



# UNIVERSITY OF PUNE

## HUMAN RIGHTS AND DUTIES IN INDIA : LAW, POLICY, SOCIETY AND ENFORCEMENT MECHANISM



### COURSE BOOK III





## विद्यापीठ गीत

ज्ञान बनो कर्मशील, कर्म ज्ञानवान

पुण्यमयी दे आम्हा अक्षर वरदान  
ज्ञान बनो कर्मशील, कर्म ज्ञानवान

जातिभेद, धर्मभेद, वंशभेद दूर  
लाख लाख कंठांनुनि हाच एक सूर  
करुणेच्या चरणांशी नत हो विशान

माणुसकी धमनिया अर्थ जाणतो  
श्रमनिष्ठा हें पवित्र तीर्थ मानतो  
हृदयांनुनि समतेच्या निर्भय अभिमान

सेवेतच मुक्ती ही मंगल दीक्षा  
न्यायास्तव जागृति ही सखपरीक्षा  
हें विश्वनि पार अमुने मंत्र हा महान

मंगेश पांडव



UNIVERSITY OF PUNE

**HUMAN RIGHTS AND DUTIES IN INDIA :  
LAW, POLICY, SOCIETY AND  
ENFORCEMENT MECHANISM**

COURSE BOOK - III

**Dr. T. S. N. Sastry**

Professor and  
Coordinator, HRE Programme  
Department of Law  
University of Pune

**Foreword**

His Excellency Shri. K. Sankaranarayanan  
Hon'ble Governor of Maharashtra

**Introduction**

Dr. W. N. Gade  
Vice Chancellor  
University of Pune

**Published by :**

**Registrar,**

University of Pune.

Ganeshkhind Pune - 411 007.

**Published by :**

**University of Pune Press**

Ganeshkhind Pune - 411 007.

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First Edition Feb. 2014

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**Feb 2014**

P.U.P. — 300-1-2014 (549)[5]



# FOREWORD...

**K.Sankaranarayanan**  
GOVERNOR OF MAHARASHTRA



RAJ BHAVAN  
MUMBAI 400035  
Tel : 022-2363 2660  
Fax : 022-2368 0505

## FOREWORD

The present phase of globalisation and revolution in science and technology brought in the humanity together. However, economic, social, political and cultural differences are seen as a constant threat for governance and for the promotion of life and liberty of individuals to stand on an equal footing, and still a distant dream. In order to reaffirm the values of humanity to guarantee the concept of equality, life and liberty, the alternative lies in the practice and propagation of human rights. In the contemporary era, human rights from their western enlightenment thinking became not only the responsibility of state for its action, but also against the intrusion of multi-faceted aspects of social system.

In the promotion of duty-based value system, human rights in their long saga, transcended from transnational frontiers to national legal structures in the modern context. In the absence of legal and institutional mechanism, infringement of individual liberties may not fortify the real perception of equality before law. Apart from the guaranteed institutional mechanism, civil society participation through advocacy groups brings in a cautious approach in the policy making tenets of the state and in the dealings between individuals. The present book 'Human Rights and Duties in India: Law, Policy, Society and Enforcement Mechanism' being the last one of the three volume series of the Human Right Education Programme of the University of Pune, succinctly introduces human rights in the Indian context with legal guarantees, enforcement mechanism and the role of advocacy groups. The comparative perspective of fundamental freedoms with that of human rights provisions in international instruments for an easy and compatible understanding of their relationship is highly commendable. I take this opportunity to congratulate Dr. W.N. Gade, Vice-Chancellor and various bodies of the University of Pune for the keen interest evinced in continuation of the programme launched in 2011 in developing a value-based student sorority.

I appreciate the efforts of Dr. T.S.N. Sastry, Coordinator of the Human Rights Education Programme, Professor and Former Head of the Department of Law for his sustained efforts in the augmentation of the ideals of the University in the propagation of human rights. I congratulate him for presenting entire human rights perspective with a lucid and simple outlook in a three book series.

I wish the programme a grand success. And I also appreciate the lead taken by the University of Pune, first in the country to propagate the International and National legal tenets of human rights as the fifth estate of the state to make proud of the State of Maharashtra in the annals of human rights education in the country.

**K. Sankaranarayanan**  
Governor of Maharashtra



### INTRODUCTION

This book on 'Human Rights and Duties in India: Law, Policy, Society and Enforcement Mechanism' is the final one in the series of Human Rights Education. International Law of human rights primarily imposes obligations upon nation-states to implement the standards of it to alleviate the intensity of conflicts and to establish peace and security. These objectives of international law and as well that of human rights could be achieved only through the dissemination and promotion in national sphere by States. To fulfill the mandate without resorting to theoretical perplexities, nation-states around the world incorporated the tenets of international law of human rights to implement the mandate through their respective constitutional and legal texts for absorption and promotion.

The framers of constitution under the leadership of Bharat Ratna Dr. Babasaheb Ambedkar designed the legal tenets of human rights philosophy with a blend of international and indigenous philosophical reflections of India, based on Justice, Liberty and Equality to establish a duty bound fraternity to realise their rights as guaranteed by law. This fine blend of philosophical mixture of eastern and western ideological tenets through fundamental rights, directive principles of state policy have been further expanded by the judiciary through the legal acumen to assist the populace of the polity to realise their dreams of cherished values of equality, freedom, life and liberty. However, economic, socio, political, cultural imbalances that prevail in the country for long upset the applecart to bloom the rights of people, the way in which they are advocated to take pleasure in their enjoyment.

In order to restore the original legal position and to extend a helping hand to the needy, a number of welfare measures are advocated by the state on a continuous basis. Further, to achieve the objectives apart from the state, advocacy groups, people of all sections need to take active part for the further promotion of Human Rights to wipe out tears from every eye. With this inspiration, this book discusses subtly human rights in the Indian Context with a remedial mechanism to address the problems.

In this regard, I thank His Excellency, The Chancellor and Hon'ble Governor of Maharashtra, Shri. K. Sankaranarayanan for his vision and support in the promotion of Human Rights Education by the University of Pune. I am also thankful to the



Government of Maharashtra for evincing its interest in the promotion of Human Rights Education for all. I extend my thanks to all the authorities of the University for granting permission to launch the programme across the Departments. I also extend my thanks to the members of the Human Rights Education Committee for their rich contribution in making the programme a success. Last but not the least, I appreciate the constant efforts of the coordinator of the programme, Dr. T.S.N. Sastry, Professor of Law & Former Head, Department of Law, and its faculty, staff and students for their continuous sustained support.

The University being the first in the country to offer this type of programme with the blessings of the Government of Maharashtra, I sincerely hope that the pupil after undergoing the course will reflect the sentiments of the University in the enrichment of Human Rights of various sections of people in the Country.



**Dr. W. N. Gade**  
**Vice Chancellor**  
**University of Pune**

## ACKNOWLEDGEMENTS



Human rights became the cornerstone of every country since their adoption by United Nations. However, states being the representative organs of people, the rights guaranteed by international law of human rights need to be institutionalized to augment the rights of everyone at the national domain. By such institutionalization with a constitutional guarantee, they try to protect the fragile nature of individual against the national and international threats.

In a multi kaleidoscopic cultural society of modern India, to weed out the differences to bring in the concept of equality in its true perspective, the judiciary over the years played a crucial role to bridge the trade off between the justiciable (Part III Fundamental Rights) and non-justiciable rights (Part IV Directive Principles of State Policy) to achieve the cherished goals of the preamble of the constitution and in tune with the philosophical orientation of International Law of Human Rights to protect individual's rights at all times from every kind of threat.

The ideological leanings of the constitution to promote and protect the life and liberty of individual at any cost and to counter the threats, in the last six decades the legislative and executive organs did their best by establishing a varied statutory mechanisms (establishment of various Human Rights oriented commissions) to wipe out the discriminatory practices and to protect every individual from the countenance of threats for the furtherance of human rights.

However, economical, social and cultural differences that exist in the society pose problems at times to fully exploit the human capabilities in their free exercise of legally guaranteed rights. Prof. Lakshminath maintains that, 'law' being the pivotal armor of society, the governmental promises cannot fulfill the legal assurance without the active participation of civil society. 'Civil society' includes human associations and a set of relational networks formed to aid and assist the victims of human rights through the guaranteed legal mechanism in order to counter the subordination of authority of state and therefore to demand political structures. To fulfill the above aspirations, this third book in the series of Human Rights Education programme subtly presents the legal and policy formulations of India in the enforcement of Human Rights with the necessary institutional mechanism.

Education being the fifth estate of a democracy, the University of Pune is of the opinion that after completing the course, the pupil of its will play their role as actors of the civil society to aid and assist victims of human rights not only to seek the assistance of legally guaranteed mechanism but also help the state in the furtherance





of human rights. The University initiated the project of HRE for all. The sole objective is to promote and propagate Human Rights to bring a duty based society with out any profit-making business. The pictures presented are used from the various web resources of the UN and its organs, International, National, Non- Governmental Organisations, search engines and other websites sites to convey the message of Human Rights in an easy and understandable perspective. In this regard, the author expresses his gratitude to all the authors whose materials have been consulted and the websites have been browsed.

I express my sincere thanks to His Excellency to the Chancellor and the Governor of Maharashtra and the State of Maharashtra for supporting the venture of the University of Pune and providing an opportunity to serve in the cultural heart land of the State of Maharashtra. I take this opportunity to express my gratitude to all the authorities of the University of Pune and the Hon'ble Vice Chancellor Dr. W.S. Gade for reposing the trust and permitting me to continue my work as a Coordinator of the HRE programme of the University. I also sincerely express my thanks to all the members of the HRE Programme of the University, and to all my colleagues of the University for seriously implementing the programme and making it a grand success.

I am indebted to the former Vice Chancellors of the University, Dr. R. K. Shevgaonkar and Dr. Sanjay Chahande for their constant encouragement and vision in the promotion of the programme. I also express my gratitude to my colleague Dr. D.S. Ukey Former Acting Vice Chancellor of SRTM University of Nanded, Professor and Head of the Department of Law, University of Pune for his constant support in my endeavors. I express my thanks to Mr. Ajay Sonawane, Teaching Associate of the Human Rights Education Programme, Faculty and Non-Teaching Staff of the Department of Law. My sincere thanks is also to Dr. S.R. Bhosale Chairman, Board of Studies and Dr. Rasheed Shaikh, Dean, Faculty of Law, University of Pune, the administrative authorities of the University, Mr. Dattatraya Kute, Manager and staff of the University of Pune Press for publishing this book with utmost sincerity.

Last but not the least, if any unintentional errors are crept in I am alone responsible. Your valuable comments and suggestions if any with respect to the improvement of content and quality of work will be highly appreciated.



**Dr. T.S.N. Sastry**  
Professor and Coordinator of  
Human Rights Education Programme,  
Department of Law, University of Pune

## Syllabi Course III

### Human Rights and Duties in India: Law, Policy, Society and Enforcement Mechanism

**Credit: 1**

#### **I. Human Rights in Indian Context**

- a) Indian Bill of Rights and Sarvodaya
- b) Preamble- Fundamental Rights- Directive Principles- Fundamental Duties

#### **II. Human Rights- Enforcement Mechanism**

- a) Human Rights Act, 1993
- b) Judicial Organs- Supreme Court (Art 32) and High Courts (Art 226)
- c) Human Rights Commission- National and State of Maharashtra
- d) Commissions of Women, children, Minority, SC/ST
- e) Survey of International Mechanism

#### **III. Human Rights Violations and Indian Polity**

- a) Inequalities in society- population- illiteracy- poverty- caste- inaccessibility of legal redress
- b) Abuse of Executive Power- Corruption- Nepotism and favoritism
- c) Human Rights and Good Governance

#### **IV. Role of Advocacy Groups**

- a) Professional Bodies: Press, Media, Role of Lawyers- Legal Aid
- b) Educational Institutions
- c) Role of Corporate Sector
- d) Non-Governmental Organisations

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## UNIT I

## HUMAN RIGHTS IN INDIAN CONTEXT

*This unit will introduce to the students, the development of human rights in the Indian context. It also further introduces the Indian perspective of social theory and justice as founded by a number of statesmen. It will also subtly discuss the contribution and significance of Sarvodaya for the development of human rights movement in India and the Constitutional provisions dealing with Fundamental Rights, Directive Principles of State Policy and Fundamental duties evolved by the Constitutional framers on the lines of the International Law of Human Rights.*

**1. Introduction:**

The concept of Human Rights is not new to India. It is inherent part of socio, economic and cultural life of Indian society. A number of religious, literary, social and philosophical texts from ancient to modern times advocated the concept based on 'Duty', in contrast to that of the Western culture of Rights. After independence, the framers of constitution, taking into consideration of both Eastern and Western philosophies, have developed Human Rights concept to suit according to the needs of Indian polity.



The Indian Constitution, compared to that of Universal Declaration of Human Rights was ahead in bifurcating civil and political rights and economic, social and cultural rights as independent units of the constitution. In a way, the division of both sets of rights advocated by Indian constitution, paved the way for United Nations to undertake steps on the lines of Indian perspective and bifurcated them as two independent sets of rights in 1966, as Covenant on Economic, Social, Cultural Rights and Covenant on Civil and Political Rights.

**2. Indian Bill of Rights**

The legal and other texts of ancient and medieval India advocated duty as the prime concept for augmentation of rights of the individual through the legal tenet of 'Dharma'. However, the arrival of foreign rulers and their divide and rule policy brought in disastrous results for the promotion and protection of individual rights in the modern period.

To resist the policies of colonial masters and to drive them from the country, 'Indian National Congress' was established in 1885. A number of movements have



been initiated under its banner to release the people from the bondage of colonial rule and to restore the rights of people at every level. Among the various movements, the *Purna Swaraj* and the Home Rule Movement richly contributed for the development of Indian Bill of Rights. In this regard, the report prepared by Mr. Motilal Nehru in 1928 enumerated certain rights that were to be conferred upon the Indian subjects by British colonial Masters. The rights that were enumerated in the report of Nehru are popularly referred to as 'Indian Bill of Rights'. In a way, they received a significant consideration while drafting the constitution by the constituent assembly. The Rights advocated by The bill are as follows:

- (i) All powers of government and all authority, legislative, executive and judicial, are derived from the people and the same shall be exercised in the Commonwealth of India through the organizations established by or under, and in due process of this constitution. (Right to democracy)
- No person shall be deprived of his liberty nor shall his dwelling or property be entered, sequestered or confiscated, save in accordance with law. All titles to private and personal property lawfully acquired and enjoyed at the establishment of the commonwealth are hereby guaranteed. (Comparable to various freedoms under Article 19 and Right to Liberty under Article 21)
- Freedom of conscience and the free profession and practice of religion are, subject to public order or morality, hereby guaranteed to every person.(Comparable to Article 19 and 25 )
- The right of free expression of opinion, as well as the right to assemble peaceably and without arms, and to form associations or unions, is hereby guaranteed for purposes not opposed to public order or morality. (Comparable to Article 19 )
- All citizens in the Commonwealth of India have the right to free elementary education without any distinction of caste or creed in the matter of admission into any educational institutions, maintained or aided by the state, and such rights shall be enforceable as soon as due arrangement shall have been made by competent authority. Provided that adequate provision shall be made by the state for impairing public instruction in primary schools to the children of members of minorities of considerable strength in the population through the medium of their own language and in such script as is in vogue among them. (Comparable to Article 21A)

- All citizens are equal before law and possess equal civic rights. (Comparable to Article 14)
- There shall be no penal law whether substantive or procedural of a discriminative nature. (Comparable to Article 20)
- No person shall be punished for any act which was not punishable under the law at the time it was committed. (Comparable to Article 20)
- No corporal punishment or other punishment involving torture of any kind shall be lawful. (Comparable to Article 21)
- Every citizen shall have a right to a writ of *habeas corpus*. Such right may be suspended in the case of war or rebellion by an Act of the central legislature or, if the legislature is not in session, by the Governor-General-in-Council, and in such case he shall report the suspension to the legislature, at the earliest possible opportunity for such action as it may deem fit. (Comparable to Article 32 and 226)
- There shall be no state religion for the Commonwealth of India or for any province in the Commonwealth, nor shall the state directly or indirectly endow any religion or give any preference or impose any disability on account of religious belief or religious status. (Secularism advocated in the Preamble of the Constitution)
- No person attending any school receiving state aid or other public money shall be compelled to attend the religious instruction that may be given in the school. (Minority rights, Comparable to Article 28)
- No person shall by reason of his religion, caste or creed shall be prejudiced in any way in regard to public employment, office of power or honour and the exercise of any trade or calling. (Right to employment without discrimination; Comparable to Article 16)
- All citizens are equal before law and possess equal civic rights. (Comparable to Article 14)
- There shall be no penal law whether substantive or procedural of a discriminative nature. (Comparable to Article 20)
- No person shall be punished for any act which was not punishable under the law at the time it was committed. (Comparable to Article 20)

- No corporal punishment or other punishment involving torture of any kind shall be lawful. (Comparable to Article 21)
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- There shall be no state religion for the Commonwealth of India or for any province in the Commonwealth, nor shall the state directly or indirectly endow any religion or give any preference or impose any disability on account of religious belief or religious status. (Secularism advocated in the Preamble )
- All citizens have an equal right of access to, and use of, public roads, public wells and all other places of public resort.(Comparable to Article 15 )
- Freedom of combination and association for the maintenance and improvement of labour and economic conditions is guaranteed to everyone and of all occupations. All agreements and measures tending to restrict or obstruct such freedom are illegal. (Comparable to a number of Directive principles of State policy )
- No breach of contract of service or abetment thereof shall be made a criminal offence. (Comparable to Article 21 )
- Parliament shall make suitable laws for the maintenance of health and fitness for work of all citizens, securing of a living wage for every worker, the protection of motherhood, welfare of children; and the economic consequences of old age, infirmity and unemployment and Parliament shall also make laws to ensure fair rent and fixity and permanence of tenure to agricultural tenants. (Comparable to a number of Directive principles of State Policy)
- Every citizen shall have the right to keep and bear arms in accordance with the regulations made in that behalf. (Right to Arms which does not exist in the Constitution)
- Men and Women shall have equal rights as citizens.<sup>1</sup> (Comparable to article 14)

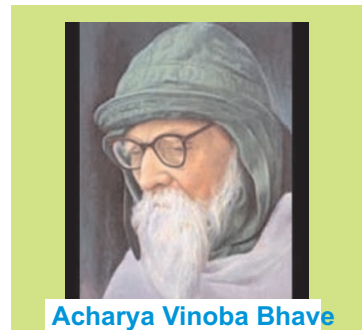
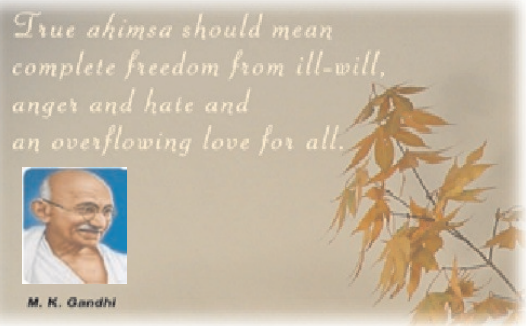
### 3. Meaning and Concept of Sarvodaya

The term Sarvodaya is indigenous in its origin. It is derived from the two-different words. They are *sarva* and *udaya*. *Sarva* means all and *udaya* means rise. In short, Sarvodaya means 'universal upliftment of all'. Mahatma Gandhi first coined this term in 1908 while translating the work of John Ruskin's tract on political economy '*Unto this Last*'.

Gandhi employed this term in order to give a modern basis to the ancient Indian philosophy of *Sarvadharmasamantva* or *Sarvabhutahita*. Conceptually, the philosophy of sarvodaya aims at achieving the welfare of all sections of people of a polity with the aid and assistance of social and legal institutions in a peaceful manner. Gandhi referred this in short as true ahimsa. This

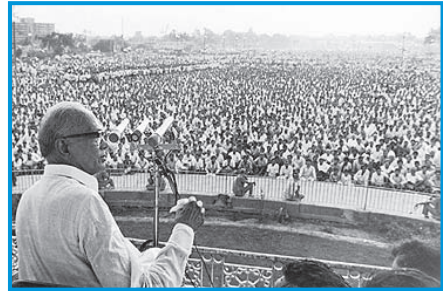
principle of Gandhi became popular, inculcated and propagated by a number of leaders in India and abroad. It became a cornerstone for a number of contemporary movements of Human Rights across the world.

Gandhi has laid the foundation for Sarvodaya movement firmly on the principles of Truth, Non-violence, and love, which has eternal value. The Sarvodaya concept became the fundamental principle of freedom movement of India. Amongst various statesmen, Acharya Vinoba Bhave, Jayprakash Narayanan, Dadasaheb Dharmadhikari, Dhirendra Mazumdar, Shankarrao Deo, K. G. Mashruwala, etc., pursued the path of the philosophical objects of sarvodaya even after independence. The Gramdan and Bhudan movements initiated by Acharya Vinoba Bhave, were the popular movements aimed to achieve the concept of welfare of peasants and landless people, and, received legal sanction.



1. <https://sites.google.com/site/cabinetmissionplan/nehru-report-1928-full-text/doc1>

After the death of Acharya Vinoba Bhave, 'Jayaprakash Narayan' took the mantle on his shoulders to achieve the concept of Sarvodaya. He went a step further and advocated that apart from Bhoodan movement, the state need to empower villages as self-sufficient units for the long-term sustainability of economy of the nation. He felt that this is the most important aspect of Sarvodaya, and it is the dream of Gandhi who advocated this concept to achieve self-sufficiency of the country for the all round development of economy and the people which in turn, augment Human Rights of everyone without much interference of state.



**Jayaprakash Narayan**

The concept of Sarvodaya has its own mark in many forms in the independent India. The various five-year plans, the number of schemes and programmes initiated by government both at national and state level have centered round it. The 73<sup>rd</sup> and 74<sup>th</sup> Constitutional amendments dealing with empowerment of Gram Swaraj etc. are the philosophical tenets of Sarvodaya. However, lack of commitment to implement the concept in its true perspective has brought in number of problems in the contemporary era. In order to make India a self reliant, vibrant democratic polity, it is the duty of every one of us to adhere strictly to the principle of Sarvodaya. By practicing Sarvodaya, will not only wipe many of the miseries that are currently affecting the polity but also help to bloom the rights of all sections of people in order to realize the social justice philosophy advocated by Dr. B. R. Ambedkar in the preamble of the Constitution.

#### **4. A brief introduction to the Constitution**

The Constitution of India was drafted under the supervision of the Constituent Assembly. Originally, the Constitution Assembly consisted of 389 members. However as a result of partition under Lord Mountbatten Plan on June 3, 1947, a separate Constitutional Assembly was set up for Pakistan. As a result, the membership of Constitutional Assembly of India was reduced to 299. The Chairman of the Constituent Assembly was Dr. Rajendra Prasad who later became the first President of independent India. In order to draft the Constitution, a Drafting Committee was set up on 29<sup>th</sup> August 1947. The Chairman of Drafting Committee was Dr. B.R. Ambedkar. Along with him , six other members were chosen to draft the Constitution. The other members were Pandit Govind Ballabh Pant, K.M. Munshi, Alladi Krishnaswamy Iyer,

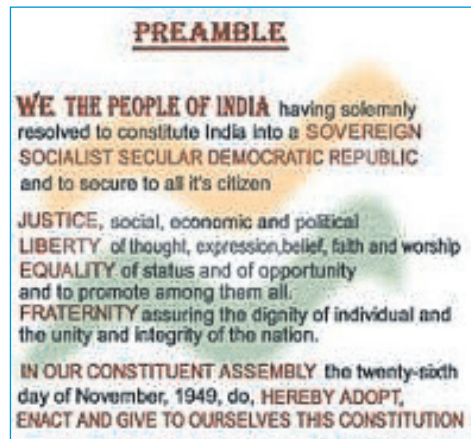


N. Gopaldaswami Ayengar, B.L. Mitter, MD Sadullah, D.P. Khaitan. Sir Benegal Narsing Rau was appointed as the Constitutional Advisor to assist the Constitutional Assembly and the Drafting Committee, who later became the First Indian to become a judge of the International Court of Justice in 1952. Drafting committee completed task of drafting constitution in 2 years, 11 months and 17 days. The draft prepared by the drafting committee was later adopted by Constitutional Assembly on 26<sup>th</sup> November, 1949 and the constitution came into force on 26<sup>th</sup> January 1950.<sup>1</sup>

The Constitution is described as quasi-federal by Prof. K.C. Wheare, an American Constitutional expert since it has both federal and unitary features in its structure. In the words of Granville Austine, a famous Constitutional jurist of India, 'the Indian Constitution is described as 'federal in times of peace and unitary in times of war'. However strictly speaking, the constitution may be best described as a co-operative federation. The constitution in all has 395 Articles and 12 Schedules.

## 5. Preamble

Preamble means, introductory statement of a constitution, which sets out in detail the underlying facts and assumptions, and explains its intent and objectives. Its objective is to clarify the meaning or purpose of the operative part of the text in case of an ambiguity or dispute. According to the preamble, the power of sovereignty lies solely with the people of India and not in any institution of the government created either by constitution or by a statute. Hence, none of the organizations of the government including the Parliament of India created by constitution is sovereign. According to the original constitution, India described as Sovereign, Democratic, Republic. The sovereignty lies with the people, and there is neither a hereditary monarch nor any individual can claim authority permanently. This means a republican constitution connotes that, the people through their representatives choose a government including President of the country at regular periodical intervals as



<sup>1</sup> For details see, <http://parliamentofindia.nic.in/ls/debates/facts.htm>

stipulated by the constitution.

The words 'Socialist and Secular' inserted to preamble by Forty-second Amendment to the constitution in the year 1976. Further, it substituted the expression of 'unity of the nation' with the expression 'unity and integrity of the nation'. Thus, the present Preamble reads as stated in the picture.

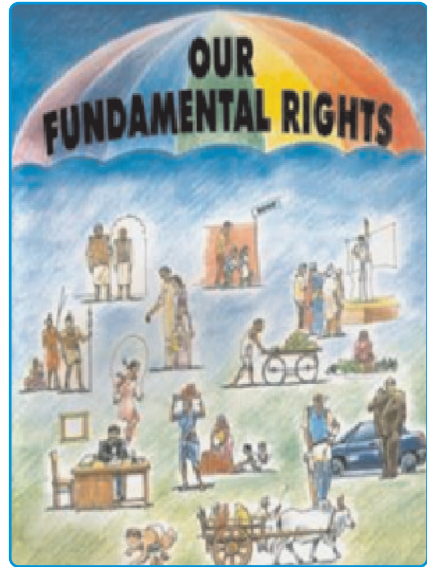
The Constitution of India was the first constitution to incorporate the ideals of the Charter of the United Nations, the Universal Declaration of Human Rights and the indigenous socio-political-economic, legal and cultural reflections of the country. The Constitution of India was the first in the world to bifurcate the Justiciable (civil and political rights as Fundamental Right) and non-Justiciable (economic, social and cultural rights as Directive Principles of State Policy) human rights that declared in the UDHR without any bifurcation. The Constitution of India in tune with the principles of international law of human rights imposed the responsibility on the state for the realization of the non-Justiciable rights through Article 38. This bifurcation and the inclusion of the non-Justiciable rights in the constitution is the vision of Constituent Assembly to provide a better life to the people wherein the socio-economic justice will be available to all without any discrimination in tune with preamble of the constitution. The philosophy of the fundamental rights advocated by the assembly is to ensure that the liberty of citizens is to fulfill at all times in a realistic perspective and not a mere promise. The assurance led the judiciary to further ensure a strict vigil that the goals of the framers of the constitution are fulfilled without much deviance. Therefore, in a nutshell, the Preamble not only represents the aspirations of people of India but also ensures realization of the goals to match with that of the jurisprudential vistas of International Law of Human Rights.

## 6. Fundamental Rights:

Jurisprudentially, the history of rights forms part of natural law which dates back to evolution of mankind. However, the philosophical differences and the suppression of individual rights by sovereigns across the world gave birth to the modern concept of Human Rights with the adoption of Magna Carta in 1215. From then onwards a number of declarations, conventions and constitutional documents gave impetus for the development of human rights in municipal sphere. However, the lack of recognition by international community led to a number of wars destabilized not only the liberties of individuals, but also peace and security.

In order to ensure and to achieve peace and security, the prime concept of international law, framers of the Charter of United Nations gave impetus to natural

rights by naming them as Human Rights. In order to further, reiterate its commitment to foster respect for rights of individuals, in the year 1948, United Nations adopted the Universal Declaration of Human Rights. The mandate of UDHR is to fix responsibility on nation-states that the civil and political rights; economic, social, cultural rights be guaranteed to people of the world in order to bloom peace and security. It also mandated on the individuals, in realizing the Rights they need to observe duties without any deviance through Article 29 of UDHR.



The constituent assembly by taking into consideration of philosophical ethos of India and that of international community incorporated the philosophy of Human Rights in the constitution as Fundamental Rights and Directive Principles of State Policy. The concept of Duties was not part of the original constitution. However, it has been incorporated to the constitution through 42<sup>nd</sup> amendment in 1976.

The provisions related to fundamental rights (which described as civil and political rights) are found in Articles 12 to 35, 226, 358 and 359 of the Indian Constitution. These fundamental rights are a mixture of international philosophy of Human Rights, the Charter of the United Nations and indigenous to suit the Indian polity. Among the various rights that has stated in the Indian Constitution, some of them are equivalent to the International Declarations and Covenants.

Here under, a comparative table is presented for an easy understanding of Fundamental Rights which are equivalent to civil and political rights at the international level.

NAME OF THE FUNDAMENTAL RIGHT AND ARTICLE IN THE INDIAN CONSTITUTION	EQUIVALENT /NEAR COMPARABLE ARTICLES IN UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948	EQUIVALENT/ NEAR COMPARABLE ARTICLES IN INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966
<p>Article 14: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India</p>	<p>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.</p>	<p>Article 14(1): All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (order public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.</p>

<p>Article 15(1): The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.</p>	<p>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.</p>	<p>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.</p>
<p>Article 16(1): There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.</p>	<p>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.</p>	<p>Article 25: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions. © To have access, on general terms of equality, to public service in his country.</p>
<p>Freedom of speech and expression- 19 (1) (a) All citizens shall have the right to freedom of speech and expression.</p>	<p>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.</p>	<p>Article 19: (1) Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.</p>



<p>Article 19 (1)(b): All citizens shall have the right to assemble peaceably and without arms.</p>	<p>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.</p>	<p>Article 21: The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.</p>
<p>Art. 19 (1)(c): All citizens shall have the right to form associations or unions.</p>	<p><b>Article 19:</b> 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.</p>	<p><b>Article 19:</b> (1) Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.</p>
<p><b>Article 19 (1)(b):</b> All citizens shall have the right to assemble peaceably and without arms.</p>	<p><b>Article 20:</b> 1. Everyone has the right to freedom of peaceful assembly and association. 2. No one may be compelled to belong to an association.</p>	<p><b>Article 21:</b> The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order</p>

		public health or morals or the protection of the rights and freedoms of others.
<b>Art. 19 (1)(c):</b> All citizens shall have the right to form associations or unions.	<b>Article 23(4):</b> Everyone has the right to form and to join trade unions for the protection of his interests.	<b>Article 22(1):</b> Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
<b>Art. 19(1) :</b> All citizens shall have the right : (d)to move freely throughout the territory of India; e) to reside and settle in any part of the territory of India.	<b>Article 13 (1):</b> Everyone has the right to freedom of movement and residence within the borders of each State.	<b>Article 12(1):</b> Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
<b>Art. 19 (1)(g)</b> All citizens shall have the right to practise any profession, or to carry on any occupation, trade or business.	<b>Article 23(1):</b> Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.	_____
<b>Article 20 (1):</b> No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.	<b>Article 11 (2):</b> 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.	<b>Article 15</b> 1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed.

<p><b>Article 20 (2)</b> No person shall be prosecuted and punished for the same offence more than once</p>	<p>_____</p>	<p><b>Article 14 (7) :</b> No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law</p>
<p><b>Article 20 (3)</b> No person accused of any offence shall be compelled to be a witness against himself.</p>	<p>_____</p>	<p><b>Article 14 (3):</b> In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge</p>
<p><b>Article 21 :</b> No person shall be deprived of his life or personal liberty except according to procedure established by law.</p>	<p><b>Article 3:</b> Everyone has the right to life, liberty and security of person.</p>	<p><b>Article 6 (1):</b> Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. <b>Article 9(1):</b> Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in</p>
<p><b>Article 21 A:</b> The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.</p>	<p><b>Article 26 :</b> Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory</p>	<p>_____</p>

<p><b>Article 22 (1) :</b> No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.</p> <p>(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.</p>	<p><b>Article 9:</b> No one shall be subjected to arbitrary arrest, detention or exile.</p> <hr/>	<p><b>Article 9 (2)</b> Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.</p> <p><b>(3)</b> Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.</p> <p><b>(4)</b> Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.</p>
<p><b>Article 23 (1):</b> Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.</p>		<p><b>Article 8(3)(a)</b> No one shall be required to perform forced or compulsory labour.</p>

<p><b>Article 25: (1)</b> Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.</p>	<p><b>Article 18:</b> 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.</p>	<p><b>Article 18: (1)</b> Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.</p>
<p><b>Article 32:</b> (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.</p>	<p><b>Article 8 :</b> 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.</p>	<p><b>Article 2(3):.</b> Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy.</p>



According to provisions of the constitution, the fundamental rights which are equivalent to that of the civil and political rights of international law of human rights, they constitute as 'claim rights'. The claims can be made against the state and its various agencies. These claims can be made by individuals and by legal persons (institutes or agencies created by Law). However, the legal persons have only limited rights that are guaranteed by law.

For the purpose of claim, the rights guaranteed under the constitution, a state constitutes, the government of the Union and the States or any agency or an institute that receives funding by the government under Article 12 of the Constitution of India as interpreted by the Supreme Court in *Ajay Hasia v. Khalid Mujib Sehravardi* (AIR 1981 SC 487).

Article 13 is the cornerstone of all fundamental rights. This article imposes a restriction on the state not to enact any law that constitutes an infringement to fundamental rights. This article empowers the judiciary to keep a vigil on the acts of state and its agencies to nullify any law, which brings in any kind of unreasonable restriction on the free exercise of fundamental rights.

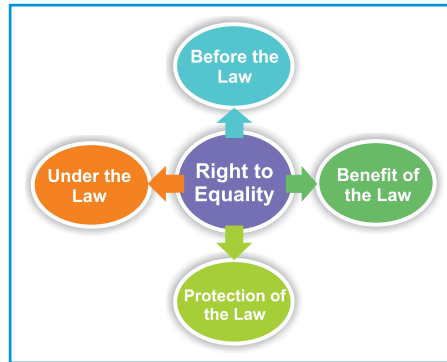
### **Right to Equality:**

Equality constitutes an important ingredient for the free exercise of fundamental rights. This means all people are equal in the eyes of law and have equal protection of laws. According to Dicey, though a section of people may enjoy certain preferential treatment for justifiable reasons, the concept of equality cannot be construed as discriminatory in nature.



Equal protection of laws connotes that all persons placed in a similar situation will have a nexus with the purpose for which the law is enacted. Accordingly, the concept of equal protection of laws does not mean that the same laws will be applicable to all persons on an equal footing. The concept of equality under Article 14 is applicable to citizens and as well to foreigners.

The concept of right to equality is dealt under Articles 14 to 18 of constitution. In these articles, certain concessions are extended to various sections of people taking into consideration of their socio, economic, politico, cultural backgrounds. The concessions extended to those groups of people are applicable only to them. The philosophy behind these concessions is to uplift the disadvantaged groups on par with other socially developed groups. This type of concessions extended to various groups is fully justified under the concept of equality. Equality being a wider concept of law, laws can be applied only between equals on an equal footing but not between equals and unequal.



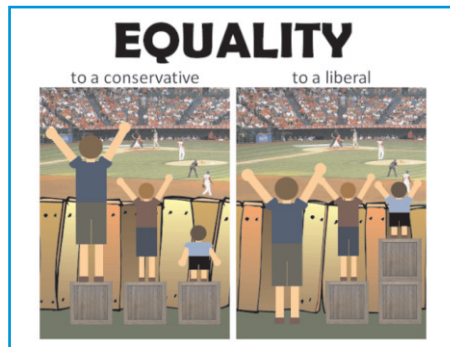
### Prohibition of Discrimination under Article 15 :

This article empathetically endorses the perception of equality before law as stated under article 14. At the same time, it clearly justifies concessions that are extended to women, children, socially and educationally backward classes of citizens and scheduled castes and scheduled tribes as reasonable classification to wipe out their inequalities in applying the spirit of equality before law and equal protection of laws. Therefore the concessions extended to various groups of people in no way constitutes discriminatory.



### Equality of Opportunity in matters of public employment under Article 16:

This article is a further extension to meet the requirements of equality under article 14. According to this article, all the citizens should be given an equal opportunity in public employment without any kind of discrimination. However, concession extended to various groups by state under this article no way constitutes discrimination to the general philosophy of equality among the citizens. At the



same time it has to be remembered, this article in no way confers a right on citizens to procure a job on a guaranteed basis.

### **Abolition of Untouchability under Article 17:**

This article is an elaboration of the concept of equality guaranteed under article 14. Though there is no definition, what constitutes untouchability, in the Constitution and as well as in the Protection of Civil Rights Act of 1955 the word 'Untouchable' signifies any kind of discriminatory practices that are adopted by a section of people to any of disadvantaged sections of people in society. This article is similar to the 13<sup>th</sup> amendment of the Constitution of America, which abolished Slavery, and in tune with the spirit of International law of Human Rights.



### **Abolition of Titles under Article 18:**

According to this article, no citizen of the country is permitted to receive any title from any foreign country. However, there is no bar on the Government of India to confer various titles and honors to its citizens based on their performances in various fields including defense services. At the same time none of the employees of government while in service, are entitled to receive any kind of emolument or any kind of job from or under any foreign state without the prior sanction of the President of India.

### **Right to various Freedoms under Article 19 :**

According to Supreme Court of India, the rights that are guaranteed under Article 19 as Natural Rights, since they are inherent with the human personality and to describe the free will and character of a citizen in a democratic polity. (**State of West Bengal v. Subodh Gopal Bose** (AIR 1954 SC 92).

This Article confers on all the citizens; (a) Freedom of Speech and Expression; (b) Assemble peacefully without arms; (c) move freely throughout territory of India; (d) to reside and settle in any part of the territory and (d) to practice any profession or to carry any occupation, trade or business. In the original Constitution, right to property was also part of this



right. However, the 44<sup>th</sup> amendment of the constitution in 1978 has converted it into a legal right than a fundamental right under Article 300 A.

The difference between the fundamental right and legal right is that a fundamental right cannot be taken away by the state under the garb of law. A legal right can be taken away by the state under the authority of law by paying appropriate compensation for such deprivation. However, the judiciary is empowered to examine whether such deprivation is legal or not.

In the exercise of above freedoms, the citizens have onerous responsibility not to impair the freedom of others, and the government is empowered to impose reasonable restrictions if it deems necessary in the interest of other right holders or for the security of the nation.

### Right to Freedom of person

Articles 20 to 24 constitute as right to freedom of person. The provisions under these various articles constitute as the basic rights in order to receive the equal treatment and equal protection of laws under Article 14 of the Constitution. The rights of Freedom of person are available to all persons and not confined to cover alone the rights of citizens of India. The above articles will be examined in subtle perspective.

#### a) Freedom of Protection in respect of conviction of offences under Article 20

According to Article 20, no person is punishable by state without following the procedure laid down by law. The protection under this article is applicable to all persons, which means, both natural and legal persons. The protection available to persons under this article is related to matters of criminal law. Under this article, no person can be punishable until and unless the acts of such persons constitutes as a crime under various laws of the land. This article guarantees that, a court cannot try or punish any person twice for a same offence. In the language of law it is referred to as '*Double Jeopardy*'. It further guarantees that no accused person shall be compelled to be a witness in his own case.



## b) Protection of Life and Personal Liberty under Article 21

This article is the cornerstone amongst all the fundamental rights. This Article not only extends protection from the unauthorized legal acts of the state, but at the same time extends to cover a wide variety of rights that are necessary for a natural person to lead a life with minimum amount of decency and decorum. This article guarantees a natural person a number of rights that are guaranteed under the various provisions of fundamental rights and directive principles which need to be honoured and respected by the state in order to ensure to lead a life with dignity.



The 44<sup>th</sup> amendment of the Constitution and the innumerable number of judgments of the Supreme Court, the Parliament of India made it impossible for the state to take away this right, and a number of corresponding rights, that are guaranteed under various provisions of the constitution, even in an internal or external emergency through 44<sup>th</sup> Amendment in 1978.

Interpreting the provisions of this article in tune with the spirit of the preamble of the constitution, the philosophy of international law of Human Rights, the Judiciary has brought in a number of rights under the purview of Article 21. The decisions of the judiciary in a catena of cases led the state to implement policies and to enact laws guarantying the various fundamental rights such as Right to Health, Right to Shelter, Right to Pollution free atmosphere, Right to Livelihood, Right to Privacy, Right to Education, Right to Information, et al., and sweeping reforms in the area of criminal jurisprudence.

After the decision of the Supreme Court in **Unnikrishnan v. State of Andhra Pradesh** (1993 SCC 1 645) guarantying Right to Education as a Fundamental Right, it took a long time for the Parliament to insert it in the Constitution under Article 21. It added a new clause (A) to Article 21 through the 86th amendment Act in 2002. Accordingly, it is an obligation of the state as per Article 21A to provide free and compulsory education to all the children of the country without any discrimination between the age group of 6-14 basing on its financial capacity.

## c) Protection against Arrest and Detention under Article 22

This is an important right to have protection of the citizens from the inimical acts of the state. It empowers a person to know the grounds of arrest, in case if Police

wants to arrest a person on any criminal charge. It further empowers to consult and defend the innocence of a person through an advocate, and have the right to be produced before the Magistrate Court within 24 hours from the time of arrest. However, in the case of alien enemies there is no right conferred on persons to know the grounds of their arrest as a preventive detention measure. In case of arrest of any person on charges of terrorism, a person can be detained under police custody up to a period of 3 months. If the custody needs to be extended, it should be done only under the supervision of an advisory board constituted under such law or under the supervision of not less than a High Court. This right has to be read in conjunction with a number of rights in the constitution. Basing on a number of judgments, during the period of detention even in case of terrorism or charges of extortion a detainee cannot be denied the basic fundamental rights and need to be provided including the reasonable facilities in conjunction with right to life and liberty as guaranteed under Article 21. Though, the right does confer a person to defend himself or herself on the grounds of arrest, by police, the constitution nor the criminal laws of India define the term what constitutes an 'arrest' in the realm of law.

#### **d) Right against Exploitation under Articles 23 and 24 :**

This important right has adopted by the constituent assembly basing on the jurisprudential vistas of international law of Human Rights. According to this right, no person can be compelled to engage in any work that degrades the dignity and constitutes as a contravention to life and liberty of an individual. For example, works like forced labour, manual scavenging, prostitution, trafficking etc. It also guarantees the children not to be employed in work below the age of fourteen, which deprives the tender age of childhood. A number of conventions, covenants, national legislations, policies of the government and judgments of the judiciary clearly advocated that this right need to be protected at all times, and a duty has been casted both on the state and on the people to keep a vigil and watch against the breach of this right. At the same time, the state is empowered to extract compulsory service for public purposes without any discrimination either to defend the sovereignty of nation or in times of major calamities.





## Right to Freedom of Religion and Cultural, Educational Rights and Rights of minorities under Articles 25 to 30

Being a land of many religions, in tune with the philosophy of the Preamble of constitution as a secular state, the state has no religion and all religions are equal in the eye of law. These articles advocate citizens to profess, practice and propagate the religious practices and sentiments of any religion without hampering the rights and sentiments of other religions. People of every religion are free to establish and maintain any institution for religious and charitable purposes in accordance with the provisions of various laws of the country. No government institution or educational institution



or institutions funded and managed wholly or partially with the support of the state at no point of time advocate or instruct any religious activity. However, any institution established for the promotion and protection of rights of minorities can impart such education which may help them to protect their cultural perspectives is permissible under Articles 29 and 30 or any other law that is enacted from time to time.

In spite of the recognition of the rights of minorities by international law of human rights and as well by the constitution of India; it is surprising to note that the term minorities is confined only to religious perspective and no definition is provided to define what constitutes a 'minority'.

## Right to Constitutional Remedies under Articles 32 and 226

In tune with jurisprudential perspectives of law that every right that has been guaranteed under law need to have a remedy. Accordingly, constitutional framers empowered the Judiciary, (especially the Supreme Court and High Courts) under Articles 32 and 226, to issue various directions in the form of a writ to prevent the encroachment or breach of the rights. After the 44<sup>th</sup> Amendment of the Constitution in 1978, and from a number of judgments of the judiciary, it is an undeniable fact that even in emergency the right to move to the court to seek remedy for the infringement of a right by the state or its agencies cannot be suspended as it constitutes a violation to the bedrock right of life and liberty of an individual under Article 21.



Writ means a judicial order commanding the party to whom it is addressed to perform or cease to perform a specified act. Accordingly, the five writs that have been recognized by constitution are as follows:

### **Habeas Corpus:**

'*Habeas Corpus ad subjiciendum*' literally means to produce the body before a court or to answer a court. Under this writ, if a person is wrongfully arrested and not produced before a court of law within the stipulated period of 24 hours, the person detained or a friend or a relative could move the court to seek a direction of writ of Habeas Corpus. If the court is convinced with the grounds stated in the application, it may direct authorities of police and the state to produce the person before the court. In case if a person is arrested on grounds of preventive detention, the court is expected to have an answer from the respective authorities, whether such detention is prima facie legal or not.

A writ of Habeas Corpus cannot be moved or granted, if a person is properly taken into custody under the authority of a court of law. If a court refuses a petition of Habeas Corpus, a person cannot file successive applications to the same court.

### **The Mandamus:**

It literally means a command issuing from the court, directed to any person, corporation or inferior court or authority to an act or refrain from an act, which falls within its jurisdiction. The issue of writ of mandamus is only in case of parties whose fundamental rights are directly and substantially invaded or are in eminent danger of being so invaded. The party against whom the mandamus is sought and such duty must be of a public nature issues it only when the applicant shows that there resides in him a legal right to the performance of a legal duty

### **Prohibition:**

Prohibition is a judicial writ compelling the courts entrusted with judicial duties to keep within the limits of their jurisdiction. This writ is issued only at the beginning of the hearing of a matter by the inferior court with a view to preventing the court from exercising jurisdiction, which it does not possess. If the court has decided the matter, this writ will not lie.

### **Quo Warranto:**

This writ issued against a person who holds a public office to inquire whether he posses the authority or not. The court has discretion to grant or to refuse the writ. It will not be issued against constitutional functionaries.

**Certiorari:**

The court issuing this writ acts in its supervisory jurisdiction. It is only concerned with the conduct of the trial before the inferior court and whether the court has followed the law or not. Hence, it can be said that the writ of certiorari can only be issued when there is error of law apparent on the face of record and not when there is error of fact.

**7. Directive principles of the state policy**

**“In my judgment, the directive principles have a great value; for they lay down that, our ideal is economic democracy. Because we did not want merely a parliamentary form of government to be instituted through the various mechanisms provide in the Constitution, without any direction as to what our economic ideal, as to what our social order ought to be, we deliberately included the Directive Principles in our Constitution.” - Dr. B. R. Ambedkar**

The Directive Principles of State Policy are as important as Fundamental rights. These principles are comparable to that of the Economic, Social and Cultural rights of International Law of Human Rights. The Indian judiciary described these principles as forerunner of the UN Convention on Right to Development of United Nations (**Air India Statutory Corporation V United Labour Union**, AIR 1997 SC 645). As they stand on par with the international Philosophy, these rights are addressed to the State to enact laws envisioning the economic, social, political and cultural Perspectives of the polity in order to enable the citizenry to enjoy their fundamental rights on an equal footing. In the legal sphere these principles constitute as non-justiciable rights, which means their derogation by state cannot be challenged in the courts of law. However, in **Minerva Mills Case** ( 1989) 3 SCC 625, Justice Bhagwati held that if the non-implementation of these principles by state has any bearing on the free exercise of fundamental rights, judiciary can direct the state to take steps for their enforcement, as they create obligations to the state to enact legislation giving effect to these principles. But, this terminology of the court cannot be considered that their non-adherence by state in all cases can be freely challenged in court of law like the fundamental rights. These principles are enshrined in part IV, Articles 36 to 51 of the Indian Constitution. The Irish Constitution was the spirit behind these principles. Here under, a comparative table is presented for an easy understanding of directive principles of state policy which are equivalent to social, cultural & economic rights at the international level.

Constitutional provisions regarding Directive principles of State policy	Corresponding provision in the Universal Declaration of Human Rights, 1948	Corresponding provision in International Covenant on Economic, Social and Cultural Rights, 1966
<p><b>Article 39 (a)</b> : The State shall, in particular, direct its policy towards securing— (a) that the citizens, men and women equally, have the right to an adequate means of livelihood</p>	<p><b>Article 25:</b> (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.</p>	<p><b>Article 11 1.</b> The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions</p>
<p><b>Article 39</b> : The State shall, in particular, direct its policy towards securing (d) that there is equal pay for equal work for both men and women.</p>	<p><b>Article 23 (2)</b> Everyone, without any discrimination, has the right to equal pay for equal work</p>	<p><b>Article 7</b> The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular (a) Remuneration which provides all workers, as a minimum, with:(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;</p>

<p><b>Article 39(f) :</b> Children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.</p>		<p><b>Article 10 :</b> The States Parties to the present Covenant recognize that : 3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.</p>
<p><b>Art. 41.</b> The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.</p>	<p><b>Article 23 :</b> Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.</p>	<p><b>Article 6 : 1.</b> The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right</p>

<p><b>Art.42 :</b> The State shall make provision for securing just and humane conditions of work and for maternity relief.</p>	<hr/>	<p><b>Article 7 :</b></p> <p>The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular:</p> <p>(b) Safe and healthy working conditions;</p> <p>(d ) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays</p>
<p><b>Article 43 :</b> The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavor to promote cottage industries on an individual or co operative basis in rural areas</p>	<hr/>	<p><b>Article 7(2)</b> The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular:</p> <p>(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;</p> <p>(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;</p> <p>(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays</p>



<p><b>Art.43A:</b> The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry.</p>		<p><b>Article 8:</b>          1. The States Parties to the present Covenant undertake to ensure: (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;</p>
<p><b>Art.45 :</b> The State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.</p>	<p><b>Article 26(1) :</b> Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages.</p>	<p><b>Article 13:</b>          2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right: (a) Primary education shall be compulsory and available free to all.</p>

<p><b>Art. 47:</b> The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.</p>	<p><b>Article 25:</b> (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</p>	<p><b>Article 11 :</b> 1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.</p>
<p><b>Art.49 :</b> It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, [declared by or under law made by Parliament] to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.</p>	<p><b>Article 27 (1) :</b> 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.</p>	<p><b>Article 15 (1) :</b> The States Parties to the present Covenant recognize the right of everyone: (a) To take part in cultural life;</p>

**Definition of State (Article 36):**

In this article, the state need to be defined as defined in Article 12 of the constitution. It is left to the judiciary to interpret the provisions of constitution to define a state in each case if necessary in the implementation of directive principles of state policy.

**Applicability of the Principles (Article 37)**

According to the provisions of the constitution and the philosophy of International Covenant on Economic, Social and Cultural rights, the principles stated in this part are only directives to the State. The implementation of these principles depends on various aspects. Further, these being non-justiciable rights, in general they cannot be challenged in a court of law in case if the state is not adherent to any directive.

**State to Secure a Social Order for the Promotion of Welfare of the People and to certain principles to be followed by State (Articles 38 and 39) :**

Articles 38 and 39 of the Constitution advocate the concept of distributive justice. Distributive justice is though a jurisprudential concept, in the constitutional and human rights perspective it is the duty of state to achieve the basic principles of equality amongst the people of the country and try to remove any inequality. Accordingly, the state is empowered to enact any specific legislation to remove inequality and provide



such facilities that are necessary to uplift the unequals in a comprehensive manner. Basing on the above provisions, the Government of India and the State Governments enacted a number of legislations to remove inequalities and extended a number of concessions to many sections of the people to empower them on par with other developed sections of the polity.

Article 39 directs the state to adopt policy measures to enact specific legislations to empower people economically in order to meet the requirements of life and liberty. In this regard, the state need to take special care with respect to certain sections of people who are disadvantaged groups and to enact legislations and adopt policy measures that their welfare need to be augmented without any adverse impact

of economic necessity. The Union of India and the State Governments in the last six decades enacted a number of specific legislations to augment the rights of the people in general and specific legislations in particular to protect those disadvantaged sections of people. The principles further enforce the right to equal justice and free legal aid as a part of Article 21 of the constitution to ensure life and liberty.

### **Organization of Village Panchayats (Article 40)**

In tune with the policy of decentralization of governance from grass-root levels, Article 40 directs the state to take steps to empower village panchayats with necessary powers to achieve self sufficient governance by the people. As per the provisions of this article, Panchayat raj system has been introduced in the country. In order to give effect to the provisions, Part IX of the Constitution, the Seventy Third Amendment of the Constitution Act, 1992 brought in a number of changes to empower the grass root level administration and also introduced reservations to Women and Scheduled Castes and Tribes.

### **Right to work, to education and to public assistance in certain Cases (Article 41)**

According to Article 41 of the Constitution, it shall be duty of state within its economic capacity and development provide right to work, to education and to public assistance in certain cases. In this regard, through Eighty Sixth Constitutional Amendment Act in 2002, the State made it a fundamental right giving effect to the judgment of the Supreme Court in *Unnikrishnan V State of Andhra Pradesh* delivered in 1992. Apart from this, the Union and States adopted a number of policies to provide public assistance in cases of unemployment, old age, sickness and disablement, etc.



### **Provisions for just and humane conditions of work and maternity relief (Article 42)**

As per provisions of Article 42 of the constitution, it is the duty of state to provide human conditions of work and maternity relief. Interpreting the provisions of the article, the Supreme Court in *D. Bhuvan Mohan Patnaik V State of Andhra Pradesh* (1975) 3 SCC 185; held that living conditions in jails for convicts and under trail prisoners are also need to be safeguarded by the state. The Parliament enacted a Maternity benefit Act in 1961 giving effect to the provisions of this article.

### **Living Wage, for Workers (Article 43)**

According to Article 43, the state need to take steps to ensure the workers of all types both in urban and rural areas to lead a life with minimum standards and to enjoy leisure and to able to meet the social and cultural opportunities. According to this article, a living wage includes food, shelter, clothing, provision for education of children, insurance etc. In tune with the policy of this article, both the Union and States enacted a number of legislations to extend a number of facilities to workers working in various avocations.

### **Uniform Civil code for Citizens( Article 44)**

Article 44 of the Constitution advocates the state to adopt a Uniform law to govern all personal laws on an equal footing. The same was reiterated by the Convention on the Elimination of the Discrimination of the Women, 1979 (CEDAW). Accordingly, the state initiated steps to codify the personal laws of all religions. However, it could not do so for a variety of reasons better known to the state. It has only codified the Hindu law, Parsi and Christian Marriage and Divorce laws. In some of these laws to remove discrimination women are given equal right to inheritance of property. In Shah Bano Case, (*Mohd., Ahmed Khan V ShahBano Begum* (1985) 2 SCC 556), the Supreme Court laid down norms to claim maintenance for Muslim women under section 125 of Criminal Procedure Code. The judiciary in a number of cases suggested that there should be a uniform civil code. (*Sarla Mudgal V Union of India* 1995 3 SCC 635).

### **Provisions for early childhood care and education to Children below the age of six years (Article 45)**

Article 45 advocates that the state need to take steps to protect childhood from malnutrition, poverty and other communicable diseases and educate all children below six years. Though the state enacted a number of legislations and adopted policy formulations, it is still a distant dream for millions of children to have a safe and decent environment to live and grow. However, as stated above, the state in 2002 took steps to ensure right to education compulsorily to all children up to the age of 14 years.

### **Promotion of education and economic interests of SC/STs and other Weaker Sections (Article 46)**

It is the duty of the state according to Article 46 to take special care with respect to educational and economic interests of weaker sections of the polity, and especially, the Scheduled Castes and Scheduled Tribes to protect from social injustice and all

forms of exploitation. In tune with the provisions of the article, the Union and States adopted a number of policies and enacted suitable legislations to augment rights of people of these sections.

### **Duty of State to raise the level of nutrition and the Standard of living and to improve public health (Article 47)**

The state has a duty according to Article 47, to take steps to evolve policy formulations in order to improve the nutritional level and standard of living of the people. It is also duty of the state to improve the public health of citizens and ban the consumption of intoxicating drinks and drugs which are injurious to health. In a number of cases, the judiciary supported the move of the legislatures to ban the sale of intoxicating drinks and drugs. However, since liquor business is revenue generating activity, the state many a time is lenient to bring in complete prohibition of liquor sale.

### **Prohibition of Slaughter of Cows and Calves (Article 48)**

According to Article 48, it is the duty of state to promote agriculture and animal husbandry by employing the modern technical and scientific means. It is also the duty of state to preserve breeds and prohibit the slaughter of cows and calves and other milch and draught cattle. In this regard, legislations passed by Union and States have been upheld as valid by the Judiciary in a number of cases.

### **Protection and Improvement of environment and safeguarding of forests and wild life (Article 48 A)**

According to Article 48A, an obligation is imposed on the state to protect the ecology and environment and to take steps to safeguard the forest and wild life of the country. In this regard, a number of legislations have been enacted by the Union and States. The Environmental Protection Act 1986 is one of the major legislations enacted by the Parliament. In spite of laws enacted by the state, the executive action



is very slow in this area. It is the duty of the people of the country also to extend their cooperation to the State to protect the environment and forests and wild life. In spite of the mandate, the easygoing approach of the state led to number of disasters in the last sixty years which severely affected the human rights of people.



### **Protection of monuments and places and objects of national Importance (Article 49)**

As per article 49, the state has a duty to take steps to protect every monument or place or object of artistic or historic interest. In this regard, such monuments and objects need to be declared by the state as property of the nation and protect them from spoliation, disfigurement, destruction, removal, disposal or export. The Parliament in 1951 enacted the Ancient and



Historical Monuments and Archeological Sites and Remains Act 1951 and declared many of such sites as national importance and property.

### **Appointment of Judges in Higher Judiciary (Article 50)**

One of the important features of any democracy is an independent judiciary. It is only an independent judiciary without the interference of Legislature and Executive alone could protect and promote the human rights of the citizens guaranteed under the constitution. The constitutional framers taking into consideration of this important feature of a democratic constitution, and rallying behind the Indian national Congress demand for a separation in 1886. Apart from other provisions of the constitution, through Article 50 direct the state to separate the judiciary from the executive. However, at the lower level of judiciary, the District Magistrate was combined with the powers of Executive and Judiciary. The Government through the Criminal Procedure Code 1973 achieved complete independence of the Judiciary by transferring the judicial powers of the district administration to judiciary. However, financial independence to judiciary is still an important aspect which needs to be achieved. The National Commission to Review the Working of the Constitution also strongly advocates such independence will enhance the full autonomy of judiciary from its dependence on the executive for its financial needs.

### **Promotion of International Peace and Security (Article 51)**

India being a member of 'comity of nations' according to Article 51 of the Constitution, it shall be duty of the state to poster respect for international relations and as well as to honour the principles of international law and treaty obligations. It has to take steps to settle its disputes with other countries in a peaceful manner by resorting to

arbitration. However, according to article 253 of the Constitution, treaties entered by India will not be operative automatically, until and unless the Parliament of India passes a law giving effect to such treaty or agreement. However, over the years, the judiciary has been interpreting the provisions of treaties relating to human rights. It held that the treaties of human rights can be implemented and interpreted for upholding the rights of citizens even in the absence of legislation, if such treaty or agreement is not inconsistent with the law of the land in force. (*Visakha V State of Rajasthan* 1997 6 SCC 241).



The brief discussion in the preceding pages on fundamental rights and directive principles amply makes it clear that the Constitution has a balancing approach to nurture the ideals of democracy and social philosophy in promoting human rights of the citizens. As rightly observed by Justice Hedge, in a strict legal perspective the fundamental rights themselves constitutes as negative in character imposing duties on the state not to do certain wrongs which will lead to breach of human rights. The Directive Principles of State Policy are positive in character as they mandate the state to take steps to promote the advancement of the people and the society in various aspects. This being the reason, the original constitution did not explicitly mention the aspect of fundamental duties.

## 8. Fundamental duties(Article 51A)

From ancient to modern times, the philosophical and legal approach of India was based on the concept of duty. The same was advocated even in the jurisprudential vistas of international law of human rights through article 29 of the Universal Declaration of Human Rights which advocates that the rights enshrined therein cannot be realised without fulfilling the duties. Since the concept of right is coupled with duty, the framers of the constitution of India did not specifically advocate duties in the constitution. However, the Supreme court of India, in *Chandra Bhavan Boarding & Lodging V. State of Mysore* in 1969 (AIR 1970 SC 2042) advocated the concept of duties as part of the constitution.

The Forty Second Amendment Act to the constitution in 1976 inserted a new Article 51-A advocating fundamental duties which need to be discharged by citizens

of India. However, it is silent as to their enforceability in a court of law or punishment for their breach. Accordingly, the Supreme Court in *AIIMS Student's Union V AIIMS* (2002) 1 SCC 428, held that they are not enforceable through a writ for their breach on par with that of fundamental rights. The duties enlisted in Article 51 –A are as follows:

**(a) To abide by the constitution and respect its ideals and institutions, the National Flag and the National Anthem.**

From this provision it is clear that all citizens have a duty to foster respect and abide by the constitution. As per the provisions of Emblems and Names (Prevention of Improper Use) Act 1950 and Prevention of Insult to National Honour Act 1971, until 1995, private individuals were prohibited to hoist the National Flag. However, in *Naveen Jindal V. Union of India* (60, 1995, DLT516), the Delhi High Court held that every citizen has a fundamental right to hoist the National Flag even in private premises without insulting it. In *Bijoe Emmanuel and others V State of Kerala and others*, (AIR 1978 SC 748) the Supreme Court held that when national anthem was sung, anybody stands silently without joining the chorus in singing the National Anthem does not constitute violation of disrespect to national anthem.

**(b) To cherish and follow the noble ideals which inspired our national struggle for freedom :**

By this provision, the values, morals that the various social movements advocated to fight against a number of evils need to be practiced in order to eliminate the bad practices and bring in social harmony as per the philosophy of the constitution.



**(c) To uphold and protect the sovereignty, unity and integrity of India**

According to this provision every citizen of the country wherever they reside they need to follow the principles of law and extend their full support to uphold the sovereignty and integrity of India. From this provision all citizens have a duty to refrain from any type of statements , comments against the nation draw the national map in a mutilated fashion. In plain language, no adverse comments or propaganda against the country and its political borders is permitted.

**(d) To defend the country and render national service when called upon to do so**

According to this provision, the state has a right to seek the assistance of people to defend its sovereignty either in times of war or national calamities. If such call is given, the citizens have duty to render their assistance to the state that is required as well within the legal parlance to undertake such work.

**(e) To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practice derogatory to the dignity of women.**

According to this provision, India being a secular country it is the duty of every one of us to follow the ideal of common brotherhood and not to make speeches or any act that effect the life and liberty of any one or any a section of people. This provision need to be read with a number of other provisions especially the fundamental rights. It is the duty of state also to take steps to prevent such activities and also encourage people to live in harmony. It is the duty of every one of us to prevent all acts that affect the decency and decorum of women.



**(f) To value and preserve the rich heritage of our composite culture**

From this provision, it is the duty of every one of us to protect the cultural institutions and any monuments, or any other property of India that constitutes as a part of cultural heritage.

**(g) To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.**

It is the duty of everyone to protect the environment and protection to all other living creatures. It constitutes as a part of group rights or third general rights of international law of human rights philosophy.



**(h) To develop the Scientific temper, humanism and the spirit of inquiry and reform**

According to this provision, the developments in science and technology need to employ to extend the benefits to its citizens. The use of science and technology or any kind of research that augments the needs of country or individuals be encouraged to foster human values and lead to further development. Any misuse may be prevented by the state through appropriate law.

**(l) To safeguard public property and to abjure violence**

According to this provision, everyone has a duty to protect any property of state and not to take part in any activity that leads to disrupt peace and security in any manner in consistent with the harmonious living of the people. According to this provision, in protest, hartals, bandhs and strikes resorting to destroy property of state, pelting stones on public vehicles is prohibited.

**(j) To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.**

It is the duty of every one of us to work in cooperation and help each other at all times. This provision again highlights that spirit of common brotherhood and its significance to achieve the prosperity of individuals and nation.

**(k) Duty of a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.**

This provision was inserted by the Constitution (Eighty Sixth Amendment) Act 2002. This was inserted when the State made it compulsory to educate every child in the country. To achieve the universal education it is the duty of state to educate every one and to provide the necessary facilities to educate every child. At the same time, duty is casted on the parents or guardians to send their children to school.



A close examination of the provisions of duties amply makes it clear they impose duties not only on individuals but also on the state. After the introduction of the

provisions, the responsibility of judiciary has increased. The judiciary in a number of cases while reading the provisions of fundamental rights, also read the directive principles and fundamental duties in order to ensure that the philosophy and scheme of the constitution is to render justice to the maximum extent to protect the rights of citizens.

The scheme of division of Fundamental rights, Directive Principles of State Policy and Fundamental Duties by constitution, it is in tune with the philosophical and ideological perspectives of international law of human rights.

## **9. Sum Up**

The above subtle discussion amply makes clear that India is the first country to adopt the principles of UDHR through its constitution. India is far ahead to bifurcate the civil, political, economic, social and cultural rights even before the UN did it in 1966 by adopting two independent covenants. The constitution equally places the responsibility on the state and its agencies and individuals in the promotion and realization of human rights. The incorporation of duties through 42<sup>nd</sup> Constitutional Amendment fully in tune with the philosophy of human rights that without discharging the duties that are legally cast on every one, the guaranteed rights cannot be realized. Hence, it is our responsibility to discharge the duties cast on every one of us before clamoring for the rights.



**MODEL QUESTIONS**

- 1. On which principles Mahatma Gandhi laid for foundation of Sarvodaya Movement?**
  - A. Truth
  - B. Non-violence (D)
  - C. Love
  - D. All of the above
- 2. The Constitution is described as ..... by Prof. K.C. Wheare, an American Constitutional expert.**
  - A. Federal (C)
  - B. Unitary
  - C. Quasi Federal
  - D. None of the above
- 3. The words ..... inserted to preamble by Forty-second amendment to the Constitution in the year 1976.**
  - A. Justice and Equality
  - B. Socialist and Secular (B)
  - C. Liberty and Equality
  - D. Fraternity and Belief
- 4. The 44<sup>th</sup> amendment of the Constitution in ..... has converted right to property into a legal right than a fundamental right under Article 300 A**
  - A. 1978
  - B. 1988
  - C. 1977 (A)
  - D. 1987
- 5. .... literally means to produce the body before a court or to answer a court.**
  - A. *Habeas Corpus ad subjiciendum*
  - B. Mandamus (A)
  - C. Certiorari
  - D. Prohibition



## UNIT II

## HUMAN RIGHTS : ENFORCEMENT MECHANISM

*This unit will introduce the ways and means how to achieve the guaranteed rights in the constitution. It will also introduce the remedial mechanism available for the breach of the respective rights guaranteed by constitution and legislature in a subtle perspective. It also describe the context in which the various authorities and the judiciary in India function in augmenting the rights guaranteed to people under Constitution, national, international laws and policies.*

**1. Brief Overview of Human Rights Issues in India**

From ancient to modern times, the philosophical perspective of India emphasized on the implementation and realization of human rights through duties. All the texts of ancient and medieval times, the Constitution of India, a number of legislative enactments extensively discussed the significance and promotion of human rights. However, due to vastness of the country, high population, poverty, the impact of divisiveness introduced by the British Government between various



communities, illiteracy, malnutrition, and many other issues have had their own impact on the realization of rights guaranteed by the constitution by millions of citizenry of the Polity. Being a party to the United Nations, a number of documents on human rights, promised to fulfill the ideals of international law through Constitutional means, the government of India in the year 1993, enacted the Human Rights Act. The enactment of the Act fulfilled to affirm the rights of citizens and constituted a National Human Rights Commission to discharge its commitment as a party to the principles of Paris 1991, on the constitution of structure, powers and functioning of National Human Rights Commissions. The clarion call of 1993 World Conference on Human Rights, also had a great impact on the Government of India to enact the National Human Rights Act in 1993 and there by establishing a National Commission on Human Rights. Apart from the above, taking into consideration of diverse cultures and due to adverse effect of socio, economic, political conditions, in order to protect a number of disadvantaged and vulnerable sections of society, it has constituted a number of special commissions over the years for the better augmentation of rights

guaranteed under the constitution. Apart from the above statutory bodies, the Judiciary has been empowered to oversee the implementation of provisions of the Constitution to make the state to discharge its international obligations in augmenting human rights of its citizenry as a party to the Charter of the UN and other international legal documents.

## **2. National Human Rights Act 1993**

India being a party to a number of international legal documents on human rights and to give effect to Art 51(c) of the Constitution of India, it enacted the 'Human Rights Act in 1993' to extend a speedy protection mechanism for the promotion and protection of human rights. The objective of the Act is to establish a Commission of Human Rights both at the level of Union and States. It also proposes to establish Human Rights Courts at the District level in order to address the issue of human rights that need to be redressed at a quick span. In 2006, the act was amended and brought in a number of provisions for the effective functioning of the Commission. Since the implementation of the Act, the Government of India and the States in the country established commissions of Human Rights.

Though the Constitution of India clearly demarcated Fundamental Rights, Directive Principles and Fundamental duties, for the first time all this have been defined as Human Rights in the act in tune with the policy of international law of human rights. According to Section 2(d) of the Act, 'human rights means rights of an individual relating to life, liberty, equality and dignity guaranteed to an individual by constitution and by international covenants that have a binding nature on the states and its various organs.' Even before the Act came into existence, interpreting the numerous provisions of the constitution in a number of cases the judiciary through the concept of public interest litigation promoted the concept of human rights.

## **3. Judicial Organs:**

It is a hallmark of Democracy that the judicial organs need to be independent. The judiciary is an important and vital organ to promote not only the principles of democracy and the rule of law, but also ensures that human rights are protected in the true spirit and philosophy with which they are advocated. In tune with this philosophy, the constitution has advocated for the establishment of Independent judicial organs to stand between the citizens and the state to prevent the excess use of power by executive, legislature. At the same time, as per the provisions of the Constitution, especially, directive principles of state policy, there is an inherent obligation on the

state to take affirmative action in many areas to usher the fundamental rights. If state fails to discharge its obligations, the judiciary is the only natural organ which can compel a state to take positive action in order to make the rights effective.

Accordingly, the Constitution of India advocated the creation of a Supreme Court as the highest court of the judicial system. Further, considering the federal features of the Union of India, every state has been advocated to have a High Court as the highest court of each state. These being the courts advocated by Constitution, they are also referred to as constitutional courts. The other courts with in a state may be created by a statute.

### Supreme Court of India

The Supreme Court of India being the apex court of the country is located in New Delhi. Being the highest court of the country, its decisions are binding on all legal organs and people. It has original, appellate and consultative jurisdiction. Being a highest court, it has a number of inherent powers to exercise to uphold principles of rule of law and the provisions of the constitution.



In the original jurisdiction, it exercises powers under Article 32 of the constitution to protect the rights of the citizens guaranteed under the constitution and under Article 131 it exercises jurisdiction in case if there arises a dispute between the Union and State or between States apart from other jurisdictions to entertain cases of civil and criminal nature. According to Art 32 of the constitution, it has powers to issue writs, directions or orders to any authority for the enforcement of fundamental rights. The right to move Supreme Court being a fundamental right, it cannot be suspended except as otherwise provided by the constitution. (*Fertilizer Corporation, Kamgar Union V Union of India* 1981 1 SCC 568).

According to the provisions of Constitution, any order passed by the court

under Art. 32 cannot be challenged once again before the Supreme Court. At the same time, as the court has inherent powers, it can reconsider its judgment to prevent any gross abuse of the process or correct a miscarriage of justice. However, such petition filed for review of the court has to establish a violation of the principles of natural justice or establish a judge heard a case has any interest in the case or any apprehensions of bias shown in delivering a judgment, the court may be requested for reconsideration. But, there is no binding obligation on the court after scrutiny of such petition to compulsorily take such petition for reconsideration, if the court is convinced that no miscarriage of justice was done to the parties.

Apart from article 32, Supreme Court has jurisdiction under various provisions of the constitution to entertain cases for the settlement of disputes. But the significance of Article 32 is that any person may move the court directly to seek a writ for the enforcement of their fundamental rights, if there is a grave breach to rights.

The court over the years expanded the jurisdiction of people to approach the court in the interest of public, if there is a grave breach of the rights of others in the country though the rights of an individual are not affected. In other words, normally only the person whose rights are violated alone could move the Supreme Court for a remedy for the breach. However, considering a number of factors, the inaction of the state, the judiciary introduced the concept of “Public Interest Litigation” or in the words of Prof. Upendra Baxi “Social Action Litigation” in the early eighties to protect the proper enjoyment of rights of weaker sections, poor, destitute and underprivileged.

According to this concept, the concept of *locus standi* has been enlarged. In general according to the concept of *locus standi* only the person whose rights are violated alone vests the power to move the court for a remedy in the event of breach of a guaranteed right. In the case of Public interest litigation, any person may move the court for a judicial remedy wherever a legal injury is caused to any person or group of persons by violation of any constitutional or legal rights guaranteed by law. (*S.P. Gupta V Union of India* AIR 1982 SC 149). However, the person moves the court need to prove that the act is bona fide one and moved only in the interest of protecting the rights of the affected people.

The concept of public interest litigation invented in India is far ahead than that of the Supreme Court of America which introduced the concept in the judicial arena in the early fifties (*Brown V Board of Education* 347 US 483 1954). After enlarging the scope

and pace of Public Interest litigation, the court also expanded the jurisdiction of writs. In the case of Public Interest litigation, a letter addressed by a person to the Supreme Court is considered as a writ petition, in case the court *prima facie* satisfies that the letter contains substantial legal aspects which need to be examined. Further, the court in exercise of its inherent powers (*suo motto*) on its own issue writs or directions to various authorities basing on reports of media, taking into consideration of the plight of millions of people whose rights are not fully augmented by the state. The whole credit of expanding the jurisdiction of the judiciary mainly owes to Justice P.N. Bhagwati the former Chief Justice of India.

### High Courts

The system of Courts at the level of State's is not a new concept to India. Even before the Constitution of India came into existence, three High Courts in Bombay, Calcutta and Madras were established in 1862. The powers and functions of theirs were defined by legislation from time to time. The constituent assembly considering the significance of High Courts provided for establishment of more High Courts in various states. Accordingly, Articles 214 to 235 of the constitution deals with various aspects of the High Courts. According to the provisions of the constitution, normally there will be a high court for each state. However, the Parliament of India by law has the power to extend the jurisdiction of a High Court to more than one State. Accordingly, there are twenty-one High Courts are functioning in the country.

The High Courts are the highest judicial authority of a State. They have judicial and administrative powers. Accordingly, the administrative province of High Court extends to all the lower courts and tribunals working in a state or jurisdiction conferred by law. A decision given by High Court may be challenged before the Supreme Court of India according to the provisions prescribed for such appeal. On the lines of the Supreme Court, the High Court's being constitutional courts have a number of powers to protect the rights of citizens. According to Article 226, the High Courts are empowered to issue writs of various kinds to protect the rights of affected people. However, the provisions of Article 226 have been amended a number of times to bring in clarity to the exercise of the powers basing on the judgments of the Supreme Court of India.

After the judgment of the Supreme Court of India in *Lt. Col. Khajoor Singh V*



*Union of India* ( AIR 1961 SC 532), the High Court normally has no jurisdiction to issue a writ against the Union of India, except the Circuit Bench of Punjab High Court in Delhi or Supreme Court. However, this has no bar on a High Court to issue a writ to Government of India, in case if the subject matter of a case falls within the Jurisdiction of the High Court. In general, the High Courts will not entertain a petition for issuance of writ, if an alternative judicial remedy is available for a person to seek judicial redress. However, the Supreme Court (*A. V Venkateswaran V R.S. Wadhvani* (AIR 1961 SC 1506) held that this rule no way bars the jurisdiction of a High Court to issue writs in order to protect or augment the fundamental rights and direct any party to seek the available alternative remedy. Accordingly, the powers of a High Court are very wide and far to issue writs in the Protection and Promotion of fundamental rights that are guaranteed under Part III of the Constitution. At the same time, as per the provisions of the constitution, and judgments of the Supreme Court, though the High Courts are empowered to issue writs, they need to exercise due care and caution before issuing the writs and need to take into consideration seriousness of the facts of a case.

The brief examination of the powers of Supreme Court and High Courts, amply makes it clear the significant role played by judiciary in the promotion and protection of constitutional rights that are guaranteed to various organs and the citizens. The provisions of Article 32 and 226 confer unfettered powers on judiciary not only to augment the rights guaranteed under the constitution, but also to inject the philosophical framework of international law of human rights. The power conferred under these articles to judicial organs is described as judicial review in the realm of philosophy of law. According to Shri. M. C. Setalvad an eminent jurist and the First Attorney General of India who served during 1950 to 1963, “the right to judicial review evolved in some countries after a prolonged struggle, has been granted to us by the constitution.” These words of a great jurist and the activist role of judiciary certainly disprove the arguments and counter arguments that are advanced by a section of researchers, statesmen and non-governmental organizations both nationally and internationally, the track record of India and mechanism to remedy the grievances of human rights is poor or negligible.

#### 4. National Human Rights Commission :

The Government of India established the National Human Rights Commission in 1993 in order to give effect to the National Human Rights Act 1993. The Head quarter of the Commission is New Delhi. As per section 12 of the provisions of the Act, the commission is empowered to inquire either on its own or based on a petition submitted by a victim or any person on behalf of a victim on the violation of human rights. It can also participate in the



proceedings of a court with prior permission of such court to defend or to place information relating to violation of such human rights that are in trial before such court. For example, in the Chakma Refugees in Arunachal Pradesh basing on a complaint by an NGO Committee for Citizenship Rights of the Chakmas in order to enforce the rights of about 65,000 chakma tribal's, it moved the Supreme Court of India through a Public Interest litigation under Article 32 of the constitution to seek and to enforce the rights of them under Article 21 of the constitution, (**NHRC V State of Arunachal Pradesh and another**, 1996 SCC (1) 742). It can visit any institution under the control of union or any state including a jail, to study the conditions and to make recommendations to such authorities of its observations and render suggestions.

It can review any laws, acts, or factors relating to terrorism and make such recommendations to the Government of India for review or amend such laws and regulations. In exercise of powers conferred on it, it had undertaken a number of studies with respect to various areas relating to disadvantaged groups on its own and on the basis of complaints received by it. It is one of the duties of the commission to examine the international legal documents on human rights and make necessary suggestions to the Government of India to take necessary steps for their incorporation in the promotion of human rights as per the provisions of Article 51(c) of the constitution of India. It has a duty to promote research and conduct activities such as seminars, conferences, workshops, for the promotion of human rights. In this regard, the NHRC invites applications at regular intervals and conducts a number of

workshops, seminars, workshops, conferences in various educational, public sector organisations and in association with Non Governmental Organizations. It publishes a wide variety of books, notes and other necessary information for the promotion of human rights.

According to Section 13 of the Act, the Commission has been conferred the powers of a civil court and other relevant laws to examine, summon, issue notices or inquire matters pertaining to human rights in deciding the cases. The Commission since its establishment in 1993, almost in the last two decades made a significant impact in the promotion of human rights of number of people. Some of the reports and recommendations submitted by it have been accepted by Government of India which resulted in a number of changes to various laws and regulations.

An examination of the provisions of the Act, especially the definition of human rights provided in section 2 (1) (d) makes it amply clear that the mandate is mostly confined to augment the civil and political rights than to that of the economic, social and cultural rights, since the human rights that are enforceable in courts of law.

It is unfortunate even after two decades of adopting the Act, the Union and States have not taken any steps to establish the Human Rights Courts at the District level for a speedy and quick justice to provide remedy of violation of human rights.

### **5. Maharashtra State Human Rights Commission**

The Maharashtra State Human Rights Commission was established in 2001, in accordance with the provisions (Sections 21-29) of the Union Act which authorizes each state to establish a commission. The Head quarter of the Commission is Mumbai. The State Human Rights commission enforces the rights of the people of the State of Maharashtra on the lines of the National Human Rights Commission. However, its jurisdiction is limited only to the State of Maharashtra. The State Commission has worked on various aspects and submitted a number of reports to the Government for consideration. It is very active in the promotion of Human Rights Education in the State. The workshop of it on the introduction of the Human Rights Education in 2010 led for the evolution of a number of modules for its impartation, and led the University of Pune to introduce the Human Rights Programme with the blessing of the Governor and the Government of Maharashtra.

Both the National and State Human Rights Commissions offer internships of four weeks to the students to equip the students and to propagate the significance and

knowledge of Human Rights Education. The details are regularly displaced in the respective websites of both the organs.

## **6. Commissions on Women, Children, Minority and Scheduled Castes and Scheduled Tribes**

The United Nations apart from general human rights concerning man, over the years basing on the deliberations, recommendations of various organs and states adopted a number of international conventions, resolutions to augment the rights of a number of disadvantaged sections of the world. It made an appeal to



all the states to adopt specific legislations extending concessions to such groups of disadvantaged sections of people to bring them on par with the developed sections of each state. It also reiterated that while enacting such policy measures, or enacting legislations, the states parties need to consider the socio, economic, political and cultural aspects which have a bearing on the exclusionist policies which prevent them to augment their rights freely and to establish such mechanism which will assist them in the enjoyment of human rights guaranteed both internationally and nationally without any kind of aberration. Further, the states parties need to extend the necessary concessions to such people to achieve self-sufficiency and to take part in all the activities of the polity in an equal manner.

In India traditionally on grounds of gender, socio, political, economic, cultural, and caste lines; women, children, Minorities, Scheduled Castes and Scheduled Tribes who are backward in many respects or termed as disadvantaged groups of people. In order to augment their rights, the constituent assembly under various provisions of the constitution extended a number of concessions to augment the rights of these people. The Government of India in accordance with international and national obligations since independence adopted a number of policies and enacted special legislations extending a wide variety of concessions to enrich these people on par with other sections of the society. However, in view of poverty, illiteracy and other socio-cultural aspects, these people are discriminated on various fronts and a target group to deny free enjoyment of their rights. In order to integrate these people with other advanced groups of the polity, to provide quick span of justice, to protect their

rights and to promote their welfare, the government of India in order to discharge its international and national legal commitments, established independent commissions to help them to achieve tenets of social justice philosophy of human rights.

### **7. National Commission for Women**

The government of India considering the reports of various commissions of its own, and the UN commission on Women's recommendation established the National Commission for Women in 1992 in New Delhi basing on the mandate of the National Commission for Women Act, 1990. According to the provisions of the Act, the Commission will have the powers to investigate and examine all matters relating to women and to submit reports with recommendations for the effective implementation or safeguards to be provided as per the provisions of constitution and other laws in force in the country. It has the right to receive any complaint either on its own or on the notice of party regarding violations concerning on any matter relating to rights of women. For the promotion of rights of women to eliminate the discriminatory practices against women, it can conduct research and other educational activities in order to suggest measures to ensure the due representation of women in all fields. The Commission shall have the powers of a civil court while inquiring the matters relating to women.



The commission since its establishment in its more than two decades existence submitted a number of reports and recommendations on a number of issues for the promotion of women's rights as guaranteed by law. The sustained effort of the Commission, The Protection of women from Domestic Violence Act 2005 was enacted. It conducts a number of workshops, seminars, conferences and other various activities to highlight the significance of women's participation in the enrichment of economic, social, cultural standing of India. It has submitted a draft note to highlight the significance to enact a special law to prevent dishonor killings of young couples based on caste and community issues and Acid attacks against women.

### **8. Maharashtra State Commission for Women**

Though the Government of India Act has no specific provisions for the establishment of women's commission at the state level, the Government of

Maharashtra established a State Commission under an Act of the State Legislature in 1993 on the lines of the National Commission for Women. The commission was constituted in tune with the policy of the State to promote the rights of women in the state and to prevent atrocities, discriminatory practices and other crimes that affect on the dignity of women. The Commission advises women and the victims on various legal aspects to seek legal remedies and other remedial mechanism. It promotes research studies on various aspects of women and conducts seminars, conferences and undertakes such activities which are necessary for the promotion of the rights of women.

The government has established twelve special courts in the state to prevent crimes and various types of atrocities against women. Apart from the special courts, the government also constituted family courts in cities where the population is more than ten lakhs to address the issues relating to matrimony, property, maintenance, and guardianship of minors etc. Apart from constituting the commission and special courts, the state took a number of positive measures for the promotion of the rights of women, and encourages special studies and research in the area of women's studies.

### 9. National Commission for Protection of Child Rights

The rights of children are abused on various fronts, due to ignorance, or factors such as poverty, leniency, socio, cultural perspectives that young children are not matured enough to have full freedom to bloom their rights. In order to augment their rights, the efforts of Ms. Eglantyne Jebbs led the nation-states to evolve a number of policy formulations and the establishment of UNICEF. The continued and sustained efforts of UN and other international and non-governmental organisations led for the adoption of Convention on the Rights of Child in 1989. The Government of India in order to discharge its international and national legal obligations enacted the National Commission for the Protection of Child Rights in 2005.



The National Commission for the Protection of Child Rights was established



in 2007. The mandate of the Commission is to review various laws, policies basing on its feedback from the grass roots level, and suggest the necessary mechanism to the government to meet the constitutional and international obligations of the State to adopt such policies according to the needs of each region in the country. It can inquire in any matter relating to the violation of rights of children, non-implementation of any law or policy either on its own, basing on the complaints received by the victim or anybody on behalf of the victim. It has the power to approach any High Court or Supreme Court for such remedy or order in the augmentation of the rights of children. The commission has the powers of a Civil Court while inquiring any matter concerning the violation or protection of the rights of children. Though there is a variance in describing the age of children between 14 to 18 under various laws, according to this Act, a child is defined as below the age of 18 years. Hence, it is implied that every authority and legal provision need to consider child means below the age of 18 years.

#### **10. Maharashtra State Commission for Protection of Child Rights:**

Basing on the provisions of the Act, about 18 states in the country established child rights commissions at the state level. The objective of the state commissions is to oversee the welfare of children in the state and to advise the government to take necessary steps to augment the rights of children in every respect in order to bloom their tender age with happiness. The Government of Maharashtra accordingly in 2007 itself constituted the State level Commission on the lines of the National Commission. The state had adopted a policy of Children in 1974 itself.

The Commission since its establishment submitted a number of reports to the government to consider various aspects in the augmentation of the rights of children with an emphasis on the rights of slum, neglected, destitute and street children. In 2012, it has conducted a National level symposium to take necessary steps to protect the rights of children of the Asia Biggest slum 'Dharavi'.

Apart from various activities, the Commission in conjunction with the state government training institute 'YASHADA' situated in Pune prepared a draft policy to be adopted by the government to augment the rights of children. In order to discharge its commitment, the government recently appointed a 64-member body headed by Women and Child Welfare Minister, Smt. Varsha Gaikwad to finalise the policy at the earliest.

## 11. National Commission for Minorities:

According to Francesco Capotorti, Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, a minority is: A group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members - being nationals 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. However, there is no common understanding amongst the nation-states on the subjective (individuals must identify themselves to be part of a minority group) and objective factors (existence of a shared ethnicity, language, or religion), there is no definition in international law defining minorities. However, the Declaration on the Rights of Persons belong to National, Ethnic, Religious and Linguist Minorities adopted by the UN in 1992 refers to minorities as based on national or ethnic, cultural, religious or linguistic identity and impose a duty on the states to take necessary steps for the promotion of their identity and to protect their human rights.



There is no precise definition either in the Constitution or in any law in the country to define who minorities are. In general, Articles 25-30 of the Constitution are interpreted for the various rights of minorities. The National Commission for Minorities Act, 1992 left the discretion to the Union of India to notify any community as a Minority. Accordingly, Muslims, Christians, Sikhs, Buddhists, Zoroastrians (Parsis) have been notified by the Government of India as minorities. To protect the rights of these communities, a National Commission was established in 1992 itself to cater the needs of minorities. The Commission will evaluate the policies and laws that are in existence and recommend such measures to be adopted for the augmentation of rights of minorities. It can make specific recommendations for the effective implementation of the necessary safeguards to be adopted by the Government from time to time. It can undertake studies and encourage research leading to the promotion

of rights of minorities. It has the powers of a civil court to conduct inquiries basing on the complaints received by any community on the violation of their rights. It produces annual reports highlighting the various activities, achievements, and recommendations of the commission to the government. Basing on the recommendations and on its own the government of India launched a number of welfare schemes in order to augment the rights of minorities.

Along with the Union of India 15 states have established the commissions of Minorities in their respective states. The State of Maharashtra enacted a State Minorities Commission Act in 2004 and established the same in 2005. This commission on the lines of the National Commission will exercise similar powers and functions in the augmentation of the rights of minorities in the state of Maharashtra.

## 12. National Commissions for Scheduled Castes and Scheduled Tribes

Among the various issues that affect the growth and development of people in the promotion and realisation of human rights, caste plays a vital role in Indian society. The selfish interests of majority section of people branding themselves as upper castes brought the concept of untouchability and left a section of people in wilderness branding them as lower castes. These lower castes people normally described as scheduled castes and tribes. For generations they have been denied all the basic rights and prevented their participation in various activities of the polity including the minimal exercise of their guaranteed rights.



Moved by their plight a number of statesmen, philanthropists, human rights activists fought against the upheavals and demanded equality and concessions to be extended constitutionally in order to enable them to exercise and realise their rights on par with other sections of the society. The constituent assembly responding positively to bring in human dignity and to eradicate the injustices done to them for generations, provided a number of safeguards to promote their social, economic, educational, political and cultural interests of the these sections of people of the society.

The Government of India in November 1950, in accordance with the provisions of Article 338 of the constitution, appointed a Commissioner of Scheduled Castes and Tribes. It was the duty of the Commissioner to look after all matters relating

to the safeguards provided under the various provisions of the Constitution for the promotion of these communities, and report to the President of India on the working of safeguards. The Commissioner's office was expanded in phases to cover various states and administrative units of the grass root level.

A number of Parliamentarians time and again demanded to amend the provisions of Article 338 in order to appoint a multi member team to work for the advancement of these groups instead of a single member body. Accordingly, a proposal was mooted to amend the constitution. However, even before the amendment took place through a resolution of the Home Ministry, in August 1978 the Government of India constituted a multi member body as the Scheduled Castes and Scheduled Tribes Commission. The commission was setup as a National advisory body to advise the government on various policy issues for the promotion of rights of these groups. This commission had submitted around thirty reports to the government on various issues in the promotion of the rights of these groups.

The Constitutional amendment of Article 338 (Sixty Fifth Amendment) in 1990, the Government of India constituted the National Commission for Scheduled Castes and Scheduled Tribes as a statutory body. The commission is committed to implement the Protection of Civil Rights Act, 1955, which mainly advocates the abolition of untouchability and the SC and ST (Prevention of Atrocities) Act 1989. The commission will not only guide the Union or State Government or Union Territory but also has the right to participate in the process of planning of socio-economic developmental aspects of Scheduled Castes and Scheduled Tribes. It shall submit periodic reports to the President of India for onward submission to Parliament of India for the effective implementation of the measures for the augmentation of the rights of these groups. It has right to inquire any complaint of violation or atrocities brought before it and possess the powers of a civil court while inquiring matters.

The 89th Amendment Act to the Constitution in 2003, inserted clause A to Article 338, advocating for the bifurcation of the National Commission for Scheduled Castes and Scheduled Tribes into two independent commissions, namely National Commission for Scheduled Castes and National Commission for Scheduled Tribes. Accordingly, in 2004 the Government divided the National Commission into two



independent commissions as contemplated by the constitutional amendment. Both commissions exercise the powers stated above independently from their birth in 2004 and their headquarters is in New Delhi. Apart from the National Commissions, many states also constituted state Commissions on the lines of the National Commissions to work for promotion of welfare of these groups and to enable them to exercise their rights freely as advocated by the constitution and to fulfill the philosophy of international law of human rights.

Apart from these Commissions, the Government of India pursuant to the directions of the Supreme Court of India in the *Indra Sahney V Union of India (AIR 1993 SC 417)* popularly referred to as Mandal Commission's case, the Government of India constituted the National Commission for Backward Classes in 1993 as a statutory body. This commission will strive to work for the welfare of the various classes of Backward people as notified by the Government of India and State Governments from time to time. The Commission will oversee the welfare and advise the Government in the policy-making aspects to promote the welfare of backward communities people. It has the power to inquire any matter reported to it and exercise the powers of a civil court. The headquarters of it is New Delhi. All most all the State Governments also constituted state level commissions on the lines of the National Commission.

### 13. Survey of International Mechanism

Human rights being a specialized area of international law, in the beginning there exists no mechanism for individuals to approach the international courts or commissions. It is only States being sovereign nations have the power to approach various courts, or commissions under International law. However, the recognition of human rights by the Charter of United Nations, adoption of Universal Declaration of Human Rights, and a number of International



Conventions, Covenants on various aspects of Human Rights, a mechanism for individuals at the international level acquired significance. Accordingly, in early 1970s, the nation-states established international complaint mechanism to receive complaints from individuals under the following core treaties of human rights stated.

(The names in brackets indicate the name of the complaint body under each treaty). Beyond the specified mechanisms, individuals have no access to other judicial, quasi-judicial, or any high-level bodies of the UN.

- The International Covenant on Civil and Political Rights (**Human Rights Committee**)
- The International Covenant on Economic, Social and Cultural Rights (**Committee on Economic, Social and Cultural Rights**)
- The Convention against Torture and other Cruel, inhuman or Degrading Treatment or Punishment (**Committee on Torture**)
- The International Convention on the Elimination of All Forms of Racial Discrimination (**Committee on Elimination of Racial Discrimination**)
- The Convention on the Elimination of All Forms of Discrimination Against Women (**Committee on the Elimination of Discrimination Against Women**)
- The Convention on the Rights of Persons with Disabilities (**Committee on the Rights of Persons with Disabilities**)
- The International Convention for the Protection of All Persons from Enforced Disappearance (**Committee on Enforced Disappearance**)
- The International Convention for the Protection of All Persons of All Migrant Workers and members of their Families (**Committee on Migrant Workers**)
- The Convention on the Rights of the Child and its optional Protocols (**Committee on the Rights of the Child**)

In the above core treaties, under each of them, States agreed to establish a committee to monitor the implementation of the treaty and to receive the complaints from individuals only if the state is party to such treaty and agreed to submit to the jurisdiction of the committee by way of ratification of the treaty or additional protocols. (The list being exhaustive it can be ascertained from the website office of the UN High Commissioner for Human Rights or from any other UN websites). In the above, the Committee on Migrant workers and the Committee on Child Rights are not yet established. Apart from the above core treaties, there are various avenues are available for complaints to be brought in by individuals to the bodies of the United Nations. Complaints can be



submitted to the Human Rights Council, its Special Rapporteurs, working groups, the Commission on the Status of Women and other various bodies of the United Nations. There exist different procedures to complain to these bodies compared to under the above stated treaties, which provide individual redress through quasi-judicial mechanism.

There are three ways for bringing complaints before the committees of the above treaties for violations of human rights.

**(a) Individual communications:**

Any individual can make a complaint against a state, which can be made by any individual about the violation of human rights under any of the treaty specified above to the respective committee subject to the following conditions:

A State should have accepted the treaty and ratified it as per the procedure of the respective treaty. Even if a state has accepted any treaty, if reservation or conditions are specified by such state with respect to any provision, no complaint can be made against such provisions where in the reservations are made.

Even if a state is a party to a treaty or protocol annexed there to, the state should have accepted the committee's competence to examine individual complaints.

Third parties or any person may also make complaints to the committees on behalf of the alleged victim by obtaining prior consent in writing of such party. However, in the case of a victim who may not be accessible to the outside world (in a confinement) or is a victim of an enforced disappearance, there is no need of a consent of such victim stating the reasons for not able to procure the consent. The complaint need not be submitted in a prescribed format. However, the Office of the High Commissioner for Human Rights has prepared a prescribed format and can be downloadable from its official website. The complaint need to be made in any of the six official languages namely, Arabic, Chinese, English, French, Russian, or Spanish of the United Nations. In case if the complaint is written in any other language a translation need to be enclosed in any of the languages of the UN.

It is necessary to submit the entire information in a sequential order of the complaint with all relevant details with respect to the treaty in question on which the complaint is made. The complaint need to contain the details about the exhaustion of judicial and other remedies provided by the state. It is implied that before proceeding to the committee on a complaint, the victim need to exhaust all the available legal

remedies within the country. All the relevant documents, especially administrative and judicial decisions copies need to be attached with the complaint. In case if the party fails to provide such documents, the Secretariat office of UN High Commissioner for Human Rights will contact the complainant for any information or to obtain additional information or may ask for resubmission of the details, if it is not satisfied with the documents submitted. Once the committee accepts the complaint, it will transmit the same to the concerned state for its reply. After the replies by the state, the committee will proceed with its final decision and will be transmitted to the complainant and to the concerned state. If a committee concludes that a violation of a treaty has taken place, the state will be asked to provide required information within 180 days. The state is asked to submit its responses and steps taken for implementation of the recommendations made by the committee. Though a state is normally expected to adopt the measures stated in the final decision, if a state fails to act, no punitive action is contemplated against a state. The final decision of the committees is made public.

### **(b) Inter-State Complaints:**

Any state may complain to any of the committees against another state who is a party to the concerned treaty for the alleged violations of the provisions of a particular treaty. The procedure to be followed and adopted by the states specified in each treaty. However, no state has so far used the procedure.

### **(c) Inquiries:**

Any committee may initiate inquiries against a state for the alleged violations upon the receipt of a complaint received by such committee. These inquiries will be conducted as stated above, only if a state has accepted the jurisdiction of such committee by adhering to a treaty or protocol. In general, the inquiry procedure is adopted in the following perspective:

1. The procedure may be initiated if the committee receives reliable information indicating that the rights contained in the Convention it monitors are being systematically violated by the State party.
2. The committee invites the state party to co-operate in the examination of the information by submitting observations.
3. The Committee may, based on the state party's observations and other relevant information available to it, decide to designate one or more of its

members to conduct an inquiry and report urgently to the committee. Where warranted and with the consent of the state party concerned, an inquiry may include a visit to its territory.

4. The findings of the member(s) are then examined by the committee and transmitted to the State party together with any comments and recommendations.
5. The state party is requested to submit its own observations on the committee's findings, comments and recommendations within a specific time frame (usually six months) and, where invited by the Committee, to inform it of the measures taken in response to the inquiry.
6. The inquiry procedure is confidential and the cooperation of the state party shall be sought at all stages of the proceedings.

In addition to the above general complaint mechanism, all most all the states under various treaties have agreed to submit annual reports to the various committees or any special committee constituted by the respective organs of the United Nations. After examination, if the committee's satisfy, they will send the comments or recommendations on the record of accomplishment of the implementation of human rights by the states parties. In case, if the committee may not satisfy, it may call for fresh evidences or fresh reports to be submitted by the state. Apart from the state, individuals and Non-Governmental Organisations also can submit independent reports with all evidences and conducted research on any of the aspects of the implementation or systematic violation of human rights treaties to which a state is a party. This system of seeking annual reports by states parties helps the UN and its various organs to take necessary steps through either recommendations or requesting the General Assembly to adopt additional measures for the promotion and implementation of human rights in various areas.

#### **14. Sum Up**

The above brief discussion clearly indicates that pronouncing rights legally without remedial mechanism for their violation be of no use. Though the international community recognises the right of individuals to complain to various treaty bodies, mostly they are teeth less in the absence of ratification by states parties, and no strict compliance mechanism. It is the duty of states to testify their achievements need to evolve strategies to strengthen international mechanism on the lines of national mechanism, which they adopted seriously for the augmentation of human rights.

### Model Questions

1. **The Supreme Court of India being the apex court of the country is located in**
  - A. Gujarat
  - B. New Delhi **(B)**
  - C. Maharashtra
  - D. Kerala
  
2. **According to Article ..... ,the High Courts are empowered to issue writs of various kinds to protect the rights of affected people.**
  - A. Article 226
  - B. Article 32 **(A)**
  - C. Article 143
  - D. Article 126
  
3. **The ..... are the Highest Judicial authority of a State.**
  - A. High Courts
  - B. District Courts **(A)**
  - C. Both A and B
  - D. None of the above
  
4. **The National Commission for the Protection of Child Rights was established in.....**
  - A. 2001
  - B. 2002 **(C)**
  - C. 2005
  - D. 2007
  
5. **The State of Maharashtra enacted a State Minorities Commission Act in ..... and established the Commission in .....**
  - A. 2004 and 2005
  - B. 2002 and 2003 **(A)**
  - C. 2011 and 2012
  - D. 2000 and 2005



## UNIT III

## OBSTACLES TO HUMAN RIGHTS AND INDIAN POLITY

*This unit will briefly introduce the various factors that hinder in the process of augmentation and realisation of human rights. It will focus on the various obstacles in the realisation of human rights by certain sections or group of people who are legally equal in all respects in the eye of law, but may not be able to realise the rights in both international and national scenario. It will also deal with the significance of the concept of good governance and its contribution in the promotion of human rights in the Indian context.*

**1) Inequalities in society and Human Rights:**

Human rights are applicable equally without any discrimination on any ground. However, inequalities present in each society deprive the equal enjoyment of human rights by a number of people. The social inequalities lead to the presence of unequal opportunities, rewards, social positions, and distribution of resources, opportunities, amongst the people or groups in a society. These inequalities bring in a division in a society between the people of a society as privileged and under privileged categories. They in turn transmit a number of obstacles for the realisation of legally guaranteed rights on an equal footing. The non-realisation of rights on equal footing by a group or section of people leads to the advantage of socially advanced groups of a society to enrich on the rights of disadvantaged groups in various ways and means in an illegal fashion or seize the opportunities of others. The unjust enrichment of socially advanced groups many a times try to exploit such socially disadvantaged groups from sociological perspective bring in problems chiefly in three dimensions such as; objective structural conditions, ideological supports and social reforms.



Objective structural conditions will help to measure inequalities in education, poverty, illiteracy, health and other social conditions present in a society. Ideological perspectives supports to examine the differences present in laws, public policies, values, and cultural differences present in a society. In view of inequalities, social reforms lead to resistance by groups and social movements for the realisation of

human rights of those deprived classes. In the struggle for realisation of rights bring in conflicting situations between advanced and disadvantaged groups, which will in turn lead to breach of rights of both sections. However, it is the socially disadvantaged groups suffer mostly than the advantaged groups. In the language of International Law of Human Rights, such breaches constitute as violation of human rights guaranteed both internationally and nationally in their realisation and enjoyment. It is the duty of nation-states to strengthen the justice system, especially that of transitional justice for the promotion of human rights and to address the issues that hamper the enjoyment of human rights. Among the various aspects that constitute as obstacles in realising human rights in the fullest extent few of them are discussed.



#### a) Population:

Population and human rights are independent issues. However, they have a close nexus with each other due to evolution of a number of sovereign states and political dominance across frontiers in designated boundaries after Second World War and decolonization. The demographic trends and population polices evolved by states from time to time, pose challenges to human rights enjoyment in an effective manner. Many of the human rights activities until the adoption of family planning

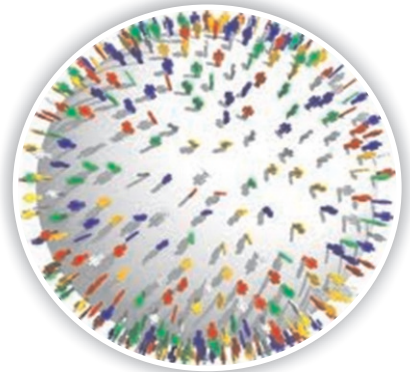


policies by several countries during late sixties and early seventies, the interrelationship between human rights and population was not realised.

In the beginning, impact of population was mostly concentrated on economic, social, and cultural rights than to civil and political rights. The population policies adopted by nation-states being a direct impact on reproductive rights, adequate standard of living, right to work, right to health, right to social security, right to water, right to safe and decent environment, right to education, right to resources, and other cultural perspectives etc. However, the impact of growth of population has brought in direct impact of on civil and political rights due to poverty, lack of bargaining capacity, unaware of policy perspective of a state by majority of population.



Among the various human rights, the impact of population is direct target on choice of reproductive rights. To control population a number of countries in the world adopt forced family planning methods, which mostly hamper the rights of women or a family in general and that of poor and destitute in particular. In a way such policies leads to migration from one country to another in an illegal perspective which lead to deprivation of civil and political rights such as life and liberty, right to seek asylum, freedom of speech and expression, right to privacy etc.



The United Nations in its population report 2012 highlighting the significance of controlling population requested the state parties to adopt policies that will help people to realize the significance of family planning, especially empowering women to choose their reproductive rights freely and the advantages in the exercise and realisation of other human rights. Accordingly, it calls on all states to adopt the following steps in the promotion of family planning and the benefits to secure other human rights:

- Radically increase financial support and political commitment to ensuring that rights-based family planning is available to all who want it, when they want it, and that services, supplies and information are of high quality.
- Promote family planning as a right, the exercise of which enables the attainment of a whole range of other rights.
- Integrate voluntary family planning into broader economic and social development because family planning enhances both.
- Eliminate economic, social, logistical, and financial obstacles to voluntary family planning so that everyone who chooses to use it has access to it.
- Reduce the number of unintended pregnancies and abortions by increasing availability, reliability, and quality of family planning supplies and service.
- Make family planning programmes available to the full range of users, including adolescents, unmarried people, and all others who need it.
- Include emergency contraception in the range of supplies available through family planning programmes.

- Engage men and boys in family planning, for their own benefit and to support the right of women and girls to use contraception.

India ranks second most populous country in the world with more than one billion. The increasing number of population is posing number of threats for the realisation of a number of human rights both fundamental rights and directive principles of state policy. It has a direct impact on the enjoyment of right to qualitative life, active participation in politico, socio, economic and cultural aspects of the polity. The increasing population has brought in unemployment, illiteracy, increasing child mortality rates, child labour, low wages, pollution, right to health, social security, environmental degradation, severe crunch on resources etc. In view of the increasing number of population, around 70% of its populace is not in a position to exercise their constitutionally guaranteed rights.

The Government of India since independence promoting a number of policies spending billions of dollars for the promotion of population control methods. India was the first country to introduce population control methods in 1952 through the First Five-year Plan through the method of "clinical approach." In sixties and seventies, it had vigorously adopted a number of schemes including the permission of termination of pregnancy under medical supervision. It had adopted the family planning norm of one child for one family. However, being a democratic society its enforcement norm is not autocratic like China. The soft approach of the state led to increasing number of population and as per predictions; by 2030 it may even overtake China. If that happens, the threats to enjoyment of human rights may increase the ratio further and bring in deplorable conditions for its masses to enjoy even the minimal rights. The government need to adopt aggressive acceptable population drive to counter the age-old beliefs built in the society on child bearing, encourage effective people's participation, especially increasing the status of women, educating the masses to prevent increasing population rate. Only if population rate is controlled, India could increase its human development index from the well below 100<sup>th</sup> mark in the world and could become a robust economic power in the future globalizing world.

## b) Poverty

In any society, poverty is linked with economic capabilities and living conditions. However, in the language of human rights poverty is a broad concept which has a number of dimensions. According to the United Nations Development Programme, "*Poverty has many faces. It is much more than low income. It also*

*reflects poor health and education, deprivation in knowledge and communication, inability to exercise human and political rights and the absence of dignity, confidence, and self-respect.*" This definition connotes



poverty may be viewed in a broad perspective where in human rights play a crucial role in their realisation and exercising the freedoms that are guaranteed by various international documents of international law of human rights, to lead a life with dignity. However, across the world, there exists a relatively narrow definition based on capability approach of Amartya Sen. According to this approach, poverty is one of the reasons for the realisation of certain basic rights and freedoms, such as freedoms to avoid hunger, disease, illiteracy, and so on. Freedom here is conceived in a broad sense, to encompass both positive and negative freedoms. Thus, a person's freedom to live a healthy life is contingent both on the requirement that no one obstructs the legitimate pursuit of good health – negative freedom, depends on society's success in creating an enabling environment in which one can actually achieve good health – positive freedom. This approach is mostly centers round the economic capability of individuals in deciding the levels of poverty. Human rights though not part of the definition of poverty; they help in reducing the levels of poverty and specify goal oriented policies that require in reducing poverty.

The United Nations Development Fund in a number of reports amply made it clear that poverty need to be tackled for sustainable development of both individuals, and nation-states. Accordingly, a number of strategies have been suggested for effective implementation at all levels. They are:

### **Accountability:**

Accountability plays a vital role in eradicating the levels of poverty and empowering all the stake holders of rights. All partners in the process of development need to accept accountability at every level for their actions. This means as stated in Article 29 of the UDHR, duty occupies a prominent place in realising various human rights. All duty holders have to decide the type of accountable role that they can play in the realisation of rights of theirs and that of others. The legal framework of international and national empowers poor with human rights and casts legal obligation on others. Accordingly, states, international organisations and non-governmental organisations have an accountable role to evolve mechanism to eradicate poverty both at international and national level.

### Non-Discrimination and Equality:

Many a times, poor people, especially economically down trodden groups are discriminated on various grounds and meets out unequal treatment. Human Rights framework mainly revolves round the twin concepts of non-discrimination and equality. It is the duty of all players to empower the poor with inclusive policies to integrate them with rest of the society. This inclusiveness could only be achieved by extending their equal participation and abolition of discriminatory practices.

In any society the poor wants their voice to be heard and policy formulations need to be framed to meet out their requirements instead of receiving legal regulations from the above. To meet this requirement in any society, the participation takes place only through free and fair elections at regular intervals and integrate concerns of poor in decision-making. Right to participation is the central aspect of human rights to address the concerns of poor. Thus, it is the responsibility of every state to provide equal opportunities for poor for their able participation in the governance to address their concerns in the realisation of their human rights in order to lead of life with liberty and dignity.

India has a third of world's poor. According to the reports of Planning Commission of India, the poverty rate has reduced from 37.2% in 2010 to 21.9% in 2011-12. However, according to World Bank reports of 2013, a number of people in the country still leading a life well below the international standard forms of life i.e., leading a life with insufficient daily income. Since independence, there is a tremendous achievement by the government in reducing the levels of poverty from around 50%. The Government of India, the states every year, evolves a number of policy formulations to counter poverty and empower the masses to lead a life with dignity. Poverty deprives people many a times to realise their necessities which in turn hamper their active participation in various aspects of governance. The World Bank and other agencies suggested a number of measures to be evolved in order to address concerns of people living in poverty, which alienate them to enjoy the basic rights of shelter, food, clothing, health, education and participation. The UN Millennium Development Goals Report, 2013, appreciates the steps taken by Indian government in reducing the levels of poverty compare to 80's and 90's, and expects that India may achieve the target of eradication of poverty by 2015. Though the government may bring in eradication of economic poverty, there is still a responsibility lies on the shoulders of state as stated in Article 38 of the constitution, to empower them in a

number of ways and means to be able to participate in the governance. At the same time, evolve inclusive policies to eradicate a number of differential treatments to melt out to a section of people on the basis of caste, gender and other cultural practices that still threaten the poor's ability to address and realise the legally guaranteed rights. Along with the state, the society, especially, the developed sections of the country, need to cooperate the state in augmenting the rights of poor through their effective participation in implementing policies of the state to shred the practices that are discriminatory in nature.

### c) Caste:

*"Caste is the very negation of the human rights principles of equality and non-discrimination...The plight of hundreds of millions cannot be justified as age-old traditions, nor can it be regarded merely as a 'family business'...The time has come to eradicate the shameful concept of caste. Other seemingly insurmountable walls, such as slavery and apartheid, have been dismantled. We can and must tear down the barriers of caste"- Navi Pillay, UN High Commissioner for Human Rights*

Caste is a social stratification found in South Asia. The caste-affected countries are Bangladesh, India, Japan, Nepal, Pakistan, Senegal, Sri Lanka, and Yemen, some of the countries in Africa and in Diaspora (a distribution of a people, language, or culture that was formerly concentrated in one place)



of communities around the world. According to UN Experts more than 260 million (26 Crores) people in the world are facing discriminatory practices basing on caste system. The caste-based practices have a profound impact on the systematic violation of human rights upon individuals, communities, societies on wide-ranging aspects. According to the Report of the International Consultation on Caste Based Discrimination (2012), the effect of caste based practice on the following aspects:

**systemic violence, particularly against women**

**extreme poverty**

**degrading untouchability practices (e.g. denial of drinking water from upper caste water sources, denial of access to public and religious places)**

**intergenerational bonded labour and child labour**

**unemployment or dangerous/degrading employment (e.g. manual scavenging)**

**restrictions on employment or forced occupations (e.g. prostitution)**

**lack of access to justice, and discrimination and violence from the police and justice system**

**lack of access to, control of, and benefit from resources - prohibition of ownership of land and property**

**segregation in housing, school and burial/cremation grounds**

**de facto prohibition of inter-caste marriage**

**abuse or discrimination against Dalit children in schools - high dropout rate from school due to poverty and discrimination**

**lack of political power or genuine/independent political representation at all levels**

**caste discrimination in humanitarian response to disasters or conflicts**

**discrimination or lack of access to health care - related high maternal mortality.**

The United Nation considers such discrimination equivalent to racial discrimination. The Periodic review reports of UN, and special procedures of the Human Rights Council basing on their observations, requested member states to cooperate with it to include the issue of caste-based discrimination as part of the racial discrimination and to monitor the issue of violation of rights. However, a number of countries including India oppose to mix up the issue with racial discrimination and assures UN that at the National level they will tackle the issue on their own.

To tackle the caste based discriminatory practices, a number of strategies adopted by various international bodies. They are effective civil society strategies; establishing specific institutions to sternly deal with such adverse practices; effective usage of communication and information system; adoption of inclusive policies to bring in such people into mainstream activities of society through governmental and civil society support etc.

In India, the practice of caste system deprives number of human rights to various sections of people. The discrimination based on caste had been abolished by the Constitution of India. The Preamble clearly advocates a democratic constitution to extend fundamental rights to all without any discrimination or on any social strata. However, the diehard practices have an impact in modern India and visible especially, in semi urban and rural areas. The international community considers the discriminatory practices based on caste within the ambit of International Convention



on Elimination of Racial Discrimination, 1965 to which India is a party. The General Recommendations of the Committee on the Elimination of Racial Discrimination condemns the discriminatory practices based on caste and by birth. However, the Government of India refuses the intervention of the UN in its international affairs and firmly rejects the comparison of caste-based discrimination on racial basis. In the opinion of the government, caste is a bar legally and considered only for identifying the economic backwardness of various sections of people to extend concession guaranteed by constitution to uplift their status. The government of India since independence adopted a number of legislations, institutional mechanisms to wipe out caste based discriminatory practices. Any untoward incident on the basis of caste is punishable under criminal law and various other laws adopted by the government from time to time.

In spite of the efforts of state, caste based practices are prevalent in India due to preconceived notions of various sections of people. The government apart from the existing various strategies that are adopted need to educate the people on a mass scale highlighting how such practices jeopardizes the rights of not only a section of people but also the progress of the nation.

#### **d) Inaccessibility to legal redress:**

Inaccessibility to legal redressal mechanism constitutes as a basic violation of human rights, especially, access to justice. Inaccessibility to legal redress may occur due to lack of proper legislative, administrative, or judicial mechanism in a state to victims of human rights or civil rights. In case, where in the legal recourse is provided by a state, vulnerable and disadvantaged people, due to adverse conditions of economic, social and cultural perspectives prevailing in any society could not be in a position to access the remedial mechanism provided by a state also leads to inaccessibility to seek legal redress. In order to prevent such abuses to victims of human rights violations, international law of human rights recognised right to access to justice as a basic human right. Before examining the aspect of inaccessibility to legal redress in Indian context, it is necessary to understand the concept of access to justice, which is a human right.

Access to justice is a fundamental human right. Theoretically, every country advocates that Executive, Legislative, and Judicial wings are wide open to prevent any kind of illegality while tackling the violations of human rights and are have equal access to everyone to seek remedial mechanism. However, in practice many a times,

they are far from reality, especially to the sufferers of human rights violations. According to the principles of international law of human rights, states need to take steps in an effective perspective to render justice to everyone concerning civil rights or human rights violations. To achieve effective justice, states must ensure that justice be provided without any kind of discrimination, and adopt a number of measures to have access to justice and to seek a remedial mechanism through constitutions, especially, to address the concerns of human rights victims.

International Law of Human Rights ensures an effective remedy for the victims of human rights through a number of legal instruments. Article 8 of the Universal Declaration of Human Rights 1948, prescribes the right to effective remedial mechanism for violations of human rights. Article 2 (3) of the International Covenant on Civil and Political Rights, 1966 endorses the right to effective remedy through judicial, administrative or legislative or by any other legal mechanism that will have the possibility of rendering judicial remedies to the victims of human rights. The right to effective remedy further guaranteed by International Convention on the Elimination of All Forms of Racial Discrimination, 1965 in Article 6, Article 2 (C) of the Convention on the Elimination of All Forms of Discrimination against Women, Article 14 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1984 etc. It is an established right of the victims of human rights or civil rights to seek an effective remedy through national tribunals and other mechanisms established by a state. At the same, it is an obligation of a state to punish the offenders and provide compensation to victims including rehabilitation in necessary cases.

The constitutional framers guaranteed to all, justice that is socio, economic and political in all respects, and provided an equal opportunity to realise the fundamental rights without any kind of discrimination based on sex, caste, religious, economical, social, and cultural status through the preamble, and other provisions of the constitution. However, inaccessibility to justice results due to a number of reasons. Firstly, deviation to adhere to principles of constitution, legislative, executive, and judicial pronouncements at all times. Secondly, poverty, discriminatory socio, economic and cultural practices,



illiteracy of knowledge about the free exercise of rights by vast majority of populace of the polity. Thirdly, non-registration of cases by police authorities at times, where in the victims are poor or belongs to marginalised sections of society, or against politically and socially well to do people. Fourthly, huge amount of litigation costs to approach courts, pendency of cases, problem of hostile witnesses etc. Fifthly, lack of information about language, procedures of court to users, lenient attitude of public prosecutors in progression of a case, poor quality of investigative reports and delay in forwarding to them to court by investigating agencies etc. Finally, age-old laws, lengthy judicial and administrative procedures, and ineffective use of alternative judicial remedial mechanism are some of the chief reasons for inaccessibility of justice to majority of the populace in India.

To remedy this, following positive steps would help to a great extent to augment to have proper access to justice. Firstly, codification and simplification of various laws, especially personal and service laws such as Motor vehicles Act, Post and Telegraphic laws, Railways Act, Labour and social welfare laws, and laws that are specially enacted to promote the rights of vulnerable and disadvantaged groups. Secondly, assist the victims of poor and needy accused by providing free legal aid, encourage the resolution of disputes of long standing by employing alternative procedures. Thirdly, dissemination of constitutionally guaranteed rights of victim, Alternative Dispute Resolution methods such as negotiation, arbitration, Lok Adalats, Legal Aid cells working in law Departments of various Universities and law colleges, and district level adopting the directives of Supreme Court of India, ensure registration of cases by police in all circumstances, etc. Fourthly, empowering Panchayats with judicial decision-making powers as advocated by 73<sup>rd</sup> and 74<sup>th</sup> constitutional amendments, establishing women's courts, human rights courts, as advocated by various laws of Parliament of India. Fifthly, to realise the rights freely by masses, especially victims of inaccessibility to justice, educate them about human rights and fundamental rights as guaranteed by constitution in their vernacular language in an easy and understandable perspective. Finally, oversee the victims receive adequate compensation for wrongful or negligent acts of state.

## **2. Abuse of Executive Power: Corruption-Nepotism or favoritism**

**"No man of what state or condition he be, shall be put out of his lands or tenements nor taken, nor disinherited, nor put to death, without he be brought to answer by due process of law"**

According to above philosophy advocated by King John of England in 1215 through the famous Charter of Magna Carta, rule of law constitutes as a fundamental basis for governance. This legal dictum of King John became the basis for Rule of Law or Due Process in the modern world. Due process of law means, state has an obligation to respect the legally guaranteed rights of persons. Accordingly, any action contemplated by a state or governmental authority have an effect by the action of such agency of state either in person or to his or her property, has a duty to issue a notice in detail and provide with reasonable opportunity to legally defend the claim of such person whose rights would be in peril. When a state or any of its agencies initiates action without adopting the above procedure, it would amounts to subversion of rule of law or abuse of executive power.



All the international legal documents on human rights guarantee the right to fair hearing in all civil and criminal proceeding before a competent, independent and impartial tribunal or court established by law. Accordingly, any action of a state without following the procedures of law or not providing any opportunity to defend by oneself, and interferes to harm the life and liberty of an individual in an authoritative manner to rob the rights or property referred to as abuse of executive power. Many a times, for one reason or the other, state and its agencies exercise their powers arbitrarily constitutes as violation of human rights. Abuse of executive power by state or any of its agencies for benefit of few individuals or for sake of authorities in power without legal recourse, seriously impair Civil, Political, Economic, Social and Cultural rights. To prevent such abuses, the UN and its various organs at regular intervals appeal to states to take necessary democratic steps to stop such abuses, which primarily defeat the purpose of the catena of legal instruments of international law of human rights adopted by 'comity of nations.' Corruption is one such issue, which leads authorities of states including its agencies to bend the norms and favour their kith and kin. The corrupt practices bring in unlawful gain to some and legal loss to many in the free exercise of guaranteed human rights both in international and national levels.

According to the UN High Commissioner of Human Rights, Ms. Navi Pillai, **"Corruption kills. The money stolen through corruption every year is enough to feed the world's hungry 80 times over. Nearly 870 million people go to bed hungry every night, many of them children."** She further said, **"Corruption is an enormous obstacle to the realization of all human rights — civil, political, economic, social and cultural, as well as the right to development. Corruption violates the core human rights principles of transparency, accountability, non-discrimination and meaningful participation in every aspect of life of the community. Conversely, these principles, when upheld and implemented, are the most effective means to fight corruption."** The statement of the High Commissioner of Human Rights, clearly highlights the evils that are associated with corruption in realizing the human rights that are guaranteed to individuals.

To eradicate corruption, the UN adopted a convention in 2004 basing on many years of its work. The convention came into force in 2005 with majority of states becoming parties to it immediately. To help nation-states in their fight against corruption, the convention for the first time introduces a comprehensive set of standards, measures and rules that all countries can apply in order to strengthen their legal and regulatory regimes to fight corruption. It calls for preventive measures and criminalization of the most prevalent forms of corruption in both public and private sectors. In addition, it makes a major breakthrough by requiring member states to return assets obtained through corruption to the country from which they were stolen.

The Constitution of India guaranteed human rights to its populace through fundamental rights, which are regarded as key provisions to usher the rights of individual. The Supreme Court of India in a catena of cases explained the real philosophy of the various rights and expanded the provisions of life and liberty by adding a number of rights to it. At the same time, the Constitution of India provided the remedial mechanism to prevent the abuse of state against the encroachment of rights by executive. However, due to economic, socio, cultural backwardness amongst various sections of the polity, many a times the abuse of executive power by a section of people in authority is to help the rich and to favour near and dear ones of political bosses, and in turn to gain either personally or economically. Such deviations and misuse of power is antithesis to the realisation of fundamental rights guaranteed to people, especially the rights of disadvantaged and vulnerable groups of the polity. Corruption and nepotism are one of the chief attributes of abuse of executive power in several instances by a section of people in various organs of state. These practices denies the vulnerable and disadvantaged people to have an access to basic services such as health, education, land, food, shelter and clothing.

In order to counter such deviate practices a number of strategies need to be adopted to bring in a transparent administrative system. Among the various, the strategies developed by OECD (International Organisation for Economic Cooperation and Development) to tackle the issue of abuse of power for corrupt and nepotistic practices in Asia and Pacific are worth considering. According to it:



**a. Integrity and competency in public officials:** Integrity and competency in public officials is the most important aspect. This could be achieved by adopting fair means of selection and promotion of officials through transparent and fair means. Adequate remuneration and other perks, introducing code of conduct at regular intervals, periodic reviews to remove conflict of interests in rules, regulations and procedures, enacting new legislations repealing the age old laws, to oversee the non-interference politicians in the functioning of public officials.

**b. Public Management System:** Public Management System is another effective tool. This could be adopted by introducing wide range of discretionary provisions, regular interactive sessions between public officials and public; e-governance; rotation of officials at stipulated intervals; public accountability mechanism through periodic audits by independent agencies and public-spirited persons etc.

**c. States Role in Augmenting Political System:** Through this system the state need to fund political parties and election campaigns. It is necessary to introduce code of conduct for politicians, inducing their role and responsibility to public at large etc., imparting the comparative administrative and legislative process and healthy process of administration at regular intervals.

**d. Regulation of Business Organization:** This aims at regular period review of policies of various business houses and compulsory insistence of adoption of ethical and moral practices. Regular audit of their role and responsibility towards good practices and social responsibility factors etc.

Apart from the above, the various committees, commission appointed by the government from time to time, the numerous judgments of courts highlighted that strict punishment including dismissals in necessary cases to eradicate corrupt and nepotism among public officials. At the same time, adoption of simple and transparent procedures and delegation of powers amongst various officials instead of concentration of power among very few, impartation of good ethical and moral



practices at regular intervals; basic amenities, attractive remuneration and promotional channels certainly help to eradicate the corrupt and nepotistic practices in subverting the executive power. Apart from the above, strict action be initiated against political leaders who interfere in the functioning of public officials and use their power to deter the officials is the most essential ingredient to prevent abuse of executive power through corrupt and nepotistic practices which in turn augment the realisation of constitutionally guaranteed fundamental rights by people to a maximum extent.

### 3. Human Rights and Good Governance

The concept of good governance is increasingly used in the contemporary era, due to bad governance by nation-states in the world. The term governance is not a new term. It is in existence since olden days. Governance generally means, involving various players or agencies in the decision making process on any matter concerning formal or informal sectors. In decision-making process, government is nucleus to implement various policies, laws and regulations to render effective service to people and to work for the progress of a nation. The term governance normally employed to refer a number of perspectives such as local governance, state governance, regional governance and international governance.



The promotion and realisation of human rights mainly depends upon the model of governance adopted by each country. However, arbitrary exercise of executive powers conferred upon various organs of a state not only brings in bad governance but also have an impact upon the realisation of human rights of the populace of a polity in general, vulnerable and disadvantaged groups in particular. The bad governance, authoritarian rule, regional and international conflicts, decolonization, the concentration of power amongst few authorities of state, misdemeanors of a section of people in each society in the promotion of rights of socially, economically and culturally disadvantaged people's rights, deviance in implementing the statutes, rules and procedures in decision making process, the developments of science and technology especially, information technology, entry of multinational corporations in various fields, insistence of the promotion and protection of human rights by UN etc., led for the evolution of the concept of good governance.

There is no single and exhaustive definition to good governance. There is no limit in its scope and concept. It is employed to define a number of aspects. However, the employment of the phrase and its operational part is very difficult to achieve. According to Office of UN High Commissioner for Human rights basing on the context and the objectives sought to achieve, good governance need to encompass the following characteristics, such as; full respect of human rights, the rule of law, effective participation, multi-actor partnerships, political pluralism, transparent and accountable processes and institutions, an efficient and effective public sector, legitimacy, access to knowledge, participation of civil society in governance, information and education, political empowerment of people, equity, sustainability, and attitudes and values that foster responsibility, solidarity and tolerance. But in general, good governance is expected from a state to be transparent in its dealings include all the players of a polity and outcomes need to be oriented towards developmental process.

According to the resolution 2000/64 of the UN Human Rights Council the chief attributes of good governance are transparency; responsibility; accountability; participation and responsiveness to the needs of the people. According to United Nations Economic and Social Commission for Asia and Pacific (UNESCAP) good governance has eight chief attributes.



**Participation:** Participation of people at various levels of a state including in governance is the key element for realisation of good governance. The government needs to have a proper communication channel where in it could receive the feedback of the expectation of people in governance. It may be either through representative manner or through any other means. The main aspect is the guarantee of human rights.

**Rule of Law:** Rule of law means, fair implementation of legal rules and procedures with a remedial mechanism without any partiality. It also ensures the full protection of human rights.

**Effective and Efficiency:** The institutions of state need to efficient to meet the requirements of people and produce results that need to meet the expectations of people. It also implies the efficient use of resources in a sustainable perspective.

**Equitable and Inclusive:** The well-being of a society depends upon the equitable status of all its populace. In order to have such an equitable status, the socially, economically and other disadvantaged groups of people need to be provided with opportunities to take part in the activities of society in an equal manner.

**Responsiveness:** All the institutions need to serve with a time frame with maximum result orientation.

**Transparency:** The decisions taken and their enforcement need to be according to the legal rules and regulations. It also includes people need to have an information free society, with a responsive free media and to have an access in decision-making process.

**Accountability:** Accountability is a holistic concept where in all the stakeholders which means, the public, private and civil society organisations all of them together accountable to the society for their acts. The quantum of accountability depends upon the nature of activities of each organ. To achieve accountability, one of the basic features of it is, rule of law need to be adhered without any deviance.

**Consensus oriented:** In every society, there are a number of actors. All of them need to evolve good strategies with consensus to achieve them keeping the community interests at par. At the same time, a long-term objective perspective is needed for sustainable human development and how to achieve the goals of such development need to be planned in a strategic perspective to counter the problems with a progressive approach.

Human Rights and good governance have a number of links as they are mutually reinforcing each other. Both of them together indicate a number of standards, which performers need to adopt. They jointly promote mainly strengthening of institutions, democratic participation, observance of rule of law, effective service delivery mechanisms, inculcate anti corruption and non-nepotistic practices in governance. The UDHR through article 21 and 28 advocates the concept of good governance at all levels including the international participation. The Covenants on Civil and Political Rights, Economic, Social and Cultural Rights and a number of documents advocate for the promotion of human rights, which help to promote the concept of good governance. The Millennium Development Goals also endorse the concept of good governance, which is the key to realise human rights.

The Constitution of India advocates the view of the UN in the promotion of human rights and good governance. The government after independence introduced a number of schemes, other plans to eradicate poverty and to bring in the disadvantaged sections of people into mainstream activities of society. However, illiteracy, poverty, unemployment, corrupt and nepotistic practices of a section of people, criminalization of politics, and a number of other instances have left a blot on the governance of the country. Though the government introduced right to information, right to education and other policies to bring in inclusive growth of the disadvantaged sections, a number of initiatives are required to meet the expectations of people and that of international community. It is the duty of state to include civil society in decision-making process, introduction of specific programmes with time frame to reduce poverty and malnutrition in children, develop the status of women, especially the economic scenario. Funding of election expenditure, encouragement of alternative dispute settlement, evolve strategies to reduce pendency of litigation in judiciary, establishment of human rights courts as contemplated in the Human Rights Act, reduction of governmental expenditure, steps to promotion of fundamental rights to their realisation in an effective perspective, compulsory education of human rights, more transparent methods of governance etc. These steps will definitely increase the potential of India as a vibrant democracy.

#### **4. Sum Up:**

The constitution and the state have guaranteed human rights. However, the inequalities in society present a bleak picture for their augmentation. The number of problems that are plugging the polity in general, and lack of empowerment of individual in particular leads to abuse of executive power by vested interests. In order to drive away the maladies, people need to seriously discharge their duties without any type of fear or favoritism. These will certainly lead to establish good practices in governance to evolve effective solutions for the problems of past, present and future.

## MODEL QUESTIONS

1. **The United Nations in its population report.....highlighting the significance of controlling population**
  - A. 2012
  - B. 2011 (A)
  - C. 2010
  - D. 1988
  
2. **OECD means .....**
  - A. Organisation for Ecological Corporation and Development
  - B. Organisation for Economic Cooperation and Development (A)
  - C. Organisation for Educational Cooperation and Development
  - D. None of the Above
  
3. **According to United Nations Economic and Social Commission for Asia and Pacific (UNESCAP) good governance has ..... chief attributes.**
  - A. 7
  - B. 6
  - C. 5 (D)
  - D. 8
  
4. **The UDHR through ..... advocates the concept of good governance at all levels including the international participation.**
  - A. article 21 and 28
  - B. article 12 and 18 (A)
  - C. article 13 and 28
  - D. article 16 and 28
  
5. **Rule of law means,..... implementation of legal rules and procedures with a remedial mechanism without any partiality.**
  - A. Fair
  - B. Unfair (A)
  - C. Bias
  - D. None of the above

## CHAPTER IV

### ROLE OF ADVOCACY GROUPS

*The politico-legal process for the adoption of Human Rights is universal. The aim of all legal instruments at International, Regional, Sub-Regional, National, and Local plane is to activate the individuals politically to safeguard their rights guaranteed under law. The Economic, Social and Cultural rights impose duties and obligations on the state to strive for the promotion of welfare of all sections of society to realise their guaranteed civil and political rights in an equal fashion. However, a number of issues such as poverty, malnutrition, threats to peace and security, underdevelopment, asymmetrical status of individuals in society, etc, are the irritants in realising human rights fully, to lead a life with liberty and equality of status as guaranteed. To help the victims of human rights, a number of advocacy groups and a number of groups of people plunge into action not only to share the miseries, but also to fight with the agencies of state. This chapter in a shuttle perspective introduces to the student the significance of various advocacy groups and the role played by them in realising the dreams of victims of human rights violations.*

#### 1. Introduction:

The realisation of human rights mostly depends upon promotional activities initiated by nation-states at every level, especially, on the articulation, think globally and act locally. Any subversion in their commitment to engage in all human beings brings in a number of issues on to centre stage that leads to denial of guaranteed rights and the struggle to their restoration. In order to help people whose rights are in quandary, civil society and a number of advocacy groups have emerged at global and national levels to defend the rights of victims. These advocacy groups popularly referred to as Human Rights Defenders. In view of their increasing number, active participation individually and of groups, many a times, the agencies of state question both of their legitimacy, their character, role in the augmentation of rights and status to fight on behalf of others.



A number of such incidents and problems encountered by advocacy groups and individuals across the World, the United Nations adopted a declaration on the rights and responsibilities of individuals, groups and organs of society to promote and protect universally recognised Human Rights and Fundamental Freedoms in 1999 in order to extend legitimacy to the advocacy groups.



The resolution recognises that “*everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.*” The UN further to protect the rights of these groups or advocates created a post of Special Representative of the UN Secretary-General on Human Rights Defenders in 2000, which was later replaced by the UN Special Rapporteur on Human Rights Defenders in 2008. The Special Rapporteur suggested a number of protective mechanisms to the defenders of human rights, which include dialogue with states to prevent intimidating acts against such defenders of human rights and requested nation- states to adopt specific mechanism to prevent such abuses etc.

## **2. Role of Advocacy Groups:**

Human Rights are older than human history. As natural rights, they are part of nature. Every society in one form or the other has advocated them, since the evolution of humanity. However, they have undergone a revolutionary change with the Declaration of Magna Carta in 1215, followed by a number of texts. A final shape was given to them after the adoption of the Charter of UN and Universal Declaration of Human Rights. In spite of long history, revolutionary change in their articulation, most people in the world are fully unaware of their rights. Advocacy groups play a vital role to prevent their abuse and to help victims of human rights to seek justice within the guaranteed political and legal structure at every level.

## **3. Professional Bodies: Media, Role of Lawyers-Legal Aid**

### **a) Media:**

Media means medium of communication. It is a broad term to represent print and audiovisual broadcasting, writing visually with pictures, reporting news etc. Accordingly, media represents newspapers, magazines, Television, Internet etc. Human rights are age old. However, in any country, the exact content of rights and the remedial mechanisms are known to only a section of populace. The rights, which citizens enjoy, vary depending on the economic, social, political and cultural developments prevailing in each society. In this context, media will play a vital role in the promotion, protection and realisation of human rights. Media being a powerful medium could give publicity to violations of human rights, publicity to organisations and individuals involving in the promotion of human rights education. It can educate people, suggest the ways and means to address the violations.

In the contemporary era, with the help of technology media could bring

experts from any nook and corner of the world on any issue through live discussions and render the ways and means to counter violations in the realisation of human rights. It has the ability to mobilise people and bring the perpetrators to justice. A number of people who constantly violated human rights including that of heads of nations around the world been brought to justice through the extensive coverage and reports of media. At the same time, being a fourth estate of a state, it needs to exercise restraint and caution. The freedom extended to press for its contributory role to promote values of democracy and human rights should not be misused. It needs to adopt a self-regulatory mechanism to present the truth to help victims of human rights to seek justice. It should take care of content of the report, language needs to be decent, employ only well qualified and trained reporters, exercise restraint in publishing materials, reports, photos that create tension or sensitivity among various sections of society.



In India media plays a vital role since olden days. However, it was limited to few as the medium of communication and other aspects were written on palm leaves. The modern medium of print communication was started during the days of British East India Company. James Augustus Hickey, an English man started the Bengal Gazette on January 29, 1780 and also popularly known as “Calcutta Advertiser.” The East India Company did recognise freedom of speech and expression as a basic right. It took several steps to prevent the printing of Bengal Gazette including finally closing it down in 1787 and sent back Hickey to England. However, the initiation of Hickey laid foundations for free press in India. In 1780 Indian Gazette, Calcutta Gazette in 1784, Bengal Journal in 1785 led other parts of the country to start print medium in the country. The Madras Courier (1785), Mumbai Herald in 1789 and other papers started slowly gaining ground for freedom of press and communication. The change of Policy of strict censorship of media by Lord Hasting in 1818, led for the evolution of a number of newspapers in India. The First paper published in an Indian language is said to be in Kannada. The efforts of a German led for the publication of first vernacular newspaper by name Mangalura Samachara in 1843. This led for the evolution of vernacular newspapers in many other languages in the country. Among

the oldest papers, the Amrit Bazar Patrika in Bengali is still popular paper in Bengali. The printing of large number of papers, and Sir Thomas Munro's reforms package, followed by Sir Metcalfe's efforts led the British Government to enact the first comprehensive Press Act in 1867, which repealed the 1835 Act. This Act named as Press and Books Registration Act, which is still in force with amendments made to it in later periods. Apart from this act, a number of acts have been enacted which laid the legal basis for freedom of speech and expression.

After the adoption of constitution, freedom of speech and expression constitutes as one of the fundamental determinant to realise the fundamental rights as guaranteed by constitution. The concept of right to information is the basic right that encompasses all rights in their realisation. The Supreme Court of India (**Bennett Coleman and Company of India v. Union of India**) in 1986 held that though it is well within powers of a state to take preventive steps of misuse of freedom of speech and expression in public interest, any preventive measures that directly impair to prevent the ideas of press to publish constitutes as a serious encroachment on the cherished right of free speech and expression. At the same time, it cautions press not to publish any false news items in **Hari Jaising** in 1996.

Media plays an enormous role in a number of issues in guiding the state and as well as public in the realisation of human rights. The significant schemes, policies of state, political parties, leading judgments of courts, efforts of various institutions, individuals on the promotion of human rights brought by media constitutes as an important source. The number of schemes such as, construction of houses, schools, educating masses, helping people by liberal collection of donations from public in emergencies or in disasters etc, are some of the key initiatives initiated by media could be considered as their contribution in the augmentation of human rights in the country, apart from the expression and dissemination of news and views to public at large. A free and responsible media could be a watchdog not only to prevent violations of human rights but could effectively disseminate the ideals of human rights for their promotion.

### **b) Role of Lawyers-Legal Aid :**

Legal professionals play a vital role in the promotion and protection of Human rights. Though it is argued that the promotion and protection of human rights is every ones field, legal profession and the professionals of law play a vital role in the development of principles and application due to their close connection with law.

Legal professionals include lawyers, judges, legal officers, legal advisors, professors of law and anybody who practices law and works for the promotion of human rights (otherwise referred to as free lawns lawyers). Lawyers through their interpretative skills temper the principles of law to evolve new principles and at the forefront in advocating the promotion of human rights through their extensive legal debates, writings and through participation in condemning the repressive movements, which violate human rights. In the contemporary era, across the World, on a number of occasions lawyers and other legal professionals played a crucial role in the development of laws relating to prohibition of torture, augmentation of women's rights, prohibitive laws on trafficking, etc. Apart from lawyers, other legal professionals such as judges, legal advocates and professors of law also play a vital role in tampering the principles of law and stand to oppose the policies of state which threaten the enjoyment of human rights, especially during emergencies, war periods and in authoritarian regimes.



In the context of India, a number of legal professionals, which include lawyers, played a significant role in the development of human rights. A number of lawyers through public interest litigation brought in a number of suits, which became responsible for expansion of the concept of life and liberty under Article 21 of the constitution of India. The Judiciary has added a number of rights, which were not explicitly defined in the constitution, as a part of Life and liberty. The litigation by lawyers and professors in India led for the development of rights of women, equal pay for equal work, environmental protection laws, child welfare, protection of rights of HIV/AIDS patients, prevention of domestic violence, torture in prisons, speedy justice etc.



Apart from practicing law, often a number of lawyers and judges joined together to educate masses and help people in need of protection of human rights through various organisations and forums such as lawyers collective, lawyers club etc. to educate and to fight for the promotion of rights of citizens.

Legal Aid is another important platform to realise and promote human rights. Though there are attempts in France in 1851 to introduce legal aid, it was USA, which laid the seeds for free legal aid with the establishment of First Legal Aid Society in New York in 1876. In 1949, England introduced the Legal Aid and Advice Act. Reginal Herber Smit advocated the concept of free legal assistance for the poor in 1919 in his book, Justice and the Poor. He advocated that it is an obligation of legal professionals to defend the cases of every one including the poor. Legal Aid means, rendering justice to poor people without charging any fees to address their grievances.

In India since 1952 attempts were started to address in the issue of legal aid through conferences, seminars, conferences of Law Ministers and Law Commission of India. In 1960, certain guidelines were framed to offer legal aid and were initiated in a number of states through law boards. In 1980, the Government of India established a committee under the chairmanship of former Justice P.N. Bhagwati on the name of committee for Implementing Legal Aid Schemes. This committee introduced another significant indigenous concept of Lok Adalat (People's Court) which disposes the cases through conciliatory means in the presence of judicial officers. In 1987, the Government of India enacted the Legal Services Authorities Act with an aim uniformly to implement the justice dispensation system as under sec. 39 (A) which impose an obligation on the state that the operation of the legal system promotes justice on a basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability. The same was guaranteed under Articles 14 and 22(1) of the fundamental rights that equality before law and a legal system need to promote justice to all and equal opportunity be provided.

The Bar Council of India considering the significant role of the legal aid many university departments of law and law colleges in the country established legal aid cells to offer dispute redress mechanism in a free and fair manner to poor. To render justice through this system, legal professionals play a vital role in promoting human rights of citizens.

### **c) Educational Institutions:**

Education plays a vital role in the promotion and dissemination of human rights. Education being the potential tool to metamorphose any society, individual or

institution, the framers of Universal Declaration of Human Rights through Article 26.2 entrusted the duty to educators to bring in social order to foster human personality in understanding, strengthening and promotion of human rights. The World Conference on Human Rights in its Vienna Declaration and Programme of Action (1993) emphasized the significant role played by education and educational institutions. Accordingly, it requested nation-states to take necessary steps to inculcate the philosophy of human rights through all means of education and all types of educational institutions to eradicate illiteracy, to equip people to counter the maladies of human rights violations. Accordingly, the United Nations declared the period 1995 to 2004 as Human Rights Education. The UN emphasizing the role of education and educational institutions in 2011 declared that human rights education is a lifelong process it needs to be imparted continuously.

The nation-states immediately after the establishment of the UN, in 1945 established United Nations Educational, Cultural and Scientific Organisation was established (UNESCO) with a firm belief that education and educational institutions play a vital role to achieve peace by guiding nation-states through the intellectual and moral solidarity of humanity. Since its establishment to strive to achieve the object, UNESCO drew a number of plans to inculcate the significance of education, especially human rights education to oversee every child in the world, to receive qualitative education as a fundamental human right for the all round human and sustainable development. It offers a number of programmes in every field of education; adopt policies that are suitable for the promotion of education in general and children education in particular.

Apart from UNESCO, the Officer of the High Commissioner for Human Rights (OHCHR) established sixty years ago as a small division to promote human rights. However, with the growth and significance attached to human rights by UN in 1993, the General Assembly expanded the centre for human Rights as OHCHR. The OHCHR has developed a number of education series to impart human rights from primary level to research perspectives by educational institutions. It works with a number of organisations of UN and with member states to develop plans and over see impartation of human rights education.

Educational institutions need not to be looked as training centers to impart certain kind of skills and knowledge to students, but need to be considered as institutions, which impart the process of socialization. This is a most important and



powerful too, as they train pupil in various facets such as life skills, socialization, cultural, moral, ethical values, which equip them with sustainable developmental attitudes apart from knowledge-based hubs. The UN considering the role that educational institutions play in the enjoyment and realisation of human rights adopted a number of declarations requesting the nation-states to impart Human Rights on a compulsory basis from primarily level to university level. Accordingly, UN and its organs adopted a number of strategies to impart human rights education at different levels.



According to various instruments at the primary level, the philosophy of human rights needs to be taught in a simple and understandable perspective with simple cartoons and illustrations. At the secondary level, students need to be imparted about the UN and the initiatives in developing human rights. At the collegiate level, the course structure needs to be focused towards appreciation of the critical components of human rights. At this stage, the students need to be trained with practical dimensions to search solutions to real problems of society. At the university level, the students need be oriented to appreciate the technical mechanisms of international and national spheres and be asked to prepare modules interlinking various subjects incorporating the value systems advocated by UN in its various documents. At the research level, students are guided to examine issues that are internationally and nationally important to identify remedial mechanism with an orientation of sustainable development. The entire curricula need to orient the duty concept and interlink with rights and duties.

Indian philosophy from ancient to modern times advocates common brotherhood without any kind of discrimination and develop a duty conscious citizens. However, the invasion of foreign rule in middle and modern periods changed its philosophical base and introduced the rights centrist education on the name of modernization. Nevertheless, the cherished ideals of freedom movement lead the constitutional framers to reintroduce its ancient ideals of value oriented duty bound society through constitution.

In tune with the ideology of the constitution, the government has taken a

number of steps to introduce value based human rights education. However, unfortunately majority of the instruments remain as instruments and efforts for the promotion of human rights education is still in its infancy in the country. The UGC taking into consideration of the Plan of Action on Education for Human Rights and Democracy adopted by the World Congress on Human Rights in 1993, and in response to the clarion call of Ministry of Human Resources Development developed a number of guidelines to promote HRE at the University level. Apart from the above, the Human Rights Act 1993, clearly emphasises the significance of importance of Human Rights Education and the role to be played by NHRC, State Human Rights Commissions and educational institutions. Off late a number of institutes realising the significance and taking efforts for introduction of teaching Human Rights education. The Institute of Human Rights Education, Madurai took a number of efforts in the promotion of human rights literacy and adopted a number of schools since 1997. With the same aim University of pune, since 2010 offering Human Rights Education on a mass scale.



The impartation of human rights education certainly empower people to evolve solutions to a number of issue that are plaguing the societies across the world and could create a congenial atmosphere where in every one can lead their life and liberty without any distortion, miseries, and could establish peace and security, the prime objective of international law of human rights.

#### **d) Role of Corporate Sector**

There exists an inseparable link between commerce and society. Companies being part of society as legal persons, they need to discharge their societal obligations, to protect the rights and obligations of various stakeholders, such as shareholders, employees, obligations and be legalistic in their transactions to be good corporate citizens. The evolution of globalization, developments in science and technology, and a number of political, socio, economic, cultural, and legal aspects led the corporate houses to expand their business beyond





borders. In their competitive quest for supremacy and to expansion of trade and business houses, there is every possibility that they may relegate to a secondary position of their legal obligations towards society and a number of stakeholders, especially, in protecting the rights of its employees.

To regulate the behaviour of corporate houses, a number of rules and regulations are in existence in both national and international law. However, end of cold war and the fourth phase of globalization account not only for the rise of dominance of corporate house over political, social, economic, for legal and cultural perspectives in the world, but also account for increased debate of human rights in every field which includes business. Further, the dominance of Multi National Corporations in expanding the business and other issues of governance in the developing world, led the UN to focus its attention on the increasing role of the relationship between human rights and business. In the year 1999, the Secretary General of the UN in his annual meeting of the World Economic Forum in Davos launched a Global Compact which called upon business to "support and respect the protection of internationally proclaimed human rights within their sphere of influence and make sure they are not complicit in human rights abuses." It articulated broadly ten principles basing on international legal standards agreed universally which needs to be respected and implemented by business houses.

The principles are:

1. Businesses should support and respect the protection of international human rights within their sphere of influence;
2. Make sure their own corporations are not complicit in human rights abuses.
3. Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining of labour ;
4. The elimination of all forms of forced and compulsory labour
5. The effective abolition of child labor;
6. The elimination of discrimination in respect of employment and occupation.

7. Businesses should support a precautionary approach to environmental challenges;
8. Undertake initiatives to promote greater environmental responsibility; and
9. Encourage the development and diffusion of environmentally friendly technologies.
10. Businesses should work against corruption in all its forms, including extortion and bribery.

Basing on these principles, to extend support and help the corporate houses to adopt the mandate of the international community for the promotion and protection of human rights launched a special website as [business.un.org](http://business.un.org). Through this web access, business houses could interact with the concerned UN organs and to know their rights and responsibilities in the promotion of human rights. Basing on the reports of abuse by corporate houses of the Office of the High Commissioner for Human Rights, in 2005 the UN appointed John Ruggie, a Professor of Harvard University as a special representative of the Secretary General to submit a report. The final report of Prof. Ruggie in 2008, found that apart from various sectors, the extractive sectors, oil, gas, and mining are account for two-thirds of abuses of human rights in the world. The UN is taking a number of steps to oversee the promotion of human rights through its global compact governance. It also appealed to states to oversee the implementation of human rights principles by business establishments in their respective territorial jurisdictions, and to amend the national laws of business incorporating the principles of human rights to be followed by corporate houses as a part of their social responsibility.

India has a long tradition of involvement of business in social welfare and other developmental promotional aspects of the governance in the country. In 2011, the Ministry of Corporate Affairs of the Government of India adopted a set of principles on Social, Economical and Environmental (updating the original principles issued in 2009) responsibilities to adopt voluntarily by business.

1. Businesses should conduct and govern themselves with Ethics, Transparency, and accountability.



**Ministry of  
Corporate Affairs**

2. Businesses should provide goods and services that are safe and contribute to sustainability throughout their life cycle.
3. Businesses should promote the well being of all employees.
4. Businesses should respect the interests of, and be responsive towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalized.
5. Businesses should respect and promote human rights.
6. Business should respect, protect, and make efforts to restore the environment.
7. Businesses, when engaged in influencing public and regulatory policy, should do so in a responsible manner.
8. Businesses should support inclusive growth and equitable development.
9. Businesses should engage with and provide value to their customers and consumers in a responsible manner.

It requests every kind of business need to integrate these principles voluntarily. The guidelines also offer strategies for Responsible business and approach the ways and means to integrate the principles. The Government also established Indian Institute of Corporate Affairs in Delhi to specially focus on the needs of business and to aid and assist both the government and business. Apart from the above, it is taking steps to integrate the principles by amending or enacting legislations in the area of corporate law and governance.

Business is an integral part of society need to observe all the human rights without any deviation. It is the duty of corporate houses, business schools to impart the principles of human rights for the healthy promotion of business to prevent any kind of abuse of rights in the corporate sector and in society.

#### **e) NGOs':**

In all round development of a state and people, capacity development plays a vital role. Capacity development implies strategic planning with a focused attention of state in every sector especially, education and health sectors, which play a vital role for the development of a state and in the promotion of human rights. In the case of individuals, capacity building imparts the process of development and knowledge about the rights and obligations. Capacity building, in other words, empowers people

to secure the ways and means of guaranteed rights, impose responsibility on state to enhance its capacity to meet the requirements of people. Many a times, for varied reasons, states fail to live up to the expectations of people, which ultimately create a vacuum. As an offshoot to fill the gap, to achieve the capacity-building concept, Non Governmental Organisations came into existence. They mainly prevail upon governments to fill the gap and demand that for strategic priorities with a focus to enable the disadvantaged sections of society to reach and able to enjoy their guaranteed rights. NGOs' in a nutshell, act as critics, capacity builders, innovators, advocates and as policy partners in general and in particular in promotion and realisation of human rights.



Non Governmental Organisations play a vital role in the local, regional, national and international promotion, protection and realisation of human rights. They have a long tradition to take part in the promotional aspects of human rights through advocacy, mobilization, capacity building, and work for a group or in general. In 1950, the Economical and Social Council through resolution 288 (X) extended consultative status to NGO is in tune with the objectives of Article 71 of the United Nations Charter. According to ECOSOC as defined in 1996, NGO means, “any such organisation that is not established by a governmental entity or intergovernmental agreement to work in conformity with the spirit, purpose and principles of the UN Charter, with a recognised standing in the field, with democratic organisational structure, and have authority to speak for their members, with an appropriate accountability mechanism.” Apart from the above criteria, they should be non-profit making, a political in nature and registered according to the law of the country where they are primarily established.

NGO's which work for the promotion of human rights may be referred to as Human Rights NGOs. This type of organisations mainly works for human development, humanitarian aspects and aspects of environment. They may work either directly or indirectly. Some of the organisations are specialized in a particular area and they work to enrich that area and demand for the implementation of existing international treaties or bring in pressure on the nation-states and international organisations to draft new regulations on any specific area. Many a times they choose



to bring pressure through international forums on the governments for the implementation of international human rights legal regulations at domestic level.

In the national level, they are always in the forefront to bring in desired reforms to prevent abuses in any area. It was the continuous fight by the NGOs', a number of new legislations are adopted and existing ones have been amended in India. Environmental Protection Act, legislations on women's rights, gay and lesbian rights, recognition of live in relationships, right to food, and a number of other aspects came into existence.

The increasing role of NGOs' is a welcome feature. However, they need to adopt transparent methods in their strategies and handling governments without resorting to corruption and other abusive practices. Any deviations in their motto not only cripple the motives, but also lose the confidence of people and state.

#### **4. Sum up:**

The subtle discussion on the role of advocacy groups amply brings in the important role played by them in the promotion of human rights. In a number of circumstances, they work not only as advocacy groups but also cautious agents to suggest remedial mechanism to state and international organizations for the betterment of their future policy perspective in augmenting human rights at every level.

**MODEL QUESTIONS**

- 1. James Augustus Hickey, an English man started the Bengal Gazettee on January 29, 1780 and also popularly known as “.....”**
  - A. Mumbai news (B)
  - B. Calcutta Advertiser
  - C. Madras Images
  - D. None of the above
  
- 2. Though there are attempts in France in 1851 to introduce legal aid, it was ..... which laid the seeds for free legal aid with the establishment of First Legal Aid Society in 1876.**
  - A. India
  - B. United Kingdom (C)
  - C. United States of America
  - D. Canada
  
- 3. UNECSO means**
  - A. United Nations Educational, Cultural and Scientific Organisation
  - B. United Nations Environmental, Cultural and Scientific Organisation (A)
  - C. United Nations Educational, Cultural and Social Organisation
  - D. United Nations Economical, Cultural and Scientific Organisation
  
- 4. In 1949, .....introduced the Legal Aid and Advice Act.**
  - A. India
  - B. Australia (C)
  - C. England
  - D. None of the above
  
- 5. In 1980, the Government of India established a Committee under the chairmanship of former ..... on the name of Committee for Implementing Legal Aid Schemes.**
  - A. Justice Krishna Iyer
  - B. Justice Gajendragadkar (C)
  - C. Justice P.N. Bhagwati
  - D. None of the above

**Conclusion:**

The first book introduced the conceptual perspective and the evolution of international law of human rights. The Second book deals with the rights of socially, economically, and culturally disadvantaged groups of people and the efforts undertaken by international and national legal systems to promote ways and means by extending concessions to achieve their rights to attain the status of equality.

The brief overview in this third and final book in the series on Human Rights and Duties in India: Law, Policy, Society and Enforcement Mechanism presents that whatever the principles and theories advocated at the international plane, they need to be nurtured and implemented at the national level. The implementation process at the national level ensures that there exists an enduring relationship between international law and municipal law. States and their legal policies and enforcement mechanisms prove to be laboratories to result in further augmentation of legal principles for the community of nations and people of the world.

The examination of relevant constitutional provisions, enforcement mechanisms and the role played by human rights defenders certainly opens the horizons of every one to decide the type of role that one has to play in the promotion, protection and realisation of human rights. Being citizens of a value based, culturally diversified and advanced country in the World, it is a primary duty of every one of us to extend their helping hand in any manner that is possible to augment the philosophy of human rights.

As rightly advocated by the Preamble of the constitution, to achieve justice, liberty, equality and fraternity in their true spirit as oriented, every one of us need to take a pledge to discharge the duties as advocated by human rights and the constitution. The discharge of duties with all sincerity in true spirit will certainly augment the rights as guaranteed by law. Any deviation in the philosophy would lead to create chaos in the augmentation of the fundamental freedoms of individuals.

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## About the Author

**Dr. T.S.N. Sastry** is a senior teacher spanning over more- than two and half decades of teaching, and research experience, especially in the-fields of International Law and Human Rights. He authored three books on International Law of State Succession, Introduction to Human Rights and Duties, Human Rights of Vulnerable & Disadvantaged Groups, edited three books on Human Rights and Constitution. He published a number of Research papers in journals of repute on International Law, Human Rights and Constitution of India. He was an academic fellow of the Erasmus Mundus External Window Lot 13. Dr. Sastry Delivered lectures on various areas of international law, human rights in a number of Indian and Foreign Universities. He was the fellow under the cultural exchange programme of the Government of France twice in 2006 and 2013. He received Vijaya Shree Award from the Indian International Friendship Society, New Delhi in 2005 for his efforts for the propagation of Human Rights Education.

Dr. Sastry was responsible in establishing the UGC Centre for Human Rights and Duties Education in 1997 in the Pondicherry (Central) University. As a founder coordinator of the centre, he conducted a number of programmes, seminars, and conferences for the propagation of human rights, apart from the academic programmes leading to research and teaching in human rights. He served as Dean, Director, and Controller of Examinations at Tamil Nadu Dr. Ambedkar Law University, Chennai. He was the Former Head of Department of Law, University of Pune, member of a number of academic bodies including the Management Council of University of Pune. He served in as a member various committees of UGC and Governmental organizations. He is the Visiting Professor of the Chanakya National Law University, Patna. Dr. Sastry Conducted a number of seminars and workshops.





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