CHAPTER II

EVOLUTION OF HUMAN RIGHTS IN INDIA

It may be true that it is the strong desire of the humanity to achieve world peace, disarmament and protection and promotion of human rights, which culminated in the adoption of U.N. Charter, Universal Declaration of Human Rights and other instruments that have a bearing on human rights.

Though there are references to rights in the ancient Indian literature like ‘Rigveda’, there is no trace of any serious movement for the consolidation of human rights in the post-vedic period. History of human rights movements in India can be traced to the advent of British including freedom movement. The British Indian Rulers discriminated against Indians in all matters and the Indian people had a feeling that their sacred and inalienable human rights and vital interests had been ignored and denied by the British Rulers.

The concrete demand for the attainment of human rights came into existence by the formation of Indian National Congress in 1885\(^1\) and the need for protection of fundamental right appeared in the Constitution of India Bill 1895, prepared by the Indian National Congress. It envisaged a constitution guaranteeing to every citizen basic human rights such as freedom of speech, inviolability of one’s own home, right to equality before law, imprisonment only by competent authority, free education etc. Though the demand was not

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meted out by the British Government, it signified the beginning of the demand for their rights by the Indian people. The Government of India Act 1915, in pursuance of the demands for fundamental rights, guaranteed equality of opportunity in the public services regardless of race or religion. As the people of India were not satisfied with these rights, a series of resolutions adopted by the National Congress between 1917 and 1919 repeated the demand for civil rights and equality of status with the English.\(^2\) The Indian National Congress demanded that the rights and liberties enjoyed by the British people should also be made available to Indians.\(^3\) The rights claimed include equality before law, protection in respect of liberty, life and property, freedom of speech and the press and the right of association. The Constitution of the Irish Free State in 1921 influenced the incorporation of fundamental rights that resulted in the drafting of the Common Wealth of India Bill 1925. The Common Wealth of India Bill contains a declaration of rights identical with the relevant provisions of the Irish constitution. The Rights claimed include freedom of liberty of the person, security of his dwelling, property, freedom of expression and opinion, right to assembly, association, free elementary education, use of roads and public places, courts of justice, equality before law irrespective of any discrimination on the ground of nationality and sex. After two years the Simon Commission was appointed by the British Government in 1927 to draft a “swaraj” constitution incorporating a declaration of rights. A committee was

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constituted in 1928 under the Chairmanship of Sri. Motilal Nehru. He was a strong supporter of the inclusion of fundamental rights in the Constitution. The Nehru Committee insisted that all those rights that had been denied to Indians should be granted to them. It also emphasized the need to have a future constitution for India. The committee specifically mentioned the importance of equality of men and women with regard to rights and freedom of religion. The Nehru Committee report recommended that fundamental right should be given a place in the constitution.

The main features of the Nehru Committee report was personal liberty and inviolability of dwelling house and property, freedom of religion, freedom of expression and assembly, right to education, equality before law and the right of every citizen to writ of 'habeas corpus', equality of rights to men and women as citizen etc. The Nehru Committee also insisted for the incorporation of a provision in the constitution to the effect that the rights guaranteed shall not at any instance be permissible to be withdrawn by the government. The proposal of the Nehru Committee report was however, rejected by the Simon Commission.

The Indian National Congress in 1931 passed a resolution reiterating the need to have a future constitution guaranteeing fundamental rights to the people of India. At the Round Table Conference also, immediately before the
passing of the Government of India Act 1935, the Indian leaders demanded for the inclusion of Fundamental Rights in the Constitution of India.\(^6\)

During 1933 and 1934, the Government Parliamentary Committee expressed the opinion that inclusion of a declaration of rights in the constitutional instrument is the best method for ensuring promotion of human rights. Although there was strong opposition against this within the Joint Select Committee of the British Parliament, some of the rights were incorporated in the Government of India Act, 1935. Such rights included prohibition of discrimination on the ground of sex,\(^7\) religion, place of birth or colour.\(^8\) Protection of certain rights and privileges of the persons was also envisaged by this Act.\(^9\)

The Next important document in the evolution of human rights in India was the Sapru Committee Report published at the end of 1945. In this report also there was a strong demand for equality in the matter of civil and political life, equality of liberty, freedom of religion, worship etc.\(^10\) The Sapru Committee Report envisaged the distinction between justiciable fundamental rights and non-justiciable directive principles.

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\(^7\) *The Government of India Act, 1935* Section 275.

\(^8\) *id. at Section 298.

\(^9\) *id. at Section 300.

\(^10\) Tej Bahadur Sapru et al., *Constitutional Proposals of the Sapru Committee, The Sapru Committee Report* p.260.
In 1946, the Cabinet Mission Plan envisaged a Constitutional Assembly for framing the Constitution of India and recognised the need for a written guarantee of fundamental rights. None of the members opposed the idea of incorporation of fundamental rights in the Constitution. The Cabinet Mission also recommended for the appointment of an Advisory Committee. The function of the Advisory Committee is to report to the Constitutional Assembly about fundamental rights, the protection of minorities etc. Several sub-committees were also constituted. One of the functions of the sub-committee was to study about fundamental rights. Dr. Ambedkar also pointed out the need for incorporation of fundamental rights in the Constitution and proposed the inclusion of machinery for the redressal of grievances.

The sub-committee also pointed out the need for inclusion of justiciable and non-justiciable fundamental rights. A distinction was made between a justiciable Part III, fundamental rights and non-justiciable Part IV, Directive Principles of State Policy. The report of the Draft Committee and the report of the Minority Committee were considered by the Advisory Committee and submitted an interim report to the President of the Constituent Assembly. The draft Constitution was taken up for consideration on 30th October 1947.\textsuperscript{11} The Draft Committee decided that the Directive Principles of State Policy should be included in Part IV and fundamental rights in Part III. The Government shall not make any law that restricts or abridges the rights guaranteed under Part III of the Constitution.

\textsuperscript{11} Constituent Assembly Debates, Vol.IX, p.104.
Constitution of India incorporates most of the human rights enumerated in the international documents. It was perhaps due to the fact that Indian Constitution was drafted during the period when discussions and deliberations on the formulation of Universal Declaration of Human Rights were in progress. The Universal Declaration of Human Rights was the culmination of the efforts of many movements that sprout in the wake of violations of human rights that took place during the Second World War. The Declaration though not legally binding operated as a common standard of achievement of all people at all times for the recognition, protection and promotion of human rights. The Indians looked at the international legal norms for guidance in formulating the rights and obligations in the constitutional documents. So it is no wonder if one hears the echo of the Universal Declaration in Part III and Part IV of the Indian Constitution.

Later, the rights and aspirations reflected in the Universal Declaration of Human Rights came to be incorporated in the International Covenant on Civil and Political Rights and the International Covenant on Social, Economic and Cultural Rights. Generally speaking one finds the provisions of the International Covenant on Civil and Political Rights, incorporated in Part III and International Covenant on Social, Economic and Cultural Rights, 1966 incorporated in Part IV. International Covenant on Civil and Political Rights has been given much importance by the State and the authorities in charge of implementation. The Covenant on Social Economic and Cultural Rights remain
optional for the State. This attitude is somewhat reflected in the approach towards the Constitution.

Human Rights are inherent in a human person even before the existence of the State. When man agreed to live under a government, he has to surrender some of his rights in return of certain privileges from the society. In fact it cannot be said that in this exchange man surrenders his rights. what happens in this transaction is that the State undertakes not to infract his rights to the extent possible.

The Importance of the Universal Declaration of Human Rights:

The UDHR is the fundamental source of inspiration for national and international efforts to promote and protect human rights and fundamental freedoms. It has set the direction for all subsequent work in the field of human rights, and has provided the basic philosophy for many legally binding international instruments designed to protect the rights and freedoms, which it proclaims. It is a historic document articulating a common definition of human dignity and values.

On coming into force of the Covenant, the State Parties accepted a legal as well as moral obligation to promote and protect human rights and fundamental freedoms as declared in the Universal Declaration of Human Rights. The very existence of the Covenants and the fact that they contain the
measures for implementation required to ensure the realisation of the rights and freedoms set out in the Declaration, gives greater strength to the Declaration.

These basic, natural human rights when came to be recognised and guaranteed by a written constitution are termed as fundamental rights. These rights are negative obligations on the part of the State. The human rights set forth in Part III of the Constitution can be categorized into groups: (1) The right to equality¹² (2) Right to freedom¹³ (3) Right against exploitation¹⁴ (4) Right to freedom of religion¹⁵ (5) Cultural and educational right¹⁶ and (6) Right to constitutional remedies.¹⁷

The right to equality includes prohibition of discrimination on the ground of religion, race, caste, sex or place of birth, equality of opportunity in matters relating to employment or appointment to office under the State.¹⁸ The State shall not interfere with these rights guaranteed under Part III of the Constitution.

The rights incorporated in Part IV of the Constitution though as important as that in Part III are not to be justiciable as the State may not have the economic strength to enforce them promptly. The idea is to give the State enough time to muster the strength. There are human rights, which the society

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¹² Constitution of India. Article 14.
¹³ id. at Article 19.
¹⁴ id. at Article 23.
¹⁵ id. at Article 25.
¹⁶ id. at Articles 29 & 30.
¹⁷ id at Article 32.
¹⁸ id. at Article 15.
¹⁹ id. at Article 16.
aims to achieve for its citizens and though not enforceable through courts, can be regarded as fundamental in the governance of the country. In other words, the State should strive to facilitate the enjoyment of these rights in course of time. The citizens cannot compel the State to afford the facility even with the help of the courts. If the rights guaranteed under Part III are violated, the aggrieved person can approach the Supreme Court under Article 32 and the High Courts under Article 226 of the Constitution. The Universal Declaration of Human Rights, 1948 requires the Member States to take steps to incorporate the provisions of the Declaration into their national constitutions. Its preamble recognised the inherent dignity of the individual and the equal and inalienable rights of the members of the human family. One of the objectives mentioned in the preamble to the Constitution of India is to secure to all its citizens social, economic and political justice and equality of status and opportunity and liberty of thought, expression, belief, faith and worship. The preamble of the Indian Constitution also recognises the dignity of the individual and unity of the nation and it is considered as the basic root of all rights and justice to all, and human rights may said to be the offspring of the preamble.\(^{20}\)

On a careful comparison of the provisions of the Universal Declaration of Human Rights and the Indian Constitution, it can be seen that many provisions that are stated in the Universal Declaration of Human Rights finds position in the Constitution of India. Article 3 of the Universal Declaration of Human Rights, 1948 provides that everyone has a right to life, liberty and

security of person. This is echoed in Article 21 of the Indian Constitution, which provides that “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

In developing the field of human rights, Indian judiciary has played a very important role and from several decided cases it has evolved new human rights jurisprudence. The Supreme Court of India in a number of decisions enforced many of the rights enumerated in the Universal Declaration of Human Rights.

The Supreme Court of India in the case of Francis Coralie Mullin v. Union Territory of Delhi21 held that the right to protection against torture or cruel or inhuman or degrading treatment is implicit in Article 21. The court in this case reasoned that right to life includes right to live with human dignity and all that goes along with it namely the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing with fellow human beings.

Article 25 of the Universal Declaration of Human Rights deals with the right to a standard of living, adequate for 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, widowhood, old age, other lack of livelihood in the circumstances beyond

control. Article 21 of the Indian Constitution was given interpretation so as to bring all the ramifications of Article 25 of the UDHR under its umbrella. This is reflected in cases of Francis Corelie and Olga Tellis. In Olga Tellis and others v. Bombay Municipal Corporation, the Supreme Court has held, right to life includes the “right to livelihood because no person can live without the means of living”.

The court also observed:

“If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live and yet such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life.”

22 ibid.
24 id. at pp.193-194.
Right to livelihood is essential to lead a dignified life and that was also included in Article 21. Article 12 of the Universal Declaration of Human Rights declares that no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence nor attacks upon his honor and reputation. Everyone has the right to the protection of law against such interference or attacks. This right is now regarded as a fundamental right by the Supreme Court in *Kharak Singh v. State of U.P. and others*\(^{25}\) and in *Rajagopal v. State of Tamil Nadu*.\(^{26}\) The right of the citizen to safeguard his privacy, marriage, procreation, motherhood, child bearing etc. are also recognised.

Article 8 of the Universal Declaration of Human Rights, 1948 lays down that everyone has the right to an effective remedy by competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law. Provision in tune with this can be seen in the Indian Constitution also. Under Article 32 the Supreme Court shall have the power to issue directions or orders or writs, including writs in the nature of 'habeas corpus', 'mandamus', 'prohibition', 'quo warranto' and 'certiorari', which ever may be appropriate for the enforcement of the rights conferred under Part III. This right cannot be suspended except as otherwise provided by the constitutions itself. In addition to this, the jurisdiction of the High Courts under Article 226 and 227 also helps enforcement of the rights.
The International Covenant on Civil and Political Rights, 1966 indicates that an enforceable right to compensation is conceptually integral to human rights. Article 9(5) of the Covenant lays down thus:

“Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.”

Section 357 Cr.P.C enables the sentencing court to award imprisonment to the victim of the crime. The provision does not make it mandatory for the State to pay compensation and has not laid down any uniform or cardinal principles. It is of course necessary to construct a suitable legislation under which the State should pay compensation to the victims of crime or to the heirs of the victim.

The question as to whether the court has jurisdiction under Article 32 to award compensation consequent upon deprivation of fundamental rights came before the Supreme Court in a case where a person was detained in jail for over a period of 14 years after his acquittal. The Court granted monetary relief to the victim for deprivation of his fundamental rights in a petition filed under Article 32 of the Constitution notwithstanding the rights available under the civil law to the aggrieved party where the court found that grant of such relief was warranted.

In another case a member of the Legislative Assembly of Jammu and Kashmir was prevented from attending the Legislative Assembly, thereby violated his personal liberty to attend the session of the assembly. The court observed:

"Police officers who are the custodians of law and order should have the greatest respect for the personal liberty of citizens and should not flout the laws by stooping to such bizarre acts of lawlessness. Custodians of law and order should not become depredators of civil liberties. Their duty is to protect and not to abduct."

The court further reasoned:

"When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation."

29 id. at p.499.
30 ibid.
The court directed the State of Jammu and Kashmir to pay to Shri. Bhim Singh a sum of Rs.50,000/- within two months.

Compensation was also awarded by the court to the mother of the deceased who died as a result of beating and assault by the police. The court considered the question of custodial death and the power of the court to award compensation in public law. In this case the court referred to Article 9(5) of the International Covenant on Civil and Political Rights 1966. The court held that the defence of sovereign immunity is not applicable to the guarantee of fundamental rights and if the fundamental freedoms and human rights of persons are violated by the State or its servant in the purported exercise of their power, the aggrieved person can resort to remedy under public law i.e. under the Constitution by recourse to Article 32 and Article 226.

Very wide powers are given to the Supreme Court to ensure complete justice and enforcement of fundamental rights. In appropriate cases where the only mode of redress available is to grant compensation, it can award monetary compensation. Relying on its earlier decisions and the International Covenant on Civil and Political Rights, the court directed the State of Orissa to pay a sum of Rs.150000/- as compensation and a further sum of Rs.10000/- as costs. The court also observed;

"This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and

jurisdiction but also an obligation to grant relief in exercise its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings.\textsuperscript{32}

The Supreme Court also upheld the award of compensation for violation of fundamental rights under Article 21 of an under-trial prisoner who was handcuffed and paraded through the streets in procession by the police during investigation.\textsuperscript{33} In another case the petitioners belonging to the Sikh community suffered damage and loss of property leading to deprivation of their right to livelihood for want of adequate protection and security arrangements. The High Court of Jammu and Kashmir also directed the State Government to pay compensation to the petitioners for loss suffered by them as a result of communal riots as it is the responsibility of the State to maintain law and order and the State had failed to provide protection to its citizens.\textsuperscript{34}

The Supreme Court approved the order of the Calcutta High Court awarding compensation of Rs.10 lakhs in a case of gang rape of a Bangladeshi

\textsuperscript{32} id. at p. 1973.
woman by some railway employees.\textsuperscript{35} The Court further held that even a foreign national also can be granted relief under public law for violation of fundamental rights on the ground of domestic jurisprudence based on constitutional provisions and human rights jurisprudence. The judgement reinforces the judicially recognised principle that monetary compensation can be granted for violation of fundamental rights. The Supreme Court reinforced the relevance of international documents on human rights in its interpretation of constitutional provisions in \textit{Vishakha v. State of Rajasthan}.\textsuperscript{36} As regard the interrelationship of the Constitution and the international human rights norms the court observed:

"In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all work places, the contents of international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Article 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. Any international convention not inconsistent with fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the

\textsuperscript{35} \textit{Chairman, Railway Board v. Chandrima Das} A.I.R. 2000 S.C. 988.
\textsuperscript{36} A.L.R 1997 S.C.3011.
constitutional guarantee. This is implicit from Article 51(c) and the enabling power of the parliament to enact laws for implementing the International Conventions and norms by virtue of Article 253 read with entry 14 of the Union List in the Seventh Schedule of the Constitution. Article 73 is also relevant. It provides that the executive power of the union shall extend to the matters with respect to which Parliament has power to make laws. The executive power of the union is, therefore available till Parliament enacts legislation to expressly provide measures needed to curb the evil.”

The court also held that gender equality includes protection from sexual harassment and the right to work with dignity, which is a universally recognised human right. The court relied on international norms and conventions in the formulation of the guidelines to achieve this purpose. The court also relied on the norms laid down in the Convention on the Elimination Of All Forms Of Discriminations Against Women, 1979 for construing domestic law when there is no inconsistency between them and when there is a void domestic law.

In this case the Supreme Court has laid down certain guidelines for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment at work place, as there was no domestic
law occupying the field. The guidelines were issued by the Supreme Court in exercise of the power available under Article 32 of the Constitution for the enforcement of fundamental rights and it was further emphasized that this would be treated as the law declared by the court under Article 141 of the Constitution. The court also observed that these directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field.

The directions issued by the Supreme Court under Article 141 of the Constitution amounts to legislation to implement an international obligation, which the Constitution requires the legislature to do. The above discussions signified the tremendous support the Supreme Court had given for giving effect to human rights in India.

Article 22 to 27 of the Universal Declaration of Human Rights deal with the right to social security, right to work, right to equal pay for equal work, right to just and favourable remuneration, right to form trade unions, right to rest and leisure, right to adequate standards of living and well being of the family, the right to education etc. The International Covenant on Economic, Social and Cultural Rights 1966 also deal with these rights. Article 2 of the Covenant casts an obligation on the State Parties to implement its provisions depending on the resources available. The rights, guaranteed under this Covenant therefore do not require immediate enforcement. Instead they require implementation according to the available resources of the country, because of the reason that economic, social and cultural rights cannot be fully ensured
without the economic and technical assistance, education and planning. In many cases international co-operation is also required.

The rights conferred by this Covenant and enshrined in Part IV of our Constitution have the potential to cover all aspects of citizen's life. The principles laid down in Part IV are fundamental in the governance of the country and the State is under a duty to apply these principles while making laws.37

Part IV of the Constitution contains various rights such as right to adequate means of livelihood.38 Right to equal pay for equal work,39 right to work, right to education and right to public assistance etc.,40 it also directs the State to avoid concentration of wealth, and the ownership and material resources of the community are to be distributed for the common good.41

The State is also expected to direct its policy towards securing that the health and strength of the workers, men and women and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocation unsuited to their age and strength.42 Children are required to be given facilities to develop their personality in a healthy manner with freedom and dignity. Childhood and youth are required to be protected against moral and material abandonment.

37 Constitution of India, Article 37.
38 id. at Article 39(a).
39 id. at Article 39(d).
40 id. at Article 41.
41 id. at Article 39(b),(c).
42 id. at Article 39(e).
Though Part III and Part IV of the Indian Constitution incorporate the various human rights found in the Universal Declaration and the various International Covenants, regarding implementation and interpretation, the Indian Judiciary in earlier times placed more importance to fundamental rights. The Court observed that the Chapter on fundamental rights are sacrosanct and not liable to be abridged by any executive or legislative act or order except to the extent provided. The Directive Principles of State Policy cannot override the provisions found in Part III but have to conform to and run subsidiary to the chapter on fundamental rights.\(^4\) Therefore the earlier view of the court was that in the case of conflict between fundamental rights and directive principles, the fundamental rights should prevail. But later on, the attitude of the Supreme Court has changed. The court is now of the opinion that when there is a conflict between Part III and IV, the court should adopt the principle of harmonious construction to give effect to both as much as possible.\(^4\) Now-a-days, courts have tried to harmonise them by importing directive principles in the construction of fundamental rights. The object of fundamental rights is to protect individual liberty. The individual liberty of a person cannot be considered in isolation from the socio-economic structure in which it is to operate. There is a real connection between individual liberties and the shape and form of the social and economic structure of the society. The Directive Principles impose an obligation on the State to take positive action for creating socio-economic conditions in which there will be social order ensuring


individual liberty and the dignity of all people irrespective of any other considerations. Hence the directive principles enjoy a very high place in the constitutional scheme and fundamental rights and directive principles should be construed in harmony with each other and every attempt should be made by the court to resolve the apparent inconsistency. Due to the influence of human rights jurisprudence, in order to give effect to fundamental rights, directive principles are read into it and thus judiciary started enforcing directive principles through fundamental rights. Right to life enshrined under Article 21, includes right to live with human dignity and it derives its existence from Article 39(e), (f), Article 41 and Article 42. These articles deal with health and strength of the workers, men and women and of the tender age of children against abuse, just and humane conditions of work and maternity relief, a minimum requirement that is needed to lead a dignified life. As these cannot be directly enforced through the courts the Supreme Court has indirectly enforced these directives by holding that the right to life under Article 21 includes the right to livelihood also. Right to education is essential to earn a livelihood and to lead a dignified life. Article 26(4) of the Universal Declaration of Human Rights, 1948 and article 13 of the International Covenant on Social, Economic and Cultural Rights, 1966 recognise the right to education and cast an obligation on the part of the State Parties to take steps to realize this right. This right is now held to be a fundamental right by the Supreme Court and opined that the right to life under Article 21 and the dignity of the individual cannot be
assured unless right to education accompanies it. The State Government is under an obligation to make all endeavors to provide educational facilities at all levels to its citizens. Article 45 of the Indian Constitution requires the State to endeavor to provide for free and compulsory education to children. Right to education is declared as a fundamental right by the Supreme Court in the case of *Unnikrishnan J.P. and others v. State of Andhra Pradesh and others* and declared that primary education up to fourteen years should be compulsory and free. This shows the inter-relationship of the rights in Part III and IV of the Constitution.

Article 13 of the International Covenant on Social, Economic and Cultural Rights also recognises the right of the parents or guardians as the case may be to choose educational institutions other than schools established by public authorities which confirm minimum educational standards. In India this is also made possible in as much as there are many schools run by private agencies, religious minorities and the citizens get ample opportunity to make the choice.

The Universal Declaration of Human Rights and other international instruments have only a persuasive effect on Indian courts. According to Article 245 and 246 and entries in List I of the Seventh Schedule of the Indian Constitution, only the Parliament has the power to legislate on foreign affairs. It includes:

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(1) Foreign affairs and all matters which bring the union in relation with a foreign country.

(2) Participation in international conferences and other bodies and implementation of the decisions made.

(3) Entering into treaties and agreements with foreign countries and implementing of treaties and conventions with foreign countries.

According to Article 253 Parliament shall have exclusive power to legislate for implementation notwithstanding that they relate to subjects, which are assigned to state legislatures. The Parliament so far has not made any law governing the making or implementation of treaties in accordance with power under Article 253. Until such a law is made by the Parliament the President can exercise this power in accordance with Article 53 and 73.

As regards the implementation of the treaties it has been ruled by the Supreme Court that implementation of treaties require legislation by Parliament. The Supreme Court observed:

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47 Article 53(1) The Executive Power of Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him.

(2) Without prejudice to the generality of the forgoing provision the Supreme Command of the defence forces of the Union shall be vested in the President and exercise thereof shall be regulated by law."

48 "Article 73(1) Subject to the provisions of the constitution the executive power of the union shall extend:

(a) ... (b) to the exercise of such rights, authority and jurisdiction as one exercisable by the government of India by virtue of any treaty or agreement provided that the executive power referred to in sub-clause (a) shall not save as expressly provided in the constitution or any law made by the Parliament extent in any State ... to matters with respect to which the legislature of the State has power to make laws.

(2) Until otherwise provided by Parliament a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State, such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution."
“The obligations arising under the agreement or treaties are not by their own force binding upon Indian nationals. The power to legislate in respect of treaties is with the Parliament under entries 10 and 14 of List I of Seventh Schedule. But making of law under that authority is necessary when the treaty or agreement operates to restrict the rights of citizens or others or modifies the law of the State. If the rights of the citizens or others which are justiciable are not affected, no legislative measure is needed to give effect to the agreement or treaty.”

Following the law laid down by the Supreme Court in this case the court started giving effect to the International treaties and giving certain rights to individuals. The Supreme Court in *Jolly George Varghese and another v. Bank of Cochin,* gave effect to Article 11 of the Covenant on Civil and Political Rights, 1966 which lays down thus:

“No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation”

In the above case the appellant was facing imprisonment due to failure to discharge the debt and it was argued on behalf of the appellant that Article 11 of the International Covenant on Civil and Political Rights bans imprisonment merely for not discharging a decree debt. So the bank’s right is

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restricted by the International Covenant on Civil and Political Rights, 1966 to
which India is a party.

The court remanded the case to the lower court for appropriate decision. It
however correctly enunciated the law thus:

"The Covenant bans imprisonment merely for not
discharging a decree debt. Unless there be some other
vice or mens rea apart from failure to foot the decree,
international law frowns on holding debtor's person in
civil prison as a hostage by the court. India is now a
signatory to this Covenant and Article 51(c) of the
Constitution obligates the States to "foster respect for
international law and treaty obligations in the dealing of
organised peoples with one another". Even so, until the
municipal law is changed to accommodate the Covenant
what binds the court is the former, not the latter." 51

The court also relied on Article 21 of the Constitution. It reasoned:

"Equally meaningful is the import of Article 21 of the
Constitution in the context of imprisonment for
nonpayment of debts. The high value of human dignity
and the worth of the human person enshrined in Article 21.

51 id. at p.473.
read with Articles 14 and 19, obligates the State not to incarcerate except under law which is fair, just and reasonable in its procedural essence.\textsuperscript{52}

The Constitution shall be revised so as to frame a comprehensive legislation dealing with making of treaties and making of legislation for treaty implementation. As the members of the Parliament do not have much competence in the field of international law, a special group of members having competency and ability shall be constituted from the legal and treaties division, Ministry of External Affairs, Indian Society of International Law and from Universities having international law as specialization, to act as Secretariat and it should be possible for them to provide information on signing/ratification, reservation etc. of the Government of India on each treaty/agreement/covenant/convention. If there is a clear provision, which clarifies or clears the meaning and implications of treaty authoritatively, the possibility of wide interpretation by the courts can be avoided.

A National Commission for Women was established under the National Commission for Women Act, 1990. The main function of the Commission is the protection and promotion of the human rights of women. It has succeeded to a considerable extent in containing the grievances of the ladies. It undertakes the study on conditions of women prisoners in jail and suggests remedial measures wherever necessary.

\textsuperscript{52} \textit{id.} at p.475.
The Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, 1993 requires every State to adopt effective implementation mechanism to redress human rights grievances and violations. Apparently in pursuance of the obligations undertaken in this conference government also took steps to have effective machinery for the protection of human rights. In 1993 the Indian Parliament enacted the Protection of Human Rights Act, 1993 establishing a National Human Rights Commission and making provisions for each State to have State Human Rights Commissions. The Act defines human rights as the right relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India.\textsuperscript{53} The aim of this legislation is to enable the government to have information on the status of human rights in India. It enables the Commission to collect such information and advise the government to take action.

Though references to the rights of man can be traced from very beginning of life in the Indian society, the concept of human rights got a concrete shape only after the framing of Constitution of India. The strong desire of the international community for the protection and promotion of human rights resulted in the Universal Declaration of Human Rights, 1948 and as the Constitution of India was drafted during that period, many of the human rights provisions of the Declaration find place in the Indian Constitution also.

\textsuperscript{53} The Protection of Human Rights Act, 1993 Section 2(d).
Many of the rights envisaged in the international documents were incorporated into the domestic law by the Indian Judiciary by expanding the horizons of human rights jurisprudence. Apart from this many legislations such as the Protection of Human Rights Act, 1999, The National Commission for Women Act, 1990 etc., were passed for the protection and promotion of human rights. Undoubtedly the concept of human rights jurisprudence marked an era of change in the judicial outlook.