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HUMAN RIGHTS IN INDIA

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MODULE 1

HUMAN RIGHTS:

NATURE, MEANING AND DEFINITION

CONCEPT OF HUMAN RIGHT

Human rights and fundamental freedoms allow us to develop fully and use our human qualities, our intelligence, our talents, our conscience and to satisfy our spiritual and other needs. They are based on mankind's increasing demand for a life in which the inherent dignity and worth of each human being will receive respect and protection. The denial of human rights and fundamental freedoms not only is an individual and personal tragedy but also creates conditions of social and political unrest sowing the seeds of violence and conflicts within and between societies and Nations.

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

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

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

Human Rights are those minimal rights which are available to every human being without distinction of language, religion, caste, nationality, sex, social and economic conditions of the society. Human rights are on the increasing demands of the mankind for a life in which the inherent dignity and worth of each human being will receive respect and protection. These rights enable individuals to fully use their intelligence, talents and conscience to satisfy spiritual and other needs.

MEANING

A right is a multi-dimensional dynamic concept, embracing almost all areas of life like social, cultural economic and political fields. According to Prof. H.J. Laski, “Rights are those conditions of social life, without which, no man can be his best self”. Prof Green defines “a right as a power, claimed and recognized as contributory to common good”.

Human rights are referred as a fundamental rights, basic rights, inherent right, natural rights and birth rights. Human rights are rights of exceptional importance and belong to every individual by virtue of being a human. These rights are necessary to ensure the
dignity of every person as a human being irrespective of race, religion, language, caste, sex or any other reason. The concept of Human right is based on the notion of equality of human being.

The features of human rights are they are universal incontrovertible and subjective. Human rights are universal means they belong to each of us regardless of ethnicity, race, gender, sexuality, age, religion, political conviction or type of government. They are incontrovertible means they are absolute and innate. Human rights are subjective means they are properties of individual subjects who possess them because of their capacity of rationality, agency and autonomy. The notion of universality has been criticized for its blindness towards the issues of cultural differences. When human rights are guaranteed by a written constitution they are known as fundamental rights because a written constitution is the fundamental law of the state.

DEFINITIONS

The United Nations Centre for Human Rights defines Human Rights as “those rights which are inherent in our nature and without which we cannot live as human beings”

The Universal Declaration of Human Rights which adopted on Dec.10th 1948, defines human rights as “rights derived from the inherent dignity of human person”

The Protection of Human Rights Act 1993 states” Human Right means rights relating to life liberty, equality and dignity of the individuals guaranteed by the constitution or embodied in the International Covenants and enforceable by courts in India.”

D.D Basu defined human rights “are those minimum rights which every individual must have against state or other public authority by virtue of being a member of human family, irrespective of any other consideration”. He also state that the concept of human right is as old as the ancient doctrine of natural rights funded on natural law, the expression human is of recent origin.

Dr. Upendra Baxi while attempting to describe human rights says that for the first time in recent history, we move from conceptions of rights as resources for individuals against state power to a conception of human rights as species rights as well. M.C. Bhandare considers that the urge for the protection of the human rights emanated out of the gross violence preceding during the two World Wars of the century.

Justice M.H. Beg, former Chief Justice of India, while defining human rights stated that human rights imply justice, equality and freedom from arbitrary and discriminatory treatment; these cannot be subjected to coercion for holding particular religious beliefs.

P.P. Rao defines Human rights as the inherent dignity and inalienable rights of all members of human family, recognizing them as their foundation of freedom, justice and peace in the world.

Justice Nagendra Singh opined that respect for the human personality and its absolute worth, regardless of colour, sex, race are the very foundation of human rights. These rights are essential for the adequate development of the human personality and for human happiness and progress.
According to S. Kim, human rights are "claims and demands essential to the protection of human life and the enhancement of human dignity, and should therefore enjoy full social and political sanctions".

Subhash C Kashyap opined that human rights are those “fundamental rights to which every man inhabiting any part of the world should be deemed entitled by virtue of having been born a human being”.

Milne defined “human rights are simply what every human being owes to every other human being and as such represent universal moral obligation”.

According to Nickel, human rights are norms which are definite, high priority universal and existing and valid independently of recognition or implementation in the customs or legal system of particular countries.

Justice Ranganath Misra, the first chairman of the National Human Rights Commission of India, has observed that “it is an obligation which all of us have to perform. Man, wherever he lives, whatever religion he professes, whatever food he takes, is a member of one family. All of us must learn to live like a member of one family. The whole world is one family. We will be able to develop the culture of human rights. In the absence of Human Rights, individuals and families are disintegrating in the modern era. It is a challenge to human progress. We should all be prepared and united to face the challenge of the indiscipline. Everyone must realize the what is prescribed by law is not for next man, or the man to follow, but for you”.

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

IMPORTANCE OF HUMAN RIGHTS

Human rights are, in the first instance, moral rights and they derive their strength on ethical grounds. Human rights are inconceivable without the primary right of freedom of thought and expression which recognizes dignity and individuality of every human beings and derives its justifiability from moral and ethical considerations.

It has been appreciated that without human right, humanity cannot progress. That is why, over the past sixty years, the individual human being has gradually acquired an increasing
number of internationally recognized human rights and obligations. During and at the time of the two World Wars, we witnessed the deprivation of the human values and rights. However after the Second World War, many nations became independent and they could protect the rights and the liberty of the people. They legalized the human rights by incorporating the provisions in the constitution and through proper legislation.

The UN Charter very clearly specified the importance of the human rights. The UN Charter has declared that the purpose of United Nation is “to achieve international co-operation in solving international problems of an economic, social, cultural and humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedom for all without distinction as to race, sex, language or religion”.

Universal Declaration of Human Rights stated the importance of the human rights in Article 1, which declares, “All human beings are born free and equal in dignity and rights”. The rights and freedom contained in the declaration were regarded as being available to all without distinction of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Justice Fathima Beevi has observed that the concept of human right has assumed importance globally during the past few decades and has international significance as every country is subject to international scrutiny by the world body which indicts member states for violations.

Justice P.N. Bhagwati, the former Chief Justice of India, is of the view that fundamental rights are of great importance for individual freedom, but the fundamental rights are a very minimal set of rights and therefore human rights, which are derived from the inherent dignity of the human person and cover every aspect of and not just a small number of preferred freedom against the state, have tremendous significances.

Human Rights Conference called by the United Nations General Assembly in 1968 declared that since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible.

The core of human right include:-
1. The right to respect human right and dignity.
2. The prohibition of selfdom, slavery, bonded labour and torture.
3. The protection from the arbitrary deprivation of liberty
4. The prohibition of discrimination on racial, religious, linguistic or similar reasons.

In our constitution the political and civil rights are termed as fundamental rights and enshrined in the part third of the constitution. They are now six categories of rights. 1. Right to equality 2. Right to freedom 3. Right to freedom of religion 4. Cultural and Educational Rights 5. Right against exploitation 6. Right to constitutional remedies. The social and economic rights are included in the directive principles of state policy.

**EVOLUTION OF HUMAN RIGHTS**

The concept of human rights has gradually evolved over the past several centuries. It is immaterial whether you call this rights as inherent rights fundamental rights or by some
other name. These rights, by themselves, have no fixed content as has been rightly remarked by Justice Mathew and most of them are empty vessels into which each generation has poured its content in the light of its experience. Human rights as conceived in the last few decades of the twentieth century are justiciable claims on behalf of all men to corporate action. They are owned to the individual by the state as well as by the organized social and economic groups which are the Centre of power and authority.

The genesis of the concept of human rights can be traced to the emergence of the classical liberalism. Classical liberalism made a passionate defense of the principles like competitive individualism, private property, market ethics, etc. It cherish the legalization of individual liberty, his development and human progress though the functioning of the above principles. The idea of the rule of law, limited government and individualism characterized the seventeenth and eighteenth century anti-nationalist school of political liberalism.

Dobbelly has said that, just as legal rights have the law at their source and contractor rights arise from contracts, humanity, human nature or some such aspects of all persons would seem to be the source of human rights. Origin

There is no clear cut theory regarding the origin of human right. There exist different viewpoints regarding the origin of human right. Some scholars trace the origin of human rights to religious tradition. Another argument is that human right is highly indebted to the enlightenment. The necessary condition for enlightenment, which combined to bring an end to the middle ages in Europe, includes scientific revolution, rise of mercantilism, launching of maritime exploration of the globe, the consolidation of the nation states and emergence of middle class. All these contributed the development of human rights.

It is also said that the roots of the rights can be traced in the Babylonian Law. Babylonian king Hammurabi issued a set of laws called Hammurabi’s code. In India the drama of Vedic period created the moral basis for human rights. Human rights are also based on the concept of Natural Law and Natural rights.

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

The concept of human right was conspicuous in ancient Greece and in India. The ancient Kings in India cared for the welfare of the people. The rights of people is mainly recognized and protected by moral and spiritual dictated and the whole thing got derived from natural law which was the ruling law.

In the evolution of human rights, the modern school of natural law, led by Hugo Grotius made great contributions. He made natural law and that natural law theory got transformed into the natural rights theory.

**Natural Rights Theory**

Proponents of natural rights explained that natural rights are rights belonging to a person by nature and because he was a human being, not by virtue of his citizenship in a particular
country or membership in a particular religious or ethnic group. Thomas Hobbes (1588-1679), John Locke (1632-1704), Jean Jacques Rousseau (1712-1778) are the three main thinkers who developed the natural rights theory. John Locke who urged that certain rights are ‘natural’ to individuals as human beings, having existed even in the ‘state of nature’ before the development of the societies and emergence of the state. Rousseau is regarded as the greatest master of Natural Law School. He proclaimed that men are bestowed with inalienable rights of liberty, equality and fraternity. His concepts became the basis for the French Declaration of the Rights of Man and of the citizen. The American Independence Movement of 1776 and the French Revolution of 1789 were inspired by the ideal of natural rights and both movements were sought to challenge governments that curtailed the natural rights of the people.

In addition to the contributions of the above three thinkers, we may make a mention of Thomas Paine (1731-1809). Thomas Paine, an American revolutionary thinker developed the doctrine of natural rights without linking it to Rousseau’s social contract theory. He held that rights are natural because they were bestowed upon man by God himself.

DEVELOPMENT OF HUMAN RIGHTS

The human rights which we are enjoying today is developed though varies stages. The important landmarks in the development of human rights are the following documents and struggles:
1. Magna Carta of 1215
2. Influence of Social Contract Theory
3. American Declaration of Independence of 1776
4. American Bill of Rights of 1791
5. French Declaration of the Rights of Man of 1789
6. The Bolshevik Revolution of Russia of 1917
7. Universal Declaration of Human Rights of 1948
8. International Covenants on Human rights.

Each of these declaration and the movement referred above, have made important contributions in advancing the concept of human rights. However, being product of their own time and specific circumstances, they lack totality of concept and were narrow in their scope and application. For instance in the Greek political system, rights existed only for the ‘citizens’ and not for the majority who were referred to as “aliens” and “slaves”. Magna Carta yield certain concessions only for the feudal lords (not for common man), though it set limitation to arbitrary rule and laid the foundation for the rule of law. The American Declaration followed by constitutional amendments or Bill of Rights contain fairly exhaustive guarantees for the rights of man. But in practice their application was largely confined to those who constituted what was abbreviated as WASP (white, Anglo-Saxon, and protestant). Slavery continued to be a part of system; the blacks of African origin were referred to as “Negro” not as man. It was in 1864 that slavery in America was legally abolished after a bitter civil war which threatened the unity of the United States.
While American and the French Declarations set the seal on the basic principles of freedom of thought, human dignity and democratic government, the countries undergoing rapid industrialization has experiencing the need for more social justice and economic security. The Bolshevik Revolution in Russia (1917) went a step further. It emphasized that economic and social rights were as important as the civil and political rights.

**Magna Carta**

The Magna Carta is considered as the first charter of liberty. It was signed by the king John of England in 1215. The main theme of the Magna Carta was protection against the arbitrary acts of the king. The 63 clauses of the charter guaranteed certain basic civil and legal rights to citizens and protected the barons from unjust taxes. The king was compelled to grant the charter, because the barons refused to pay heavy taxes unless the king signed the charter. In reality, the Magna Carta was merely a compromise of the distribution of powers between king and his nobles. It gave certain concessions (not rights as we understand them today), to clergy, landlords and nobles and consequently restricted the powers of the king to the extent of those concessions were concerned.

**Influence of Social contract theory**

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

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

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

Rousseau wrote the book ‘the Social Contract’. According to Rousseau, people transferred all their rights to society and put the natural order to an end. Rousseau regarded the real will of the society as the General Will. He considered General Will as sovereign. This General Will forms the basis of government. Rousseau regarded government is an institution functioning under the General Will of the people.
The English Bill of Rights

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

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

The toleration Act passed by the parliament granted religious freedom to the people.

AMERICAN DECLARATION OF INDEPENDENCE

America was the colony of Britain. There were 13 colonies in America. These colonies were revolted against England for their independence. The main reason for the revolt was that the British government was of the view that the colonies also should share in the expenses incurred in their administration. With this view the British government started to take various regulatory measures under which it introduced certain new taxes. This resulted into militant opposition by the American people. They argued that, since they did not have their representatives in British parliament, it had no right to impose taxes upon them. ‘No taxation without representation’ was the main slogan during that period. The state declared independence in 1776. The Declaration of Independence was done on July 4th 1776. This famous document was drafted by Thomas Jefferson. The document says:-

“We hold these truths to be self-evident, that all men are created equal that they are endowed by their creator with certain inalienable rights, that among these are life, liberty, and pursuit of happiness, that to secure these rights governments are instituted among men deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it and institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to affect their safety and happiness”.

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

**US BILL OF RIGHTS**

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

Followings are the important amendments:-

The first amendment provides freedom of religion, freedom of press, freedom of expression and the rights of assembly. The fourth amendment provides protection of individual against unreasonable search and seizure. The fifth establishes the rue against the self-incrimination and the right to due process of law.

After that, later on other amendments also made in the constitution, in this respect. The thirteenth amendment, adopted after the civil war, abolishes the practice of slavery. Fifteenth amendment (1870) grants the rights to vote to racial minorities. Nineteenth amendment (1920), extended the right to vote to women. By 26th amendment (1971) right to vote at 18 years of age and by 27th amendment (1972), the provision of equal rights and non-denial or non-abridgement of equality of rights on account of sex is included. It is worth that no rights ever been removed or abridged by the Congress.

**THE FRENCH DECLARATION OF THE RIGHTS OF MAN**

The Declaration of the Rights of Man was a product of French Revolution. The revolution reached in climax in 1789; the National Assembly swept away the ancient feudalism and serfdom. The slogan of the revolution was liberty, equality and fraternity. The French revolution gave a fatal blow to absolute monarchy and a death blow to feudalism and led to the establishment of French Republic. All the special privileges were abolished and the society came to be organized on the basis of equality. The French revolution enabled the people to enjoy different kinds of rights. The revolution established the novel ideas of Liberty equality and fraternity. The government should be not only “for the people” but also “by the people”.

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

1. Men are born and remain free equal in rights
2. The aim of all political association is to preserve the natural right of man.

These rights are liberty, property, security, and resistance to oppression
3. Sovereignty rests essentially in the nation
4. Liberty consists in the ability to do whatever does not harm another; hence the existence of the natural rights of each man has no limits except those which assure to other members of society the enjoyment of the same rights. Law can determine these limits.
5. No man can be indicted, arrested or detained except in cases determined by law.
6. All men should be presumed innocent until judged guilty.
7. No one may be disturbed for his opinion, even in religion, provided that their manifestation does not trouble public order as established by law.
8. Free communication of thought and free opinion is one of the most precious rights of the man. Every citizen may therefore speak; write and print freely own his own responsibility.
9. Taxes can be levied only with the consent of the citizens.
10. Society has the right to hold accountable every public agent of administration.
11. Property being a sacred right, no one may be deprived of it except for an obvious requirement of public necessity, certified by law and then on condition of a just compensation in advance.

**THE RUSSIAN REVOLUTION**

The Russian was the greatest social uprising of the world since the French Revolution. Russian revolution took place in 1917. It was the first successful communist revolution of the world. The revolt was against the naked exploitation of the masses by the autocratic ruler and the wealthy feudal nobles. The revolution brought a though change in the political, social and economic life of the people and established the first proletariat government of the world. H.G.Wells concerned it as “the greatest event after the advent of Islam”.

It is true that the French Declaration proclaiming liberty, equality and fraternity for all. But liberty and equality were soon proving to be empty slogans for poor peasants and factory workers. Hence, beginning the mid-nineteenth century, the demand for social security and social justice, in addition to civil and political rights, appeared in the forefront of socialist movement. The Bolshevik Revolution in Russia (1917) went a step further. It emphasized that economic and social rights were as important as the civil and political rights. Many economic and social rights had been included in the Soviet constitution.

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

**The formation of League of Nations and ILO**

The League of Nation was not mentioned about the provisions of human rights. But the ILO, which was formed in 1919, was an organization, worked for maintain justice and rights. The standards determining the conditions of industrial workers, established in the beginning of the twentieth century, became the subject of further international agreements.
elaborated by International Labour Organization. It promoted the conditions of the workers, internationally. Later on, it became an important specialized agency under the UN

**ADOPTION OF UNIVERSAL DECLARATION OF HUMAN RIGHTS**

The Universal Declaration of Human Rights (UDHR) was adopted by the General Assembly of the United Nations on 10th December 1948. The declaration is not a legally binding document; it is an ideal for all mankind. In the words of Eleanor Roosevelt, it proclaims “a common standard of achievement for all people and all nations”. In its final form, it comprises of alert of civil, political, economic, social and cultural rights to which all persons are entitled. Universal Declaration is a declaration of principles directed to the peoples of the world. This has been considered as one of the greatest achievements of the UN. It has been maintained that “the Universal Declaration of Human Rights has had a significant influence on the development of standards that states are not only respected but also has legal commitment to be respected”.

**INTERNATIONAL COVENANTS ON HUMAN RIGHTS**

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

1. International Covenant on Civil and Political Rights,

What is more important about the two UN covenants is that they contain “international mechanism” to monitor and oversee that the obligation of human rights are observed by states parties to the covenants. Two supervisory bodies – that Human Right Committee under ICCPR and committee on Economic, social and cultural Rights under ICESER consisting of 18 human rights experts are created to help States Parties to the covenants in fulfilling these obligations.

Optional Protocol

There are two Optional Protocols to the International Covenant on Civil and Political Rights. The two international covenants together with the universal declaration and the optional protocols comprise the international bill of rights.

**TYPES OF HUMAN RIGHTS**

Positive and Negative rights

There are generally two types of rights; they are positive and negative rights. Positive human rights require the state to take active steps towards their realization. For example; the right to food, right to work, right to education etc. Negative human rights refer to freedoms that the state must not encroach upon. For example freedom from torture, freedom from arbitrary arrest etc. While civil and political rights are predominately negative in nature, the majority of social, cultural and economic rights are positive in nature.

**CLASSIFICATION OF HUMAN RIGHTS**

Human rights are generally classified into three. They are;

1. The First Generation rights
2. The Second Generation Rights

3. The Third Generation rights

Some Human Rights have evolved and developed as a reaction to oppressive institutions, policies and practices of the rulers. These are the first generation rights. The second and third generation rights are concerned to be responses to the economic and political oppression that was the by-product of colonialism and industrial capitalism. Karel Vasek, a former director of Human Rights and Peace Division of the UNESCO was the major proponent of the classification of rights into three generations. He stated that civil and political rights constitute the first generation rights. Social, economic and cultural rights constitute the second generation rights. The group rights, such as the right to development and environmental rights formed the third generation of rights.

The first generation rights i.e. civil and political rights provide for certain basic Right guarantees for an individual in relation to the state; they involve the inviolability of the individual against any invasive action by the state. These are distinct from second generation rights, which generally require action by the state to provide certain basic needs or amenities to the individual. In other words civil and political rights demand freedom from coercive action by the state against an individual; while economic, social and cultural rights necessitate certain actions and provisions by the state in order for it to fulfill its obligations.

First generation articles are included in the Articles 3 to 21 of the UDHR while Article 22 to 27 deal with second generation rights.

Demands have come from some developing countries to focus on some group rights, as it is claimed that their societies are less individualistic than western countries. Consequently, third generation rights have been developed to provide for the relation between individuals and the state. Third generation Rights include: the right to self-determination, right to development, right to participate in and benefit from the common heritage of mankind and the right to a healthy environment; amongst many other collective rights.

Civil and political rights cannot be enjoyed in the absence of basic social economic and cultural rights. The interdependence of the rights must be acknowledged and provided for so as to ensure a better life.

In short we can say that first generation rights are related to liberty; second generation rights to equality; and third generation rights are related to fraternity.

The World Conference on Human Rights of 1993, proclaimed the Vienna Declaration and Programme of Action. That declaration asserted that ‘all human rights are universal, indivisible, interdependent, and inter-related. The declaration also stated that human rights and fundamental freedom would have to be respected and promoted by all states irrespective of their political, economic and cultural systems. In the international level, under the initiatives of the UN different Covenants were signed to maintain the different categories of rights. They are:-

Human Rights in India 16
The International Covenant on Civil and Political Right

The UN prepared International Covenant on Civil and Political Right in 1966, contains a lot of civil and political rights. The various rights contained in this covenant are, mainly civil and political rights, which are not new rights. These are the rights that had; developed in course of a long period of time since the time of Greek city states and concretized in the form of Magna Carta of 1215, the Bill of Rights of the American Declaration of Independence and the French Declaration of the rights of man and of the citizen. These rights were also included in the European Convention on Human Rights and in Inter-American and African instruments. It also manifested in the constitutions of many countries.

The International Covenant on Economic Social and Cultural Rights

The international covenant on economic social and cultural rights signed in 1966. These are Second Generation rights. As the main source of the origin of the civil and political rights is considered to be the American and French revolution so economic and social rights are considered to be originated in the Russian Revolution of 1917 and in the Paris peace conference of 1919. The significance of the Paris peace conference was the establishment of the International Labour Organization which laid emphasis upon the concept of social justice by proclaiming that “peace can be established only if it is based upon social justice.”, and that “the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries”.

The former American President Roosevelt was the first man who put a hope for an instrument dealing with the economic and social rights. In his message to congress in 1944, President Roosevelt referred to the four essential freedoms, i.e. 1. freedom of speech and expression, 2. freedom of any person to worship in his own way, 3. freedom from want, 4. freedom from fear to which he looked forward as the foundation of future world.‘ Freedom from ‘want’ it may be argued, formed the basis on which the concept of economic and social rights were formulated. He stated that “people who are hungry and out of job are the stuff of which dictatorships are made”. In his opinion, true individual freedom cannot exist without economic security and independence.

Collective Rights – Third Generation Human Rights

Louis B Sohn has argued that individuals are also members of such units groups or communities as a family, religious community, social club trade union, professional association, racial group, people, nation and state. Therefore that international law not only recognizes inalienable rights of individuals but also recognize certain collective rights exercised jointly by individuals who are grouped in to larger communities including people and nation. Karek Vasak says the collective rights can be realized only “through the concerted efforts of all the actors on the social scene; the individual, the state, public and private bodies and the international community”.

The effective exercise of collective rights is precondition to the exercise of other rights political or economies or both. The most cherished belonging to the third generation rights are the right to self-determination, the right to development and right to peace.
APPROACHES TO THE STUDY OF HUMAN RIGHTS

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

There are mainly three approaches to the study of human rights. They are:

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

WESTERN OR LIBERAL APPROACH

The Western approach is also known as the liberal democratic approach. It is based on the idea of liberalism which defenses the principles of competitive individualism, private property, and market ethics. It cherishes the individual liberty, development and human progress through the functioning of the above principles. The liberal approach is based on the natural law and natural rights view of human rights. The advocates of liberal approach agree with the Locke’s understanding on the natural rights of life, liberty and property. They argue the duty of the government is just to maintain law and order so that everybody will get a chance to enjoy their rights. Liberal approach prefers a minimum or night watchman state.

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

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

The liberal approach was subject to severe criticism by the conservatives, who considers the natural rights as a useless metaphysical abstraction. They argued that the real right of men were social not natural. It also criticized by the universalism of natural rights.
theory, for its failure take into account national and cultural diversity. Utilitarian only recognized legal rights, thereby denounce natural rights theory. Marxist criticized liberal approach because for considering man has a being separate from community and nature which man has an instinctive relationship and for its unconditional support for the right to private property.

**MARXIAN OR SOCIALIST APPROACH**

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

The developing and underdeveloped nations believe in the Marxian approach to the human rights. According to Marx natural rights are not seen in history therefore they are the creation of the human mind. The natural right theory is made for the protection of the interest of the bourgeoisie. Marx state that man is a social animal and therefore they should utilize their abilities qualities and work for the society. To achieve the social good the people should do their duties and responsibility to the society. At the same time it is the duty of the state to provide social welfare and development to the people.

Marx maintained that inequality existing in the society due to the existence of the classes. In a capitalist society, there is no equal enjoyment of rights. The capitalist will enjoy all the rights and majority working class is deprived of the rights and they are exploited. Therefore only in a classless society the people can enjoy the rights in its full meaning.

The rights can be exist and succeed in a society where there is social economic liberty and equality. The marginalized section can prevent the exploitation and develop their condition through creation of new rights in the society.

The Marxian approach does not consider religion, culture, morality, customs traditions etc. as integral components of human rights. They argue that full realization of individual’s development is possible only within the context of society. The approach envisages freedom as freedom through the society not freedom from the society.

The importance of the Marxist approach is that it emphasized that socio, economic rights in a society. The important criticism against this theory is that it gives emphasis on society rather than the individuals.

**THIRD WORLD APPROACH**

The approach of the Third World countries on human rights was not very different from the western concept. But since most of the Afro-Asian, Latin American countries were under colonial rule there were human rights violations in that part of the world. The nationalist movements in all these countries were for the protection of their basic rights. Among the Third World countries, India was the pioneer in the formulation of the concept of the human rights. In India a large section of people such as Harijans, Girijans and
landless labours have not only suffered economic exploitation but have been subjected to all sorts of exploitation. However with the independence of the country, the framers of the constitution formulated programmes for the welfare of those who were neglected.

The Third World countries never agree with the universality of the human rights. They believe that the universality of the human right is the impositions of the western countries. They give importance to state since the people relay on state for the fulfilment of their basic needs. This approach consider rights as culturally relative, not as universalistic. The third world countries have their own problems, values and culture. Therefore they give more importance to the socio-economic equality and development. For this purpose, they believe the individual liberty may be limited.

The diverse socio-cultural matrix of developing countries does not permit them to approach the promotion and protection of human rights in a through and unified way. The developing countries are faced with tremendous problems of state building, economic reconstruction and regional, sub regional and ethnic conflicts. These conflicts are making threats to the nation. Even with the third world there remains a sharp disagreement on the exact scope and nature of the basic human rights and on the treatment of the substantive human rights and the methodology of protecting the human rights. Human rights are illusory to the large sections of populations of the third world countries. In the process of pursuing socio-economic goals the developing countries do not show the desired respect to civil and political rights.

In the Third World, the perspective applied to each concept and reality of human rights varied with prevailing social philosophy, culture, ideology and historical tradition. Understandably in the case of former colonies the emphasis will lie as much on civil and political rights and the third generation rights, with a somewhat decisive inclination in favour of community interest, where in the context of community interest, where social and economic progress and development are regarded as of primary importance.

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

Third world approach theory believes in the Human Rights Trade Off theory and gives primary to economic development over human rights. The theory stands to postpone human rights for the sake of development. The slogan of the third word is that “development first and rights second”. The argument is that human rights can be realized in the long run, if we dedicate the short run to development. So the states are blind towards the grave human rights violation persuaded in the name of development. The negative response of the Indian state towards the Narmada Bachavo Andolon, a movement for protecting the rights of the marginalized who are the victims of the development project is an example to shoe the third world’s approach to human rights.
MODULE—II

UNO AND HUMAN RIGHTS

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

The Charter of the United Nations, gives due importance to the aim of promoting human rights and fundamental freedoms. The charter states that the fundamental objective of the UN is; ‘save the succeeding generations from the scourge of war’ and ‘to reaffirm faith in fundamental human rights, in the dignity and worth of human person and in the equal rights of man and woman’. One of the five declared purposes of the UN is the achievement of international cooperation in promoting and ensuring respect for human rights. Several articles in the Charter deal with the subject. For instance, Article 55, 56 require the United Nations to promote a high standard of living, full employment to create conditions of economic and social progress and development, promotion of universal respect for observation of human rights and fundamental freedoms. Further Article 62 of the Charter provides for setting up of several commissions, including one for the promotion of human rights. Accordingly, the commission of Human Rights was duly constituted under the chairmanship of Mrs. Eleanor Roosevelt. The Commission on Human rights is the main policy making body to deal with human rights.

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

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

In 1929, Institute of International law adopted a declaration of the International Rights of Man, which recognizes the rights of life, liberty and prosperity irrespective of nationality, sex, race, language or religion.

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

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

THE ATLANTIC CHARTER

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

After the final destruction of the Nazi tyranny, “they hope to see established a peace which will afford to all nations the means of dwelling in safety within their own boundaries, and which will afford assurance that all men in all the lands may live out their lives in freedom from fear and freedom from wants”.

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

The UNO came into existence on 24th October1945. The purpose of the United Nation is to bring all nations of the world together to work for peace and development, based on the principles of justice, human dignity and the well-being of the people. In the preamble of the charter it is stated that it “reaffirm faith in fundamental human rights, in the dignity and worth of human person, in the equal rights of man and women and of nations large and small”

The purpose of the UN was declared in article 1of the Charter. It says “……..promoting and encouraging respect for human rights and for fundamental freedom for all without distinction as to race, sex, language or religion”. In furtherance of this objective of securing human rights the UN General Assembly adopted the Universal Declaration of Human Rights on 10th December 1948. It set up a Global standard for human rights that every state should grant to men and women all over the world.

The UDHR was not in the nature of a binding treaty. The UN therefore took steps for drafting covenants relating to human rights that would create binding obligations: Two separate covenants were created. They are:-
1. International Covenant on Civil and political Rights (ICCPR)

2. International Covenant on Economic, Social and Cultural Rights (ICESCR)

ICCPR contains negative rights. These rights restrict or prohibit the state from abridging or taking away certain rights. These rights in here in every human being eg:- right to freedom speech, belief, assembly, right to personal freedom, right to fair legal procedure etc.

ICESCR enumerates positive rights. These rights expect and can take shape only when the state takes some positive action. They cannot be realized in a day. They can materialize gradually depending on the action taken by the state. Examples are right to social security, to health and education. For conferring’s these rights state has to create an infrastructure and a machinery to implement. It requires positive action from the state.

In the UN, there were considerable differences in viewpoints among the members, on the inclusion of positive rights. Therefore the rights were split in two covenants ICCPR and ICESCR. Draft of these two was presented to the General Assembly for discussion in 1954 and was adopted in 1966. The ICCPR entered force on 23rd march 1976. Those states which have ratified it are bound by it.

It is noteworthy that our neighbors China, Myanmar and Pakistan are not state parties to the covenant.

The ICESR was adopted by the General Assembly on 16th December 1966 and came in to force on 3rd January 1976. This covenant contains positive rights requiring positive action of national governments. A number of states have made Reservation and interpretative declarations in respect to this covenant. Belgium has interpreted that it does not imply that the foreigners have the same rights as the nationals. Egypt accepts the covenant to the extent it does not conflict with Islamic Law

India understands that the right of self-determination applies only to people under foreign domination and not to sovereign nation states. Other clauses are to be read in the context of the constitution of India.

The USA signed the covenant in 1979 but has not ratified it. Therefore it is not bound by it. Successive presidents from Carter onwards regarded these rights as merely desirable social goals and so they cannot be subject of binding treaties.

Rights contained in the ICCPR.

1. Right to life
2. Right of self determination
3. Right to liberty and security.
4. Freedom from torture or cruel, inhuman or degrading nature of Punishment
5. Freedom from slavery and servitude.
6. Right to liberty of movement.
7. Right to fair trial.
8. Freedom of thought conscience and religion
9. Freedom from arbitrary or unlawful interference with privacy, family, home or correspondence
10. Right to religion as a person before the law.
11. Right of peaceful assembly.
12. Right to freedom of association and expression.
13. Right to equality before the law and equal protection of law
14. Right to marry and found a family.
15. Right of detained person to be treated with humanity
16. Freedom from imprisonment for debt
17. Freedom of aliens from expulsion
18 Right to privacy.
19The rights of the child
20. Political rights such as right to vote etc.
21. The rights of the minority etc.

Rights contained in the ICESCR
1. Right to self determination
2. Right to work
3. Right to enjoy just and favorable condition of work
4. Right to form trade unions
5. Right to social security.
6. Right to an adequate standard of living including adequate food clothing and housing and to the continues improvement of living conditions
7. Right to enjoyment of the highest attainable standard of physical and mental health.
8. Right to education
9. Right to take part in cultural life.
10. Right to enjoy the benefits of scientific progress and its application.
11. Protection of family; including special assistance for mother and children etc.

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

Optional Protocols

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

RESERVATIONS

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

Many States have entered the ICCPR subject to reservations. India interprets the right of self-determination as applicable to countries which are under foreign rule. It is not applicable to India because India is a sovereign democratic state. India’s view is that Article 4 and other Articles (regarding limitations to imposed on rights to be imposed on the rights) have to be construed according to the constitution. Similarly equal opportunity in the workplace (Article 7) is to be interpreted in the light of provisions contained in the constitution.

Egypt has accepted the covenant only so long as it does not conflict with Islamic law. Kuwait interprets the equal treatment clauses of article 2and 3 subject to its constitution. Right to social security would apply only to Kuwait’s strikes may not be permitted. Pakistan has made a general reservation to interpret subjects to the provisions of the constitution.

The USA signed covenants in 1979 but has refrained from ratifying it .US feels that the rights conferred by this covenant are no rights; they are social goals which state must endeavor to achieve.

DEROGATIONS

In addition to the recourse of reservations, countries are also the option of “Derogating” from a treaty at times of emergence. That is “suspending” a provision of the treaty when conditions threaten the life of the nation. Derogations are considered temporary measures, put in place until the state of emergency of the country is lifted. There are five named non-derogable rights in the ICCPR, which country may not suspend under any circumstances even during times of war. These are the right to life, the right not to be subjected to torture and other cruel, inhuman, and degrading treatment, the right not to be enslaved, the prohibition of retroactive criminal legislation, the right to recognition under the law and the right to freedom of thought, conscience and religion. One of the main problems with derogations is that a nation may remain in a state of public emergency for years on end. The ICCPR contains a “derogation clause” which permits the states parties “in time of public emergency that threatens the life of the nation” to suspend all but seven of the most fundamental rights contained in article 6,7,8 (paragraph 1&2) 11, 15, 16and 18). The ICESCR also provides for permissible limitations in Article 4 (limitation applicable to all rights) and 5and 8 of the covenant.
INTERNATIONAL BILL OF RIGHTS

The International Bill of Human Rights is an informal name given to one General Assembly resolution and two international treaties established by the United Nations. It consists of the Universal Declaration of Human Rights (adopted in 1948), the International Covenant on Civil and Political Rights (1966) with its two Optional Protocols and the International Covenant on Economic, Social and Cultural Rights (1966). The two covenants entered into force in 1976, after a sufficient number of countries had ratified them.

In the beginning, different views were expressed about the form the bill of rights should take. In 1948, General Assembly planned the bill to include UDHR, one Covenant and measures of implementation. The Drafting Committee decided to prepare two documents: one in the form of a declaration, which would set forth general principles or standards of human rights; the other in the form of a convention, which would define specific rights and their limitations. Accordingly, the Committee transmitted to the Commission on Human Rights draft articles of an international declaration and an international convention on human rights. At its second session, in December 1947, the Commission decided to apply the term "International Bill of Human Rights" to the series of documents in preparation and established three working groups: one on the declaration, one on the convention (which it renamed "covenant") and one on implementation. The Commission revised the draft declaration at its third session, in May/June 1948, taking into consideration comments received from Governments. It did not have time, however, to consider the covenant or the question of implementation. The declaration was therefore submitted through the United Nations Economic and Social Council to the General Assembly, meeting in Paris. The General Assembly adopted the Universal Declaration of Human Rights (UDHR) on 10th December 1948, which included the civil, political, economic, social and cultural rights. Subsequently, in 1966 the Assembly adopted two covenants, that is ICCPR and ICESER. Later Assembly passed optional protocols to these two Covenants. The UDHR and the two Covenants and the Optional Protocol are popularly known as the International Bill of Rights.

UNIVERSAL DECLARATION OF THE HUMAN RIGHTS

The Vienna declaration, a program of action, the end result of the 1993 World conference of Human Rights asserted that “All human rights are universal, indivisible, interdependent and interrelated”. The declaration stated that human rights and fundamental freedoms would have to be respected and promoted by all states irrespective of their political, economic and cultural systems.

In 1946, the United Nations established a commission on human rights which started the work on an international bill of rights—consisting of a universal declaration of human rights and the two covenants and protocols. In the first stage of this programme, during 1946-1948, drafted and recommend to the General Assembly, the Universal Declaration of Human Rights which was unanimously adopted by it on 10th December 1948. The declaration was proclaimed “as a common standard of achievement for all peoples and all nations” (even those which were not UN members) and was accepted as a unanimous interpretation of the Charter by the most authoritative UN organ, the General Assembly. It catalogued almost all important rights, civil and political and economic, social and cultural rights—which were not defined in the year charter. Though it is a non-binding instrument, it has acquired moral and legal status. It is recognized in international law as customary law.
The preamble of the declaration pointed out its significant feature. It states that the individual, not the state or the government, is “the foundation of freedom, justice and peace in the world”.

The universal declaration inspired three regional human rights commissions. The council of Europe adopted a European Convention on Human Rights in 1950 by which it established the European commission and Court of Human Rights. In 1969, the Organization of American States adopted a similar convention of human rights and the Organization of African Unity (now African Union) adopted in 1981, the African charter on human and people’s rights. The declaration has been translated into nearly 360 local and regional languages. The declaration is the best known and the most sited human rights document in the world.

The Universal Declaration of Human Rights stands as a common standard of achievement where all people’s or all nations, to the end that every individual and every organ of society keeping this declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and the freedom and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of member states themselves and among the peoples of territories under their jurisdiction.

The Universal Declaration of Human Rights consists of a Preamble and 30 articles. The declaration set forth the human rights and fundamental freedom to which all men and women without distinction everywhere in the world are entitled. Article 1 of UDHR, lays down the philosophy upon which the declaration is based. It reads “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”.

The Universal Declaration was adopted by the UN General Assembly on 10th December 1948. The adoption of such a declaration was an historic event and one of the greatest achievements of the UN. Now the people all over the world celebrate the human right day on every year the 10th December.

PREAMBLE

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

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

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

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

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,
Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

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

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

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

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

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

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

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

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

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

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

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

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

Article 11. (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

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

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

Article 13. (1) Everyone has the right to freedom of movement and residence within the borders of each state.

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

Article 14. (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

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

Article 15. (1) Everyone has the right to a nationality.

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

Article 16. (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

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

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

Article 17. (1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

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

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

Article 20. (1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association

Article 21. (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

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

Article 22. Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23. (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
(2) Everyone, without any discrimination, has the right to equal pay for equal work.
(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
(4) Everyone has the right to form and to join trade unions for the protection of his interests.

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

Article 25. (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26. (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27. (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

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

Article 29. (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

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

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

Importance of the declaration

The Universal Declaration has received praise from a number of notable people. Charles Malik, Lebanese philosopher and diplomat, called it "an international document of the first order of importance," while Eleanor Roosevelt, first chairwoman of the Commission on Human Rights (CHR) that drafted the Declaration, stated that it "may well become the international Magna Carta of all men everywhere." 10 December 1948. In a speech on 5 October 1995, Pope John Paul II called the UDHR "one of the highest expressions of the human conscience of our time". And in a statement on 10 December 2003 on behalf of the European Union, Marcello Spatafora said that "it placed human rights at the center of the framework of principles and obligations shaping relations within the international community." John P. Humphrey observes: “No other act of the United Nations has had the same impact on the thinking of our times, the best aspirations of which it incorporates and proclaims. It may well be that it will live in history chiefly as a statement of great moral principle. As such it influence in deep and more lasting than of any political document or legal instrument”. UDHR is one of the largest translated documents in the world

1. The Declaration of human Right was the first of its kind in the history of International organization.
2. The declaration became one of the most remarkable developments in the law of nations
3. The declaration acquired a political and moral authority.
4. The declaration has exercised profound influence on the constitution of new nations and regional agreements
5. The Indian constitution was also greatly influenced by the UDHR

A Critical Appraisal

The important criticism leveled against UDHR are briefly described below

1. UDHR is highly individualistic in nature. Every right included in the UDHR is supposed to be addressing an individual human being. It reduces the role of society in shaping the self and rights of the individual and also reduces the role of the state in bestowing the individual citizens with certain positive entitlements.
2. The UDHR was criticized as a replica of the American Bill of Rights because of its supports to the liberal democratic idea of human rights which was not sufficient to satisfy the vision of communist countries about human rights
3. The importance given to the civil-political rights over the socio-economic rights was
considered as an agenda popularized the liberal democratic vision of human rights at the international level during and after the cold war.

4. The human rights in the UDHR completely neglected the minority rights in the opinion of communitarians

5. Feminist scholars criticize that, it hardly give any sufficient space for the rights of women and gender issues

6. The cold war politics was evident in the making of the UDHR

7. The Euro-centric nature of Human Rights has been criticized by the orient from an eastern perspective against west. It led to the argument that the UDHR was aiming at the westernization of the agenda of human rights in the international politics.

8. There is also a criticism that there is an acute shortage of legal mechanism and institutional apparatus to ensure the enforceability of rights given to all in the international politics. In another words the UDHR has no force of law.

**The role of UN Specialized Agencies in promoting Human Rights**

The United Nations, with its subsidiary organ ECOSOC, coordinated a few specialized agencies, which are entrusted with to the formulation and observation of economic, social and cultural rights and creation of the conditions needed for their enjoyment. The important specialized agencies are the following:

**UNESCO**

United Nations Educational, Scientific and Cultural Organization was recognized as an agency of the United Nations by virtue of an agreement of December 14, 1946. Its constitution was initially drafted by the Great Britain and France and later adopted by 43 members of the UN.

**Functions**

Article 1 of the constitution of UNESCO lays down the functions of the organization. It states that UNESCO shall contribute to peace and security by promoting collaboration among the nations through education science and culture in order to universal respect for justice for the rule of law and for the human rights and fundamental freedoms which are affirmed by the people of the world, without distinction of race, sex, language or religion by the charter of the United Nations. It has mainly three functions 1. Educational functions 2. Research and Training in basic sciences 3. Social and cultural development. UNESCO has played an active part in disseminating knowledge about the Universal Declaration of Human Rights though exhibitions and other method

**ILO**

The international Labour Organization was formed on April 11, 1919. It was dedicated to improving living and working condition of workers throughout the world. During the inter war period it conducted thousands of studies, held hundreds of conferences and adopted convention for reduction of working hours, holidays with pay, sickness and old age insurance, freedom of association, forbidding network for women and their employment in mines. In 1946 ILO became the first specialized agency of the United Nations.

**Functions:**

WHO
An international health conference held in June 1946, set up WHO which came in to existence in September 1946. The basic purpose of WHO is the attainment of all peoples of the world the highest possible level of health. WHO defined health as “a state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity”. Health is the fundamental right of every human being and is considered necessary for the attainment of peace and security. Geneva is the headquarters of the WHO.

Functions:- The followings are the main functions of the WHO.1. Preventing the areas of disease and confining it in the boundaries of the state.2. Curing the disease after it has spread. 3. Preventing the diseases, 4. Establishment of an environment promoting good health

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

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

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

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

INTERNATIONAL MONITORING BODIES
Indeed, the United Nations does not have the power to enforce even the most basic principles of human rights. Therefore, the effective implementation of human rights instruments requires a strong commitment by all concerned, primarily by the government themselves. The United Nation has set-up a complex but effective system whose aim is the universal implementation of internationally accepted human right standards. This task is carried out by the Commission on human rights and the human rights bodies set up under the covenants and other international conventions, notably the human right committees.
In international level, in order to ensure that the rights contained in the various are implemented by the state parties, an effective enforcement mechanism should be in place. The enforcement of human rights has been very controversial and even resisted by various governments. It is in this context that International Monitoring Bodies assume significance as theory have been created for the purpose of the development, monitoring, implementation and enforcement of international norms. There are two distinct kinds of enforcement machinery under the UN. They are:

1. Treaty based organs and
2. Charter based organs

**1 treaty based bodies**

Seven principal human rights treaties have been adopted within the UN framework. For each of these treaties, committees have been established for felicitating their implementation. These monitoring bodies meet regularly to examine state reports in which governments explain what legislative, administrative or judicial measures they have adopted to comply with the obligations undertaken pursuant to the relevant conventions. These reports are carefully scrutinized by independent and outstanding experts and are given more and more publicity by an alternative media. They go through the general assembly and determine the adoption of resolutions requesting urgent action by member states. The end result of this process is often the corresponding modification of national legislations and practices.

1. ICCPR -------- Human Rights Committee
2. ICESCR ------ Committee on Economic Social and Cultural Rights
3. CERD --- Committee on the Elimination of Racial discrimination
4. CERAW ---- Committee on the elimination of all forms of discrimination against women
5. CAT ----- Committee Against Torture.
6. CRE ----- Committee on the Rights of the Child
7. International Convention on the Protection of the Rights of all Migrant Workers and members of their Families ------- Committee on the protection of the right of all Migrant workers and members of their families

These committees are composed of independent experts who are of recognized competence in the field of human rights and are elected to their positions by the state parties to the relevant conventions. The members are to function in their personal capacity in an independent and impartial manner.

Of the seven treaty based bodies, five can receive complaints from individuals concerning violation of rights contained in the respective treaty. They are the committee against torture, Human Rights Committee, Committee on the elimination of racial discrimination, Committee on the Elimination of all forms of discrimination against women and the Committee on the Protection Rights of all Migrant Workers and Members of the families.
HUMAN RIGHTS COMMITTEE

Human rights committee was established in 1976 to supervise state compliance with the International Covenant on Civil and Political Rights. The functions of HRC include considering the periodic reports submitted by state parties to assess compliance by making ‘concluding observations’ and developing General Comments which address specific rules of issues of the ICCPR. State parties may recognize the competence of the committee to hear interstate complaints. The optional Protocol to the civil and Political rights, Covenant has extended the power of the HRC the competence to receive and consider individual complaints. The HRC has adopted General Comments on the Rights of the Child, discrimination and other such issues.

COMMITTEE ON ECONOMIC SOCIAL AND CULTURAL RIGHTS

In 1986, the United Nations Economic and Social Council established committee on Economic, Social and Cultural Rights for the purpose of monitoring the implementation of the Covenant. The functions of the CESCR includes considering the periodic reports submitted by state parties to assess compliance and providing ‘concluding observations’, developing general comments in order to interpret rights and compliance standards and holding discussions to promote improved implementation of CESCR obligations. In the General Comments of the CESCR, diverse issue have been addressed, ranging from issues relating to non-discrimination and inadequate housing to issues concerning the rights of the people with disabilities and economic, social and cultural rights of the people.

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

The Committee on the Elimination of Racial Discrimination (CERD) was established in 1969 to monitor state compliance to the Convention on the Elimination of All Forms of Racial Discrimination.

The functions of the CERD include considering the periodic reports submitted by the state parties to assess compliance and making ‘concluding observations’. CERD may also consider interstate communications and individual complaints. The committee also develops ‘General Recommendations’

THE COMMITTEE ON THE ELIMINATION OF THE DISCRIMINATION AGAINST WOMEN

The Committee on the Elimination of Discrimination Against Women was established to monitor the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The functions include considering the periodic reports submitted by State Parties to assess compliance and making ‘concluding observations’. Under the optional protocol which entered into force on 22 December 2000, the committee considers the complaints of individuals or groups of individuals arising under CEDAW. Under the protocol, the committee has been empowered to make confidential inquiries into grave or systematic violations of those rights by a state party. It also issues General Recommendations, observations and suggestions.

THE COMMITTEE AGAINST TORTURE

The committee against torture was established in 1987 to monitor the implication of the convention against Torture or Punishment. The functions of the committee include examining state parties reports and making concluding observations, receiving and considering individual communications concerning violations of the convention and
enquiring into allied systematic torture in states that have accepted the procedure under Article 20.

**COMMITTEE ON THE RIGHT OF THE CHILD**

The committee on the Rights of the Child has been monitoring the convention on the right of the Child since 1991. The functions of the committee includes, examinations of state reports submitted and the making of concluding observations, the issuing of general recommendations and conducting general discussions on a particular article of the Children’s Convention or a specific issue.

The committee on the protection of the rights of all Migrant Workers and Members of their Families. The international convention on the Protection of the Rights of All Migrant Workers and Members of their Families was adopted in 1990 and entered into force on 1st July 2003. The functions of the committee include examine state reports submitted and making concluding observations and also issuing general recommendations.

**2. charter based bodies**

There are two kinds of charter based organs. The first group consist of those principal bodies whose creation has been directly mandated by the UN Charter. They are:-

1. The security council
2. The General assembly
3. The secretariat
4. The commission on Human Rights
5. The commission on the status of the women

Charter bodies usually reach a final decision on the matters related to human rights through the mechanism of voting and generally pass resolutions documenting such decisions. Since these resolutions reflect international public opinion, nations are often pressured into complying with them to secure their image at international forums.

**THE SECURITY COUNCIL**

The security council has the primary responsibility for the maintenance of international peace and security. The problems of peace keeping, peacemaking and peace building inevitably affect human rights outcomes and humanitarian law. The Security Council is the only UN body with any real enforcement potential. Therefore it has a very important role in successfully ensuing the implementation of those human rights resolutions that have a bearing upon international peace and security.

In the 1970’s, the Security Council played a key role in enforcing the fulfillment of Human Right standards in South Africa, The Nations continuing practice of Apartheid violated international law in a multitude of ways, and the security council successfully endeavored to force it into compliance. Chiefly it imposed a mandatory arms embargo and applied consistent pressure against the state. Ultimately South Africa conceded and apartheid was abolished.

**THE GENERAL ASSEMBLY**

The General Assembly has also adopted numerous declarations and conventions on matters relating to human rights and has mandated several operations in their interest, such
ad in Haiti and Guatemala. The Third Committee of the General Assembly deals the items related to human rights.

SECRETARIAT

The secretariat is primarily concerned with the administrative work of the UN. The Office of the High Commissioner for Human Rights in Geneva is a part of the Secretariat, is responsible for the overall promotion and protection of human rights. The office of the High Commissioner for Human Rights has three branches. The Research and Right to Development Branch is concerned with human right policy development and research of OHCHR and related human right bodies. The Support Service Branch provides support to both the Treaty and Charter based human right bodies and organs. The Activity and Programmes Branch, supports special procedure relating to situations of human rights in particular countries.

UN COMMISSION ON HUMAN RIGHTS

The UN commission on human rights was established in 1946 and is a subsidiary body of the Economic and social council (ECOSOC) At present it consist of 53 member governments elected by ECOSOC for three year term. The commission deals with the area of human rights more directly than any other charter based body. Its jurisdiction of human rights protection was expanded by ECOSOC in 1970’s to extend the entire world. Since its incorporation the commission has influenced international human right standards. It made contribution to the Universal Declaration of Human Rights in 1948 as well as the International Covenant on Civil and Political Rights and the International Covenant on Civil and Political Rights. It has further, developed norms and standards relating to civil and political rights, the right to development, the rights of minorities and indigenous people and economic social and cultural rights. The commission also monitors the implementation of the standards outlined. It has the authority to use any number of permanent or special procedures while examining a specific human rights issue.

THE COMMISSION ON THE STATUS OF THE WOMEN

The commission on the status of woman was established in 1946. It report to ECOSOC on policies aimed at promoting women’s rights in the socio, economic, political and educational field. It play a significant role both in standard setting as well as in the development of further instruments. It consists of 45 govt. representatives elected for a period of four years, who meet for eight days every year. The commissions mandate includes follow-up to the Platform of Action adopted by the Fourth World Conference on Women, held in Beijing in 1995. In 1999 it completed the task of drafting an Optional Protocol that enabled individual complaint’s to be lodged under the Convention on the Elimination of All forms of Discrimination Against Women.

VIENNA CONVENTION

The General Assembly, in 1990, decided to organize a Second World Conference on Human Rights. The conference convened in 1993 in Vienna with the following objectives

a).To review and access the progress that has been made in the field of human rights since the adoption of the UDHR, and also to identify obstacles that hinder progress in the area of human rights;
b). to examine the relationship between development and the enjoyment of economic social and cultural rights as well as civil and political rights;

c).to examine ways and means to improve the implementation of existing human right standards and instruments

d). To evaluate the effectiveness of the methods and mechanisms used by the united nations in the field of human rights;

e). to formulate concrete recommendation for improving the effectiveness of united nations activities and mechanisms in the field of human rights

f). to make recommendations for ensuring the necessary financial and other resources for United Nations activities in the promotion and protection of human rights and fundamental freedoms.

Vienna conference, in addition, recommended the creation of the post of United Nations High Commissioner for Human Rights. The General Assembly welcomed the appointment of the United Nations High Commissioner for Human Rights on 20th December 1993. His function, inter alia, will be to coordinate relevant united nations education and public information programmes in the fields of human rights
MIDULE III

HUMAN RIGHTS IN INDIA:
SOCIO-POLITICAL AND CONSTITUTIONAL CONTEXT

The constitution of India, which came into force on 26th January 1950, is almost the most comprehensive constitution in the world. The preamble, Part III of the constitution consisting of fundamental rights, Part IV comprising Directive principles of State Policy, Part IV(A) contains Fundamental Duties, constitute the human rights framework in our constitution.

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

Fundamental rights are dealt in part IIIrd of the constitution, and directive principles of state policy are in part IVth in the constitution. While civil and political rights have been incorporated in the part IIIrd of the constitution, economic social and cultural rights have been incorporated in part IVth of the constitution. They are divided on the ground of enforceability of the former and non-enforceability of the latter in the quotes. Otherwise, the rights included in both are equally important. Neither of these parts is superior or inferior to the other. They are complimentary of each other because together they constitute the human rights reign, including respectively the civil and political rights and the social and economic rights. Without one, the rights in the other are not only incomplete, but also unattainable; together they have been called the conscience of the constitution.

In India humanitarian ideas become popular from the beginning of the nineteenth century. The abolition of sati (1829), abolition of slavery (1843), and abolition of female infanticide (1870), the formation of torture commission in the Madras presidency (1855), introduction of widow remarriage by legislation (1856), and prohibition of child marriage (1929), were restraints imposed tradition and the beginning of humanization legislation. The enactment of Indian Penal Code in 1860 and a series of prison and jail reforms by legislation and acts were based on reformist’s tendencies. For preserving the rights of female children, the age of consent act of 1891 and the Abolition of Child Marriage act of 1929 were passed. In addition the Madras Government passed the Madras Children’s Act and the Madras Elementary Education act in 1920 to safeguard children and provide better education at primary level. This humanitarian legislation prepared the ground for an awareness of human rights during war years.
The work for drafting a constitution for India was done during the time of the Universal Declaration of Human Rights. With the inspiration from the UDHR the framers of the constitution incorporated a list of rights, what is known as fundamental rights in the Indian constitution. We adopted the Patten of American Bill of Rights. The fundamental rights, that are guaranteed under the constitution have a close similarity with those in the U. N .Declaration of human Rights in form and content in Article 14,15, 16,19,20,21,23, 25, 29,31 and 32.

The preamble outlines the basic structure of the constitution and sets out the aims and aspiration of the people that have been translated into various provisions of the constitution.

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

We, the people of India, having solemnly resolved to constitute India into a sovereign, socialist, secular, democratic republic and to secure its all citizens:

Justice, Social economic and political;
Liberty of thought, expression, belief, faith and worship;
Equality of status and of opportunity;
and to promote among them all
Fraternity assuring the dignity of individuals
and the unity and integrity of the nation.

In our Constituent Assembly this twenty sixth day of November, 1949, do hereby adopt, enact and to give to ourselves this constitution.

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

The rights of the people are enumerated in the part III and part IV of the constitution. Part III mentions the civil and political rights whereas the part IV mentions the social economic and cultural rights. Part III is known as the fundamental rights which are justiciable rights. The part IV is known as the Directive Principles of State Policy contains the non-justiciable rights. In other parts of the constitution also we can see the rights of the people. For example article 300A is for the right to property which is not a fundamental right now.

Article 12- 35 deals with Fundamental right .Fundamental rights were finalized by a committee of the constituent assembly headed by Sardar Vallabhai Patel. These rights have not been defined by the constitution. They are described as fundamental for they are superior to ordinary laws; they can be altered only through constitutional amendment. Over all they are vital for the full development of the human personality, promoting an
individual’s dignity and welfare. These rights unlike other justiciable rights, are protected by the constitutional remedy by way of an application direct to the supreme court under Article 32 which itself is included in the part III. The fundamental rights are not absolute; as such they are subjected to certain restrictions. While some of these restrictions are spelt out by the constitution, others may be imposed by the government. However the reasonableness of such restrictions is to be decided upon by the courts. Some of these rights are not available to the members of the armed forces. Some of the rights are available to all in the country, while some are available only to Indian citizens. Articles 15, 16, 19, 29, 30 are fixed only for citizens and the rest of the provisions of the Part III are applicable to all persons residing within the territory of India for the time being and subject to its jurisdiction.

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

1. Right to equality - Article 14 to 18
2. Right to freedom – article 19-22
3. Right against exploitation Article 23 & 24
4. Right to religion Article 25-28
5. Cultural and educational rights Article 29, 30
6. Right to constitutional remedies Article 32

Article 19 clause 1 sub clause (f) and article 31 has been taken away from the part III of the constitution by the 44th amendment act of 1978.

1. **Right to equality**
   a) Equality before law and equal protection of law. (Art. 14)
   b) Prohibition of discrimination on grounds of religion caste etc. (Art. 15)
   c) Equality of opportunity to employment. (Art.16)
   d) Abolition of untouchability. (Art. 17)
   e) Abolition of titles (Art. 18)

2. **Right to freedom** (Art.19)
   1. a) Freedom of speech and expression
      b) Freedom to assemble peacefully
      c) Freedom to form association and union
      d) Freedom to move anywhere in India
      e) Freedom to settle in any part of the country
      g) Freedom to do any job or profession

Protection in respect of conviction for offences (Art.20)

Right to life and personal liberty, Art. 21
(21A is related to the right to education to the children at the age group of 6-14. It was included though the 86th amendment acts of 2002. It implemented though the act of 2009; the right of children for free and compulsory education).

d) Protection against arrest and detention in certain cases (Art.22)

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

4. Right to freedom of religion
   1. Freedom of conscience and the right to profess practice and propagate religion (Art.25)
   2. Freedom to manage religious affairs (Art. 26)
   3. Freedom of payment of taxes for promotion of any particular religion. (Art.27)
   4. Freedom as to attendance at religious instruction in certain educational institutions. (Art 28)

5. Cultural and educational rights of the minorities
   1. Protection of language script or culture of minorities (Art.29)
   2. Right of minorities to establish and administer educational institutions. (Art30)

6. Right to constitutional remedies (Art 32)
   This is one of the most important rights in the constitution. Without this right the other right may remain in words without proper enforcement. The right to constitutional remedies helps us to enjoy the fundamental rights and can move to the court for the enforcement of the rights though the writ petitions. There are mainly five kinds of writs. They are:-

   1. **Habeas Corpus**---It literally means to ‘have the body’. The court can order the authority, which has confined a person, to produce him/her before the court and examine whether the detention was justified.

   2. **Mandamus**---An order of the superior court to the government or any public authority to do or refrain from doing what it is obliged to do or refrain from doing.

   3. **Certiorari**-----Order by a Superior Court to a lower Court to submit records of proceedings for scrutiny.

   4. **Quo-warranto** ------ An order of the court to the holder of an office to show to the court under what authority he/she holds office

   5. **Prohibition** -----Order by a superior court to a lower court commending it to refrain from doing something it is about to do .

Rights implied under Article 21

- Right to Privacy
- Right to pollution free Environment
- Right to live with Human Dignity
- Right to lively hood
- Right against sexual harassment
- Right against solitary confinement
- Right against Bar Fetters
- Right to legal aid
- Right to speedy trail
- Right against handcuffing
- Right agents delayed execution
- Right against custodial violations
- Right to travel abroad Right to know
- Right to release and Rehabilitation of bonded labour
- Right against cruel and unusual punishment
- Right to shelter
- Right to healthcare or medical assistance
- Right to education

The scope of fundamental rights is wide enough to encompass the new generation human rights. The courts while interpreting the rights have introduced new rights into the category. For example, the court stated that right to life means right to live with human dignity not mere animal existence. So it demands clean environment, food, water, education etc. However the rights conferred by the constitution are not absolute. IN the interest of the unity and integrity of the nation and in order to secure public good these rights can be reasonably restricted. The state can impose restrictions over the enjoyment of the fundamental rights in the interest of the sovereignty, integrity and security of the state, public order, morality, decency, health, friendly relation to foreign states etc. More over an emergency proclamation under Article 352 will curtail the individual liberties provided under Article 19. The provision for Preventive Detention is also a challenge to human rights protection under fundamental rights.

**Electoral rights**

**Right to vote**

The right to vote is a constitutional right distinct from a fundamental right in that the remedy of filing a writ under article 32 before the Supreme Court for its enforcement is not available. Citizens above the age of 18 years are entitled to vote. A person can however, be disqualified from exercising the right to vote or be denied registration as a voter on grounds of non-residence; unsound mind crime or corrupt or illegal practice. Further all person are entitled to be included in the electoral role and cannot be excluded on grounds only of religion, race, caste and sex or any of them
Right to information

In 2002, the Supreme Court held that the ‘freedom of speech and expression includes the right to impart and receives information and the freedom to hold opinions’ and that ‘a democracy cannot survive without free and fair election, without free and fairly informed voters’. The supreme court reaffirmed that the right to information about the financial, educational and criminal backgrounds of candidates contesting elections, promoted freedom of expression and therefore the right to information forms and integral part of the Article 19(1) (a) i.e right to speech and expression. Later, Right to Information Act was passed in 2005 by the Government of India. It is one of the most revolutionary law in India. It enables the citizens to get all information.

HUMAN RIGHTS AND DIRECTIVE PRINCIPLES OF STATE POLICY

The Directive Principles of State Policy are ideals, directions and rights aimed at establishing an economic and social democracy which is pledged in the preamble of the constitution. The idea of DPSP was borrowed from the Irish constitution. The importance of the DPSP is evident in the words of Dr.B.R. Ambedkar who stated that DPSP as the manifesto of aims and aspirations. DPSP enshrined in the part IV of the constitution. It sets out the ideals and objectives related with social economic and cultural upliftment. The Directive Principles of State Policy enshrines socio-economic rights which are part of the human rights. These rights can be classified in to three categories 1. Directives in the nature of ideals of the state. 2. Directives shaping the policy of the state.3. Non-justiciable rights of the citizens.

1. Directives in the nature of ideals of the state.

1. The state shall strive to promote the welfare of the people by securing a social order permeated by social, economic and political justice Art38(1): to minimize inequality in income, status facilities and opportunities amongst individual and groups Art38(2)

2. The state shall endeavor to secure just and human conditions of work: a living wage, a decent standard of living and social and cultural opportunities for all workers (Art43).

3. The state shall endeavor to raise the level of nutrition and standard of living and to improve public health. (Art 47)

4. The state shall direct its policy towards securing equitable distribution of the material resource of the community and prevention of concentration of wealth and means production. Art (39 (b),(c).

5. The state shall endeavor to promote international peace and co-operation (Art51)

2. Directive shaping the policy of the state

1. To establish economic democracy and justice by securing certain economic rights
2. To secure a Uniform Civil Code for the citizens. (Art.44)
3. To provide free and compulsory primary education (Art.45)

(Now this concept is a fundamental right and included in the Article 21A).
4. To prohibit consumption of liquor and intoxicating drugs except for medical purposes. (Art 47)

5. To develop cottage industries (Art 43)

6. To organize agriculture and animal husbandry on modern lines (Art 48)

7. To prevent slaughter of useful cattle’s i.e. cows, calves and other milch and draught cattle. (Art 48).

8. To organize village panchayats as units of self-governments (Art 40)

9. To Promote educational and economic interest of weaker sections and to protect them from social justice. (Art 46)

10. To protect and improve the environment and safeguard forests and wild life (Art 48A)

11. To protect and maintain places of historic or artistic importance. (Art 49)

12. To separate the Judiciary from the executive. (Art 50)

3, Non-justiciable rights of the citizens

1. Right to adequate means of livelihood. Art 39(a)

2. Right of both sexes to equal pay for equal work (Art 39(d)

3. Right against economist exploitation (39 (e),(f)

4. Right of children and the young to be protected against exploitation and to opportunities for healthy development, consonant with freedom and dignity. Art 39(f)

5. Right to equal opportunity for justice and free legal aid Art 39A

6. Right to work (Art 41)

7. Right of public assistance in cases of unemployment, old age, sickness and other cases of undeserved want (Art 41)

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

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

10. Right to children to free and compulsory education Art 45.

Articles 39A, 44A, were included in the DPSP by 43nd amendment act of the constitution. By the 44th amendment, the Janatha Government introduced section 2 in Article 38 which speaks for minimizing inequality in income and status not only among individuals but also among groups.

The role of DPSP in promoting the human rights can be identified by analyzing the impotent initiatives taken by the state, based on the DPSP. For example; Zemindari abolition, Community Development Programmes, Implementation of Panchayat Raj, Agricultural subsidies, Land Reforms Reservation of seats, Public Distribution Schemes, Commission for minority, SC,ST, women and Children, Tribal welfare policies etc.
The part 1V of the Indian constitution related to the Directive Principles of State Policy, which is much more exhaustive than the Universal Declaration.

Rights and duties are the two sides of the same coin. Fundamental duties are contained in the Part IV(A) of the constitution. The constitution of India was incomplete with the absence of this chapter and this was rectified by the 42nd amendment of the constitution in 1976. The followings are the important duties.

In short we can say that the India fully followed International Bill on Human Rights and Indian constitution protects such rights, according to the philosophy of Universal Declaration. India constituted the National commission for Human Rights for the redressal of grievances of human rights violations. The commission’s role is appreciated by the peoples of India and other human rights organizations working abroad.

**FUNDAMENTAL DUTIES**

Rights and Duties are the two sides of the same coin. It is also essential to realize that, in return for every right, the society expects the citizens to do certain things which are collectively known as duties. Some such important duties have been incorporated in the Indian Constitution also. The original Constitution enforced on 26th January, 1950 did not mention anything about the duties of the citizen. It was expected that the citizens of free India would perform their duties willingly. But things did not go as expected. Therefore, ten Fundamental Duties were added in Part-IV of the Constitution under Article 51-A in the year 1976 through the 42nd Constitutional Amendment. However, whereas Fundamental Rights are justiciable, the Fundamental Duties are non-justiciable. It means that the violation of fundamental duties, i.e. the non-performance of these duties by citizens is not punishable.

The following ten duties have been listed in the Constitution of India:

1. to abide by the Constitution and respect its ideals and institutions, the National Flag, National Anthem;
2. to cherish and follow the noble ideals which inspired our national struggle for freedom;
3. to uphold and protect the sovereignty, unity and integrity of India;
4. to defend the country and render national service when called upon to do;
5. to promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women;
6. to value and preserve the rich heritage of our composite culture;
7. to protect and improve the natural environments including forests, lakes, rivers and wildlife;
8. to develop the scientific temper, humanism and the spirit of inquiry and reform;
9. to safeguard public property and not to use violence; and
10. to serve towards excellence in all spheres of individual and collective activity.

Besides, a new duty has been added after the passage of Right to Education Act,
2009. “A parent or guardian has to provide opportunities for the education of his child/ward between the age of six and fourteen years.

These duties are in the nature of a code of conduct. Since they are unjustifiable there is no legal sanction behind them. As you will find, a few of these duties are vague. The fundamental duties are inspired by the constitution of former Soviet Union. Since, the fundamental duties are included in part IV of the constitution, these cannot come into force automatically, and neither can these duties be enforced by judicial process. The constitution, like directive principles of state policies, leaves to the goodwill of citizen to abide these provisions. According to the famous constitutional expert D D Basu, the constitution does not make any provision to enforce these duties automatically or any sanction to prevent the violation of these duties by the citizen. However, it is expected that if a law is enacted by the legislature to enforce these provisions, it shall not be declared unconstitutional on the ground of its inconsistency with the provisions of Article 14 and that of 19. According to him, these provisions would act as a warning to all those who does indulge in not paying due regard to the constitution and destroying public property. The Supreme Court may issue such warning to citizen to take these provisions seriously. The legislature may also enact laws to enforce these duties. In fact, there are already many laws which directly or indirectly enforce these duties. For example, there is law for the protection of public property as well as environment and animal species.

However, the Supreme Court, in Surya Vs Union of India (1992) case, ruled that fundamental duties are not enforceable through judicial remedies by court. In Vijoy Immanuel Vs State of Kerala (1987), the Supreme Court overruled the decision of Kerala High Court and decided that though to Constitution provides it to be the duty of citizen to respect the National Anthem, it does not provide that singing of the National Anthem is part of such respect. Even a person, while standing during the singing of National Anthem (without himself singing it) can show respect to the National Anthem.
MODULE IV

INSTRUMENTALITIES FOR THE PROTECTION OF HUMAN RIGHTS

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

NATIONAL HUMAN RIGHTS COMMISSION

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

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

NHRC defining human rights as ‘the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the international covenants – that is ICCPR and ICESER- and enforceable by courts in India’. The NHRC of India was the first such commission constituted in the South Asian region.

Structure

The protection of the Human Rights Act provides that the National Human Rights Commission consist of 5 members including the chairman. It consists of :-

a). A chairperson who has been a Chief Justice of supreme court.
b). One member, who is or has been a judge of the Supreme Court.
c). One member, who is or has been the chief justice of the High Court.
d). Two members to be appointed from among the persons having knowledge of or practical experience in matters relating to human rights.
e). The chairpersons of the National Commission for Minorities, the National Commission for Scheduled Caste and Scheduled Tribes and the National Commission for Women shall be deemed to be the members of the commission for the discharge of certain functions.

There shall be a Secretary General who shall be the chief executive officer of the commission and shall exercise such powers and discharge such functions of the commission as it may delegate to him. The headquarters of the commission shall be at Delhi.

Appointment of chairpersons and other members

The Chairperson and other members shall be appointed by the president by warrant under his hand and seal; provided that every appointment under this sub-section shall be made after obtaining the recommendations of committee consisted of :-

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

FUNCTIONS

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

1. Inquiry and investigation

The NHRC may inquire into and investigate complaints of human rights violations, their abetment or the negligence in the prevention of such violations by a public servant. Such enquiry may undertake through its own initiative (Suo motto) or based on a petition presented by a victim or any person on his / her behalf. These suo motto powers are particularly relevant in situation that involves persons belonging to the marginalised sections of society who do not have the financial or social resources to lodge individual complaints. The NHRC has thus the power to take its own initiative and protect the rights of these people.

The NHRC has been vested with the powers similar to those available to civil courts while trying a suit. This means the commission can summon and enforces the attendance of any person; examine under oath; require documents and items to be produced before the commission; receive evidence as affidavits; requisition and public record from any court or office and examine witness and documents.

Upon the completion of an inquiry, the NHRC may make recommendations to the government or the authority concerned for the initiation of proceedings for prosecution or any other action as it deems fit. It may also approach the supreme court or the high court for a direction, order or writ, as that court may consider necessary.
2. Inspection

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

3. Intervention in court proceedings

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

4. Sensitization

The NHRC is mandated to sensitize the government to its constitutional obligations to accede and honour international human rights treaties. The NHRC is also entrusted with spreading human rights literacy and awareness and encouraging the efforts of non-governmental organizations and institutions working in the field of human rights.

In addition to these functions, NHRC encourage the effort of non-governmental organizations and institutions working in the field of human rights. It study treaties and other international instruments on human rights and make recommendations for their effective implementation. NHRC undertake and promote research in the field of human rights. It also reviews the factors including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures.

The commission required to submit an annual report to the central as well as the state governments concerned. It can also submit special reports on any matter of urgency or important .The Protection of human rights act 1993 also provides for the establishment of state human rights commission to be constituted by the respective state government.

JUDICIARY

Judiciary is the guardian of fundamental rights. Judiciary always try to protect the rights of the people. It protects the rights of the citizens from government and private encroachment. One of the most important features of the judiciary in modern time is the power of judicial review. Judicial review is the power of the judiciary to declare a law passed by the parliament or an executive order is null and void if it is against the provisions of the constitution. Judiciary performs the functions of implementation of human rights mainly by innovative interpretation and applications of the human rights provisions of the constitution. The supreme court of India has assumed the role and declared that it has a special responsibility to enlarge the range and meaning of fundamental rights and advance the human rights jurisprudence. The major contributions of judiciary to the human rights jurisprudence are as follows:

1. Substantial expansion of the concept of human rights under Article 21 of the constitution
2. Procedural innovation of public interest litigation.
As per the protection of human right act for the purpose of providing speedy trial of offences arising out of the violation of human rights. The state government may, with the concurrent of the chief justice of high courts by notification, specify for each district a court of session to be a human right court to try the said offence.

The supreme court of India has original appellate and advisory jurisdiction to perform. If the fundamental rights of the citizen’s is either violated or denied he can move the supreme court or high court as the case may be for its reinstatement.

**Indian Judiciary and Human Rights**

Indian Judiciary is able to protect the human rights and prevents the executive and legislative branches from violating their area of jurisdiction because of several features of Indian constitution. They are the followings:-

1. Separation of Powers

There is an independent judiciary in India and it is fully separated from the legislature and the executive. Therefore the judiciary is able to provide justice without fear and favour.

2. Written constitution

India has a system of written constitutional law. It increases the success of judiciary to identify the mistakes on the part of the executive and legislature. Each and every provision of the fundamental rights is also described in the constitution. Therefore the judiciary is able to read every law preferably that related to the rights of the citizens.

3. Rule of law

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

4. Integrity and freedom of judiciary

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

5. Social representation

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

6. Training and educational background of judges.

The values and principles of the education system which gives traing to the aspirant judges helps a lot to increase the professional quality to deal with human right cases.

7. Judicial activism

The judiciary’s human right consciousness has been changed along with the change of judiciary from a passivist to an activist. During the initial stages, the judiciary in India was
followed the black letter of law tradition or it was passivist in character. This image of the
court was changed with the emergence of Public Interest Litigation and the judicial
activism. The judicial activism helped too much to the people to enjoy their rights.

9. Writ petition

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

MEDIA

In the contemporary democratic states the role of media is very important, especially in
protecting the human rights. Origin of the print media in Europe in the modern history was
related to various struggles for rights, mainly civil and political rights. The print technology
has revolutionised the potential of media as the most common channel of communicating
massages to give strength to agitations. The relationship of the media to human right is well
recognized since the very beginning.

Media was essential to preserve human rights and the freedom of the press in the liberal
democratic constitutions was depicted as a fundamental human right closely connected to
freedom of opinion and expression. Media has considered as the fourth estate, which shows
its political significance. The existence the media itself is based on the principle of freedom.
Therefore the media is the child and the parent of the rights and the freedom. That means
media can effectively function only in a democratic state where there is freedom of speech
and expression. At the same time the media can use its freedom to protect the freedom and
the rights of the people.

In various countries at various stages of struggle for emancipation and justice media
helped the social movements to articulate their demands and to publish their concerns
regarding different rights. For example in glorious revolution, American war of
independence, French revolution, working class movements and in the anti-colonial
struggle in the world, press and other forms of media played a significant role.

ROLE OF MEDIA IN PROTECTING HUMAN RIGHTS

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

Now the new media and the social network help a lot for the anti-corruption campaigns
and for protecting the human rights. Its potential is very high and it can influence lakhs of
people. It also gives more support to overthrow the bad government and for the liberation of the people in various countries.

The media promoted human rights by making people aware of their rights and duties. In this sense media have an educative value. It can inculcate certain values in society like peace and non-violence, fraternity etc. and thereby promote the importance of human rights. The media publish the human rights violation stories and invite the attention of the authorities in the concerned matter.

It has been publishing stories relating to the women and children whose rights were generally neglected. The media popularise human rights by providing publicity to individuals and organizations engaged in human rights protection activities. In a democratic society free media can be a powerful against abuse and violation of human rights. The media become a powerful instrument because it exposes human right violations.

Though the investigative journalism, the journalists exposes many human right violation issues before the public and the government. It had proved successful in many cases of corruption and criminalised politics. The media helps in keeping the state and its agencies accountable and democratic. The moulding of social reality by media also contributes to the promotion of human rights.

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

Media in the Globalised World

Globalization has changed the face of the media. Globalisation is the catch phrase being used to describe the increased transnational flows of finance, goods, services and people; a phenomenon which has gained particular momentum since the 1990’s. The capital accumulation process on a global scale, commoditized the information and communication sector as well as made it into a branch of industrial activity for the sake of maximum profit. Centralisation and concentration of media industry leading to the emergence of giant globally operating media conglomerates and increased transnational flows of media products, a consequent spread and intensification of the commercialization of media output, these are considered some of the features of media globalization.

Almost the entire international communication and media industry is owned and controlled by giant, western, mainly US-based transnational corporations. Since the early 1980s, there has been a dramatic restructuring of national media industries along with the emergence of a genuinely global commercial media market. The newly developing global media system is dominated by three or four dozen large transnational corporations with fewer than ten US based media conglomerates towering over the global market. In addition to the centralization of media power, the major features of global media order is its through going commercialism and associated marked decline in the relative importance of public broadcasting and the applicability of public service standards. Such a concentration of media power in organizations dependent on advertiser support and responsible primarily to
shareholders, is a clear and present danger to citizens participation in public affairs, understanding of public issues, and thus to the effective working of democracy.

Media is really the protector of the rights of the people. However in the globalised world, media also give importance to market. They strive to make more profit through advertisement and through conducting shopping festivals and other things. Thus they forget the importance of human rights. If there is a human right violation in a corporate level or industrial level, they ignore it because they lose the advertisement of that organization. So weightage is for advertisement. This is really a problem in the modern democracy. There are many human right violations in media organizations also.

RIGHT TO INFORMATION ACT

It was one of the most important legislation passed by the Indian parliament in 2005. It is considered important to the people’s participation and empowerment in democracy. Today right to information is a basic right of the people. The Scandinavian countries are perhaps the early ones to ensure free flow of information to the people though statutory provisions.

The Right to Information Act (RTI) is an Act of the Parliament of India "to provide for setting out the practical regime of right to information for citizens" and replaces the erstwhile Freedom of Information Act, 2002. The Act applies to all States and Union Territories of India except the State of Jammu and Kashmir. Jammu and Kashmir has its own act called Jammu & Kashmir Right to Information Act, 2009. Under the provisions of the Act, any citizen may request information from a "public authority" (a body of Government or "instrumentality of State") which is required to reply expeditiously or within thirty days. The Act also requires every public authority to computerize their records for wide dissemination and to pro-actively publish certain categories of information so that the citizens need minimum recourse to request for information formally. This law was passed by Parliament on 15 June 2005 and came fully into force on 13 October 2005. Information disclosure in India was hitherto restricted by the Official Secrets Act 1923 and various other special laws, which the new RTI Act relaxes.

Objectives

The objectives of the RTI Act is to enhance all those conditions which are necessary for the promotion of democracy in India, ait include for the creation of an informed citizenry, maintenance of transparency in governance, contain corruption and to make the government and its instrumentalities accountable to the governed. The act define information as “any material in any form including records, documents memos, emails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, paper, samples, models data material held in any electronic forms and information relating to any private body which can be accessed by a public authority under any other law for the time being in force. As per the letters in the act right to information empowers the citizens with the right to:

- Inspection of works, documents, records
- Taking notes, extracts or certified copies of documents/records
- Taking certified samples of materials
- Obtaining information in the form of diskettes, floppies, tapes, cassettes or any other electronic mode or taking print outs
The act is applicable to all constitutional authorities including executive, legislature judiciary, any institution or body established or constituted by an act of parliament/state legislatures. Boards or authorities established or constituted by order or notification of appropriate government s including bodies owned, controlled or financed directly or indirectly by funds provided by government are also covered.

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

The Procedure

Under the Act, all authorities covered must appoint their Public Information Officer (PIO). Any person may submit a request to the PIO for information in writing. It is the PIO's obligation to provide information to citizens of India who request information under the Act. If the request pertains to another public authority (in whole or part), it is the PIO's responsibility to transfer/forward the concerned portions of the request to a PIO of the other within 5 working days. In addition, every public authority is required to designate Assistant Public Information Officers (APIOs) to receive RTI requests and appeals for forwarding to the PIOs of their public authority. The applicant is not required to disclose any information or reasons other than his name and contact particulars to seek the information. The customer has to pay nominal amount of Rs 10 as fee for filing the request and Rs 2 per page for information in case of central departments. The people belong to BPL category are exempted from paying the fees.

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

The Act specifies time limits for replying to the request.

If the request has been made to the PIO, the reply is to be given within 30 days of receipt.

If the request has been made to an APIO, the reply is to be given within 35 days of receipt.

If the PIO transfers the request to another public authority (better concerned with the information requested), the time allowed to reply is 30 days but computed from the day after it is received by the PIO of the transferee authority.

Information concerning corruption and Human Rights violations by scheduled Security agencies (those listed in the Second Schedule to the Act) is to be provided within 45 days but with the prior approval of the Central Information Commission.

However, if life or liberty of any person is involved, the PIO is expected to reply within 48 hours.

Since the information is to be paid for, the reply of the PIO is necessarily limited to either denying the request (in whole or part) and/or providing a computation of "further fees". The time between the reply of the PIO and the time taken to deposit the further fees for
information is excluded from the time allowed. If information is not provided within this period, it is treated as deemed refusal. Refusal with or without reasons may be ground for appeal or complaint. Further, information not provided in the times prescribed is to be provided free of charge.

**Excluded Departments**

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

**Information Exclusions**

RTI provides for several exemptions based on several reasons to disable the public to know about the government decisions. The act exempts the following matters from the list of list of information which the citizens can seek for information. They are:-

1. The information, disclosure of which would prejudicially affect the sovereignty and integrity of India, security, strategic, scientific or economic interest of the state and relation with foreign states.

2. Information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may cause a contempt of court.

3. Information including commercial confidence, trade secrets or intellectual property, the disclosure of which will affect the competitive position of the third party, unless in the interest of the larger public.

4. Information the disclosure of which would causes a breach of the privileges of parliament or State legislatures.

5. Information received in confidence from the foreign governments

6. Information which would endanger the life or physical safety of any person or identity the source of information or assistance given in confidence of law enforcement or security purpose.

7. Information which would impede the process of investigation or apprehension or persecution of offenders.

8. Cabinet papers including deliberations of the Council of Ministers, secretaries and other officers.
9. Information relates to personal interest which had no relationship to any public activity fund.

10. Information available to a person in his fiduciary relationship unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information and so on.

**Evaluation**

Most radical provision of the Act is that the information seeker needs not to give any reason for it or prove his *locus standi*. Yet the task of implementing the law is not without major challenges. Lack of adequate public awareness, especially in rural areas, lack of proper system to store and disseminate information, lack of capacity of the public information officers (PIOs) to deal with the requests, bureaucratic mind set and attitude etc. are still considered as major obstacles in implementation of the law.

**PUBLIC INTEREST LITIGATION**

Public Interest Litigation (PIL) stands for litigation in the interest of the public. It emerged as a by-product of the influence of welfare ideology on the judiciary. The traditional legal theory of judicial process envisaged passive role for the courts. The traditional legal theory demands for a neutral or passive judiciary which follows the black letters of law. Therefore the procedures in the judicial process were not at all liberal.

PIL stands for the liberalization of the procedure in judicial process especially the provision of *locus standi*. *Locus standi* means, a person must show that he is adversely affected by the impugned action or that his own right has been violated. Further the issue he raises must be a justifiable issue that can be resolved through judicial process. The liberalisation of the provision of *locus standi* empowers a person to approach the court for addressing injustice in which he may not be a party or victim. This gives power to the people to approach the court for the protection of the right of the vulnerable or marginalised who are not in a position to argue for the rights. It can also be used the general welfare of the public. In short PIL empower the courts to act in favour of the social cause.

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

**Features of Public Interest Litigation**

The features of PIL are; it is remedial in nature, representative standing , non-adversarial litigation, relaxation of procedure ,epistolary jurisdiction etc

- It had created a new regime of human rights by expanding the meaning of fundamental rights to equality ,liberty and life
- Democratization of access to justice by liberalising procedures
- Judicial monitoring of state institutions
- It had fashioned new rules of relief like compensation in case of state sponsored
violence

- It has an instrument of social change. It led to the breakdoen of legal imperialism
- Shifted from legal centralism to legal pluralism.

The use of PIL had led to the emergence of a number of rights like right to speedy trial, free legal aid, means and livelihood, education, medical care, clean environment, right against torture, solitary confinement sexual harassment bondage, servitude etc. The land mark cases which used PIL declared speedy trial as a part of right to life and liberty, protection of environment and ecology, rehabilitation and compensation in case of violation of rights etc. So far the use of PIL was successful in issues related to rights of prisoners, children especially adopted kids, labours, pavement dwellers, environment pollution, solid waste disposal, explicitly political issues like corruption and elections. The popularity of the PIL is in the inexpensive nature of remedy and its result oriented character. Though it has prayed as an instrument of social change, critics argue that PIL had only brought a cosmetic change not a genetic change. The low cost of justice, leads to increased cases of PIL which in turn fails the virtue of instrument.

**Importance**

PIL offers informal justice without formal legal procedures. It provides remedies for social wrong. It made judicial process more participatory, polycentric and result oriented. It became an instrument of social change and bringing the justice to the doorstep of the poor and less fortunate. The liberal rule of *locus standi* had helped social action group to come to court on behalf of the disadvantaged sections in society. It enables the court to address the issue of human rights violation. It had shifted its focus from technicality to informality and from passivism to activism. It ensures public participation in judicial process and can be used as a means to control, the other organs of the government. The court became a political institution laying sown the law and assuring the role of a protector of the underdog and liberalised the concept of *locus standi* and justifiability.
Dalits and Adivasis

In India the scheduled caste and scheduled tribes are generally known as dalits and adivasis respectively. In a border sense Dalits are considered as all those who are exploited and marginalised. In a narrow sense that finds meaning with reference to the caste based hierarchy in Hindu society. It represents those who are at the bottom of the caste hierarchy. Here we are discussing the problems of scheduled caste people as Dalits problem. The term Dalit, which is popular among the Marathi speaking literary writers, stands to represent the broken or downtrodden people in India. Dalits constitute 16.48% of the total population of our country.

Adivasis refer to the Tribes or original inhabitants of the land. The use of the term was initiated by the British in their attempt to understand the group of people in India who do not fit in to the caste religion frame work of Hinduism. In popular wise Adivasis refers to the tribes. There are around 60 million Adivasi communities in India.

Dalits or Scheduled castes are one of the marginalised sectors of the Indian society who constitute to suffer from utter violation of their human rights even today. As per the constitution provisions, a number of measures - both protective as well as developmental- have been initiated by the govt. The government, passed Untouchability (offences) Act, 1995, to give effect to Article 17. This act was amended in 1976 and was renamed as the Protection of civil rights Act 1955. Another act, known as the Scheduled Castes and Scheduled Tribes (prevention of atrocities) Act 1989 was also passed by the Parliament. Yet there is the practice of untouchability and atrocities. They face both the economical and non-economic problems.

A number of militias (private armies) are indulging in the most reprehensible acts of human rights violence of dalit villagers. It is also alleged that police have accompanied them during their attack. There are allegation that police have routinely beaten villagers, sexually assaulted women and destroyed their property during such raids. It is also to note that these sena leader and police officials have never been prosecuted for such killing and abuses. Another category of human right violation is their de facto disenfranchisement during elections throughout the country.

In the case of Adivasis, the industrial and technological achievements of civilisation have led to the extinction and absorption of many of the world’s tribal peoples and cultures. After destroying the political autonomy of the tribes, the state gained the control over their land. The state implemented various programme in the name of progress, poses serious threat to their livelihood, culture, language, marriage customs and religion. Consequently, tribes have rapidly faded, natural resources have been exploited and the environment has been devastated. There lifestyle has been worst affected by the environmental problems caused by rapid industrialisation. Health is the major area in which adivasis have been adversely affected. Malnutrition is a major problem among the Adivasi Children.

The Dalits and Adivasis face grave human rights violations in the form of discrimination and social exclusion. They are not treated as equals in society. Although the...
constitution prohibits the practice of untouchability, though the article 17, it practises in different places. Untouchability means the imposition of social disabilities on person by reason of their birth in certain castes. They have been prohibited from using public roads, wells, schools, shops, hotels and similar other public utilities. These are denied to access land and basically they have also been denied the educational facilities.

Social exclusion is different from discrimination. They are not allowed to come in the mainstream of social life. These groups are in segregated sectors. The existence of the ‘caste villages’ is the best example in this regard. Social exclusion is reinforced in the welfare policies of the government.

Forced and bonded labour systems also negatively affected the Dalits and Adivasis. Most of them are forced to work in inhuman and degrading conditions. Majority of them work as manual scavengers, leather worker, street sweepers, cobblers etc. The Dalits and Adivasis are kept under the custody of dominant as slaves. The bondage is due to poverty and ineptness and ignorance.

The upper caste and the dominant group treat them as low, impure and polluted groups. The practice of degrading rituals, in the name of religion, leads to the violation of their dignity and individuality. The strict adherence of to the principle endogamy which is the concrete base of caste system causes human right violation in the form of honour killing. The dalits and Adivasis are the main victims of this practice. The women belongs to such communities, carry the triple burden of caste, class and gender. Most of the time these marginalised becomes the victims of state sponsored violence especially in the hands of police. The police in India are notorious for their caste bias and in many instance the police ignore the atrocities against Dalits and Adivasis. They are also becomes the victims of police atrocities. They are also becoming the victims of custodial death and custodial rape.

Within the Dalits and tribes, the minorities converted to Islam, Christianity or Buddhism, faces grave human right violation in the hands of the advocates of religious fundamentalism or by the advocates of sanscritization.

In spite of many legislations and reservation policies adopted by the government, the Dalits and the Adivasis continuous to be at the bottom of the society. The reasons behind this includes existence of socio-economic contradiction, the lack of democratisation of society, defects of modernisation, unequal power and resource sharing and the evil practice of caste system.

MINORITIES IN INDIA

Minority rights are necessary to protect the minorities from cultural assimilation, majoritarian tyranny and for their socio-political inclusion. The minorities in India lay behind the majority in terms of social economic and political development. The Sachar Committee reports prove this argument. The increasing tendencies of communalism, for example Godra, Orissa etc. also take the minorities to the fringe of crisis.

Article 29 and 30 of the Indian constitution provide protection to minorities as regards their language, script or culture. The right of the minorities to establish and administer educational institution is also recognised. But the constitution does not define minority.

Minorities in India are generally defined in terms of religion at the national level. As per the minority commission of India the minorities include Muslims, Christians, Buddhists, Zoroastrians etc. One of the key institutions to protect the interest of the minorities in India...
is the National commission for Minorities, a statutory body set up in 1993, under the National Commission for Minorities Act. It is intended to safeguard and ensure the implementation of the constitutional policies and schemes with respect to minorities. It is to be remembered that the democracy is not only the rule of majority, it should also consider the minority. However it is found that during communal riots, by and large, the life and property of minorities are destroyed. The police and para-military forces have often exhibited their communal bias. The Sree Krishna Commission in the Bombay riots of 1992, has found that the communal political groups play a role in organising communal riots.

At the international level the first explicit reference to minority right was given in the ICCPR. The cultural rights and right to religion was entitled to individual. In December 1992 UN adopted a declaration on rights of Persons Belonging to National Ethnic, religious and Linguistic Minorities. It imposed an obligation on the state to encourage conditions for promotion of minority rights. The government of India is a party of such international initiatives. Moreover the government had appointed several commission and introduced reservation of seats to the minorities. In spite of these efforts, minority community remains on the margins of the society.

**HUMAN RIGHTS OF WOMEN**

Indian society is male dominated and biased against female gender. This result in all sorts of exploitation and discriminatory practices. Obviously the status of woman is unjust and inhuman. For instance female foeticide and female infanticide are widespread and the practice of sati an d purdah system has also not disappeared. Women are frequently tortured in the broad day light because of insufficient dowry. Hundreds of women commit suicide either due to humiliating sexual atrocities on them or because of unbearable tortures by the husband or in laws. The majority of Indian woman, who play the role of a faithful wife and self –effacing mother are forced to live a passive powerless and slavish life throughout.

Women face grave human right violations in every society. As per UN records the human right violation in the case of women not only include physical violence but also include deprivation of denial of basic amenities and means of livelihood like health education etc. The violation of human rights occurs in different levels viz the public sphere, private sphere and religious sphere. This is not a strict compartmentalisation. In the religious sphere women are victims of evil practices like sati, devadasi, pardh, female genital mutilation etc. Religion treats women as secondary to man. Religion treats women as impure to compared to man. The personal laws on marriage, divorce, property, inheritance etc. are all gender biased.

In the private sphere the women faces atrocities in the form of domestic violence, dowry deaths, torture and discriminations. In the public sphere the violation occurs in the form of discrimination and denial of autonomy, individuality and personality.

The major forms of human right violations faced by women are include sexual assault, rape, female foeticide and infanticide, forced prostitution, denial of education, denial of participation in decision making. The practice of surrogate motherhood is a new generation problem faced by women. The commodification of female body is also a n issue. The issue of honour killing, homicide of individuals in the name of protecting the dignity of caste or religion is also badly effecting the right of women.
Protection of Women’s Right

The woman’s right got the recognition as human rights after the Second World War. The UN set up the commission on the Status of Women in 1946 with an end to protect and monitor women’s right, all over the world. It adopts a Convention on the Political Right of Women to legalise women’s right to political participation in 1952. The UN declared 1975 as the International Year of Women and the period from 1975 to 1985 as the women’s Development decade. The first world conference on women was held in Mexico in 1975, adopted a declaration on the equality of women and their contribution to development of peace. In 1979 the UN adopted the Convention on the Elimination of All Forms of Discrimination Against Women. This convention which came into force since 1981, is considered as the International Bill of Rights of Women. A UN committee on the Elimination of discrimination Against women (CEDAW) was set up to monitor compliance with the convention the UN Forth World Women’s Conference held at Beijing in 1995, declared women’s rights as human rights and there by placed it at the core of international human rights.

According to UN resolution 48/104 (1993) violence against women is recognized as violation of human rights. Such violence is defined as “any act that results in, or is likely to result in, physical, sexual or psychological harm of suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”.

In compliance with the international initiatives the government of India had also introduced a number of laws to protect the rights of women. Apart from the provisions in fundamental rights and DPSP, the govt. enacted the minimum Wages Act, factories Act, Maternity benefit Act, Dowry prohibition Act, equal remuneration Act, sati prevention Act. Dowry prohibition act, Hindu marriage Act etc. The Hindu code bill contained new rules on seven different matters; they are 1. The law of maintenance 2. divorce 3. Adoption 4. Minority and Guardianship 5. the order of succession among the different heirs to the property to a deceased dying interstate 6. Marriage 7. Property right to women.

THE RIGHT OF CHILDREN

Childhood is universal transcend all nationalities and know no artificial boundaries. Family as the fundamental group of society plays significant role in nurturing children. Family shall provide the natural environment for the growth and well-being of all its members, particularly children. Children should be provided necessary protection and assistance for the harmonious development of their personality.

Child Right in the international level

The Geneva declaration of the right of the child 1924 was the first convention adopted by League of Nations to consider the rights of the child. The UDHR confers rights to all human beings without any discrimination on the basis of age or sex. Article 24 of the UDHR stated that a child is entitled to special care and assistance. Article 10 of ICCPR, the declaration of the right to child 1959 etc., also advocate the significance of the right to child. The Convention on the Right of the child (CRE) 1989 is regarded as a landmark in international efforts to protect child rights. It provides an international framework to determine the right of the child. The convention defined the child right as “a child means every human beings below the age of 18 unless under the law applicable to the child, majority is attained earlier. The convention entitled the child with four important categories.

The world summit for children was held in 1990. The following conferences also mentioned about the different rights of the child.
1. World conference on education for all 1990
2. World conference on environment and development 1992
3. World conference on human rights 1993
4. International conference on population and development 1994
5. World summit for social development 1995
7. World food summit 1996
8. World congress against commercial sexual exploitation against children 1996
9. Amsterdam and Oslo conferences on child labour 1997

As in the case of other marginalised sections, children in India also faces grave human right violation. The hierarchical nature of Indian society which does not treat the child as an individual having reason is an important reason behind such violations. In Indian society Children are only seen not heard Child in India is a victim of different types of abused like physical, emotional, sexual and commercial abuses. An abuse means, causing or permitting any harmful or offensive contact on a child’s body or any communication of transaction of any kind that humiliates shames or frightens the child. While a physical abuse indicates a physical injury, the emotional abuse is a kind of psychological maltreatment. The sexual abuse is the involvement of a child in sexual activity whether forced or consensual that occurs prior to the age of 18. Child labour, child prostitution etc. are forms of commercial abuses of the child.

The other important problem faced by children includes discrimination especially in the case of girl child. Infanticide, foetid, child marriage, physical, emotional educational neglect etc. The defect of juvenile justice system which leads to alienation of children from the mainstream life is also a human right violation. The existence of corporal punishment in school like canning, beating, kneel down etc leads to the development of anti-social character and inclination to violence among children. Though the judiciary and National Child right Commission had banned corporal punishment, it is common a practice in most of the schools. The street children in India become the most oppressed category among children. Also with them the disabled children and the refugee are also posing challenges before the society.
MODULE VI

HUMAN RIGHTS MOVEMENTS IN INDIA

Civil society movement movements have largely articulated and agitated for rights safeguarded by the constitution and its constant impingement by the state and its instrumentalities. The citizenry must be conscious and vigilant if human rights are to be ‘realized’ and the state is to be prevented from encroaching of fundamental rights.

Social movements are an effort to change institutions and practices. Social movements are any explicit or implicit persuasion by non-institutionalized groups seeking public gain by attempting to change some part of the system. They are usually for the purpose of furthering the rights of one of more groups within a system, either through reform or more radical changes.

Historical background

A number of social movements have marked in Indian History from the 1800’s onward. Struggles were generally in opposition to the government of that time. Though their struggles, they gained some reforms from the govt. For example, The British colonial govt. enacted some changes for the case of social equality after efforts were initiated by individuals like Raja Ram Mohan Roy, Iswar Chandra Vidya Sagarand, Dayanand Saraswathi. Generally these changes had positive impacts on groups that have historically been marginalised in India. Women, for example, were primary beneficiaries of new laws that ended the practice of sati and allowed widows to remarry. The movement for independence led by the Indian national congress, engaged in a larger struggle for democracy, which was inclusive of greater human rights and civil liberties. In that capacity, the INC contested several repressive laws contrary to civil rights such as the Arms Act 1878and the Press Sedition Act 1878. However the INC also supported some draconial laws during that time and was not a wholly democratising influence.

The Indian Civil Liberties Union

In 1934 The Indian Civil Liberties Union (IUCL) was established Its main activities were gathering information about violations of civil liberties, particularly regarding the condition of prisoners and people in detention, police brutality, proscriptions on literature and restrictions on the press. Along with ICLU, Bombay Civil Liberties Union, the Madras Civil Liberties Union and the Panjab Civil liberties Union further marked the birth of viable social movements for rights in India.

Post-Independence Period

The constitution of India guaranteed certain inalienable rights to the citizen’s of India. It was heavily influenced by the Universal Declaration of Human rights. Consequently it encapsulates and guarantees the fundamental principles of human rights.

After independence the voluntary initiatives were started against the oppressive rule of the govt. The policies of the govt. clearly widened the gap and led to the appropriation of privileges by the upper caste and the wealthy. The casteist, feudal and the communal characteristic of the Indian polity, coupled with a colonial bureaucracy stood against the spirit of freedom, rights and affirmative action enshrined in the constitution. The government’s commitment to civil liberties further challenged by internal instability. The left wing Naxalite movement of 1960’s was formed in response to the ongoing repression and abuse of the central government.
PEOPLE’S UNION FOR CIVIL LIBERTIES

People’s Union for Civil liberties is one of the most popular NGO, working in India, for the protection and promotion of human rights. The idea was to organize people on non-political and non-partisan, bases for the defence of civil liberties and human rights. The organization emerges out of the People’s Union for Civil liberties and the Democratic Rights (PUCLDR) founded by Jaya Prakash Narayan in 1976. PUCLDR was organized to protest against the emergency and the undemocratic practices of the Indira Gandhi regime. The organization questioned the violation of civil liberties during the imposition of national emergency. But the dynamic element of PUCLDR got subsided along with the dethroning of Indira Gandhi government. The organisation lost its momentum during the Janatha regime and the death of J.P. accelerated the process. The continued violation of civil liberties, irrespective of the nature of government compelled the members to re-strengthen the organisation. Thus the PUCLDR was divided and formed two organizations. One is PUCL and the other is PUDR.

The PUCL emerged as a membership organization and adopted its constitution on 23rd Nov, 1980. It was founded as an organization free from political ideologies. The constitution of the organization states that members of political partied will not have the right to hold any office if they join the organization. The first president and General Secretary of the organization were V.M. Tharkunde and Arun Shourie respectively.

PUCL has a three tier structure. At the grass-root level is the General body known as National Convention. Above that there is National Council and its Executive. The national PUCL establishes the state branches. The structure of the state branch follows the pattern at the national level.

MAJOR AREAS OF ACTIVITY

The important activities of the organisation include mobilizing public opinion in favour of a better climate for the protection of the civil liberties in the countries, conducting investigation into incident of violation of human rights, publishing the findings and filing petitions.

The organization does not accept money from funding agency in India and abroad. The expenses are met by the members themselves. The PUCL publishes a monthly journal, the ‘PUCL Bulletin’, and also it had instituted journalism award for best human right stories. It organizes a JP memorial lecture every year on 23rd march in relation to the issue of human rights.

It activity of PUCL in the initial stage was focused on black laws. It had actively campaigned against the NSA which was widely used against the trade union members of Madhya Pradesh. The organization had played a significant role in addressing the cause of the marginalised in society. It pressurized the supreme court in varies ways to liberalised the provision of locus standi thereby activated the use of PIL to protect the rights of the people. It had conducted investigations about the existence of child labour in Tamil Nadu and Assam. It also focused human right violation during communal riots. The organization published reports in issues like the Sikh massacre in Delhi riot 1984, Hasimpira and Meerut riots in 1987, Bombay riots etc. During 1988 the organization strongly acted against the de-humanising practice of sati. The role of PUCL in the Roop Kanwar sati case is important.
During 1995 it had focused on the human rights violations in Jammu and Kashmir and also in the fake encounters cases of the north east. It had fought in the court for the right to food and health of the vulnerable sections in India. The organizations use of right to information and the cooperation with the NHRC are also commendable.

Andra Pradesh civil Liberties Union and Association for the Protection of the democratic rights are other organisations working in the fields of protecting the human rights.

**ENVIRONMENTAL MOVEMENTS**

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

The important environmental movements in India were the Silent Valley Movement, the Chipko Movement, APPIKO movement, Anti-Tehri Dam movement, Narmada Bachavo Andolan, Mithani Village Movement, Jharkhanthi organization against radiation, National Fish Workers Forum, Beej Bachao Andolan etc. Among these some are ati-Dam movements.

**CHIPKO MOVEMENT**

The renowned Chipko movement, which began in 1971 in the hill of Uttarakhand (now in the state of Uttaranchal). The term Chipko means’ embrace’ or ‘hug’, reffering to the first action of the movement at Mandal village in the Alakananda vly.

The movement was sparked by the government’s decision to allot a plot of forest land to a sports goods company while denying the villagers to use the local timber to make the agricultural tools. Women, being the most affected party of the decision, though the environment degradation and the privatization of the basic resources played a prominent and decisive role. When attempt were made to divert the attention of the men, the women stepped in to sav4 their environment and their livelihoods. They started hugging trees in order to prevent them from being axed. This simple action transformed into an organized and peaceful movement under the leadership of Chandi Prasad Bhatt. The movement largely drew upon Gandhian principles of non-violent satyagraha. This was the first movement of its kind, not just in post independent India, but also across the world. It regarded as one of the landmarks in the history of environmental movement.

As the movement gained steam, the then Prime Minister Indira Gandhi, declared a ban on tree logging in the 5000-kilometre trans –Himalayan region. As the movement spreads and became more organised, it led to the prevention of logging in areas of Himachal Pradesh in north, Rajasthan in the west, Karnataka in the south, Bihar bihar in the east, The western Ghats, and the Vindhyas.

The most active participants of the movement included Sundar lal Bahuguma, Chandi Prasad Bhatt, Doom singh Negi Ghanasyam Raturi and Indus Tikeker. Sundarllal Bhahuguma, the prominent leader, coined the word ‘Ecology is permanent Economy’.
Infact, the Chipko Movement inspired Vandana Siva for the development of a new theory called as ‘Ecofeminism” Which especially explains the link between the women and the ecology

**APPIKO MOVEMENT**

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

**SILENT VALLEY MOVEMENT**

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

**NARMADA BACHAO ANDOLAN**

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

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

CHALLENGES TO HUMAN RIGHTS

TERRORISM

The word ‘terror’ comes from a Latin word meaning ‘to frighten’. Oxford English dictionary defines terrorism as “a policy intended to strike with terror those against whom it is adopted”. According to UN Security Council report terrorism is an act intended to cause death or serious bodily harms to civilians or non-combatants with the purpose of intimidating a population or compelling a government or an international organisation to do or abstain from doing a certain act. According to the US Army manuals, terrorism is the calculated use of violence or threat of violence to attain goals that are, religious or ideological in nature, through intimidation, coercion or instilling fear. A person who practices terrorism is a terrorist. Terrorism is not a new phenomenon and it had been used since the beginning of recorded history. The term “terrorism was originally used to describe the actions of the Jacobin Club during the’ Reign of Terror ‘in the French Revolution in January 1858, Felice Orsini, an Italian threw three bombs in an attempt to assassinate French emperor Napoleon III.

The term ‘terrorism’ and ‘terrorist’ carry strong negative connotations. These terms are often used as political labels to condemn violence or the threat of violence by certain actors as immoral, indiscriminate, and unjustified or to condemn an entire segment of population. Those labelled terrorist are rarely identify themselves as such and typically use other terms to specify their situation such as separatist, freedom fighter, liberator, revolutionary, militant, guerrilla, rebel or any similar word which comes nearer to the meaning in other languages or cultures. Jihadi, Mujahidin, and Fedayeen are similar Arabic words which have entered the English lexicon. It is a word with a negative connotation that is generally applied to one’s enemies and opponents. The connotations of the word can be summed up as ‘one man’s terrorist is another man’s freedom fighter’.

Terrorism symbolizes premeditated violent activity to attain political objectives. Terrorist groups often use unconventional means to attain their goals. The objectives of such means are not the direct physical oppression of the enemy, but to put psychological pressure on the enemy. Therefore the terrorist activities are directed towards a wider audience than the actual victim of such activities. The terrorist network cross cut the globe and receive financial and technical assistance from external sources.

Causes of terrorism

The causes for the emergence of terrorism are context specific. Yasin and Upadhyay identify the following reasons for the terrorism.

1. The existence of socio economic contradictions: The increased poverty, unemployment, epidemics, Lack of literacy, lack of development etc.
2. Alienation of cultural or ethnic group brought about by threats to life by frequent communal violence, historical humiliation, discrimination etc.
3. Fear to lose cultural identity due to the assimilation policies of the state
4. Governance which leads to uneven socio- economic development.
5. Social and political prejudices
6. Fundamentalist indoctrination.
7. Suppression of human of human rights
8. Capitalist exploitation, imperialist domination and defects of modernisation projects.
9. The world witnessing of mushroom growth of terrorist groups, organizations and parties in recent times. Some such organizations are Hezbollah, AL- Jihad, Al-Qaida, Lashkar-e-Thoiba, LTTE, Kurdistan workers party, Japanese Red Army, People War Groups, Palestine Liberation Front etc. These organisations differ in their ideology, programme, goals motivations, means etc.

Terrorism and its impact on human rights

The relationship between terrorism and human rights are highly complex. Through leads to severe human rights violation, most of the terrorist claim human rights as their base. This makes the relation more complex

Terrorist activities cause human rights violation in two ways. One it directly violates the rights to life, security development etc. Secondly it compels the state to abridge from its commitment to the protection of human rights. Terrorism leads to chaos in society there by compels the state to declare an emergency so that it can deal with such internal disturbances effectively. An emergency declaration always demands the curtailment of some of the basic rights of the individual. So terrorism leads to the violation of rights. Terrorism leads to deterioration of law and order, fight of capital subversion of democratic and constitutional process, threat to secular fabric etc. Infect all these in turn led to grave human right violations in the form of anarchy, underdevelopment, undemocratic and communal tendencies.

On the other hand human rights provide the base for terrorist movement. A number of terrorist movements justified their violence on the basis of human rights. The movement against colonialism, imperialism, apartheid, cultural and ethnic cleansing genocide etc. can be considered as human rights movements. Because they claim right to self-determination, right to life, right to non-discrimination etc. which are basic human rights. But it is not right to justify violence in the name of human rights.

Terrorism leads to deterioration of law and order, fight of capital, subversion of democratic and constitutional process, threat to secular fabric etc. In fact all these in turn lead to grave human right violations in the form of anarchy, underdevelopment, undemocratic and communal tendencies. The increased number of terrorist attacks compelled the sovereign states of the world to counter it effectively.

RELIGIOUS FUNDAMENTALISM

Fundamentalism is a religious movement or a view point characterised by a return to the fundamental principles by rigid adherence and often by intolerance of other views and opposition to secularism. The purpose of such a movement was to preserve unchanged presupposition and convictions of religion in the words of Harr religious fundamentalism ideologically focuses on the past, socially or alternative structures and culturally on identity. It is a kind of sense of restoration. It seeks to restoration of religion to its central role in public life. It is presumed on the belief that religious laws takes the precedence over all other laws Fundamentalism is intolerant, disintegrative, divisive and irrational. It always emphasizes on the outer forms of religion like rituals and customs.
fundamentalism rejects plurality and diversity. Fundamentalist ideology encourages corporate state which denies human rights and belief that individual is for the state.

CAUSES OF RELIGIOUS FUNDAMENTALISM

1. The existence of socio-economic contradictions like poverty, unemployment, illiteracy, inequality etc.
2. Political societies link with the religion
3. The degradation of political society and fallouts in organized people
4. The fragmented civil society

All most all religion has fundamentalist tendencies. Wahhabis, Salafism in Islam, Fundamentalism among Catholics and Protestants in Christianity and Hindutva in Hinduism are examples of fundamentalism.

FEATURES OF RELIGIOUS FUNDAMENTALISM

1. The fundamentalist believe that society needs to be rescued from secularism.
2. They reject enlighten norms particularly the ideas of individual rights and secularism
3. They consider religious views as inseparable from politics, law and culture
4. They rely on an idealized past.
5. Committed to activism and fighting for changed social political and legal order

RELIGIOUS FUNDAMENTALISM AND HUMAN RIGHTS

Though many argue that religion provides a base for human rights basically religion and human rights are diametrically opposite to each other. Religion is a social construction, from a Marxian point of view religion is an instrument in the hands of the dominant class in society which help them to maintain the dominance. That makes the point very clear religion works against the interest of the marginalised sections of the society.

The worst effected victims of religious fundamentalism are the vulnerable section in the society. Women are always an important target of fundamentalist movement. All major religious religions had traditionally defined different roles for men and women and entitled women submission and obedience to men. It disempowers the public authorities from protecting women rights. The feminists defined religious fundamentalism as radical patriarchies which ignores egalitarianism between sexes. The women are the victims of almost all evil rituals and customs of religion like the sati, devdasi, purdah, female circumcision etc. There is discrimination on women in many countries. For example women are not allowed to drive vehicles in Saudi Arabia and Iran. The voting right of the women are delegated to men in Kuwait. Some countries punish the women for violating the religious dress code. Iraq and Kurdistan allows men to kill their wife in case of proved adultery.

The other important vulnerable sections are also the victims of fundamentalism like Dalit’s, tribes, children and minorities of religion, language sex etc. The practice of untouchability, differential punishment for same crime, human sacrifices are example of human right violation. The extreme form of fundamentalism like communalism and terrorism leads to direct infringement of rights including the right to life.
POLICE ATROCITIES AGAINST WOMEN, CHILDREN AND MARGINALISED SECTIONS

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

Effective and just policing is a necessary precondition for the protection and promotion of human rights. However the police in in India fail in much respect to protect the human rights. Many cases have been reported by the media which shows the police atrocities. A number of international and national human right NGO’s had criticized the Indian Police system for its instability towards human rights and its indulgence in massive human right violations. Third degree methods are really an extension of police atrocities. The major complaints against police are alleged unprofessional conduct and assault. Police personnel occasionally were accused of beating suspects to obtain confessions. In many cases the only evidence against the accused was a confession. The media has played a role in exposing the excesses by the police but has failed to improve the forces.

The police in India are the offspring of Indian imperial policy of the colonial era. Article 246 of the constitution of India states the police as a state subject. That means the state government frames the rules and regulations that govern the police force. Each state and union territory of India has its own separate police force.

The Police in India is notorious for its insensibiity towards human rihgts . They show discrimination and injustice to the vulnerable group like women, children, dalits tribes, minorities etc. for protecting the interest of the dominant class. The major forms of human right violation by the police include arbitrary arrest and detention , custodial death, custodial rape, discrimination, false testimony, false evidence, false encounter, torture, arbitrary interference in the privacy, failure in crime registration and investigation, disappearance denial of fair public trial etc.

ATROCITIES AGAINST WOMEN

Women are one of the main victims of police atrocities. The police shows indifferent attitude towards women issues. They treat issues of dowry deaths, and domestic violence as private affairs and therefore encourage compromises even if the women are brutally tortured. Another important human right issue faced by women in relation to police is custodial or prison rape. As per NCRB report 2002, the court tried 132 police men for custodial rape, but only four were convicted. The Mathura case of 1980, in which a lower caste minor girl was detained and raped by police men was a best example to show the gender bias of Indian police. Such incidents are a part of daily media report even today.

The questioning of the victims of rape also shows the insensibility of police. They treat such victims as impure, therefore use abusive language and even assault them. Women are also victims of custodial death.

In India, Bihar, Uttar Pradesh, Madhya Pradesh are the worst examples of police atrocities. Poor and backward women are the victims. Amnesty International has said in its latest report authorities in India are failing to prevent violence against women and
sometimes take an active part in it. These women often suffer a double discrimination on the basis of caste as well as gender.

Women face violence during infancy, and growing years like infanticide, neglect of nutrition needs, education and health care. As adults they face domestic violence, sexual abuse at workplace etc. In all such violence police intervention is not satisfactory.

The United Nations defines violence against women as “any act of gender based violence that results in or is likely to result in, physical, sexual, moral, psychological harm or suffering to women, including threat of such acts, coercion or arbitrary deprivation of liberty whether occurring in public or private life”. In spite of various efforts at regional, national and international level violence against women take place in every corner of the globe.

POLICE ATROCITIES AGAINST CHILDREN

The convention on the right of the children is the first legally binding international instrument to incorporate the full range of human rights – civil, cultural, economic, political and social rights. In 1989 world leaders decided that children needed a special convention, because people under 18 years old often need special care and protection that adults do not. The convention sets out these rights in 54 articles and two optional protocols. It spells out the basic human rights that children everywhere have; right to survival, to develop to the fullest, to protection from harmful influences, abuse and exploitation and to participate fully in family and cultural life. The four core principles of the convention are non-discrimination, devotion to the best interest of the child, the right to life, survival and development and respect for the views of the child. The convention protects children’s rights by setting standards in health care, education and legal, civil and social services.

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

Notwithstanding the massages children are still subjected to various violence and exploitations there are reports about continued trafficking, child labour and violence against children even in their home. Some of them are subject to sexual harassment and police atrocities. In India National Human Rights Commission, have taken initiative in imparting training to state police forces, pare-military forces and armed forces on human rights.

It is a common knowledge in India that third degree methods are used to extract confessions or for purpose of intimidation. The common torture methods employed by the police to extract confession are:

1. Rolling of long wood on the legs to torture the muscles
2. Spraying of chilli powder in the eyes
3. Stretching the legs open to the unbearable extent
4. Application of electric current on their bodies
5. Hanging up wide down from a roof
6. Keeping the detainee without food and water
7. Pulling of nails etc.
Police should ensure that, policemen do not directly or indirectly become violators of human rights. Only then they can act as protectors of human rights.

**POLICE ATROCITIES AGAINST MARGINALISED SECTIONS**

Marginalised sections are those sections of the society, who are excluded from the mainstream activities of the society. Minority communities, Dalit’s and Adivases and SC/ST’s are the other section who faces police brutalities. In the words of Asger Ali Engineer, every communal riot has its own story of police atrocities towards minorities. The partial roll of the police was proved in the Bhivandi riot in 1984, Meerut riot 1987, Bhagalpur riot 1989, the Babri Masjid issue etc. The recent example is the Gujarat Carnage of 2002 where the police became onlookers while there was riot.

The police are expected to be the protectors of the basic rights of the citizens. They are required to show special consideration and sensibility while dealing with the weaker sections of the society particularly the marginalized community. But in many times they are acting against this principle. National Human Rights Commission got a lot of complaints regarding to the atrocities of police towards the marginalised sections. Majority of these complaints are related to failure to take lawful action, abuse of power, false implications and illegal detention of accused, suspects and the relatives. Many of the complaints of misbehaviour or atrocities of police are received from the poor, the Scheduled Caste, Scheduled Tribes and other weaker sections of the society.

Caste decimation was also there. People or castes that were performing the task of eliminating polluting elements from the market and other places were considered untouchables. Structurally the lower castes were economically dependent on the higher castes for existence. A major portion of the lower castes and Dalit’s are still depended on others for their livelihood.

Minority community members are the another major section which faces the police brutality. In the words of Asgar Ali engineer, every communal riot has its own story of police. The police- minority relationship in India are far from the normal condition and they are antigenic in different situations. The partial role of police was proved in the Bhivandi riot of 1984, meeret riot of 1987, the Babri masjid case and even more in the Gujarat carnage of 2002. During Gujarat incident the police became only an onlooker, when places were set on fire. They became inactive when the majority destroying the place of worship of the minorities. Police ignored the call for help. Not only the religious minority but also linguistic and sexual minorities are also the victims of police brutality.

Democratic country like India needs democratic policing. Democratic policing is based on the idea of the police as protectors of the rights of citizens and the rule of law while ensuring the safety and security of all equally.

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

Causes of police atrocities

The followings are the main causes of police atrocities:

1. Police brutality is the colonial legacy. The police in India are still governed by the police act of 1861 made by the British govt. The organizational structure, bureaucratic and political influence, managerial philosophy, value systems are the same as it was in the colonial era.
2. Lack of ethical and professional standard
3. Improper training
4. Politicisation of police.
5. Psychological pressures.
6. Lack of sufficient vehicles and instruments
7. Criminal elements
8. Over burden and staff shortage.
9. The introduction of the deconian laws like MISA, TADA, POTA etc.

The Indian police system has to be reformed. New methods of training should be given to them. The human right awareness, first of all, should be given to the police force. More politicisation of police force will be a danger to democracy. Police should strive and work hard to capture the confidence of the people. At the same time govt. should help them to keep their morale. They should be given their promotion in proper time and should not be transferred with political bias. A good police force would strengthen the democracy.