoting an individual's dignity and welfare. These rights unlike other justiciable rights, are protected by the constitutional remedy by way of an application direct to the supreme court under Article 32 which itself is included in the part III. The fundamental rights are not absolute; as such they are subjected to certain restrictions. While some of these restrictions are spelt out by the constitution .Others may be imposed by the government. However the

reasonableness of such restrictions is to be decided upon by the courts. Some of these rights are not available to the members of the armed forces. Some of the rights are available to all in the country, while some are available only to Indian citizens. Articles 15, 16, 19, 29, 30 are fixed only for citizens and the rest of the provisions of the Part III are applicable to all persons residing within the territory of India for the time being and subject to its jurisdiction,

There are six categories of fundamental rights. They are;-

1. Right to equality-Article 14 to 18
 2. Right to freedom –article 19-22
 3. Right against exploitation Article 23&24
 4. Right to religion Article 25-28
 5. Cultural and educational rights Article 29,30
 6. Right to constitutional remedies Article 32 Article 19 clause 1 sub clause (f) and article 31 has been taken away from the part III of the constitution by the 44th amendment act of 1978.
1. Right to equality
- a). Equality before law and equal protection of law. (Art .14) b) Prohibition of discrimination on grounds of religion caste etc. (Art. 15) c) Equality of opportunity to employment. (Art.16) d) Abolition of untouchability. (Art. 17) e) Abolition of titles (Art. 18)
2. Right to freedom (Art.19)
- a) Freedom of speech and expression b) Freedom to assemble peacefully c) Freedom to form association and union d) Freedom to move anywhere in India e) Freedom to settle in any part of the country g) Freedom to do any job or profession Protection in respect of conviction for offences (Art.20) Right to life and personal liberty, Art 21 (21A is related to the right to education to the children at the age group of 6-14. It was included through the 86th amendment act of 2002. It implemented through the act of 2009; the right of children for free and compulsory education). d) Protection against arrest and detention in certain cases (Art.22)

3. Right against exploitation a) Prohibition of Traffic in human beings and forced labour. (Art23) b) Prohibition of employment of children in hazardous employment. (Art24)

4. Right to freedom of religion

1. Freedom of conscience and the right to profess practice and propagate religion (Art.25)

2. Freedom to manage religious affairs (Art. 26)

3. Freedom of payment of taxes for promotion of any particular religion. (Art.27)

4. Freedom as to attendance at religious instruction in certain educational institutions. (Art 28)

5. Cultural and educational rights

1. Protection of language script or culture of minorities (Art.29)

2. Right of minorities to establish and administer educational institutions.(Art30)

6. Right to constitutional remedies (Art32)

This is one of the most important right in the constitution. Without this right the other right may remain in words without proper enforcement. The right to constitutional remedies helps us to enjoy the fundamental rights and can move to the court for the enforcement of the rights through the writ petitions. There are mainly five kinds of writs. They are:-

1. Writ of Habeas Corpus

2. Mandamus

3. Certiorari

4. Quo-warranto

5. Prohibition

The scope of fundamental rights is wide enough to encompass the new generation human rights. The courts while interpreting the rights have introduced new rights into the category. For example, the court stated that right to life means right to live with human dignity not mere animal existence. So it demands clean environment, food, water, education etc. However the rights conferred by the constitution are not absolute. IN the interest of the

unity and integrity of the nation and in order to secure public good these rights can be reasonably restricted. The state can impose restrictions over the enjoyment of the fundamental rights in the interest of the sovereignty, integrity and security of the state, public order, morality, decency, health, friendly relation to foreign states etc. More over an emergency proclamation under Article 352 will curtail the individual liberties provided under Article 19. The provision for Preventive Detention is also a challenge to human rights protection under fundamental rights.

Socio, economic and cultural rights-(directive principles of state policy)

The Directive Principles of State Policy are ideals, directions and rights aimed at establishing an economic and social democracy which is pledged in the preamble of the constitution. The idea of DPSP was borrowed from the Irish constitution. The importance of the DPSP is evident in the words of Dr.B.R. Ambedkar who stated that DPSP as the manifesto of aims and aspirations. DPSP enshrined in the part IV of the constitution. It sets out the ideals and objectives related with social economic and cultural upliftment. The Directive Principles of State Policy enshrines socio-economic rights which are part of the human rights. These rights can be classified in to three categories

1. Directives in the nature of ideals of the state.
2. Directives shaping the policy of the state.
- 3.Non-justiciable rights of the citizens.
 - 1) The state shall strive to promote the welfare of the people by securing a social order permeated by social ,economic and political justice Art38(1): to minimize inequality in income ,status facilities and opportunities amongst individual and groups Art38(2)
 2. The state shall endeavor to secure just and human conditions of work: a living wage, a decent standard of living and social and cultural opportunities for all workers(Art43).
 - 3.The state shall endeavor to raise the level of nutrition and standard of living and to improve public health. (Art 47)
 4. The state shall direct its policy towards securing equitable distribution of the material resource of the community and prevention of concentration of wealth and means production. Art(39 (b),(c).

5. The state shall endeavor to promote international peace and co-operation (Art51)
- 2.Directive shaping the policy of the state
 1. To establish economic democracy and justice by securing certain economic rights
 2. To secure a Uniform Civil Code for the citizens. (Art.44)
 3. To provide free and compulsory primary education (Art.45) (Now this concept is a fundamental right and included in the Article 21A).
 4. To prohibit consumption of liquor and intoxicating drugs except for medical purposes. (Art47)
 5. To develop cottage industries (Art.43)
 6. To organize agriculture and animal husbandry on modern lines (Art48)
 7. To prevent slaughter of useful cattle's i.e. cows, calves and other milch and draught cattle.(Art48)
 8. To organize village panchayats as units of self-governments (Art40)
 9. To Promote educational and economic interest of weaker sections and to protect them from social jusice.(Art.46)
 10. To protect and improve the environment and safeguard forests and wild life Art 48A)
 11. To protect and maintain places of historic or artistic importance.(Art49)
 - 12 .To separate the Judiciary from the executive.(Art50) ,

Non-justiciable rights of the citizens

1. Right to adequate means of livelihood. Art 39(a)
2. Right of both sexes to equal pay for equal work (Art 39(d)
3. Right against economist exploitation (39 (e),(f)
4. Right of children and the young to be protected against exploitation and to opportunities for healthy development, consonant with freedom and dignity. Art 39(f)
5. Right to equal opportunity for justice and free legal aid Art 39A
6. Right to work (Art41)

7 Right of public assistance in cases of unemployment, old age, sickness and other cases of undeserved want (Art41)

8. Right to a living wage and conditions of ensuring decent standard of life for workers (Art 43)

9. Right of workers to participate management of industries (Art 43A)

10. Right to children to free and compulsory education Art 45. Articles 39A, 44A, were included in the DPSP by 43rd amendment act of the constitution.

By the 44th amendment, the Janatha Government introduced section 2 in Article 38 which speaks for minimizing inequality in income and status not only among individuals but also among groups. The role of DPSP in promoting the human rights can be identified by analyzing the impotent initiatives taken by the state, based on the DPSP. For example; Zemindari abolition, Community Development Programmes, Implementation of Panchayat Raj, Agricultural subsidies, Land Reforms Reservation of seats, Public Distribution Schemes, Commission for minority, SC,ST, women and Children, Tribal welfare policies.

The part IV of the Indian constitution related to the Directive Principles of State Policy, which is much more exhaustive than the Universal Declaration. In short we can say that the India fully followed International Bill on Human Rights and Indian constitution protects such rights, according to the philosophy of Universal Declaration. India constituted the National commission for Human Rights for the redresses of grievances of human rights violations. The commission's role is appreciated by the peoples of India and other human rights organizations working abroad.

Acts on human rights right to information act

It was one of the most important legislation passed by the Indian parliament in 2005. It is considered important to the people's participation and empowerment in democracy. Today right to information is a basic right of the people. The Scandinavian countries are perhaps the early ones to ensure free flow of information to the people through statutory provisions. The Right to Information Act (RTI) is an Act of the Parliament of India "to provide for setting out the practical regime of right to information for citizens" and replaces the erstwhile Freedom of Information Act, 2002.

The Act applies to all States and Union Territories of India except the State of Jammu and Kashmir. Jammu and Kashmir has its own act called Jammu & Kashmir Right to Information Act, 2009. Under the provisions of the Act, any citizen may request information from a "public authority" (a body of Government or "instrumentality of State") which is required to reply expeditiously or within thirty days. The Act also requires every public authority to computerize their records for wide dissemination and to pro-actively publish certain categories of information so that the citizens need minimum recourse to request for information formally. This law was passed by Parliament on 15 June 2005 and came fully into force on 13 October 2005. Information disclosure in India was hitherto restricted by the Official Secrets Act 1923 and various other special laws, which the new RTI Act relaxes.

The Act has increased transparency and greater accountability in the functioning of the government and hence played a significant role in exposing and reducing corruption to some extent. It is claimed to promote a "citizen- centric approach to development" and to increase the efficiency of public welfare schemes run by the government.

Process Under the Act, all authorities covered must appoint their Public Information Officer (PIO). Any person may submit a request to the PIO for information in writing. It is the PIO's obligation to provide information to citizens of India who request information under the Act. If the request pertains to another public authority (in whole or part), it is the PIO's responsibility to transfer/forward the concerned portions of the request to a PIO of the other within 5 working days. In addition, every public authority is required to designate Assistant Public Information Officers (APIOs) to receive RTI requests and appeals for forwarding to the PIOs of their public authority. The applicant is not required to disclose any information or reasons other than his name and contact particulars to seek the information.

The Central Information Commission (CIC) acts upon complaints from those individuals who have not been able to submit information requests to a Central Public Information Officer or State Public Information Officer due to either the officer not having been appointed, or because the respective Central Assistant Public Information Officer or State Assistant Public Information Officer refused to receive the application for information. The Act specifies time limits for replying to the request. If the request has been made to the PIO,

the reply is to be given within 30 days of receipt. If the request has been made to an APIO, the reply is to be given within 35 days of receipt. If the PIO transfers the request to another public authority (better concerned with the information requested), the time allowed to reply is 30 days but computed from the day after it is received by the PIO of the transferee authority.

Information concerning corruption and Human Rights violations by scheduled Security agencies (those listed in the Second Schedule to the Act) is to be provided within 45 days but with the prior approval of the Central Information Commission. However, if life or liberty of any person is involved, the PIO is expected to reply within 48 hours. Since the information is to be paid for, the reply of the PIO is necessarily limited to either denying the request (in whole or part) and/or providing a computation of "further fees". The time between the reply of the PIO and the time taken to deposit the further fees for information is excluded from the time allowed. If information is not provided within this period, it is treated as deemed refusal. Refusal with or without reasons may be ground for appeal or complaint.

Further, information not provided in the times prescribed is to be provided free of charge. Exclusions Central Intelligence and Security agencies specified in the Second Schedule like IB, Directorate General of Income tax(Investigation), RAW, Central Bureau of Investigation (CBI), Directorate of Revenue Intelligence, Central Economic Intelligence Bureau, Directorate of Enforcement, Narcotics Control Bureau, Aviation Research Centre, Special Frontier Force, BSF, CRPF, ITBP, CISF, NSG, Assam Rifles, Special Service Bureau, Special Branch (CID), Andaman and Nicobar, The Crime Branch-CID-CB, Dadra and Nagar Haveli and Special Branch, Lakshadweep Police. Agencies specified by the State Governments through a Notification will also be excluded. The exclusion, however, is not absolute and these organizations have an obligation to provide information pertaining to allegations of corruption and human rights violations. Further, information relating to allegations of human rights violation could be given but only with the approval of the Central or State Information Commission.

Information Exclusions RTI provides for several exemptions based on several reasons to disable the public to know about the government decisions. The act exempts the following

matters from the list of list of information which the citizens can seek for information. They are:-

1. The information, disclosure of which would prejudicially affect the sovereignty and integrity of India, security, strategic, scientific or economic interest of the state and relation with foreign states.
2. Information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may cause a contempt of court.
3. Information including commercial confidence, trade secrets or intellectual property, the disclosure of which will affect the competitive position of the third party, unless in the interest of the larger public
4. Information the disclosure of which would causes a breach of the privileges of parliament or State legislatures.
5. Information received in confidence from the foreign governments
6. Information which would endanger the life or physical safety of any person or identity the source of information or assistance given in confidence of law enforcement or security purpose.
7. Information which would impede the process of investigation or apprehension or persecution of offenders.
8. Cabinet papers including deliberations of the Council of Ministers, secretaries and other officers.
9. Information relates to personal interest which had no relationship to any public activity fund.
10. Information available to a person in his fiduciary relationship unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information and so on.

UNIT 4

AGENCIES FOR PROTECTING HUMAN RIGHTS

Although we have many laws and covenants to promote human rights, violations in various level are still going on. There is a wide gap between the ‘promise’ and ‘performance’ because of the absence of any effective implementation machinery. Enforcement of human rights is also very important. The measures taken by the various national governments towards making available the various human rights promised by the international covenants to their citizens can be called enforcement of human rights. Reports of the Amnesty International show that, human rights are violated in a number of states. Assault on human dignity on massive scale is a matter of deep concern. To uphold the human dignity and human rights a good number of conventions and conferences were held at regional, national and international levels. Similarly there are various agencies to protect and promote the human rights throughout the world. The important agencies which protect the human rights are Judiciary, National Human Rights Commission and Media.

Judiciary

Judiciary is the guardian of fundamental rights. Judiciary always tries to protect the rights of the people. It protects the rights of the citizens from government and private encroachment. One of the most important features of the judiciary in modern time is the power of judicial

review. Judicial review is the power of the judiciary to declare a law passed by the parliament or an executive order is null and void if it is against the provisions of the constitution.

Judiciary performs the functions of implementation of human rights mainly by innovative interpretation and applications of the human rights provisions of the constitution. The supreme court of India has assumed the role and declared that it has a special responsibility to enlarge the range and meaning of fundamental rights and advance the human rights jurisprudence.

The major contributions of judiciary to the human rights jurisprudence are as follows:

1. Substantial expansion of the concept of human rights under Article 21 of the constitution
2. Procedural innovation of Public Interest Litigation.

As per the protection of human right act for the purpose of providing speedy trial of offences arising out of the violation of human rights . The state government may, with the concurrent of the chief justice of high courts by notification, specify for each district a court of session to be a human right court to try the said offence.

The supreme court of India has original appellate and advisory jurisdiction to perform. If the fundamental rights of the citizen's is either violated or denied he can move the supreme court or high court as the case may be for its re instatement. Indian Judiciary and Human Rights Indian Judiciary is able to protect the human rights and prevents the executive and legislative branches from violating their area of jurisdiction because of several features of Indian constitution. They are the followings:-

1. Separation of Powers There is an independent judiciary in India and it is fully separated from the legislature and the executive. Therefore the judiciary is able to provide justice without fear and favour.
2. Written constitution India has a system of written constitutional law. It increases the success of judiciary to identify the mistakes on the part of the executive and legislature. Each and every provision of the fundamental rights is also described in the constitution. Therefore the judiciary is able to read every law preferably that related to the rights of the citizens.

3. Rule of law Indian constitution guarantees rule of law to every citizens. It provides equality of law among equals and equal protection of law. It ensures that the judiciary can protect the human rights of the citizens based on the principle of rule of law.

4. Integrity and freedom of judiciary Indian constitution ensures the freedom and integrity of the judiciary. The judges of the Supreme Court and the High Courts cannot be removed at the whims and fancies of the executive.

5. Social representation If the judiciary is socially representing the population, it is helpful on two reasons. It ensure the impartiality of the judges. It also help the judge to be patient to listen to the human rights concerns of the different sections of the population. For example women, dalits, minorities etc.

6. Training and educational background of judges.

The values and principles of the education system which gives training to the aspirant judges helps a lot to increase the professional quality to deal with human right cases. 8. Judicial activism The judiciary's human right consciousness has been changed along with the change of judiciary from a passivist to an activist. During the initial stages, the judiciary in India was followed the black letter of law tradition or it was passivist in character.

This image of the court was changed with the emergence of Public Interest Litigation and the judicial activism. The judicial activism helped too much to the people to enjoy their rights.

Writ petition

The Supreme Court under article 32 and the High Court under article 226 have the power to issue certain writs for the enforcement of the fundamental rights to any person or authority or the government within its territorial jurisdiction. There are five kinds of writs. They are Habeas Corpus, Mandamus, Cerciorary, Quo-Warranto and Prohibition

Public interest litigation

Public Interest Litigation (PIL) stands for litigation in the interest of the public. It emerged as a by-product of the influence of welfare ideology on the judiciary. The traditional legal theory of judicial process envisaged passive role for the courts. The traditional legal theory demands for a neutral or passive judiciary which follows the black letters of law. Therefore

the procedures in the judicial process were not at all liberal. PIL stands for the liberalization of the procedure in judicial process especially the provision of locus standi. Locus standi means, a person must show that he is adversely effected by the impugned action or that his own right has been violated .

Further the issue he raises must be a justifiable issue that can be resolved through judicial process. The liberalization of the provision of locus standi empowers a person to approach the court for addressing injustice in which he may not be a party or victim. This gives power to the people to approach the court for the protection of the right of the vulnerable or marginalized who are not in a position to argue for the rights. It can also be used the general welfare of the public. In short PIL empower the courts to act in favour of the social cause. PIL in India is an improved version of the PIL in USA.

In India it emerged as a result of the informal nexus of pro-active judges, media and social activists. In India PIL as a means to social change was promoted by eminent judges like Justice P.N. Bagwathi and Justice V.R. Krishna Iyer. Such an instrument was introduced in the aftermath of the emergency and its related human right violations.

National human rights commission

There are governmental and non-governmental agencies and institutions have been working for the protection of the human rights. Universal human rights standards and norms have been incorporated within the domestic law of most countries. Various international instruments have also been ratified by the countries, either by inculcating though legislation or by understanding to directly comply with the obligations contain there in by way of automatic adoption. The existence of laws that protect human rights is not sufficient if there are no processes and institutions to ensure the effective realization of those rights.

The protection of Human Right Act of 1993 demands for the constitution of a National Human Rights Commission, State Human Rights Commission and Human Rights Courts. A national human right institution can be described as an independent organization that is established by the government according to specific legislation with an aim to promote and protect human rights at national level. It has been described as one of the fundamental building blocks on human rights protection.

NHRC defining human rights as ‘the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the international covenants – that is ICCPR and ICESER- and enforceable by courts in India’. The NHRC of India was the first such commission constituted in the South Asian region. Structure The protection of the Human Rights Act provides that the National Human Rights Commission consist of 5 members including the chairman. It consists of :-

- a). A chairperson who has been a Chief Justice of supreme court.
- b). One member, who is or has been a judge of the Supreme Court.
- c). One member, who is or has been the chief justice of the High Court.
- d). Two members to be appointed from among the persons having knowledge of or practical experience in matters relating to human rights
- e). The chair persons of the National Commission for Minorities, the National Commission for Scheduled Caste and Scheduled Tribes and the National Commission for Women shall be deemed to be the members of the commission for the discharge of certain functions. There shall be a Secretary General who shall be the chief executive officer of the commission and shall exercise such powers and discharge such functions of the commission as it may delegate to him. The headquarters of the commission shall be at Delhi. Appointment of chairpersons and other members The Chairperson and other members shall be appointed by the president by warrant under his hand and seal; provided that every appointment under this sub-section shall be made after obtaining the recommendations of committee consisted of :-

- a) The Prime Minister-Chairperson
- b) Speaker of the house of the people- member
- c) Minister in charge of the ministry of home affairs in the government of India-member
- d) Leader of the opposition in the house of the people-member
- e) Leader of the opposition in the council of states-member
- f) Deputy Chairman of the council of states-member

Functions

The functions and powers of the NHRC are outlined below:-

1. Inquiry and investigation

The NHRC may inquire into and investigate complaints of human rights violations, their abetment or the negligence in the prevention of such violations by a public servant. Such enquiry may undertake through its own initiative (Suo motto) or based on a petition presented by a victim or any person on his / her behalf.

These suo motto powers are particularly relevant in situation that involves persons belonging to the marginalized sections of society who do not have the financial or social resources to lodge individual complaints. The NHRC has thus the power to take its own initiative and protect the rights of these people. The NHRC has been vested with the powers similar to those available to civil courts while trying a suit. This means the commission can summon and enforces the attendance of any person; examine under oath; require documents and items to be produced before the commission; receive evidence as affidavits; requisition and public record from any court or office and examine witness and documents. Upon the completion of an inquiry, the NHRC may make recommendations to the government or the authority concerned for the initiation of proceedings for prosecution or any other action as it deems fit . It may also approach the supreme court or the high court for a direction, order or writ , as that court may consider necessary.

2. Inspection

The NHRC can undertake inspections and make recommendations on living conditions in jails and other institutions. It may also monitor existing legal and constitutional mechanism for protecting human rights and measures for effective implementation, and suggest mechanism that ought to be instituted to better protect human rights.

3. Intervention in court proceedings

The NHRC may intervene, with the courts permission, in proceedings involving human rights violation. For example the NHRC has effectively intervened in a case of gross violation of human rights in the Best Bakery case in which serious questions were raised about the fairness of the criminal justice system.

4. Sensitization

The NHRC is mandated to sensitize the government to its constitutional obligations to accede and honour international human rights treaties. The NHRC is also entrusted with spreading human rights literacy and awareness and encouraging the efforts of non-governmental organizations and institutions working in the field of human rights. In addition to these functions, NHRC encourage the effort of non- governmental organizations and institutions working in the field of human rights. It study treaties and other international instruments on human rights and make recommendations for their effective implementation. NHRC undertake and promote research in the field of human rights. It also reviews the factors including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures. The commission required to submit an annual report to the central as well as the state governments concerned. It can also submit special reports on any matter of urgency or important .The protection of human rights act 1993 also provides for the establishment of state human rights commission to be constituted by the respective state governments.

Media

In the contemporary democratic states the role of media is very important, especially in protecting the human rights. Origin of the print media in Europe in the modern history was related to various struggles for rights, mainly civil and political rights.

The print technology has revolutionized the potential of media as the most common channel of communicating messages to give strength to agitations. The relationship of the media to human right is well recognized since the very beginning. Media was essential to preserve human rights and the freedom of the press in the liberal democratic constitutions was depicted as a fundamental human right closely connected to freedom of opinion and expression. Media has considered as the fourth estate, which shows its political significance. The existence the media itself is based on the principle of freedom. Therefore the media is the child and the parent of the rights and the freedom. That means media can effectively function only in a democratic state where there is freedom of speech and expression. At the same time the media can use its freedom to protect the freedom and the rights of the people.

In various countries at various stages of struggle for emancipation and justice media helped the social movements to articulate their demands and to publish their concerns regarding

different rights. For example in glorious revolution, American war of independence, French revolution, working class movements and in the anti-colonial struggle in the world, press and other forms of media played a significant role.

Role of media in protecting human rights

All the media, which includes the print, electronic and the new media, in one way or another way protecting and promoting human rights. The media is not only a carriers of information but also as interpreters, supporters and advocates of certain social political and cultural values. Journalism, as a profession is for social service. Media alert the people about the chances of human rights violation by state or non-state actors. The media reacts against the police atrocities to people. It informs the public about the bad deeds of the government. It fights against the corruption. Corruption itself is a violation of human right. Recently many scams were brought into light by the media. For example the 2G spec tom case, commonwealth games case and adarsh flat case etc. Thus the free media provides a warning signal of impending crisis. These warning signals force preventive action.

Now the new media and the social network help a lot for the anti- corruption campaigns and for protecting the human rights. Its potential is very high and it can influence lakhs of people. It also gives more support to overthrow the bad government and for the liberation of the people in various countries. The media promoted human rights by making people aware of their rights and duties. In this sense media have an educative value. It can inculcate certain values in society like peace and non-violence, fraternity etc. and thereby promote the importance of human rights. The media publish the human rights violation stories and invite the attention of the authorities in the concerned matter. It has been publishing stories relating to the women and children whose rights were generally neglected.

The media popularise human rights by providing publicity to individuals and organizations engaged in human rights protection activities. In a democratic society free media can be a powerful against abuse and violation of human rights. The media become a powerful instrument because it exposes human right violations.

Though the investigative journalism, the journalists exposes many human right violation issues before the public and the government. It had proved successful in many cases of corruption and criminalized politics. The media helps in keeping the state and its agencies

accountable and democratic. The moulding of social reality by media also contributes to the promotion of human rights. However one thing we should bear in mind is that the media in the globalized corporate world; while thinking about to make more profit, deliberately or not, dismantling human right issues. They tried to protect the corporates and the advertisers. It reports only that news item which will add its profits by increasing circulation or rating. Sometimes it uses human right violation issues to make sensational stories. An independent and impartial media can only work for the protection and promotion of human rights.

Human rights movements in India

People's Union for Civil Liberties (PUCL)

People's Union for Civil liberties is one of the most popular NGO, working in India, for the protection and promotion of human rights. The idea was to organize people on non-political and non-partisan, bases for the defence of civil liberties and human rights. The organization emerges out of the People's Union for Civil liberties and the Democratic Rights (PUCLDR) founded by Jaya Prakash Narayan in 1976.

PUCLDR was organized to protest against the emergency and the undemocratic practices of the Indira Gandhi regime. The organization questioned the violation of civil liberties during the imposition of national emergency. But the dynamic element of PUCLDR got subsided along with the dethroning of Indira Gandhi government. The organization lost its momentum during the Janatha regime and the death of J.P. accelerated the process. The continued violation of civil liberties, irrespective of the nature of government compelled the members to re-strengthen the organization.

Thus the PUCLDR was divided and formed two organizations. One is PUCL and the other is PUDR. The PUCL emerged as a membership organization and adopted its constitution on 23rd Nov,1980. It was founded as an organization free from political ideologies. The constitution of the organization states that members of political parties will not have the right to hold any office if they join the organization. The first president and General Secretary of the organization were V.M. Tharkunde and Arun shourie respectively. PUCL has a three tier structure. At the grass-root level is the General body known as National Convention. Above that there is National Council and its Executive. The national PUCL

establishes the state branches. The structure of the state branch follows the pattern at the national level.

Major areas of activity

The important activities of the organization include mobilizing public opinion in favour of a better climate for the protection of the civil liberties in the countries, conducting investigation into incident of violation of human rights, publishing the findings and filing petitions. The organization does not accept money from funding agency in India and abroad. The expenses are met by the members themselves.

The PUCL publishes a monthly journal, the 'PUCL Bulletin', and also it had instituted journalism award for the best human right stories. It organizes a JP memorial lecture every year on 23rd March in relation to the issue of human rights.

Its activity of PUCL in the initial stage was focused on black laws. It had actively campaigned against the NSA which was widely used against the trade union members of Madhya Pradesh. The organization had played a significant role in addressing the cause of the marginalized in society. It pressurized the Supreme Court in various ways to liberalize the provision of locus standi thereby activated the use of PIL to protect the rights of the people. It had conducted investigations about the existence of child labour in Tamil Nadu and Assam. It also focused human rights violation during communal riots. The organization published reports in issues like the Sikh massacre in Delhi riot 1984, Hasimpura and Meerat riots in 1987, Bombay riots etc.

During 1988 the organization strongly acted against the de-humanizing practice of sati. The role of PUCL in the Roop Kanwar sati case is important. During 1995 it had focused on the human rights violations in Jammu and Kashmir and also in the fake encounters cases of the north east. It had fought in the court for the right to food and health of the vulnerable sections in India. The organization's use of right to information and the cooperation with the NHRC are also commendable.

Environmental movements

Environmental movements have an important place in the studies related to water, air, natural resources or explicitly to have a clean environment are all part of the third generation rights. Environmental movements emerged as a by-product of the development

paradigm which totally ignored the importance of nature in human life. The massive destruction of nature affected the life of the people of the world in a number of ways. The problems ranging from deforestation, water scarcity, pollution, ozone depletion, soil erosion, acid rains, species extinction, desertification, unequal access resources etc. got large scale movements having their base on natural protection.

The important environmental movements in India were the Silent Valley Movement, the Chipko Movement, Narmada Bachavo Andolan, Mithani Village Movement, Jharkanthi organization against radiation, National Fish Workers Forum, Beej Bachao Andolan etc. The Silent Valley Movement of the 1970's was one of the successful environment movements which prevented the construction of a hydal project in river Kunthi, in the ecologically rich region called Silent Valley. The movement was led by KSSP an environmental NGO which contributed to the growth of environmental consciousness in the state of Kerala. The Chipko Movement in Uttaranchal was also a successful movement against the felling trees for commercial purpose during 1970's. NBA is one of the longest running battles against the construction of a system of dams called Sardar Sarovar Project in river Narmada. The movement questioned the dominant development paradigm there by brought environment and development into clashes. The movement argued that the development is important, but that development model which violates the human rights of the vulnerable section like the tribes in society should be abandoned.

The Mittani movement was movement focused on the issues of displacement and rehabilitation in relation to the expansion of NTPC in the village of Sonbhadr. The movement successfully gained a large compensation package. JOAR a movement which was started as a movement for rehabilitation and settlement of VCIL in Jharkhand, later turned to a movement which also addressed issues like radioactive waste management, and health hazards caused by radio activity. Beej Bacho Andolan stands for the protection of variety of indigenou seeds from extinction.

Chipko movement

The renowned Chipko Movement, which began in 1971 in the hills of Utterkhand,(now in the state of Uttarachal). The term Chipko means 'embrace' or 'hug', referring to the first action of the movement ar Mandal Vilege in the Alakananda Vally.

The movement was sparked by the government decision to allot a plot of forest land to a sport good company while denying the villagers permission to use local timber to make agricultural tools. Women, being most affected by the hardships of both the ongoing degradation to their environment and the privatization of basic resources, played a prominent and decisive role. When attempts were made to divert the attention of the men, the women stepped into save their environment and their livelihood. They started hugging trees in order to prevent them from being axed. The simple action translated in to an organized and peaceful movement under the leadership of Chandi Prasad Bhatt. Sunderlal Bahuguna was the great leader of the Chipco Movement, who was a Gandhian activist and philosopher and declared the slogan “Ecology is permanent Economy”. The movement largely drew on Gandhian principles of non-violent Satyagraha.

This was the first movement of this kind, not just in post independent India, but also across the world. It is regarded as one of the hallmarks in the history of the environmental movement. As the movement gained steam, the government finally yielded and the Prime Minister Indira Gandhi declared a ban on tree logging in the 5000 kilometer trans Himalayan region. The United Nations Environment Programme lauded the efforts of the participants: “the Chipko people are working for a socio- economic revolution by winning control of their forest resources from the hands of a distant bureaucracy, which is concerned with selling the forest for making urban-oriented products”. As the movement spread and became more organized, it led to the prevention of logging in areas of Rajasthan, Karnataka, Bihar, the western Ghats, and the Vindhas. It also sensitized civil society in India to the need to pressure the government to formulate an ecological policy that would promote sustainable development.

Anti-Dam movements

Narmada Bachao Andolan

Narmada Bachao Andolan (NBA) is a movement to save the river valleys of the Narmada River in central India. It was mobilized people at the grass root level on a scale unprecedented for an environmental movement in post-independent India. The movement is primarily against the contraction of the Sardar Sarovar Dam which is estimated to displace 300,000 people—largely peasants and tribal people –and inundate farming land and forest area which is inhabited by rare species. The NBA and its supporters argue that projected,

benefits, given past experiences, are unlikely to be realized and are far outweighed by the social and environmental costs.

The NBA has succeeded in provoking a larger public debate on development and the environment within India. It has initiated discussion about which model of development is appropriate for India; one of large-scale industrialization on the lines of the west, which has done irreparable damage to the natural environment, or one based on small-scale enterprise and sensitivity to the needs of local communities and ecology. NBA argues for the latter, nothing the idea of precaution in environmental matters, as well as the social cultural and economic rights of the displaced. It encouraged of traditional water harvesting systems in villages and improving dry farming techniques, which will also promote social and ecological harmony. As a last resort, NBA also advises improvement of efficiency of existing dam projects.

Medha Patkar, a central organizer of NBA, stated that the model of development symbolized by projects like the Sardar Sarovar Dam represent the ‘epitome of unsustainable development’, and there is no other way but to redefine ‘modernity ‘and goal of development’, to widen it to a sustainable, just society based on harmonious, non-exploitative relationships between people and nature’. The movement has drawn attention to the conflicts between environment and development at a popular level. The NBA was instrumental in the World Bank’s decision to withdraw its funding and participation from the project on the basis of human and environmental concerns.

The Silent valley project

Another significant anti-dam movement is against the Kerala Government’s proposal to construct a dam across the river Kunthi in the Silent valley. The government has argued that it is a viable alternative to the more expensive and polluting sources of the thermal power. However, environmental and citizen groups oppose it, due to a threat that it may upset the delicate ecological balance of the bio-diversity reserve, inhabited by some rare species in the Silent Valley. In addition, the river has traditionally been a source of drinking water for villagers and tribes inhabiting the region; activists have charged that diverting the water amounts to ‘state sponsored robbery of resources’.

International organization such as the World Wide Fund for Nature (WWF) and International Union for the Conservation of Nature and Natural Resources (IUCN) mounted pressure on the government, leading to the shelving of the project in 1983 by Prime Minister Indira Gandhi. This movement met with success fairly early and is one of the very rare instances where the state yielded to pressure and retracted.

Anti Tehri dam movement

In 1972, the Indian Planning Commission approved plans for Tehri Dam, naming the principal town it would submerge, along with two populated and fertile valleys. Protest against began in 1967 and continued for more than two decades. The opposition argued that the dam would cause displacement and have an adverse ecological impact by inundating large tracts of forest and farming land.

Furthermore, as it was located in the high risk seismic zone, it posed great danger to the people living downstream. The people's committee formed to oppose the dam succeeded in forcing the government to make several reviews of the project. In the mid-1980's the plan was abandoned for some time after the committee appointed by the government to review the project recommended ending it on environmental grounds.

By 1992, When construction of the dam was well under way, the opposition movement peaked, and it seemed for some time that the protesters might persuade the government again to halt the project. The movement swelled, the environment activists, concerned citizens, and others joined the residents of Tehri, neighbouring villages and the adjoining area of Uttarakhand the end of what they viewed as a destructive, costly and unnecessary dam. Ultimately the movement was not successful and the authorities pressed on with Tehri Dam, finally submerging most of Tehri and the proposed valleys in 2005.

However the movement did succeed in bringing together desperate groups and gaining the attention of the media, and may yet provide a model for future protest movement.

UNIT 5

CHALLENGES TO HUMAN RIGHTS IN INDIA

Human Rights Violation against Minorities, Dalits, Adivasis and Women

There is no universal definition of minorities. However a commonly accepted definition was provided by UN special Rapporteur Francesco Capotorti, which is as follows: “A group numerically inferior to the rest of population of a state, in a non-dominant position, whose members-being national 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” Another definition is it is a group “held together by ties of common descent, language or religious faith and feeling themselves in different in these aspects from majority of the inhabitants of a given entity”.

In India neither the constitution nor the National Commission for Minorities Act (NCM Act) define the term minorities and speak of these ‘based on religion or language’. The NCM Act states, ‘Minority for the purpose of this Act, means a community notified as such by the central government. The central government has notified the following as falling within the category of a ‘minority’: Muslims, Christians, Sikhs, Parsis and Buddhists. Such a definition of minority excludes among others Judaism, Jainism and the Bahai faith. Articles

29 and 30 of the Indian Constitution deal with the minority rights. Article 29 states: any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture have the right to conserve the same. Article 30 states, 'all minorities whether based on religion or language, shall have the right to establish and administer educational institution of their choice'.

The National Commission for minorities

The Minority Commission was first constituted in 1978, to look in to the welfare of minorities. The Commission was made a statutory body in 1992, with the passing of the National Commission for Minorities Act, in order to better address the interests of the minorities in an organized and effective manner. A special commission for minorities was considered necessary, even though special provisions had been included in the constitution for their protection.

The commission must consist of a Chairperson, a vice Chairperson and five members to be nominated by the central government from among persons of eminence, ability and integrity, where the Chairperson and the five members are to be from amongst minority communities. Duties and functions:

The NCM has been vested with the powers of the civil court while evaluating the progress of the development of minorities under the union and states; monitoring the working of the safeguards provided in the constitution and in laws enacted by the parliament and state legislatures; and looking into specific complaints regarding the deprivation of rights and safeguards of the minorities and take up such matters with the appropriate authorities. Although it is vested with quasi- judicial powers, the NCM is not formally endowed with statutory powers of investigation and has no independent investigative unit of its own.

The NCM also recommends to the Central or State Government ways to effectively implement safeguards for the protection of minorities; conduct studies on discrimination against minorities and recommends measures for cessation; promote research on issues relating to the socio-economic and educational development of minorities; and submit reports to the Central government on any matter pertaining to minorities.

Human rights violations among Dalits and Adivasis

The vulnerable section who becomes the victims of police atrocity includes the Dalit's, adavisis, women and minority. The common victims of arbitrary arrest and detention are the Dalit's, tribes and the members of minority communities. The police consider Dalit's and tribes as habitual criminals. They always reserve the barbaric investigation techniques for those suspects who belong to the bottom line of the society. The police atrocities against Dalit's and tribe are very common in states like Bihar, Uttar Pradesh, Madhya Pradesh, Haryana and Gujarat. The police clearly exhibits their upper caste bias in almost all cases. Moreover, the police ignore the complaints made by the backward caste members. Even if they pay attention, they are not ready to register the complaint under the SC and ST Prevention Atrocities Act. Thomas Paine stated that "it is over the lowest class of mankind that government by terror is intended to operate and it is on them that it operates to the worst effect. The state and its agents are controlled by the dominant group so it will use force against the poor and the marginalized so that it can maintain its dominance".

Atrocities on Dalits

Dalits or the Scheduled Castes have been the largest marginalized section of the Indian society. The untouchables in India are treated as more than slaves because of graded inequality on the basis of caste. Caste and untouchability are the offshoots of Hindu Dharma. Hindu religion itself is responsible for the atrocious administration. The SC's being the untouchables have occupied lower position insocial economic and cultural order. The reasons for the atrocities on SC's are attributed to their extreme poverty. 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. The following acts have been enacted to prevent atrocities on SC's. They are

1. Protection of Civil Right Act.1955
2. SC/ST (Prevention of Atrocities Act) 1989
3. Protection of Human rights Act 1993 4. The SC/STs (Prevention of Atrocities Act) 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 labor.

Atrocities on Adivasis

In the discourses on human rights, Adivasis or tribals stand out prominently as a community owing to their unique cultural taints and inhabitation. Adivasis are a group of people, families, clans or communities who share social, economic, political etc, ties and often a common ancestor and who usually have a common culture, dialect and a leader. The erosion of Adivasis rights in forests has been the hallmark of the most of the tribal movements in both pre and post independent India.

A distinct feature of the life of the Adivasis has been their aloofness from the so-called plain or modernized people which afforded the former the right to preserve their ethnic-cultural characteristics, to carry on with their traditional socio-economic and political formations and to share a symbiotic relationship with the natural environment, particularly the forests. However, with the establishment and consolidation of the colonial rule in the country, the

Adivasis were sought to be politically, economically and administratively integrated with the rest of the society. This integration resulted not only into the disturbance of the quite and autonomous life-style of the Adivasi people but also introduced the perennial problems of the so-called modern people like poverty and indebtedness, unemployment and exploitation into the life of the tribals. These problems led to the erosion of the traditional life style of the Adivasis and infringed upon the human rights of the Adivasi communities. The starting point to analyze the issues in the human rights of the Adivasis is the notion of land alienation. Owing to the factors like opening up of the tribal areas and their acquisition by the government and other institutions for the purposes of communication and development, coupled with the lacunae in the land laws, the native people lost their prized possession resulting into land alienation.

Moreover, the modern system of land ownership fundamentally transformed the socioeconomic system of the Adivasis and led to the infiltration of non-tribals in the tribal regions. Another significant issue in the realm of the human rights of the Adivasis is the symbiotic relationship with the forests. Traditionally, the forests have been, along with the land, the basis of sustenance and prosperity of the tribal people. Gradually, with the government taking up the management of the forests as the natural resources, there has come up a constant tension between the Adivasis and the government.

It has been of little concern to the government that the forests are central to the social customs and rituals of the Adivasis. Among other issues that cause concern to the human rights of the Adivasis are poverty, indebtedness and unemployment. Bereft of the ownership over land and forests, the Adivasis lost their means of livelihood and were forced into poverty in course of time. Due to their frequent need for money in adverse times and famines, the Adivasis were compelled to borrow money from the unscrupulous moneylenders. The transformation of subsistence agriculture into a cash crop economy also led to their indebtedness, as the Adivasis became more and more dependent on the market for their food requirements. Above all, industrialization has not been of much help to these people because, although, new job opportunities were created, the native people could not fit themselves into these jobs due to the lack of necessary skills and education.

In the face of these bottlenecks in the human rights of the Adivasis, the pursuits of both the governmental and the non-governmental organizations should not only be to restore the

traditional rights of these people but also to modernize them in such a way that they are not cut from their roots.

Constitutional Protection for the Adivasis

Article 342 of the Constitution provided for a special category having those social groups which were to be treated as Scheduled Tribes (STs) for official purposes. Further, under Article 15(4), the measures for the advancement of the STs are exempted from the general ban on discrimination on the grounds of race, sex, caste and like. Moreover, under Article 19(5), the state may by law curtail the general rights of all citizens to move freely, settle and acquire property to presumably prevent the alienation or fragmentation of tribal property. Article 45 directs the state to promote with special care, the educational and economic interests of the STs. Provision for reservation for these people in public services at both the centre and the state levels are made under Articles 16 and 355. Article 338 provides for the setting of a National Commission for the Schedule Tribes also.

The Union Government, under Article 339(2), is empowered to exercise its executive power in giving direction to states for drawing up and executing schemes specified in the direction to be essential for the welfare of the STs. Article 275(1) instructs the union to give grants-in-aid to the state to meet the expenses on tribal welfare schemes. Elaborate provisions have been made under Articles 244 and 244(A) of Part X of the Constitution regarding the administration of the Scheduled areas and the tribal areas.

Further, the fifth schedule of the Constitution deals with the administration and control of the scheduled and tribal areas of in states other than Assam, Meghalaya, Tripura and Mizoram. The sixth schedule applies to the tribal areas within the above mentioned states. Similarly, under Article 164, provision has been made for a particular minister in charge of the tribal welfare in the states of Bihar (now Jharkhand), Madhya Pradesh (now Chhatisgarh) and Orissa. Also, under Articles 330, 332 and 335, certain temporary provisions exist for the special representation and reservation of seats for the scheduled tribes in the Union and state legislatures. The cumulative effect of these constitutional provisions has been the starting of a plethora of policies and programmes for the tribal development.

There are many other policies and programmes for the development of Adivasis are initiated by the Indian government. These policies and programmes have, however, not been found to achieve the desired results to a large extent.

Violence against Women

The Declaration on the Elimination of Violence against Women defines violence against women as 'any act of gender-based violence that results in , or is likely to result in, physical, sexual, or psychological harm or suffering to women ,including threats of such acts coercion or arbitrary deprivation of liberty , whether occupied in public or in private life. Crimes against women have been steadily on the rise'.

The definition is broad in its coverage and recognizes the fact that violence can occur within the confines of the home. Violence against women can assume active or passive forms- a physical act of violence is not the only form of violence. Creating a hostile environment whether at work or at home or making disparaging and humiliating remarks also come within the preview of violence as they have psychological impact on the victim.

Domestic Violence occurs within the home and poses a challenge to the sanctity of family relationships. It is violence that occurs the private sphere, generally between individuals who are related through intimacy, blood or law. It entails active and passive violence against children, the elderly, women- married, unmarried and divorcees. The primary and substantial victims of domestic violence are women.

Under the Protection of Domestic Violence Act of 2005, the definition of domestic violence includes abuse as well as the threat of abuse. It includes abuse that is physical, verbal and emotional sexual or economic in nature.

The Dowry Prohibition Act 1961 made the demanding and giving of dowry punishable under the law. Women are one of the great victims of police atrocities. The police maintain callous and indifferent attitude towards women issues. They treat issues of dowry deaths, and domestic violence as private affairs and therefore encourage compromises even if the women are brutally tortured. Another important human rights issue faced by women in relation to police is custodial or prison rape.

As per NCRB report 2002, the court tried 132 police men for custodial rape, but only four were convicted. The Mathura case of 1980, in which a lower caste minor girl was detained

and raped by police men was a best example to show the gender bias of Indian police. Such incidents are a part of daily media report even today. The questioning of the victims of rape also shows the insensibility of police. They treat such victims as impure, therefore use abusive language and even assault them. Women are also victims of custodial death. In India, Bihar, Uttar Pradesh, Madhya Pradesh are the worst examples of police atrocities. Poor and backward women are the victims. Amnesty International has mentioned in its latest report authorities in India are failing to prevent violence against women and sometimes take an active part in it. These women often suffer a double discrimination on the basis of caste as well as gender. Women face violence during infancy, and growing years like infanticide, neglect of nutrition needs, education and health care. As adults they face domestic violence, sexual abuse at workplace etc. In all such violence police intervention is not satisfactory.

The United Nations defines violence against women as “any act of gender based violence that results in or is likely to result in , physical , sexual m, psychological harm or suffering to women , including threat of such acts, coercion or arbitrary deprivation of liberty whether occurring in public or private life”. In spite of various efforts at regional, national and international level violence against women take place in every corner of the globe. National Commission for Women Owing to the overwhelmingly patriarchal structure of our society, women have been relegated to a secondary status and have been subject to various legal and social discriminations.

The framers of our constitution recognized the need to remove such inequalities and made special provisions to redress the same. The National commission for Women is a statutorily constituted body under the National Commission for Women Act 1990. The NCW consists of a Chairperson, five members and a member secretary, all nominated by the central government according to guidelines provided for in the Act.

Functions :-

1. Inquiry and Investigation

The NCW also has the power of a civil court while investigation and examining matters relating to the safeguards provided for women under the constitution and other area. It is empowered to consider matters relating to deprivation of women’s rights and take up the

issues with the appropriate authorities of its own. It looks in to complaints and takes suo motu notice of matters relating to non-implementation of laws.

2. Action Research

The NCW conducts studies and investigations into problems arising out of discrimination and atrocities against and recommends for their removal. The NCW members participate and advice on the planning process of socio- economic development of women, suggest measures to promote their representation in all spheres and evaluate their progress. The NCW has formulated Bills on Prevention of Sexual Harassment at Workplace and the Domestic Violence to Women (prevention) Bill 1994 in consultation with members of the civil society.

3. Legal intervention

The Parivarik Mahila Lok Adalat is an innovative mechanism developed by the NCW , which has taken up thousands of cases so far. It deals with matters pertaining to family law, encouraging settlement of disputes outside the formal legal framework and aiming to empower women in the justice delivery mechanism.

Police Atrocities against Children

The convention on the rights of the children is the first legally binding international instrument to incorporate the full range of human rights –civil, cultural, economic, political and social rights. In 1989 world leaders decided that children needed a special convention, because people under 18 years old often need special care and protection that adults do not.

The convention sets out these rights in 54 articles and two optional protocols. It spells out the basic human rights that children everywhere have; right to survival, to develop to the fullest, to protection from harmful influences, abuse and exploitation and to participate fully in family and cultural life. The four core principles of the convention are non-discrimination, devotion to the best interest of the child, the right to life, survival and development and respect for the views of the child.

The convention protects children's rights by setting standards in health care, education and legal, civil and social services. India became a party in 1992 to the international Convention on the Rights of the child, 1989 , following popular demand. By agreeing to undertake the

obligations of the convention, national governments have committed themselves to protect and ensure children's rights and they have agreed to hold themselves accountable for this commitment before the international community.

While the rights of the child call for a comprehensive treatment, we shall confine to its two aspects in the context of the Indian society which have lately highlighted the need for urgent affirmative action. They are the incidence of violence against children, including violence by the criminal justice system, and the practice of child labour. Notwithstanding the masses of children are still subjected to various violence and exploitations there are reports about continued trafficking, child labour and violence against children even in their home. Some of them are subject to sexual harassment and police atrocities.

In India, National Human Rights Commission have taken initiative in sensitizing and imparting training to state police forces, para-military forces and armed forces on human rights. There is also report of growing violence against street children in many urban areas.

Parliament enacted Juvenile Justice Act, 1986 primarily for the care, protection, treatment, development and rehabilitation of neglected or delinquent children. Large scale exploitation of children for a free or cheap labour has been a bane of independent India. Children are engaged in a variety of industries or vocations making of matches and fireworks, carpet making, glass bangle making, plastic and rope weaving, salt extraction, incense stick production, diamond cutting and polishing biscuit making and steel rolling domestic work prostitution and construction work etc. Indeed child labour is more in the unorganized sector than the organized sector.

State and human rights

Police is the official organization that is entrusted with the duty to protect life, liberty and security to the people. A functioning police system, as the protector of rule of law, is a precondition of the survival of democracy and for the proper enjoyment of human rights. The duties of police include prevention and detection of crime, maintenance of law and order, investigation of crime, collection of evidence, apprehension of offenders, maintenance of internal security, environment, VIP protection and traffic control. Effective and just policing is a necessary precondition for the protection and promotion of human rights.

However, the police in India fail in much respect to protect the human rights. Many cases have been reported by the media which shows the police atrocities. A number of international and national human right NGO's had criticized the Indian Police system for its instability towards human rights and its indulgence in massive human right violations. Third degree methods are really an extension of police atrocities. The major complaints against police are alleged unprofessional conduct and assault. Police personnel occasionally were accused of beating suspects to obtain confessions.

In many cases the only evidence against the accused was a confession. The media has played a role in exposing the excesses by the police but has failed to improve the forces.

Police Atrocities

Marginalized sections are those sections of the society, who are excluded from the main stream activities of the society. Minority communities, Dalit's and adivasis and SC/ST's are the other sections who face police brutalities. In the words of Asgar Ali Engineer, every communal riot has its own story of police atrocities towards minorities. The partial role of the police was proven in the Bhivandi riot in 1984, Meerut riot 1987, Bhagalpur riot 1989, the Babri Masjid issue etc. The recent example is the Gujarat Carnage of 2002 where the police became onlookers while there was riot. The police are expected to be the protectors of the basic rights of the citizens. They are required to show special consideration and sensibility while dealing with the weaker sections of the society particularly the marginalized community.

But in many cases they are acting against this principle. National Human Rights Commission got a lot of complaints regarding to the atrocities of police towards the marginalized sections. Majority of these complaints are related to failure to take lawful action, abuse of power, false implications and illegal detention of accused, suspects and the relatives. Many of the complaints of misbehavior or atrocities of police are received from the poor, the Scheduled Caste, Scheduled Tribes and other weaker sections of the society. Caste decimation was also there. People or castes that were performing the task of eliminating polluting elements from the market and other places were considered untouchables.

Whereas Brahmins who performed religious rites in temples were considered higher caste, based on the purity-impurity principle. Structurally the lower castes were economically dependent on the higher castes for existence. A major portion of the lower castes and Dalit's are still depended on others for their livelihood. Democratic country like India needs democratic policing. Democratic policing is based on the idea of the police as protectors of the rights of citizens and the rule of law while ensuring the safety and security of all equally.

The vulnerable sections who becomes the victims of police atrocity includes the Dalit's, advisis, women and minorities. The common victims of arbitrary arrest and detention are the Dalit's Tribes and the members of minority communities. The police considers Dalit's and tribes as habitual criminals. They always reserve the barbaric investigation techniques for those suspects who belong to the bottom line of the society.

The police atrocities against Dalit's and tribes are very common in states like Bihar, Uttar Pradesh, Madhya Pradesh, Haryana and Gujarat. The police clearly exhibit their upper caste bias in almost all cases. Moreover the police ignore the complaints made by the backward caste members. Even if they pay attention, they are not ready to register the complaint under the SC and ST prevention atrocities act. Thomas Paine stated that "it is over the lowest class of mankind that government by terror is intended to operate and it is on them that it operates to the worst effect. The state and its agents are controlled by the dominant group so it will use force against the poor and the marginalized so that it can maintain its dominance". It is a common knowledge in India that third degree methods are used to exact confessions or for purpose of intimidation.

The common torture methods employed by the police to extract confession are:-

1. Rolling of log wood on the legs to torture the muscles;
2. Spraying of chilli powder in the eyes;
3. Stretching the legs open to the unbearable extent;
4. Application of electric current on their bodies;
5. Hanging up wide down from a roof;
6. Keeping the detainee without food and water;

7. Pulling of nails etc.

Police should ensure that, policemen do not directly or indirectly become violators of human rights. Only then they can act as protectors of human rights. Causes of police atrocities.

The followings are the main causes of police atrocities:-

1. Police brutality is the colonial legacy. The police in India are still governed by the police act of 1861 made by the British govt. The organizational structure, bureaucratic and political influence, managerial philosophy, value systems are the same as it was in the colonial era.

2. Lack of ethical and professional standard

3. Improper training

4. Politicization of police.

5. Psychological pressures.

6. Lack of sufficient vehicles and instruments

7. Criminal elements

8. Over burden and staff shortage.

9. The introduction of the draconian laws like MISA, TADA, POTA etc.

10. Erosion of public confidence.