CHAPTER VI
HUMAN RIGHTS – A FUNDAMENTAL APPROACH TO CONSTITUTIONAL RIGHTS IN THE PUBLIC INTEREST.

13.1. a) As we know Public interest means those interests which concern the public at large. Matter of public interest "does not mean that which is interesting as gratifying curiosity or love of information or amusement but that in which a class of community have a pecuniary interest or some interest by which their legal rights or liabilities are affected".

(Per Campbell, C.J.R. vs Bedfordshire 4E and B.541, 42.)

b) People all over the world are now pointing to matters affronting to human rights. The Human Rights Group, Amnesty International got disturbed by the failure to condemn human rights abuses in Iraq for violating rights to freedom, security, fair judgment and the freedom of thought, conscience and religion. The massive extra judiciary executions, disappearances and arbitrary detention together with deaths of 8000 Kurds by chemical weapons in Iraq called for urgent relief against serious violations of human rights. Ayatollah Khomeni's call to Kill Salman Rushdie for writing 'The Satanic Verses' is clearly an affront to human rights enshrined in the

164. 4E and B.541, 42
Per Campbell, C.J.R vs Bedfordshire.
Charter. Many Countries in the West, including Britain have reacted sharply to the threat. Some of them have even recalled their Ambassadors from Iran. A writer has an absolute right to expose social and religious shams and taboos. His supreme loyalty is to himself, not to the religion he has to adopt by birth. Rushdie tried to humanize the Prophet Muhammad. He saw the growth of Islam as an historical phenomenon. If his expouse offends the sensitivities of conservative Muslim it is not his fault. It is perhaps for the first time in the history of the world that a country has vowed to send a death Squad to another sovereign country with an astronomical price on a writer's head. Necessarily, it has voiced the sentiments of all right thinking people about safeguarding individual freedom against the national paranoia aroused by a country under narrow minded Mullahs.

13.2. In India, we have already witnessed worst prison treatment in a number of public interest litigations. Here we cite one instance in which for sub-standard food in jail, Mr. Justice Dilip Kumar Basu and some Advocates of Calcutta High Court visited Alipore Central Jail on 9.3.1989 and spent over three hours inspecting different wards and listening to the statements of misery of the
convicts and undertrial prisoners. It was the statement about the sub-standard food served to them and lack of adequate medical care by the jail authorities. Mr. Justice Basu decided to inspect the jail following receipt of a letter of complaint written to the Chief Justice of Calcutta High Court about the pitiable condition of convicts in West Bengal Jails and sub-jails by Pratul Kumar Sinha, a lawyer of Nabadwip Court. The Chief Justice assigned Mr. Justice Basu to look into the matter and to treat the letter of complaint as Writ application. Mr. Justice Basu passed an order declaring the entire proceedings as a public interest litigation.


* 'The Statesman' Feb 23, 1990
women's rights, increase in dowry deaths, significant exploitation of child labour etc. which are the major facets of such reports. In America also Mr. Chief Justice Taney could have referred Dred Scott to Slavery from Minnesota on the ground of no standing, but he went on to declare the Missouri Compromise unconstitutional and did away with Squatter Sovereignty. Fundamental rights of the Constitution of India have concurrence and strong bearing with the Universal Declaration of Human Rights of the U.S. General Assembly on December 10, 1948 as the same will appear from the annexures placed hereinafter.

13.4. It is for the first time the U.S. Administration has listed 'positive developments' on the human rights front in India particularly in Punjab, reports UNI.

The State Department's "country reports on human rights practices for 1989", presented to the U.S. Congress recently and released to the Press recorded that "stringent law and order policies" were pursued particularly in Punjab and Kashmir and in the north-east to curb political and communal violence last year.

On the other hand, local political leaders in various parts of India were often involved openly in
communal or caste-related violence that resulted in killings, it added.

The chapter on India in the 1641 page report and speak of "Magnificent human rights abuses" but made it clear that many of them were generated by "severe social tensions" like casteism, ethnic violence and sectarian politics thus absolving the State of direct responsibility in their occurrence.

The U.S. report said the severity of human rights problems varied considerably from State to State.

Problem areas included extra judicial "encounter" killings by the police, particularly in Punjab and Andhra Pradesh, incommunicado detention for prolonged periods without charge, torture and deaths of suspects in police custody, lack of prosecution of police accused of abusing and raping detainees. Uneven implementation of laws affecting women's rights, increase in 'dowry deaths', significant exploitation of child labour, separatist terrorism in Punjab and Kashmir and unchecked intercaste and communal violence, notably in Bihar.

13.5 Human rights also encompass the rights of socially and educationally backward classes to be at level in terms of equality with the rest of the other classes.
In India, its Constitution provides appointment of a commission to investigate the conditions of backward classes under Article 340 and to report thereon. But at the time of implementation of such report in case of Mandal Commission upon reservation of employment for such classes found sporadic spurt of violence and loss of many young lives. The reasons of such violence and unrest were manifold and it was pointed out that such implementation was politically motivated and that it would lead to blatant discrimination in the existing economic conditions of the country where every applicant for employment was economically hard pressed and frustrated for want of employments. So, implementation of human right should depend on the true perspective of the economic and social condition of the country where it relates. With reference to India, it was observed that there was difference of public opinion and there were number of cases on the determination of this issue. It was thus observed that ---

a) whether the discrimination by recommending reservations in the matter of employment was reasonable for the purpose it aims to achieve according to constitutional directives and

b) whether the President of India may be approached to refer the whole questions of Mandal's recommendations
to the Supreme Court for its opinion upon it under Article 143 of the constitution as the recommendations, if implemented, are of vital importance to the policy of the nation.

13.6. In the above connection the following decisions of the Supreme Court of India may be referred to adjudge the whole issue in its true perspective:-

a) In M.R. Balaji Vs state of Mysore it was held that if the classification of backward classes of citizens was based solely on the caste of the citizens it may not and may perhaps contain the vice of perpetuating the castes themselves.

b) In K.S. Jaysree Vs caste of Kerala, it laid stress on balanced approach based on occupations, place of habitation and income and it considered both caste and poverty in determining backwardness.

c) The court held in AIR 1979 All 135 that an economic content is a major ingredient of social backwardness and in such cases the investigation has to be done by the Govt.

d) It was held that "mere inadequacy of a
representation of a caste or class in services is however not sufficient to attract Article 16(4) of the constitution unless that class is socially and economically backward.

e) It was also held in [168] that "what is true in regard to Article 15(4) is equally true in regard to Article 16(4) of the constitution and while making adequate reservation under Article 16(4) care should be taken not to provide for unreasonable, excessive or extravagant reservation for that could create confusion.

13.7 * Annexed below in the appendix E, F and G are the chart of universal declaration of Human Rights and a comparative table with the Articles of the constitution of India and a declaration by the Govt. of India respectively for assessing a whole situation in relation to India. In these deliberations it will appear that there is a strong recognition of human dignity, freedom of speech and belief and freedom from fear and want, the right to equality before the law and the equal protection of laws, protection against discrimination, equality of opportunity, etc. which are protected in the Fundamental Rights under the Indian Constitution. The Government of India also acceded to the

168. AIR 1964 SC 179 - T. Doradnagar v. Union of India
International covenant on Economic, Social and cultural Rights including Civil and Political rights as those Rights were in conformity with the Article 16(4), 19, and 22 of the Constitution of India. So, what are provided in the Fundamental Rights of the Constitution of India are very similar to those provided in Human Rights of the United Nations.

In the Annual Report of the Amnesty International for 1990 cases of abuses of human rights in 141 countries came to question the dignity of the people to live with rights.

Unaccounted murder, ethnic violations, torture on prisoners, gross discrimination among whites and non-whites, withdrawal of privileges and basic rights to disadvantaged class are still going unabated despite all global efforts to extinguish and/or to minimise violation of human rights. Most of the countries suffer from dual standards by violation of the rights in their home countries while propagating the rights outside. Human violations of such rights shook the world through execution of hundreds of people in Iran in the Gulf war, and killing of people after unfair trials in China. Although, seven countries abolished the death penalty for all crimes. In the USA,
which ranks next to China and Iran in the use of death penalty, 23 people were executed and at least 2300 others lived under the shadow of the gallows. On the other side, a fearful picture has come up on the violation of human rights in Burma. The Lawyers Committee for Human Rights of New York comprising noted jurists accused the Burmese military junta of violating the fundamental principles of the rule ignoring practically all international standards with regard to trial proceeding denying its citizens their basic rights to justice in the name of the State Law and Order Restoration Council (SLORC). The military Tribunals used to hand down guilty verdict with lightning speed to thousands of politicians, pro-democracy student activists and others peacefully exercising their basic rights to freedom of expression, assembly and association. It points out that thousands remain detained for long periods under poor conditions, where they suffer from torture and other forms of maltreatment at the hands of the military. *

* Appendix 'H' - News paper cuttings
The Statesman of 15.10.91.
Amnesty International's latest report on India revealed that torture, rape and custody deaths have become routine in all the 25 states. Most victims of custodial deaths were poor and illiterate belonging to scheduled castes and tribes. Often deaths occurred after people had been detained without the police acknowledging their arrest or producing them before a Magistrate within 24 hours of arrests. Amnesty International has documented 20 cases of custodial death in Tamil Nadu since 1985 in which torture was said to have been the cause of death but no police personnel had been brought to book so far. The report of Amnesty International cited cases of torture by police personnel in respect of death of Shekhar (a 25 years old law student) and Kandan (a 28 years old farm worker) of South Arcot district on Sept 2, 1989 as revealed by the People's Right Protection Movement. The plight of Kalpana Sumathi (a 26 years old teacher) in Dharampuri District, Madras in July, 1988 for which she got compensation of Rs. 20,000 by an order of the Supreme Court and that being too inadequate, Smt. Kalpana filed a petition in public interest litigation for further compensation from Tamil Nadu Govt. and expeditious trial of 4 police personnel by whom Smt. Kalpana was raped.
and sustained injuries—Wide Report in The Statesman, 27.3.92.

13.9. Over the recent genocide of Serbs, the Yugoslav Government has called on the UN and other international organisations to establish the real truth about the genocide committed against Serbs in the Secessionist Yugoslav Republic of Croatia. The policy of genocide against Serbs in Croatia flagrantly tramples fundamental human rights and freedoms.

13.10. There has been synthesis of Indian Constitutional rights with those in the Universal Declaration of Human Rights and in the two International Covenants. The Supreme Court rulings in India in the field of prison justice, right to be heard by a lawyer, application of natural justice, immunity from civil imprisonment for civil debts, death penalty, worker's rights and equal status of women have brought their levels to the International approach in fulfilling human rights. Thus, it has brought the purpose of public interest litigations concerning the aforesaid matters to be more meaningful for the amelioration of the suffering humanity. The
Articles 38 and 39 of the Constitution of India bear the main Socio-economic contents of human rights. In Parts III and IV of the Constitution of India together with amendments to date assure all forms of human rights and make no distinction between political, civil, economic and cultural rights. Even Pope John XXIII in his Encyclical Pacem in Terris said that Man has the right to life. He has the right to bodily integrity and to the means necessary for the proper development of life, particularly food, clothing, shelter, medical care, rest and finally, the necessary social services. In consequence, he has the right to be looked after in the event of ill health, disability stemming from his work, widowhood, old age, enforced unemployment or whenever through no fault of his own he is deprived of the means of livelihood. The International Human Rights Conference in Tehran supported the view that the fulfilment of economic, social and cultural rights gives the base to the full realisation of civil and political rights since human rights and Fundamental freedoms are indivisible. *Public interest litigations towards asserting those rights are the means in attaining constitutional objectives failing other efforts.