CHAPTER - 2

HUMAN RIGHTS MACHINERY

In 1989 the General Assembly of United Nations called for the convening of a world meeting that would review and assess progress made in the field of human rights since the adoption of the Universal Declaration of Human Rights, and identify obstacles and ways in which they might be overcome. The first global meeting on human rights had taken place in Tehran in 1968. The conference agenda, as set by the forty-seventh session of the General Assembly in 1992, also included the examination of the link between development, democracy and economic, social, cultural, civil and political rights, and the evaluation of the effectiveness of the United Nations methods and mechanisms with the aim of recommending ways to ensure adequate financial and other resources for United Nations human rights activities. From the first of four preparatory committee meetings in Geneva in September 1991, it was clear that these were tasks that raised many difficult, sometimes divisive issues regarding national sovereignty, universality, the role of non-governmental organisations and questions concerning the feasibility, viability and impartiality of new human rights instruments. The search for common ground on these and many other issues were characterized by intense dialogue among Governments and dozens of United Nations bodies, specialized agencies and other intergovernmental organisations and thousands of human rights and development Non-Governmental organisations from around the world. The preparatory process included three key regional meetings in Tunis, San Jose and Bangkok, which produced declaration out living particular concerns and perspective of the African, the Latin American and Caribbean and the Asian
and Pacific regions. In addition, informal meetings throughout the world involving broad spectrums of society made extremely valuable contributions. At the final meeting in May, which ended after an extended session, the preparatory Committee prepared a draft final document with which the conference, hosted by the Austrian Government in Vienna began its work and final negotiations. The final document agreed to in Vienna, which was endorsed by the forty-eighth session of the General Assembly (resolution 48/121, of 1993), reaffirms the principles that have evolved during the past 45 years and further strengthened the foundation for additional progress in the area of human rights. The recognition of the interdependence between democracy, development and human rights, for example, prepares the way for future cooperation by international organisations and national agencies in the promotion of all human rights, including the right to development.

The Vienna Declaration also makes concrete recommendations for strengthening and harmonizing the monitoring capacity of the United Nations system. In this regard, it called for the establishment of a high commissioner for Human Rights by the General Assembly, which subsequently created the post on 20th December 1993 (resolution 48/141). Mr. Jose Ayala Lasso was nominated by the Secretary General as the first High Commissioner and he assumed Office on 5th April 1994. The Vienna conference has, therefore, rightly decided to evaluate methods and machinery for guaranteeing human rights with a view to improving them. At the administrative level, the number of procedures for guaranteeing human rights have been increasing for years, not only within the United Nations, but also at such specialized agencies as the International Labour organization and the United Nations Educational, Scientific and Cultural organization and at such regional organizations of American States. Within the United Nations, a proliferation of
Bodies each entrusted with monitoring implementation of a specific convention are notable. United Nations centre for Human Rights, initially designed to carry out studies and provide information on all aspects of human rights, the centre has gradually been called on to contribute to the implementation of conventions, and to participate in adhoc committees of special rapporteurs set up to investigate such wide-ranging matters as summary executions, disappearances and instances of arbitrary detentions. However, guaranteeing human rights also means settings up jurisdictional controls to punish any violations that occur. In this area, regional organizations have shown the way—particularly in the context of the council for Europe, in the form of the European Court of Human Rights, and in America, in the form of the Inter-American court. United Nations efforts to promote both a permanent international criminal court and a special international tribunal to prosecute the crimes committed in the former Yugoslavia. In February 1993, the security Council decided to establish such a tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991.

In asking the Secretary-General to consider this project, the Security Council has given itself an entirely new mandate. On 27th May 1993, the Tribunal was established by a unanimous decison of the Security Council, acting under Chapter VII of the Charter. This method has the advantage of giving immediate effect to the establishment of the Tribunal, since all states are required to take the necessary steps to implement a decision adopted in this matter. The council has thus created, in the context of an enforcement measure, a subsidiary organ as envisaged in Article 29 of the charter, but one of a judicial nature. Since December 1988, when the General Assembly adopted resolution 43/131 on humanisation
assistance to victims of natural disasters and similar emergency situations, the notion of a right to humanitarian assistance has, to a certain extent, become one of the areas in which human rights can actually be guaranted. This has been reflected in the organisation's operations in Sudan, in Somalia, in the special case of Iraq and, today, in the former Yugoslavia. Once again, these resolutions are not intended to justify some ostensible right of intervention, but simply to reflect one of the Key ideas lying behind current efforts to safeguard human rights: the relationship between such guarantees and the imperative of democratization which the international community is rightly embracing today.

The imperative of democratization is the last and surely the most important - rule of conduct which should guide our work. There is a growing awareness of this imperative within the international community. The process of democratization cannot be separated, from the protection of human rights. More precisely, democracy is the political frame work in which human rights can best be safeguarded. This is not merely a statement of principle, even less a concession to a fashion of the moment, but the realization that a democracy is the political system which best allows for the free exercise of individual rights. It is not possible to separate the United Nations promotion of Human Rights from the establishment of democratic systems within the international community. To avoid misinterpretations and misunderstandings, we must all agree that democratization must not be a source of concern to some but should be an inspiration for all states. In this spirit the United Nations, in its mission to guarantee Human Rights, has an obligation to help states-often those that are the most disadvantaged-along the ever difficult road to democratization. One thing is certain, there can be no sustainable development without promoting democracy and, thus, without respect
for Human Rights. We all know that, on occasion, undemocratic practices and authoritarian policies have marked the first step taken by some countries along the road to development yet, we also know that if these states do not undertake democratic reforms once they have begun to experience economic progress, they will ultimately achieve nothing more than disembodied growth, a source of greater inequity and, eventually, social unrest. Democracy alone can give development its true meaning.

The United Nations must be able to provide states with technical assistance that will allow them to adapt their institution, educate their citizens, train leaders and set up regulatory mechanisms that respect democracy and reflect a concern for Human Rights. It is important to establish independent systems for the administration of justice, to establish armies that respect the rule of law, to create a police force that safeguards public freedoms, and to set up systems for educating the population in Human Rights. The Universal Declaration of Human Rights has become, over the years, not only a part of customary international law but also it has all the attribute of justice cogens. The Declaration has also influenced the drafting of various constitutions of the world and Indian constitution is one of them. So much so that even the judges of the International Court of Justice have made the principles of the Declaration as the basis for their opinion.

**National Machinery for Protection of Human Rights**

Vienna Declaration and programme of Action adopted by the World conference on Human Rights rightly stated that every state should provide an effective framework of remedies to redress Human Rights grievances or violations. The administrations of justice including law enforcement and prosecutorial
agencies and, especially an independent judiciary and legal profession in full conformity with applicable standards contained in international Human Rights instruments, are essential to the full and non-discriminatory realisation of Human Rights and indispensable to the process of democracy and sustainable development. National Human Rights Institutions are a necessary corollary to the democratic machinery of governments. They are a means of democratic empowerment for those who are less powerful and less advantaged. Majority rules in a democracy. Standard Government machinery and institutions are not always sufficient to guarantee to protection of human rights. This becomes very much relevant for those section of people who are in minority and for those without significant financial or intellectual resources, as well as for the section of society that are not as legally empowered as others e.g., children. The Naional Human Rights Insititutions can complement existing democratic bodies within the government. 6

In fact, National Human Rights Insititutions are fundamental mechanisms in protecting people's rights. The establishment and maintenance of National Human Rights Institutions will depend on special settings. The most important factor in this regard is the degree of commitment that a government has in setting up Human Rights Insititutions, strong political will must be exhibited from across the political spectrum, not only from those holding power at particular point of time. It is necessary to stress the philosophical reasoning behind the need for setting up National Human Rights Institutions and convince the government that such institutions will actually help the government to govern. It is of utmost importance to stress the link between Human Rights and development of the nation. 7 Placing emphasis on a state's obligations under international law to observe Human Rights can be an effective means of persuasion with government. The use
of existing institutions in other countries as models and the use of like minded organisations with similar interests can provide a foundation for the development of institutions. Generally National Human Rights Institutions can be divided into two categories, i.e., (i) offices of Ombudsman and (ii) Human Rights Commissions.

(a) **Ombudsman**

Institution of Ombudsman was developed in Scandinavian countries in eighteenth century to check power abuse of public servants. This was started in Sweden in 1809. Later on it was developed in many democratic countries of the world. To check power abuse of public servants and security of citizen's rights was motive behind its establishment in almost all countries. There is unlimited increase in the work of a state, in democratic countries. Today, state is working for the progress of economic and social progress of the people. As a result, public servants are enjoying more powers. An individual is depending upon state for his all jobs. Interference of administration is increasing in day to day life of an individual. There is no sphere of life, which is not having interaction with the state. Administration is enjoying unlimited rights with the increase of state scope. There is possibility of power abuse by administrative officers and violations of civil rights and liberties. Administration is ignoring individual interest in the name of public interest now a days. Therefore most of the countries adopted an institution of ombudsman. Ombudsman has been established to check corruption in administration, to control power abuse of public servants; to implement obey of rule and to secure rights of the citizens. According to John V. Monterey, Ombudsman is only institution which eradicates corruption and maladministration simultaneously.
Characteristics of Ombudsman

(i) Ombudsman is a legislative officer and agent, who examines Government's work on behalf of legislature. Ombudsman is appointed by legislature or upon its advice; except Britain. In Britain, ombudsman (known as parliamentary commissioner) is appointed by executive; (ii) being an officer of parliament, ombudsman is in general under the supervision of parliament. Ombudsman cannot be removed easily; (iii) legal education is essential qualification for ombudsman in Scandinavian countries. Generally advocates, jurists and law professors are appointed as ombudsman. In Britain, first ombudsman was public servant. He was not having any experience of law; (iv) ombudsman of all countries are authorised to hear public complaints directly; except Britain. In Britain complaint is sent to a member of parliament, if later considers it genuine then he sends it to ombudsman; (v) all the countries are not having uniform attitude at the question of sanctions. In Sweden and Finland, ombudsman is authorised to charge the guilty. In Norway and Denmark, ombudsman recommends to administration for charging guilty officers. Ombudsman is authorised to recommend concerned department for the complaint in all countries. They put annual reports in parliament; (vi) Ombudsman acts as machinery of public grievances in almost all countries; (vii) ministers in Sweden are left outside the jurisdiction of ombudsman. Ministers are not head of departments in their administrative system. They are responsible for policy making only. In Newziland, ombudsman is authorised to examine departmental recommendations to ministry, but minister is out of jurisdiction of ombudsman for his decisions. In Britain, ombudsman can not examine the decisions of ministry. Judiciary is in the control of ombudsman in Sweden and Finland. Military administration is within the
jurisdiction of ombudsman in Finland and Denmark. Public complains against Ministry of Defence are examined by ombudsman in Britain. Separate ombudsman controls the military administration in Sweden and Norway; (viii) ombudsman has been authorised to examine the records for finding facts in almost all countries. Any department cannot deny to show records. Ombudsman is a universal approach. Rule of law, Judicial Review, Discretionary power, and parliamentary control are insufficient; because activities of state administration are increasing day by day.

Ombudsman can be considered as a flexible and cheap method to examine the matters of maladministration. Ombudsman is a safeguard for regular complaints for administration point of view. Citizens are satisfied with the results, because an impartial institution has examined their complaints. Thus ombudsman represent good public relations for administration. There is possibility of delay in justice from courts and is also costly. There is lengthy process of courts. For implementing administrative decisions courts function with the speed of tortoise. Ombudsman is neutral politically from members of legislatures, interest groups, and press. Ombudsman is not authorised to change decisions just like courts and therefore he does not interfere in the work of administrators. He is not bound for lengthy process as in courts and there is no fee for his services. Therefore his work is cheap and fast in comparison with courts. Due to its utility most of the countries have adopted the system of ombudsman.

An Ombudsman in terms of utility means" a watch dog of the administration" or "the protector or the littleman" It is an unique institution which leads to an open government by providing a democratic control mechanism over the power of the government. The institution of Ombudsman plays an important role of bringing renaissance and humanism in the working of the government. It
is difficult to define ombudsman in precise term. An officer of parliament, having as his primary function, the duty of acting as an agent for parliament, for purpose of safeguarding citizens against abuse or misuse of administrative powers by the executive. An office provided for by the constitution or by action of the legislature or parliament and headed by an independent high level public official who is responsible to the legislature or parliament, who receives complaints from aggrieved persons against government agencies, officials and employees or who acts on his own motion, and who has the power to investigate, recommend corrective actions and issue reports. In a rapidly developing country, it is inevitable that many officials, both of Government and of the ruling party, should be authorised to exercise wide discretionary powers. Decisions taken by such officials can, however, have the most serious consequences for the individual, and the commission is aware that there is already a good deal of public concern about the danger of abuse of powers. We have, therefore, given careful thought to the possibility of providing some safeguards for the ordinary citizen. There is one more importance of the office of the Ombudsman. It protects the government officials against unfounded, malicious or unfair attacks.

Ombudsman in India

Corruption is a matter of discussion and debate within and outside the parliament for a long time. One cannot deny for the existence of corruption to some extent in the past era. But corruption reached at its peak during second world war in India; as in other countries. Our country faced partition, communal riots, migration of population, war of Kashmir, and unification of provinces. As a result rule of law disintegrated and unity of public servants shattered. It was considered that with the end of preliminary hindrances of freedom; rule of law
will be established and public life will get rid of corruption. However, it has not happened. Ministers and members of legislatures at centre and states level joined corrupt public servants in majority. Elected representatives, who are considered keepers of conscience and unity of rule joined corruption for self interests. As a result public representatives, even Chief Ministers and ministers were in the hamam of corruption. According to Jawahar Lal Nehru, India is having least administrative corruption. But corruption was increasing in multiplication in India. Late Rajgopalachari gave the name of licence-kota-permit raj to modern administration which provided the space for corruption. The then Home Minister Guljarilal Nanda admitted about corruption in parliament at that time. In present decade corruption has crossed all boundaries. Even Prime Minister and Chief Ministers were chargesheeted for corruption. Possibility of corruption from public servants increases with the increase of state affairs in economic sector. To eradicate such possibility, different measures have been adopted in different countries. In USA, examining committees of Congress are working as corruption checking agencies. In Britain there is an independent tribunal. Council of state is functioning in France. All the above institutions are useful but there is need of an effective and more efficient institution to check abuse of power. Ombudsman came into existence in Scandinavian countries to fulfil this motive. Power abuse from bureaucracy decreased by this institution to some extent.

Unrest against corruption increased in India. Demands were raised in parliament to check corruption, from time to time. Inquiry commissions were appointed by the parliament to investigate some matters of corruption. Inspite of these, it was felt that problem of corruption cannot be solved by parliamentary control. Therefore, Government had to establish Vigilance Commission, Vigilance
Commissioner in Home Ministry and Central Bureau of Investigation. Inspite of these institutions it is unbelievable that problem of corruption has been solved. In this context demands for establishment of ombudsman were also raised in India. All India Law Conference was held in Delhi in August 1962, which recommended for ombudsman. The Chief Justice of India (B.P. Gajendragadkar) gave confidence to the demand of ombudsman in his speech at Indian Public Administration Institute Delhi on 15 July 1963. In 1963, Rajasthan Administrative Reforms Committee recommended state legislature for the appointment of a Commissioner to examine complaints against high officials and ministers. The Committee named it as ombudsman. Question of ombudsman was raised in Parliament for the first time on 3rd April 1963, by Dr. Luxmimal Singhvi. At first government opposed the demand and a Central Vigilance Commissioner was appointed to satisfy the house. At last Indian Administrative Reforms Commission recommended for the appointment of a ombudsman. Reforms Commission surveyed on the subject of public complaints on 13th April 1966. Survey cleared that single base of public complaints is not corruption only, but lengthy process and rude behaviour of officials are inclusive. On the basis of experience of Scandinavian countries, the Administrative Reforms Commission considered Lokpal and Lok Ayukat institutions useful for India. Commission in its report suggested the Institution of Lokpal for examining complaints against Ministers of Centre and states as well as for the Secretaries of the Government of India. Lok Ayukat was recommended for examining the complaints against the officials of below Secretary level at the centre.

However, due to non-cooperation of political parties and lack of political will institution of ombudsman remained only a matter of debate within the
parliament. The parties and politicians were not sincere for introducing the institution of ombudsman.

(b) **Human Rights Commission**

Human Rights Commissions deal with the protection of citizens against discrimination as well as with the protection of other Human Rights. They are generally designed to hear and investigate individual charges of Human Rights violations or discriminatory acts committed in violation of existing law. Most Human Rights Commissions are collegial bodies comprised of members who, in most cases, are selected by executive. In many cases the commissions enjoy statutory independence and are responsible for reporting on a regular basis to the legislative body. The human rights Commission can be domestic or international depending upon their scope and jurisdiction. There are national human rights institutions which may be the creations of national constitutions or a specific statute. There are some advantages in establishing these institutions as a constitutional body. For example, the constitution is a supreme law and any change in the fundamental structure of the institution would require passing of a constitutional amendment Act for which special procedure has to be followed. Thus, the integrity of the institutions will be protected through the constitution or statutes, so that it can work more effectively. There are certain advantages of "national human rights institutions" over the judicial means of protecting human rights. For example, in courts, there is prohibitive cost of litigation, frequent delays and lengthy hearing procedures of cases. The courts can deal only with the specific issues raised in the case and cannot go beyond that. Sometimes there is difficulty in producing an evidence. The complex procedures of the courts keep many deserving cases out of context. Thus, the courts play only a peripheral role and do
not provide for a review in depth of the entire administrative field.\textsuperscript{12} The control by the administrative machinery over its own faults and lapses suffer from "official bias" and it starts building up its own defence within the department. Similarly, the legislature lacks time to investigate complaints. It lacks ready access to information. The legislators are also unwilling to investigate politically sensitive issues. There is also a danger that an investigation done by a member of the legislature is not impartial but politically motivated. Further, the legislature procedure is such that there is not much room for ventilating individual grievances on the floor of the House.

The struggle to preserve, protect and promote human rights is perhaps as old as human civilization. It continues all over the world even today. India, being the mother-land of many cultures and civilizations, is also a great and old companion of this struggle. Many centuries ago, it was from this holy land that the highest ideal of human life was echoed. That is, let all people be happy. Infact, the protection and promotion of human rights are possible only in a society where all people, irrespective of their castes, creeds, sex and religions, live happily. It was against the backdrop of unprecedented destruction and disasters perpetrated by man against man in the World War II that the United Nations was established in 1945 for promotion of international peace and prosperity. It may marked the beginning of a new era of internationalization of human rights ideals with the proclamation of Universal Declaration of Human Rights (UDHR) on the historic day of December 10, 1948. In India there is a systematic development of human rights perspective and its machinery.

Human Rights movements and recognition of human rights in India can be with the Indian renaissance.
Rammohan Roy and the Indian Renaissance

The history of modern India with Raja Rammohan Roy (1772-1833) who was the harbinger of the Indian Renaissance. He was a great visionary who led India in the earliest period of her transformation from feudalism to modernity. He visualized the modern multi-polar world much earlier than any great man of his time could do. Rabindranath Tagore adorned Rammohan as the great 'Indian Pilgrim' (Bharat Pathik). In his address at the Rammohan centenary meeting at Calcutta's Senate House in 1933, Rabindranath Tagore observed: "Like Kabir and Dadu, Rammohan Roy was a great Indian Pilgrim, but he ushered in modern thought and ideas when our society needed them most." As one of the greatest rationalist and creative thinkers of his age, Rammohan Roy made critical inquiries to Hinduism through its primary sources like the Vedas and Upanishadas. His rational mind made him a poignant critique of those religious rituals of Hinduism like sati and child marriage which patronised and promoted societal violence against women in the name of religion. His opposition to polygamy, and his advocacy for equal rights of women including the right of widows to marry and the right of women to property also came from his firm belief in the supremacy of Reason. His respect for the liberal democratic ideals of the West led him to welcome the British Empire as 'modernising agent' in India. Nevertheless, his concern for freedom of the Press also led him to fight against the Press Regulation imposed by the British rule in 1823. Likewise, Rammohan's concern for civil liberties led him to submit petitions with both houses of the British Parliament, signed by Hindus and Muslim, against the Jury Act of 1827 which introduced religious bias into the judicial system of India. He was particularly opposed to that provision of the Act under which "natives, either Hindu or Mohammedan, are subject to judicial
trial by Christians, either European or native, while Christians are exempted from being tried either by a Hindu or Mussalman juror." For his catalytic thoughts and actions, Rammohan Roy can reasonably be regarded as the founding father of Human Rights movement in modern India. Today, at this distance of time, when we make a retrospect to the astounding contribution of Rammohan Roy in Human Rights discourse and movement as far back as the late eighteenth and the early nineteenth centuries, we can take pride in our rich heritage in the domain of Human Rights. In this context, it would not be out of place to mention that the USA which is now projecting itself as if the only crusader of Human Rights in the world community, has not yet ratified the 'Convention on the Elimination of All Forms of Discrimination against Women'.

The unfinished work of Rammohan Roy was carried on by another great social reformer in the nineteenth century Bengal, Ishwar Chandra Vidyasagar (1820-91). A scholar of great depth, he drew the attention of his contemporaries to societal violence against women. He stood against all odds and obstructions including hostile social resistance, and dedicated himself to the cause of women's emancipation. It was due to his unstinted efforts that legal obstacles to the marriage of widows were removed through a legislation in 1856. As an ardent activist for women's rights, he also played a leading role in promoting education of girls. He started and helped the setting up of a number of schools for girls. This was indeed a great progressive venture in those days of conservatism.

Confluence of European Reniassance and Indian Reawakening

The Indian Reawakening in the nineteenth century was, in a sense, the successor of the European Renaissance. The ratioinal thinking and ideal of the European Renaissance were brought to the holy soil of India, the ancient land of
great human civilization, by enlightened European Missionaries like William Carey (1761-1834) and Joshua Marshman (1760-1837), Western educationist and social workers like David Hare, Derejeo and Sister Nivedita, and the British rulers like Lord Bentinck. They could reasonably be considered, among others, as the architects of the Indian Reawakening. In fact, more than two decades before the arrival of Rammohan Roy at Calcutta in 1814, Carey came to Calcutta in 1793, and as the head of the Serampore Mission established in 1800, he played an important role not only in the growth of Indian language and literature but also in spreading women education and creating mass awareness and launching movement against cruel and inhuman practices of the then Hindu society, such as sati or widow burning and infanticide. It was Carey and his colleagues at Serampore Mission who actually prepared the soil of Bengal for social reforms and human rights movement led by Rammohan Roy and Ishwar Chandra Vidyasagar.

**Spread of the Movement**

From Bengal, the movements for modernization of Indian society were spread in other parts of the country. In Maharashtra, Mahadev Govinda Ranade (1842-1901) who was one of the founders of the Indian National Congress, set up an all-India organization, the Indian Social Conference in 1887. Under his dynamic leadership, the Conference worked and campaigned all over the country for various Human Rights abuses such as abolition of caste, raising of age at marriages, discouragement of polygamy, and encouragement of widow remarriages, intercaste marriages and women's education, improvement in the condition of the so called outcasts, and settlement of religious disputes between Hindus and Muslims by the appointment of Panchayats. Ranade was a great thinker and visionary. That is why, even at that time, he was able to realize the interdependence and indivisibility
of what is now known as the two generations of Human Rights—civil and political rights, and economic, social and cultural rights. He said very poignantly: You cannot have a good social system when you find yourself low in the scale of political rights nor can you be fit to exercise political rights and privileges, unless your social system is based on reason and justice. You cannot have a good economic system when your social arrangements are imperfect. If your religious ideas are low and grovelling, you cannot succeed in the social, economic and political spheres. This interdependence is not an accident but is the law of nature.

It was really amazing that what an Indian intellectual-activist thought a century ago, has now become a popular assertion of the world Human Rights community for effective enforcement of UDHR on an international basis. Mahatma Jotiba Phule was another great social reformer of Maharashtra who founded the Satyashodhak Samaj to mobilize the oppressed castes in a movement for equality, and played a significant role in promoting education of girls, particularly of the oppressed castes. Likewise, Kandukuri Veeresalingam (1848-1919) led the movement for widow remarriage and girls' education in Andhra, while Shri Narayana Guru (1845-1928) organized the movement against caste oppression in Kerala. The socio-religious movements led by the Arya Samaj founded by Swami Dayanand Saraswati in 1875 and Ramakrishana Mission founded by Swami Vivekananda in 1899 made remarkable contributions in spreading education to all sections including women, awakening of Hindus against social evils associated with superstitions and religious practices, and developing the spirit of nationalism. The Muslim reform movements, such as the Aligarh Movement led by Sir Syed Ahmed Khan (1817-99) and the Ahmediya Movement founded by Mirza Ghulam Ahmed in 1899 made significant contributions in emphasizing the universalism
and humanitarianism of Islam and the national awakening of the Muslims.

**Gandhi's Contribution**

In the twentieth century, when the Indian National Congress under Mahatma Gandhi's leadership, was converted, in the words of Netaji Subhash, from 'a talking body' into a 'living and fighting organization', the nationalist movement became a mass movement and social reform for preservation and promotion of Human Rights became an integral part of India's freedom struggle. The national movement led by Gandhiji for various social causes like abolition of untouchability and Harijan's rights for entry to temples were indeed very important milestones in the annals of Human Rights movement in modern India.

**National Emergency : A Blessing in Disguise ?**

The National Emergency of 1975-77 appeared as a blessing in disguise for the people of India who could realize for the first time after Independence the importance of democracy and the necessity of civil and political liberties. In fact, the Human Rights movement in post-colonial India, in its present shape, owes its origin to "the political milieu of the National Emergency". The movement is yet to gain adequate numerical strength in many spheres. Nevertheless, the quantitative shortcoming is somewhat compensated by the quality and dedication of its activist cadre, consisting of students, teachers, jurists, social scientists, technocrats, etc.

Although the Delhi-based People's Union for Democratic Rights (PUDR) and People's Union for Civil Liberties (PUCL) are the forerunners in this movement, a number of other organizations spreading over different parts of the country, viz., Committee for the Protection of Democratic Rights (Bombay), Andhra Pradesh Civil Liberties Committee (Hyderabad), Association for the Protection of Democratic Rights (Punjab), and Banavasi Panchayat (West Bengal) are now
active in defending the democratic rights of such social groups as the tribals, the "untouchables", unorganized labour in urban areas, women, children and ethnic minorities, "who are either not conscious of their rights or are incapable of defending them against violation".

In recent years, people's movement for environmental protection and various other Human Rights causes led by enlightened and dedicated individuals like Medha Patekar, Baba Amte, Sundarlal Bahuguna and B.D. Sharma, have added new dimensions to Human Rights movement in India. There are instances when such movements forced the otherwise indifferent and inactive civil bureaucracy to act for public interest.

Hence it is felt that to give some legal teeth and some independent machinery, falling outside the control of administration, for the protection of human rights of the people must be created. It is in this context that the role played by the institution of Ombudsman and Human Rights Commission becomes very important. In order to meet the national as well as international demand for the constitution of National Human Rights Commission, State Human Rights Commissions in States and Human Rights Courts for better protection of Human Rights and for matters connected there with or incidental thereto, the Human Rights commission was created in India. National Human Rights Commission has been constituted under the protection of Human Rights Act. In the Act it has been provided that the commission shall consist of:

(i) A chair person who has been a chief justice of the Supreme Court;
(ii) One member who, is or has been, a judge of the Supreme Court;
(iii) One member who is, or has been, the chief justice of a High Court;
(iv) Two member to be appointed from amongst persons having knowledge of
or practical experience in matters relating to Human Rights. In addition to this, there are three ex-officio members. They are the chairpersons of the National Commission for scheduled castes and scheduled tribes and the National Commission for Women. Chairpersons of these institutions shall also discharge all the functions of the National Human Rights Commission except that they will not enquire suo moto or on a petition presented by a victim or any person on his behalf into complaint of violation of Human Rights or abetment thereof or negligence in the prevention of such violation. An officer of the rank of the secretary to the government of India is to be a secretary general of the Human Rights Commission and he shall exercise such powers and discharge such functions of the commission as it may delegate to him. The appointment of chairperson and other members of the Human Rights Commission is made by the president of India on the recommendations of a committee which consists of following persons:

(i) The Prime Minister Chairperson
(ii) Speaker of the House of People Member
(iii) Home Minister Member
(iv) Leader of the opposition in the House of the people Member
(v) Deputy Chairman of the Council of States Member
(vi) Leader of the opposition in the council of States Member

The Chairman or any other member of the commission shall only be removed from his office by order of the president on the grounds of proved misbehaviour or incapacity after the Supreme Court on reference being made to it by the president, has on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or such other
member, as the case may be, ought on any such ground be removed. Notwithstanding this, the president may by order remove from office the chairperson or any other member if the chairperson or such other member, as the case may be: (i) is adjudged an insolvent; or
(ii) engage during his term of office in any paid employment outside the duties of his office; or
(iii) is unfit to continue in office by reason of infirmity of mind or body; or
(iv) is convicted and sentenced to imprisonment for an offence which in the opinion of the president involves moral turpitude.17

The term of office of the chairperson and other members of the Human Rights Commission has been fixed. The chairperson shall hold the office for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier. Other members of the Commission shall hold the office for a term of five years from the date on which they enter the office and shall be eligible for re-appointment for another term of five years subjected to the condition that no member shall hold the office after attaining the age of seventy years. On ceasing to hold office, the chairperson as well as members of the Commission are not eligible for further employment under the government of India or under the government of any state.18 In the event of the occurrence of any vacancy in the office of the chairperson by reason of his death, resignation or otherwise, the president may, by notification, authorise one of the members to act as the chairperson till to fill such vacancy. The terms and conditions of service of members including their salary and allowances can not be varied to their disadvantage after their appointment.19 This provision has been made to ensure independence in their working.
Functions and Powers of the Human Rights Commission:

From the basic objectives of the Act it is evident that the protection of Human Rights Act was exacted, inter alia, for better protection of Human Rights and for matters connected therewith or incidental thereto. Therefore, the Human Rights Commission has to discharge such functions which are for better protection of Human Rights and matters connected therewith or incidental thereto. In order to achieve these objectives, section 12 of the Act provides that the Commission shall perform all or any of the following functions, namely:

(i) inquire, suo moto or on a petition presented to it by a victim or any person on his/her behalf, into complaint of violation of Human Rights or abetment thereof; or negligence in the prevention of such violation by a public servant;

(ii) intervene in any proceeding involving any allegation of violation of Human Rights pending before a court with the approval of such a court;

(iii) visit, under intimation to the state government, any jail or any other institution under the control of the state government, where persons are detained or lodged in jail for purposes of treatment/reformation or protection to study the living conditions of the inmates and make recommendations thereon;

(iv) review the safeguards provided by or under the commission or any law for the times and recommend measures for their effective implementation;

(v) review the factors, including acts of terrorism, that inhibit the enjoyment of Human Rights and recommend appropriate remedial measures;

(vi) study treaties and other international instruments on Human Rights and make recommendations for their effective implementation;

(vii) undertake and promote research in the field of Human Rights;

(viii) spread Human Rights literacy among various sections of society and promote
awareness of the safeguards available for the protection of three rights through publications, the media, seminars and other available means;

(ix) encourage the efforts of non-governmental organisations and institutions working in the field of Human Rights; and

(x) such other functions as it may consider necessary for the promotion of Human Rights. However, the complaint relating to following matters shall not be entertained by the commission:

(i) complaints in regard to events which happened more than one year before making of the complaint.

(ii) complaints with regard to the matters which are sub-judice or pending before a state commission or any other commission duly constituted under any law for the time being in force;

(iii) complaints which are vague, anonymous or pseudonymous;

(iv) complaints which are of frivolous nature; and

(v) the complaints which are outside the purview of the commission.\(^{20}\)

In order to enable the Human Rights Commission to discharge the above mentioned functions in an effective manner, it is necessary that the Commission must be invested with powers of the courts. Section 13 of the Act ensures this by providing that the commission shall, while enquiring into complaints under this Act, have all the powers of civil courts lying a suit under the code of civil procedure and particularly in respect of the following matters namely:

(i) summoning and enforcing the attendance of witnesses and examining them on oath;

(ii) discovery and production of any document;

(iii) receiving evidence on affidavits;
(iv) requisitioning any public record or copy thereof from any court or office;
(v) issuing summons for the examination of witnesses or documents; and
(vi) any other matter which may be prescribed.

The Human Rights Commission or any officer or agency working on behalf of the Commission for the purpose of investigation of a complaint has the following powers:

(i) summon and enforce the attendance of any person and examine him;
(ii) require the discovery and production of any document; and
(iii) requisition of any public record or copy thereof from any office.

Procedure for Dealing with Complaints:

Dealing with the complaints and grievances from members of the public is a basic function of the Human Rights Commission. The manner in which such complaints are received and processed is of great importance as it will determine the effectivity of the institution. If the procedure is simple, it provides more accessibility to the complaint. Section 17 to 20 of the Act of 1993 deal with procedure in dealing with the complaints. In addition to this, section 10(2) of the Act of 1993 empowers the Commission to regulate its own procedure. In exercise of the powers conferred by section 10(2) of the Act of 1993, the National Human Rights Commission has made the National Human Rights Commission(Procedure) Regulations 1994 which have come into force with effect from 1st March 1994. The Commission normally has its regular sittings in the first and third weeks of every months, except on holidays. The chairman himself or at the instance of one or more of the members may direct a special sitting of the Commission to consider specific matters of urgency. All the complaints in whatever form received by the Commission are registered and assigned a specific number. Then they are placed...
before a Bench of two members, within the period of two weeks from the receipt of the complaint, for the purpose of admission. No fee is charged on the complaints. Every complaint should be made in such a manner so as to disclose a complete picture of the matter leading to the complaint. The complaint may be made in English or Hindi to enable the Commission to take immediate action. However, the Commission can entertain complaints in any of the Eighteen languages mentioned in the Eighth Schedule of the Constitution. The Commission if so desires, can further ask for any information and affidavits in support of allegations made in the complaint. The complaints sent telegraphically or conveyed through fax can also be accepted by the Commission. If at the stage of admission of the complaint, the Commission does not find any substance in it then the same can be dismissed in the liminii. Once the complaint is admitted, the Commission shall decide and direct for further inquiry or investigation. After the decision is taken by the Commission to hold inquiry or investigation in regard to the allegations in the complaint, the Secretariat of the Commission calls for reports/comments from the concerned government/authority. Such government/authority is given a reasonable time to give its report/comments. If the report/comments of the concerned government/authority are not received within the stipulated time the Commission may proceed to enquire into the complaint in its own. If the report/comments are received from the concerned authority within the stipulated time, a detailed note on the merit of the case is prepared for consideration of the Commission. If the Commission is satisfied that either no further inquiry is required or that the required action has been taken or initiated by the concerned government authority, then it may not proceed further with the complaint and the complainant is informed accordingly. However, having regard to the nature of the complaint,
if the Commission is satisfied that it is necessary to inquire the matter further, it shall initiate inquiry. In case the investigation is undertaken by the Commission or by any other person under its direction, then the report is required to be submitted within a week of its completion. If the Commission finds that the investigation has not been made properly or the matter required further investigation, it may direct for further investigation in that case. The Commission or any of its members can make an on-spot study. Whenever such study is undertaken by one or more members, they are required to submit the report of such study as soon as possible.

After the inquiry is completed the Human Rights Commission may take any of the following steps:

1. Where after the inquiry it is found that there was violation of Human Rights or there was negligence in the prevention of violation of Human Rights by a public servant, the Commission may recommend to the concerned government authority to initiate proceedings for prosecution or take any other appropriate action against the concerned person.

2. The Commission may approach the supreme court or the concerned High Court for such directions, orders or writs as the court may deem necessary.

3. The Commission may recommend to the concerned government/authority for the grant of immediate interim relief to the victim or to the members of the family.

4. The Commission is required to send the report of the inquiry to the concerned government/authority within one week of the completion of the proceeding. The concerned government/authority is required to give its comments on the report including the action taken or proposed to be taken thereon to the Commission.
5. The copy of the inquiry report is also given to the petitioner or his/her representative.

6. The Commission is required to publish the inquiry report together with comments of the concerned government/authority and the action taken or proposed to be taken by the government/authority within the period of one week.25

Whenever the complaints regarding the violation of Human Rights by the members of armed forces is received by the Human Rights Commission, it adopts a somewhat different procedure. The Commission either on its own motion or on receipt of a petition seeks the report from the Central government. If the Commission is satisfied with the report of the government, it will not proceed further with the complaint. If the Commission is not satisfied with the report of the government it makes its recommendations to the government. The central government is required to inform the Commission of the action taken on the recommendations within the period of three months or such further time as the Commission may allow. Thereafter the Commission is required to publish the report together with the recommendations made to the central government and the action taken by the government on such recommendations, within the period of one week. The Commission is also required to furnish the copy of the published report to the petitioner or his/her representative.26

Finally, the Human Rights Commission is required to submit an annual report to the central government and to the state government concerned. However, the Commission may submit special reports on matters which are of such urgency or importance that it should not be deferred till the submission of the annual report. The central government and the state government concerned shall place
the annual report and special reports of the Commission before each house of
Parliament or the State Legislature respectively along with the memorandum of
action taken or proposed to be taken on the recommendations of the Commission
and the reasons for non acceptance of the recommendations.

One of the most far reaching responsibilities entrusted to the National
Human Rights Commission under its statute is contained in section 12(b) which
requires the Commission "to spread Human Rights literacy among various sections
of society and promote awareness of the safeguards available for the protection
of these rights through publications, the media, seminars and other available
means." In the course of the year under review the Commission greatly intensified
its activities to give meaning to this responsibility, but even as it did so, it remained
deeply conscious of the inherent difficulties involved in creating an "awareness
of the safeguards available" for the protection of Human Rights in a country where
some forty eight per cent of the population remains trapped in illiteracy (1991
census) and vast numbers of our people lived below the poverty level. Indeed, in
this endeavour as in others, the Commission could not but observe that a clear
linkage existed between the creation of a society that was just in economic, social
and cultural terms, and one in which a culture of Human Rights could take root,
be sustained and flourish.

The expectations of the people of India in the working of the Human
Rights Commission are most vividly expressed in the number and range of
complaints addressed to the Commission, which cover the entire gamut of Human
Rights problems facing the country. During the period of 1st April 1995 to 31st
March 1996, the Commission registered 10195 complaints (including 444 reports
on custodial deaths transmitted to it by States Agencies) as against 6987 complaints

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received by the Commission in the preceding reporting year. There is gradual increase in complaints every year to the Human Rights Commission. By any yardstick, this constituted an extremely heavy case-load. In the course of the year under review the Commission took up 11153 complaints for consideration, of which 5894 were dismissed in limini and 1178 were disposed of with directions to the appropriate authorities for action at their end. In respect of 4081 complaints, directions were issued calling for further inquiries. Of these 546 complaints were concluded on receipt of reports from the concerned authorities, or reports of investigation by its own team.28

The Human Rights Commission considers those complaints which are registered to the Commission or came to light by media and other sources. There is a gross violation of the most basic Human Rights of dalits and tribals. Women folk among them are most prone to suffer. Landlords and higher caste people in the villages and slum lords and Crime Syndicates in the Urban slums are among those most responsible. The police are often in league with these elements. Illiteracy and general demoralisation as well as conditions of poverty facilitate the oppression of the poor. Lack of political awareness in particularly weak among the deprived sections of the population is another reason for their victimization. There is a general attitude of pessimistic even among people of apparent goodwill. The victims are often afraid of reporting cases of oppression to the police for fear of dire consequences. They may be exposed to police atrocities or attacks from organised gangs. All the laws meant to protect them may be of no avail due to lack of legal education and the favouritism at one stage or the other. Most of the political parties, movements and organisations are in some way part of the cruel and violent system. They tend to exploit the grievances of the poor for their own
electoral or other gains. Ultimately, it is the suffering masses themselves have to rise above and fight for their rights.

**Summary**

The Universal Declaration of Human Rights was intended to be "a common standard of achievement for all people and all Nations." It has thirty articles which include civil, political, economic, social and cultural rights and fundamental freedoms to which every human being is entitled. On December 10, 1948, the Universal Declaration of Human Rights was adopted by the General Assembly of the United Nations. However, the universal Declaration of Human Rights is not a treaty, a legal agreement between countries, or a binding legal document. It is rather a declaration, a statement of intent or principles. The United Nations charter member states promised to take joint and separate actions to promote universal respect for and observance of human rights. Therefore, the universal Declaration of Human Rights should be followed by all member states of the United Nations. It is an important document as it is used for a guiding standard of behaviour and as a basis for appeal to governments to observe human rights. The declaration has influenced the constitutions, laws and court-decisions of many countries and international organisations. Many legal binding agreements and contracts between individuals, groups and nations have incorporated them while making global and regional treaties or covenants.

In order to strengthen the Universal Declaration of Human Rights, the General Assembly of the United Nations adopted two additional documents called covenants in 1966. These are: -(1) The International covenants on civil and political rights and (2) The International covenants on Economic, Social and Cultural Rights. Though not well known as the Universal Declaration of Human Rights these
covenants are even more important. This is because the countries which have signed them have actually agreed to follow them. Human Rights are Universal. They are also called natural rights and they belong to all people just because they are human beings. People are equally entitled to them regardless of their sex, race, colour, language, national origin, age, class or religious or political beliefs. People can have human rights even when laws of their own countries do not recognise or protect them.

Institution of Ombudsman had been working as safeguard for power abuse of public servants and security of citizen's rights in various countries. India also adopted Lok Pal and Lok Ayukt for the same reasons.

Legal rights are those rights that are laid down in the laws of a country. They can be defended in a country's court of law. Most but not all legal rights are written down. In some countries, which do not have written laws, unwritten laws protect people from being illegally assaulted or tortured. Human rights are meaningless unless they are included in the laws of a country and are actually enforced.

Rights may be classified into three categories. These include:

(i) **Civil and Political Rights**

Civil and political rights are sometimes referred to as "Liberty oriented" or "first generation" rights. They give people freedom to think, and have access to information, the freedom to act and to choose what to do and freedom to join the political life of their community and country;

(ii) **Social and Economic Rights**

These rights provide people with protection against the violation of basic things in life, such as food, shelter, and health care. These are sometimes
referred to as "security oriented" or "second generation" rights; and

(iii) **Environmental, Cultural and Developmental Rights**

These Rights affirm that people have the rights to live in a healthy and safe environment. They also recognise the rights of the people for cultural and economic development. Sometimes they are referred to as "third generation rights".

There are few reasons with which the United Nations is more closely identified than the promotion and protection of human rights. Building on the principles of its charter and the Universal Declaration of Human Rights, the United Nations strives to create a "Culture of Human Rights" throughout the world. Provisions of United Nations human rights treaties have been written into national laws and constitutions, and the spotlight of the organizations attention has proven to be a powerful tool in curbing abuse and spurring on the transition to democracy occurring in many countries. Both development and human rights have as their main concern for survival of justice and human well being. In the broader sense, development can be viewed as the process by which all human rights are to be realized and human rights as the goal of development can be promoted.

Throughout the course of human history, discrimination has been a scourge at the heart of war, repression and barbarous (cruel) acts that shatter the fabric of society. The United Nations has long sought to improve public understanding of the phenomenon of discrimination and to counter its crippling effect with action through legally binding human rights instruments, covering social discrimination, genocide, apartheid and the rights of women and vulnerable groups such as children, migrant workers and refugees. The Constitution of India is not just a pedantic legal text, but it is a living organ. It embodies human values, cherished principles of civilized society and spiritual norms. It is not only
upholds the dignity of man but also accepts the individual as the focal point of all
development. It has adopted the principle of the rule of law. The constitution also
manifests the purposes intended to be an instrument of government, whether it be
Executive, Legislative or Judicial. The preamble of the constitution of India
resolves to secure to all its citizens social, economic and political justice. It also
affirms a determination to secure liberty of thought, expression, belief, faith and
worship and equality of status and opportunity, and to promote amongst the people
a feeling of fraternity assuring the dignity of the individual and the unity and
integrity of the nation.

To achieve the aims, objectives and purposes of the constitution. It has
struck a balance between the rights and privileges of the citizens and the powers
of the government. It has also adopted a democratic ideal which not only means
that the people directly exercise the political power but also that the state should
promote a social order in an holistic sense. For this purpose the constitution has
sanctioned beneficial discrimination so that the weaker sections of society can
make up with the rest. To protect the rights , it has classified the rights of citizens
as fundamental Rights which are enforceable in the court of law. To protect the
rights of the weaker sections of society the Supreme Court has allowed public
interest litigation . But all these ideal and protective measures are of no use unless
they are made known to the general masses. Most of them are poor, illiterate and
ignorant. The fruitful provisions of the constitution are neither interpreted nor
executed to serve the needy and the people in harness. That is the reason why
India has not progressed at the rate it should have despite possessing all kinds of
resources.

Vienna Declaration and programme of Action adopted by the world
conference on Human Rights on 25 June 1993 points out that every state should provide an effective framework of remedies to redress human rights grievances or violations. The administration of justice including law enforcement and prosecutorial agencies and especially an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, are essential to the full and non-discriminatory realisation of human rights and indispensable to the process of democracy and sustainable development. National human rights institutions are a necessary corollary to the democratic machinery of governments. They are a means of democratic empowerment for those who are less powerful and less advantaged. Given that in a democracy the majority rules, government machinery and institutions are not always sufficient to guarantee the protection of human rights. This becomes very much relevant for those section of people who are in minority and for those without significant financial or intellectual resources. It is also relevant for the section of society that are not as legally empowered as others (e.g. children). The national human rights institution can complement existing democratic bodies within the government. In fact, national human rights institutions are fundamental mechanism in protecting people's rights. The national human rights commission is an expression of India's concern for the protection and promotion of human rights.

The next chapter deals with women prisoner's Rights as Human Rights.
References


3. Speech of Boutros Boutros Ghali Ex-Secretary General UN at World Conference in Vienna on 14th June 1993.


13. The Act received the assent of the President on January 8, 1994 and Published in the Gajette of India, Extra, Part-II, Section - I, Dated 10th January, 1999, PP 1-16, St No. 10

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15. Ibid, Section-3(3) and 12 (a).

16. Ibid, Section-11(a) and 3(4).


19. Ibid, Section-8


23. See Section 8 (1) to 8 (9) of (Procedure) Regulations, 1994 and Section 17 of the Act 1993.


