Chapter III

EVOLUTION OF NATIONAL HUMAN RIGHTS COMMISSION (NHRC) IN INDIA IN THE LIGHT OF UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR) OF 1948 AND INDIAN INDEPENDENCE

INTRODUCTION

When the United Nations introduced the Universal Declaration of Human Rights in 1948, it was seen by many as a sign of optimism, of the possibilities of a better world. Yet, over 50 years later, observers recognize that we live in an age when human rights abuses are as prevalent as they ever have been – in some instances more prevalent. The issue of collective rights is still on the international political agenda. Such questions as the rights of peoples – whether indigenous or not – are hotly debated. These are closely related to questions involving the right of peoples, as well as individuals, to a clean and healthy environment, both for themselves and for their offspring.

As the leading third world country, from the very beginning, India’s role was considered very important in the protection and promotion of human rights both at the national and at the international level. The establishment of the National Human Rights Commission in India in 1993, along with the country’s
new economic reforms like globalization, liberalization and structural adjustments, was the subject of considerable skepticism within the scholarly discourse, as also some strident criticism from the human rights activists of the country.

This chapter deals with the evolution of human rights in India especially after the Universal Declaration of Human Rights by U.N.O. and after its independence from British colonial rule. After independence, India was very much sympathetic to the promotion and protection of human rights through various provisions of her new Constitution, through the establishment of impartial judiciary, independent political parties, pressure groups, free press and it is also a signatory to various covenants, conventions and treaties on human rights. In spite of that it was necessary for India to set up a separate statutory body, human rights commissions, both at the centre and at the state levels. This chapter also tries to show the reflection of the Universal Declaration of Human Rights (UDHR) in the various provisions of the Indian Constitution and also describes the context where it was necessary to set up the National Human Rights Commission to protect and promote the human rights as well as to frame policies after debates and discussions.
UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR)

AND INDIA’S RESPONSE

The Universal Declaration of Human Rights in 1948 is regarded as the cornerstone to make the quest for human rights a truly global concept. After this declaration a challenge for the United Nations was to promote and encourage respect for human rights, to extend human rights and fundamental freedoms to all nation-states of the world. It is true that in its first step in dealing with human rights, United Nations was mostly guided by the Western world. In August, 1941, the then U.S.A. President Roosevelt and U.K. Prime Minister, Churchill proclaimed guarantees of human rights through the Atlantic Charter. The third General Assembly adopted and proclaimed the Universal Declaration of Human Rights under the chairmanship of the then U.S.A. President Roosevelt and several articles covered a wide range of basic human rights and fundamental freedoms as developed in the Western world.¹

Naturally, from the beginning, the UN activities in the field of human rights was not gladly accepted by the Soviet Union ruled by Stalin and other socialist countries of the world. It was not very much accepted by a large number of new-born third world countries as their national set up was demanding different set of values which were necessary for the reconstruction of the countries.
Upendra Baxi, in his work "The Future of Human Rights" denied the notion that 'human rights' are the gifts of the West to the rest. Human Rights constitute not just a multitude of normative orderings but also distinct realms of human experience. Most of the Third World countries, freed from the cluster of colonial legacy recently have three important things to achieve - economic development, industrialization and nation-building. In due course of time, one of the most important as well as pertinent questions that has made the process of development all the more difficult is the question of the rights or freedoms of man vis-à-vis state in these countries. The Third World countries are characterized by their traditional cultural patterns and ethnic social set up; they do not fully share either the intellectual heritage of the West or that of the socialist interpretation of rights.

According to Western liberal thought, man by nature is isolated and autonomous, possessing certain inherent and inalienable rights with the establishment of a civil and political society instituted through a social contract among individuals. And it is the duty of the State to protect individual safety, security, his rights and property in pursuance of a just and orderly society. Thus, private property become the pivot of a free enterprise economic system and subsequently became a fundamental human right, thereby making the approach to rights as politico-materialistic in nature.
But the natural and individual rights of liberals, and the social and economic rights of the socialists have not been incorporated in totality in the Third World perspective of human rights. Rather, they give emphasis on group rights or the rights of the minority because of their heterogeneous social set up. Rights of an individual can be enjoyed with the shared value and shared experiences with other members of the society. Most of the Third World countries in Africa, Asia, Middle East and the Latin America accord priority to economic and social rights over civil and political rights. In fact, they want to attain economic development, along with the preservation of their religious and cultural heritage. 3

When the Universal Declaration was adopted, only two - India and the Philippines - of 58 members of UNO were newly independent nations. Being a Third World country, India derives it human rights perception from the two mentioned schools of thought - liberal and socialist - but is an exception to the rest of the Third World nations as it also has its own perception of rights that emanates from its ancient culture and civilization. The Indian vision of rights emphasizes not only the individual but also the total person, a person whose interdependent rights and duties are determined by his/her position within a hierarchical network of relationship. The impact of Islamic religion, renaissance and reforms movements, British colonialism and the nationalist ideology played a vital role in the formation and practice of human rights in India. As a newly born State the economic reconstruction of the country, eradication of poverty, hunger, illiteracy, increasing the level of productivity, etc. were considered as the primary
need to the national leaders of India. The concept of independence, self-determination, non-intervention, economic progress were considered as fundamental freedoms. Building a strong foreign policy for Indian people, giving a strong base of her non-alignment policy to the international world, increasing the standard of living of the people, greater participation in international decision making were important human rights.

The Universal Declaration of Human Rights was quite silent about the right to self-determination and the right to development which were very much relevant to the perspective of newly born Third World countries like India. Indian leaders perhaps follow and practice the principle of 'Nation before community' or 'society over the individuals.' This may be the reason that India has not ratified the covenants adopted by the General Assembly on 16th December, 1966 at first. The Covenant on Economic, Social and Cultural Rights catalogues the right to work, to full and productive employment, fair wages and decent living. As the covenants are legally binding treaties for those States which are parties to them, the fear of the newly born States like India arose whether it will be possible to ensure decent living for the people all over the country, to ensure education for all or to ensure employment for all. Afterwards India has ratified the two covenants with reservations entered (Indian's accession deposited on 10th April, 1979).
THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

AND INDIAN CONSTITUTION

The above discussion does not necessarily imply that India was not sympathetic to the protection and promotion of human rights in Indian society after independence. In India most of the human rights declared by the Universal Declaration of Human Rights (UDHR) and Covenants had incorporated in our independent Constitution through the Preamble, Chapters on Fundamental Rights and Directive Principles of State Policy and many other provisions. The General Assembly proclaimed that the Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every organ society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction. We can make a comparative analysis between the thirty articles of the UDHR and the related provisions incorporated in the Indian Constitution :-

P.T.O
Article 1 of the UDHR

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

Indian Constitution

If we go through the Preamble of our Constitution, we will find the principles of justice, liberty, equality and fraternity. Preamble secures to all of its citizens "Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Fraternity assuring the dignity of the individual and the unity and integrity of the Nation." Article 14 declares 'equality before the law' and 'equal protection of all citizen' irrespective of their caste, race, sex, etc.  

Article 2 of the UDHR

"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Further, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent trust, non-self-government or under any other limitation of sovereignty."
Indian Constitution

Article 15(1) of the Indian Constitution says that the State shall not discriminate against any citizen on grounds only of religion, race, case, sex, place of birth or any of them. According to Article 16(2) no citizen shall on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State.

Article 3 of UDHR

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

Indian Constitution

Article 21 of Indian Constitution says that no person shall be deprived of his life or personal liberty except according to procedure established by law. The protection of this article is available to citizens as well as non-citizens and extends even to a convict behind prison bars, subject only to the limitations imposed by his conviction under the law.

Article 4 of UDHR

"No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms."
Indian Constitution

Rights against exploitation (Art. 23-24) is included in our Fundamental Rights in Indian Constitution in Part III. It must be noted that today’s slavery is not the brutal practice historically associated with the capture of humans, bound in chains and sold on the open market. It has taken many forms associated mainly with agriculture and migrant labour and in many cases is institutionalized. The exploitation of child labour is a world wide problem which sometimes directly linked to the sale of children.

Article 23(1) of Indian Constitution prohibits the traffic in human beings and beggar and other similar forms of forced labour and any contravention of this provision shall be an offence punishable in accordance with law. Article 24 of our Constitution says that no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Article 5 of UDHR

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment“

On 10th December, 1984 by the United Nations General Assembly defines torture as ‘any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act or ........“
Indian Constitution

Article 17 of the Indian Constitution abolished "Untouchability" and its practice in any form. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law. This step must be treated against inhuman or degradation of humanity which was a practice of Indian society.

Article 6 of UDHR

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

Indian Constitution

This provision may be compared to the provision declared by Article 14 of the Indian Constitution. This article prohibits that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. This principle does not take away from the State the power of classifying persons for legitimate purposes. Directive Principles of State Policy, Part IV of our Constitution are trying to establish the humane conditions for all. Article 39 declares that certain principles of policy to be followed by the State; e.g. adequate means of livelihood, equal pay for equal work, ownership and control of material resources of the community to subserve the common good etc.
Article 7 of UDHR

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

This article in considered together with Article 2 of UDHR (mentioned earlier) and more or less similar to the provision to Article 14 of the Indian Constitution (mentioned earlier).

Article 8 of UDHR

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

Indian Constitution

Article 32 of the Indian Constitution acts as the Safeguard of our fundamental rights. According to this act every citizen has the right to move the Supreme Court or High Courts by appropriate proceedings for the enforcement of his rights. The Supreme Court and the High Courts shall have power to issue directions or orders or writs for the enforcement of any of the rights.
Article 9 of UDHR

“No one shall be subjected to arbitrary arrest, detention or exile.”

Indian Constitution

Article 22(1) of our Constitution says that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult and to be defended by, a legal practitioner of his choice. Article 22(2) says that every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.”

Article 10 of UDHR

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

Above article provides for the basic right to a fair trial. It refers not only to criminal cases but also to civil disputes where one person sues another. The Basic Principles on the independence of the Judiciary are expected to be taken into account by States.
Indian Constitution

Article 22(1) of the Indian Constitution (discussed earlier) is partly similar to the Article 10 of UDHR. According to Article 20(1) no person shall be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. Article 20(2) says that no person shall be prosecuted and punished for the same offence more than once. Article 20(3) says that no person accused of any offence shall be compelled to be a witness against him.

Article 11 of UDHR

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

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

Indian Constitution

Article 22(1) of our Constitution, mentioned above, is similar to the Article 11(1) of UDHR. Article 20 (discussed above) of the Indian Constitution is closely related to Article 11(2) of UDHR.
Article 12 of UDHR

"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, not to attack upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."

Indian Constitution

Right to Privacy as such has not been identified under the Constitution. But the right to converse on telephone without interfering can certainly be claimed as right to privacy. In the famous case of the State of Maharashtra Vs. M. Narayan, 1991, the Supreme Court was in favour of this right to privacy. Telephone tapping to infringe Article 21 of Indian Constitution unless permitted by law. This right is available even to a woman of easy virtue and no one can invade her privacy. \(^8\)

Article 13 of UDHR

"Everyone has the right to freedom and residence within the borders of each State. Everyone has the right to leave any country, including his own, and to return to his country."

Indian Constitution

The fundamental rights guaranteed by articles 19(d) and 19(e) of Indian Constitution are similar to the civil rights of the above Human Rights Act. Article 19(d) says that all citizens shall have the right to move freely
throughout the territory of India and Article 19(e) declares the right to reside and settle in any part of the territory of India.

Article 14 of UDHR

"Everyone has the right to seek and to enjoy in other countries asylum from persecution".

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

Indian Constitution

The Constitution of India says nothing about the above Human Rights Act.

Article 15 of UDHR

1) "Everyone has the right to a nationality."

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

Indian Constitution

Indian Constitution says nothing directly about the above article of UDHR. In Part II of our Constitution Article 5 says that "every person who has his domicile in the territory of India and who was born in the territory of India; or either of whose parents was born in the territory of India; or who has been ordinarily resident in the territory of India for not less that five years immediately preceding such commencement, shall be a citizen of India."
Article 6 of our Constitution also says that "a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if—(a) he or either of his parents or any of his grandparents was born in India as defined in the Government of India Act, 1935; and (b) in the case where such person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration, or in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him thereof to such officer before the commencement of the Constitution in the form and manner prescribed by that Government. Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application."

Article 9 of Indian Constitution says that "No person shall be a citizen of India by virtue of article 5, or be deemed to be a citizen of India by virtue of article 6 or article 8, if he has voluntarily acquired the citizenship of any foreign State." The Parliament of India has enacted the Citizenship Act,* 1955 dealing with the acquisition and termination of citizenship on or after 26-1-1950.
Article 16 of UDHR

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

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

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

Indian Constitution

Our Constitution says nothing specifically regarding this. But in Indian society marriage has been recognized as a sacred institution from time immemorial. After independence both Hindu Marriage Act passed in 1956 and on the other hand, Muslim Personal Law is present. Indian Parliament has also passed National Marriage Act in this regard without changing one’s own religion.

Article 17 of UDHR

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

2) No one shall be arbitrarily deprived of his property.”
Indian Constitution

In the original Constitution of India the right to property was one of the important fundamental rights of the Indian people according to the Article 19(1)(f) and Article 31. But this fundamental right has been omitted by the Constitution 44th Amendment Act, 1978. Right to Property has been taken out of the Fundament Rights incorporated in Part III of Indian Constitution and make a separate Article that is 300(a) which says “No person shall be deprived of his property served by authority of law.” With this, Right to property of Indian people becomes a constitutional right since 1978.

Article 18 of UDHR

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

Indian Constitution

Article 25 of Indian Constitution relates to the freedom of conscience and free profession, practice and propagation of religion. Article 25(2)(a) relates to prevent the State from any law regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice.
Article 19 of UDHR

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

Indian Constitution

Freedom and Speech and Expression is an important Fundamental Right incorporated in Article 19(1)(a) in Part III of Indian Constitution. This freedom means the right to express one's convictions and opinions freely, by word of mouth, writing, printing, picture or any other manner. Under our Constitution, there is no separate guarantee of freedom of press. It is implicit in the freedom of expression which is conferred on all citizens.

Article 20 of UDHR

1) "Everyone has the right to freedom of peaceful assembly and association."

2) "No one may be compelled to belong to an association."

Indian Constitution

To assemble, peaceably and without arms, is an important fundamental right of Indian citizen according to Article 19(1)(b). This sub-clause guarantees the freedom of citizens to meet with each other in any number provided the assembly is peaceable and unarmed and is held at a public place.
Article 21 of UDHR

1) "Everyone has the right to take part in the Government of his country, directly or through freely chosen representatives.

2) "Everyone has the right of equal access to public service in his country."

3) "The will of the people shall be the basis of the authority of Government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."

Indian Constitution

Article 326 of the Indian Constitution says that the elections to the House of the People and to the Legislative Assembly of every state shall be on the basis of adult suffrage. Article 16(1) in our Constitution guarantees the fundamental right of equality of opportunity in matters of public employment. According to Article 16(2) of Indian Constitution "No citizen shall on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State." India being the largest democracy in the world, incorporated in the Preamble of Indian Constitution, the will of the people is the basis of the authority of Government.

rights declared through the Universal Declaration of Human Rights into different perspectives based on various aspects of human life, such as - Natural Rights, Moral Rights, Fundamental Rights, Legal Rights, Civil and Political Rights, Economic-Social and Cultural Rights. The Vienna Declaration, issued after a conference in which representatives of 171 countries and hundreds of non-governmental organizations participated, unambiguously affirmed that all human rights are universal, indivisible, interdependent and interrelated.

The above discussed twenty-one articles of the Declaration of Human Rights are closely linked with Civil and Political Rights and concern the freedom and personal security of individuals. Founding fathers of Indian Constitution were very much interested to provide social and political equality rather than providing economic equality to the people. This mentality was reflected in the parts of Preamble, Fundamental Rights and in many Articles in our Constitution.

Articles 23-27 of the UDHR deal with economic, social and cultural rights, which aim at the realization of both material and non-material human needs to ensure the full development of the human potential.

Article 22 of UDHR

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

Indian Constitution

Article 29 (1) of our Constitution says that any section of the
citizens residing in the territory of India or any part thereof having a distinct
language, script or culture of its own shall have the right to conserve the same.
In Part IV, in the Directive Principles of State Policy, Article 38 (1) says that the
State shall strive to promote the welfare of the people by securing and protecting
as effectively as it may a social order in which justice, social, economic and
political, shall inform all the institutions of the national life.

Article 23 of UDHR

1. "Everyone has the right to work, to free choice of employment,
to just and favourable conditions of work and to protection against
unemployment."

2. "Everyone without any discrimination, has the right to equal pay
for equal work."

3. "Everyone who works has the right to just and favourable
remuneration ensuring for himself and his family an existence worthy of human
dignity, and supplemented, if necessary, by other means of social protection."

4. "Everyone has the right to form and to join trade unions for
the protection of his interests."
Indian Constitution

Indian Constitution has not guaranteed the right to work as fundamental right or of any form for her people. But in the part IV, through the Directive Principles of State Policy, our Constitution gives assurances to the people of India to maintain the favourable conditions of work, equal payment, etc. It is said that some of the Directives, such as Articles 39(e), 41, 43(3) seek to introduce Gandhian Socialism.

Article 39(d) says that the State shall, in particular, direct its policy towards securing that there is “equal pay for equal work for both men and women.”

Article 38(1) says that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. According to Article 38(2) “the State shall, in particular, strive to minimize the inequalities to income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.”

Article 19(c) of Indian Constitution says that “All citizens shall have the right to form association or unions. In a case between All India Bank Employees’ Association Vs. N.I. Tribunal, in 1962, Supreme Court opined that the
right to form associations or union includes associations for any lawful purpose, e.g., a trade union, and Government servants are not excluded from its protection.

Article 24 of UDHR

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

Indian Constitution

Article 43 of Directive Principles of State Policy ensures a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure…….

Article 25 of UDHR

1. "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

2. "Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection."

Indian Constitution
Article 39(a) says that the citizens, men and women equally, have the right to an adequate means of livelihood;

Article 39(b) says that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

Article 39(e) says that the health and strength of workers, men and women, and the tender age of children are not abused and the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

Article 43, the Directive Principle says that the state shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

The Directive Principle of Article 47 ensures that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of the public health as among its primary duties,
and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and to drugs which are injurious to health.

Article 26 of UDHR

1. “Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.”

2. “Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.”

3. “Parents have a prior right to choose the kind of education that shall be given to their children.”

Indian Constitution

Article 45 through the Directive Principle, our Constitution declares that the State shall endeavour to provide, within a period of ten years from the
commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

Article 46 says that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

It is unfortunate that no attention was made on the part of the Indian Government to execute those above articles even after fifty years of independence. In 2002, by the Constitutional 86th Amendment Act, Article 21(a) added as a new addition in this regard. This article provides for free and compulsory education for all children between the age of 6-14 years.

Article 27 of UDHR

1. "Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits."

2. "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."
Indian Constitution

Part IV A of our Constitution declares that the duty of every citizen to value and preserve the rich heritage of our composite culture; to develop the scientific temper, humanism and the spirit of inquiry and reform.

Articles 29 & 30 assure the Cultural and Educational Rights as the fundamental right of Indian citizens. According to Article 29(1) "Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.” According to Article 30(1) “All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.”

Article 28 of UDHR

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

It is true that despite several decades of international action devoted to development, the gap between rich and poor, at both international and national levels, continues to widen. This indicates that the maldistribution of the world’s resources is reinforced by existing policies and institutions. Economic growth should not be an end in itself but a means towards meaningful development based on the human dimension and the well-being of the human person.
Indian Constitution

Article 38(1) of the Directive Principle of State Policy declares that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

Article 39(f) inserted to our Constitution by the 42nd Amendment Act, 1976, declares clearly that the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that youth are protected against exploitation and against moral and material abandonment.

Article 29 of UDHR

1. "Everyone has duties to the community in which alone the free and full development of his personality is possible."

2. "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."

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

After independence, in the new Constitution of India did not declare duties of Indian citizens. But in 1976, by the 42nd Constitutional Amendment Act inserted new Article 51A where ten fundamental duties were declared for the Indian citizens.

Article 30 of UDHR

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

This means that the Declaration in no circumstances should be used as a pretext for violating rights. This rule applies not only to States, but also to groups and individuals. Thus, no one may take an article of the Declaration out of context and apply it in such a way that other articles would be violated. This concluding article, as does the whole Declaration, requires constant vigilance and the courage to stand up for one's own rights and the rights of others. This vigilance and courage are the price we must all pay so that some day human rights will apply to all members of the human family in practice as well as in theory.
FAVOURABLE INTERNATIONAL SITUATIONS FOR THE ESTABLISHMENT OF NATIONAL HUMAN RIGHTS COMMISSION IN INDIA

Since the adoption of the Universal Declaration of Human Rights, the United Nations has developed a comprehensive strategy aimed at achieving the human rights objective set out in the Charter. The basis of this strategy is the body of international rules and standards which now cover virtually every sphere of human activity. But the task of promoting and protecting human rights, however, is not one which could or should be assumed by only one organization. United Nations practice in the field of human rights, is based on the fundamental premise that universal respect for human rights requires the concerted efforts of every Government, every individual, every group and every organ in society.

The question of National Human Rights institutions was first discussed by the Economic and Social Council (ECOSOC) in 1946, two years before the General Assembly proclaimed the Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations. A seminar on National and Local Institutions for the Promotion and Protection of Human Rights was held in Geneva in September 1978 which approved a set of guidelines about the functions of national institutions, such as -
(i) To act as a source of human rights information for the government and people of the country;

(ii) To assist in educating public opinion and promoting awareness of and respect for human rights;

(iii) To consider, deliberate upon, and make recommendations regarding any particular state of affairs that may exist nationally and which the government may wish to refer to them;

(iv) To advise on the question regarding human rights matter referred to them by the government;

(v) To study and keep under review the status of legislation, judicial decisions and administrative arrangements for the promotion of human rights, and to prepare reports on these matters to the appropriate authorities;

(vi) To perform any other function which the government may with them to carry out in connection with the duties of the State under those international instruments in the field of human rights to which it is a party; \(^\text{10}\)

Throughout the 1980s, the United Nations continued to take an active interest in this topic and a series of reports prepared by the Secretary General was presented to the General Assembly. It was during this time that a considerable number of national institutions were established - many with the support of the United Nations Centre for Human Rights. In 1990s, the Commission on Human Rights called for a workshop to be convened with the participation of national and regional institutions involved in the promotion and protection of human rights.
NATIONAL CONSCIOUSNESS
FOR THE ESTABLISHMENT OF
NATIONAL HUMAN RIGHTS COMMISSION

The history of the establishment of a Human Rights Commission in India can be traced back to pre-independence era, when the national liberation struggle was stirring up against British tyranny. After independence, the Parliament and State Legislatures in India have also been quite vigilant about the violation of human rights. It has shown above that The Constituent Assembly took note of the Declaration and incorporated a glossy list of human rights as Citizen’s Fundamental Rights in Part III of the Constitution, such as - Right to Equality before Law (Art. 14), Right to Freedom from discrimination (Art. 18), Right to Freedom of Speech and Expression (Art. 19), Right to Assemble Peacefully (Art. 21), Prohibition of Employment of Children in hazardous Occupation (Art. 24), etc. All these fundamental rights encompasses the entire gamut of civil and political rights including the Right to Judicial Interference in case of the violation of these fundamental rights of the citizens by the State. There is also included Directive Principles of State Policy in Part IV of Indian Constitution which are economic and social rights requiring the State to promote and protect the rights of the most vulnerable sections of our society. Even in the Preamble to the Indian Constitution, the declaration of Justice, Liberty, Equality, Fraternity, Individual Dignity, etc have been really become the Magna Carta of human
rights. Besides, National Human Rights Commission, State Human Rights
Commissions, Minority Commission, Commission for the Scheduled Caste and
Tribe, Tribal Commission etc. have been constituted to look into the problems of
human rights and to preserve the human rights of the Indians from denial,
neglect and violation. The National Police Commission and the Law Commission
have also made much contributions to the law and order system of the country
for protection of the rights and freedom of all citizens. To these we can
mention Civil Rights Act (1976), Dowry Prohibition (Amendment) Act (1986),
Probation of Offenders Act and the Juvenile Justice Act, etc. It's indeed a great
sing of hope in the proper maintenance of the human rights of the Indian
people.

But at the same time this Constitution says that the State can
violate all such fundamental rights in the interest of its own “security”. The
architect of our Constitution took necessary measures to keep certain undemocratic
articles within the Constitution and the human rights as recognized in the Indian
Constitution have often been denied, neglected and even violated both
governmentally and non-governmentally, i.e., officially and individually. The
Constitution has conferred immense power upon the ruling class to enact
draconian acts and laws in flagrant violation of all democratic norms and
principles and in this respect the role of the police department as a government
machinery is very often inhuman, anti-human and apathetic. Thus, when one refers
to the Armed Forces Special Powers Act (1958), now in force in many parts of
India’s North East and Kashmir hit by the rising crescendo of insurgency and
violence - in spite of popular protests against it, one is actually describing the social and political impact of a draconian Act that in its turn keeps the Constitution of Indian and many other laws investing the citizens with their rights in perfect suspension. Special zones are thus created within the country where the Constitution and the laws of the land do not apply. These zones witness extraordinarily high incidence of violence exercised by the state with impunity. In Part XVIII of Indian Constitution declares the Emergency Provisions which gives the State to act in an autocratic manner where an elected government in any state can be made inactive, the fundamental rights of Indian citizens can be violated. From the fear of ‘external aggression’ and ‘internal disturbance’, societies become irreconcilable with democracy in the long run.

Factors leading to the Establishment of a

National Human Rights Commission

in India :-

The ideal of human rights which was achieved a great momentum in the pre-independence Indian society under British rule, also present in the post-independence Indian society. The decision by the Government of India to set up a human rights Commission in the first half of 1990s did not come a day soon. Arun Kumar Palai in his book described that a host of factors led the government to think in terms of setting up of a statutory and recommendatory body on human rights. We can try to discuss these factors from different perspectives.
From the independence, the Indian federalism were facing various insurgency movements coming from various states like Punjab, North-Eastern states, Kashmir, Assam, and Andhra Pradesh. While suppressing these insurgencies serious incidents of violation of human rights had occurred by the state power. These violations include custodial deaths, illegal confinement, police brutalities, rape and other heinous crimes.

Rampant violations of human rights arise out of the poor socio-economic conditions of our people, particularly people belonging to the most vulnerable sections - members of the Scheduled Castes and Scheduled Tribes, migrant workers and landless labourers. In our capitalist society the poor can not enjoy their human rights. The rich, on the other hand, alone can buy the protection of their rights. Not only that a large part of the poor villagers and the jobless tribal people in the remote villages does not have, and is often deprived from, the very preliminary right to livelihood and minimum subsistence and is often forced to die after a long, regular and periodical starvation. Thus human rights in India, to speak the truth, are not properly maintained and preserved.

Over the past several years after independence, India has been severely criticized by Amnesty International, Asia Watch and International Red Cross for alleged violations of human rights by the police and security forces. The increasing concern being made about human rights, a real threat has been
anticipated in the form of link between economic assistance and human rights conditionalities. The USA and UK are not the only Western countries which have been expressing their concern over the violations of human rights in India, but other donor countries like Sweden, Norway, France and Switzerland have also expressed their concern in this regard. They acknowledge that there have been instances of arbitrary killings of civilians by terrorist groups in Kashmir and hence stress the point that higher standards are expected from the government officials who are entrusted to uphold and protect basic rights of people. If we look at our national scenario, we will find that the Supreme Court of India several times raised its voice against the violation of human rights or human dignity of the people by the government. In 1985, the-then Chief justice of Supreme Court, justice P.N. Bhagbati ordered the State Government of Bihar to release all the under trial prisoners who had kept in custody for a long period of time without taking any step. In the first half of 1990s, Court’s role in sensitizing the CBI to discharge their constitutional obligations in the Hawala Case in which top leaders were involved, to enforce citizen’s fundamental rights and to protect the human rights against abuse of the state power, that is, police brutality and torture, custodial death, death of under trial prisoners in jail, is very important in this regard. In the late 1980s and early 1990s the Court extended its ‘judicial activism’ to protect the viability of public goods, that is, clean air, water, etc. All these are related to the fulfillment of the basic needs of the people.
After independence the real emergence of human rights organizations took place in 1960s when both the privileged social classes and the government systematically cracked down on groups fighting for the rights of the traditionally oppressed people. In 1972, the Association for Protection of Democratic Rights (APDR) was formed in Calcutta and in 1974, the Andhra Pradesh Civil Liberties Committee (APCLC) was formed. Their main task was to highlight the growing repression and exploitation in the countryside and played a crucial role in confronting and exposing the coercive action of the State.

The National emergency of 1975-77 appeared as an example of oppressive character of the state power and as a result the people of India, for the first time after independence, realized the importance of democracy and the necessity of civil and political liberties. A major agitation against the growing authoritarianism of Smt. Indira Gandhi, the then Prime Minister of India, widened the scope for the establishment of human rights organization in the country. The Delhi based People’s Union for Democratic Rights (PUDR) and People’s Union for Civil Liberties (PUCL) are the forerunners in this movement. During the post-emergency era, a number of human rights organizations such as the Civil Liberties and Human Rights Organizations (CLAHRO) in Manipur, Citizens for Democracy (CFD) in Delhi, The Committee for the Protection of Democratic Rights (CPDR) in Bombay, the Free Legal Aid Committee (FLAC) in Bihar, the
J & K Peoples Movement for Human Rights and many other have been formed for this cause. It is undeniable from the above discussion that the civil society was very much conscious about the violation of democratic rights, human rights of the people.

The Indian civil society was ready to accept a separate body for the promotion and protection of human rights of the Indian people. The first political initiative to set up a Civil Rights Commission took place as early as 1977 in the election manifesto of Janata Party. It was proposed to be independent and autonomous, and was to be headed by a person equal to the status of a judge of the Supreme Court, who would be competent to ensure that minorities, the Scheduled Castes and Scheduled Tribes and other backward classed did not suffer from discrimination and inequality. In early 1983, the Minorities Commission had recommended to set up a comprehensive National Integration-cum-Human Rights Commission and urged the government to make a constitutional provision for it. The Congress election manifesto released in 1991 had promised to set up a Human Rights Commission to investigate and adjudicate complaints of violation of human rights within 365 days of its assuming power.
Conclusion

The establishment of the National Human Rights Commission in India, along with the country's new economic reforms like globalization, liberalization and structural adjustments, was the subject of considerable skepticism within the scholarly discourse, as also some strident criticism from the human rights activists of the country. The Government of India introduced the Human Rights Commission Bill in the Lok Sabha on 14th May, 1992. The Commission was initially constituted on 12th October, 1993 under the Protection of Human Rights Ordinance of 28th September, 1993. Organizationally, NHRC consists of a Chairperson, Members, Secretary-General, Heads, Sub-heads and other staff of different divisions.

The issue of collective rights is still on the international political agenda. Such questions as the rights of peoples—whether indigenous or not—are hotly debated. These are closely related to questions involving the right of peoples, as well as individuals, to a clean and healthy environment, both for themselves and for their offspring. The states of the world, sometimes erroneously referred to as the 'international community', find it hard to opt for long-term interests such as a sustained development, when there are seemingly attractive short-term options available. The human rights of collectivities do often not coincide with the national interests of states and tend to be on the losing side, at least for the time being.
It had been really very late. But it was the right step to pass
the Protection of Human Rights Act, 1993 by the Government of India with the
object to provide for the constitution of a National Human Rights Commission,
State Human Rights Commissions in States and Human Rights Courts for better
protection of human rights and for matters connected therewith or incidental
thereto. First Chairperson of the National Human Rights Commission, Justice
Ranganath Misra opined that the Commission, a statutory body, has greatly helped
sensitization of the Armed and Para-military forces, the Police, the public officers
and the people in general about human rights since its inception. The Armed
Forces have exhibited accountability, the Police have accepted their obligation to
conform to improved conduct; the public officers have learnt the lessons on
human rights; educational institutions have started teaching human rights; non-
governmental organizations (NGOs) have sprung into action; all these are in
response to the call of the Commission in discharge of its statutory obligation to
promote human rights and generate a new culture.

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NOTES & REFERENCES

4. Ibid. P. 27.
7. The lecture delivered by the Secretary General of UNO in the convention against 'Torture and other Cruel, Inhuman or Degrading Treatment or Punishment' on 10th December, 1984.
10. Ibid. Pp 36-37.
11. Ibid. P. 45.
12. Section 3 of the Protection of Human Rights Act, 1993 describes the constitution of a National Human Rights Commission with a Chairperson who has been a Chief Justice of the Supreme Court; one Member who is or has been, a Judge of the Supreme Court; one Member who is, or has been, the Chief Justice of a High Court; two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.