CHAPTER-VI

CONCLUSION AND SUGGESTIONS
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The concept of human rights has a long history but the rules and machinery designed for the international protection of these rights are in large measure a post-World War-II development. The several global and regional instruments for the protection of human rights have given rise to a substantial body of literature which is known as International Law of Human Rights. The human rights are so important leap forward. International community is of the considered opinion that human rights represent a new element in the development of mankind and in the life of human society. They signify the end of a period and the beginning of a new era in international relations. The central idea of human rights is the universal equality of all. In other words, it signifies the absolute prohibition of every kind of discrimination. This, 'principle of equality' was borrowed from 'Natural law' and was incorporated in the U.N. Charter by the international community. Now, this norm finds its way into all general or particular documents relating to human rights.

The Second World War generated a wave of revolution due to the shocking crimes committed against humanity. Under this shadow of hatred and fear, it was natural for the U.N. Charter which was adopted in 1945 to give priority to the recognition and protection of human rights. The language of the Charter reflects an impressive show of confidence on the part of its framers for the incorporation of human rights in the Charter. Therefore, seven times altogether, once in the Preamble and six times in the body of the Charter, its framers have expressed faith in fundamental human rights and their determination to secure these to the people of the world. The different Articles of the Charter refer to the need either for 'promoting and
encouraging respect for human rights" or for "assisting in the realization of human rights and fundamental freedoms".

The Economic and Social Council, the principal organ of the UN concerned for promotion and protection of human rights formed in 1946 the Commission on Human Rights, with power to deal with any matter concerning human rights. The Commission drafted the Universal Declaration of Human Rights, which was adopted by the General Assembly on 10 December 1948.

The Declaration, being the resolution of General Assembly, was not intended to be a legally binding document. But the importance of the declaration lies in the fact that for the first time members of international community classified human rights into five categories which are necessary for the physical and mental growth of all individuals. While the critics argue that there is no binding force of the Declaration, they tend to overlook the fact that moral sanctions can always be imposed on the erring States, much the same way as genocide and apartheid are denounced universally. Now as a part of Customary International Law, the Declaration is treated as binding in nature by all the States. The several rights and freedoms enumerated in the Declaration have been incorporated in the Constitutions of States which attained independence after 1948. The Declaration has exercised a profound influence upon the minds of the peoples of the world.

Another achievement of the Commission on Human Rights was the drafting of the International Covenant on Civil and Political Rights; the Economic, Social and Cultural Rights; and Optical Protocol to the Covenant on Civil and Political Rights which were adopted by the General Assembly in 1966 and came into force in 1976. Both the Covenants principally deal with rights which were to be enjoyed by individuals. The International Covenant on civil and Political Rights deals with the rights of equality, personal liberty, freedom from arbitrary arrest and detention, freedom from
rendering compulsory personal service, freedom of expression and conscience, right to participate in the administration of the country etc. The Covenant on Economic, Social and Cultural Rights deals with the right to work, the right to fair wages, the right to collective bargaining the right to carry on trade or profession, the right to establish institutions to conserve culture etc. As human rights and fundamental freedoms are indivisible and inter-dependent, equal attention and urgent consideration should be given to the promotion, protection and implementation of both civil and political, and economic, social and cultural rights.

However, the two Covenants differ in respect of the machinery set up under them for implementation of rights enshrined therein. In the case of the Covenant on Civil and Political Rights it is the Human Rights Committee, or organ established by the States Parties to this Covenant. In the case of Covenant on Economic, Social and Cultural Rights, the implementational machinery is the Economic and Social Council assisted by the Commission on Human Rights and the Specialized Agencies. The Human Rights Committee consists of persons serving in their individual capacity and thus work independently whereas the Commission on Human Rights consists of the representatives of Governments.

The State Parties to the Convention on Civil and Political Rights are under obligation to submit reports to the Human Rights Committee. The inter-state Communication system can be invoked only by those States which have made a ‘declaration’ recognizing in regard to itself the competence of the Committee. The conciliation procedure also requires declaration on behalf of the State. Therefore, except reporting system, the other mechanisms for implementation of human rights are not mandatory. The individual’s right to petition which has been provided in the Optional Protocol also depends upon the sweet will of the State. State practice in this regard is also discouraging. Further, the States are only required to
take steps individually and through international assistance and cooperation with a view to achieving progressively the full realization of the rights embodied in the Covenant on Economic, Social and Cultural Rights. The implementation procedure provided in this Covenant is insignificant as it does not go beyond the reporting system.

No doubt, the system of implementation provided in the International Covenants and the Optional Protocol is far from being perfect, but it is probably the most advanced among possible systems bearing in mind that a balance is to be created between State sovereignty and international obligations. To begin with, it is better to start with lesser States obligation and then to increase it. Now, after 33 years, the provisions of the Covenants may be amended to make it more obligatory.

The object of formation of international human rights law is to compel the contracting States to regulate in a uniform way their Constitutional or other laws to guarantee the individuals the same fundamental rights and freedoms so as to bring it in conformity with international instruments. However, when the moment comes to fulfill the international obligation through domestic measures, a certain resistance by the various domestic legal system is to be expected. This resistance sometimes assume the form of delay in the ratification of such measures or of an attempt to make reservations while ratifying so as to interpret the international obligation in the most convenient way in order to avoid substantial changes in the existing system. Hence, the international implementational measures must serve as a stimulus for the State Parties to each Convention, urging them to take, as soon as possible, the steps required for the fulfillment of their obligations.

When the Constitution of India was being drafted, the Constituent Assembly had before it, the Bill of Rights, the Universal Declaration of human Rights and the other ILO Conventions and the work on Covenants
on Human Rights was in progress before the Commission on Human Rights. India being a party to the Universal Declaration Human Rights, the Constituent Assembly tried to shape Indian Constitution in the light of international human rights documents. The Indian Constitution came into force on January 26, 1950.

The Preamble of the Indian Constitution declares India to be a ‘sovereign, socialist, secular, democratic republic’. It means the Government gets its authority from the will of the people and it is elected by the people representing them. The power to exercise legal as well as political sovereignty vests in the people, thereby making the India largest democracy of the world. In other words, in India all are equal irrespective of their caste, religion, language, sex and culture. The Constitution of India, to achieve the above stated objectives, has given a special status to the Chapter of ‘Fundamental Rights’ in Part III and ‘Directive Principles of State Policy’ in Part IV of it. The Fundamental Rights were deemed essential to protect the rights and liberties of the people against the encroachment of the power delegated by them to their Government. They are limitations upon the powers of the Government, Legislature as well as Executive. Therefore, the Fundamental Rights guarantees to the individual certain rights whereas, the Directive Principles give direction to the State to provide some other rights to its people in specified matter. These together constitute the conscience of the Indian Constitution. But the rights guaranteed and provided in the Constitution are required to be conformity with the Universal Declaration of Human Rights and the International Covenants which have been acceded to by India in 1979.

An objective evaluation of the Indian Constitution reveals that there is no water-tight compartment between the civil and political on the one hand and the economic, social and cultural rights, on the other, because Part III have also given place to some of the economic, social and cultural rights.
The rights contained in the Part-III of the Constitution as 'Fundamental Rights' are judicially enforceable and binding upon the legislature as well as the executive whereas 'Directive Principles of State Policy' in Part-IV have been expressly made non-justiciable though they are fundamental in the governance of the country. These rights have been discussed in two categories i.e. specifically guaranteed rights which are in Part-III and IV and Impliedly Guaranteed Rights which though are not part of the Constitution are still available to us due to liberal interpretation of Art.21 of the Constitution by the Indian Judiciary which treat them as fundamental also.

The comparative study of the human rights provisions of the Indian Constitution and that of the Universal Declaration of Human Rights and the Covenants on Human Rights is indicative of the fact that most of international provisions find place in the Constitution. Still there are certain rights which exist in the International Covenants but are missing in our Constitution e.g., right to leave country, right to return to one's country, right to work etc. But inspite of the acknowledgement of human rights in the Constitution, it cannot be said that these are totally guaranteed and that there is no violation of these rights.

The Indian judiciary has made a seminal contribution in interpreting Art. 21 guaranteeing the right to life and personal liberty. It took a century or more for the English and American judiciary to paint 'life and liberty' in multi-colour but the Indian courts took just four decades to reach that height. This Article (i.e. Art. 21) at one time treated as impotent, poor and skeleton without life and blood, was nourished year by year to grow into a reservoir of legal principles to be drawn upon by the judiciary to sustain a wide range of claims and interests. Now this residuary clause of freedom will give to the petitioner a master key to unlock treasures in the locker of right of life and personal liberty. Therefore, by reading Art. 21 with Art. 19 and Art. 14, the Supreme Court of India has for all practical purposes
created a new omnibus right endowing the judiciary with a creeping jurisdiction comparable with the due process jurisdiction of the American Supreme Court.

To begin with, the Supreme Court of India relied upon the English Law under which the judicial power was confined to the scrutiny of executive action in order to ensure its conformity to the authority of law and prescribed procedure in a case of deprivation of life and personal liberty. But, after a period of three decades, the Supreme Court widened the meaning of the expression ‘life and personal liberty’ under Art. 21 to include right to live with dignity. The crucial right to life stands enlarged in magnitude and in dimension. The courts have held that right to life under Art. 21 of the Indian Constitution includes, right to livelihood; right against inhuman, cruel and degrading treatment; right to life and capital punishment; right to free medical care; right to speedy trial; right to provide legal assistance and right against environmental pollution.

Life and personal liberty are basically two sides of the same coin, interdependent and inseparable. In the area of ‘personal liberty’, the Supreme Court has been doing a commendable job. A host of rights have been identified as constituting personal liberty viz., right to privacy; liberty to travel abroad; right to not to be imprisoned for inability to fulfill contractual obligation; right of prisoners to be treated with humanity; and right to compensation in case of violation of right to life and personal liberty.

The post-Maneka Gandhi expedition of the Supreme Court pressed Articles 14 and 19 into the service of Art. 21 in order to evolve the principle that the procedure for the deprivation of personal liberty had to be ‘fair, just and reasonable’. This has proved to be the Indian counterpart of American doctrine of due process of law. The Supreme Court has brought about two further changes in the sphere of personal liberty. Firstly, it has interpreted Art. 21 with other articles of the Constitution, such as Articles 14, 19 etc.
and therefore, propounded the theory of inter dependence of the Articles of
the Constitution. Secondly, the doctrine of 'intended and real effects' and
test of direct and indirect effect have been used to widen the scope of
Art.21. In fact, American legal system though considerably influenced the
Indian Courts.

There is no doubt that the concept of personal liberty is the fountain
head of many rights that unfold themselves gradually in keeping with the
movement of the society. 'Personal liberty' is no more personal. It has
become private liberty which is of course, a wider concept - healthy
transformation indeed. The concept of life has been broadened in its scope
and ambit to the extent that it tends to include many variables of personal
liberty, so much so that the distinction between 'life' and 'personal liberty'
becomes moribund issue. Therefore, the Supreme Court deserves Kudos
for demonstrating judicial activism to come to the rescue of an ordinary
man.

The judicial activism also made another endeavour to extend the
jurisdiction of courts in cases of public interest litigations. The court has
even treated a telegram sent to one of the judges as a writ petition even
though the sender of telegram complained of violations of the rights of a co-
prisoner. Similarly, petitions filed on the basis of newspaper reports have
been considered by the Supreme Court.

The Supreme Court of India also assumed the role of a reformer
while criticizing practices which according to its standards were violating of
the right to life and personal liberty. The Judiciary has used strong
language to condemn the handcuffing of prisoners as 'sadistic', 'despotic'
and 'demoralising'. The practice of using bar fetter is termed as
'outrageous', 'scandalising' and 'cruel'. However, court does not absolutely
rule out the application of these practices but permits their employment in
specified conditions.
The close analysis of the judicial process in action in this area reveals that the Indian Supreme Court had a deep and abiding problem into the phrase 'procedure established by law' which operates as a qualification to the right to life and personal liberty under Art. 21 of the Constitution. The learned Judges of Supreme Court have reached a consensus that this phrase connotes - Just, far and reasonable procedure established by a valid law. Some Judges said that the phrase is similar to American 'due process'. In America even the substantive law can be subjected to judicial scrutiny. Our Constitution makers had deliberately avoided the use of the expression 'Due process' to prevent judicial vargeries. The Judicial indulgence in this regard has evoked a mixed reaction. Some of the legal and political luminaries eulogized it for demonstrating judicial activism while others criticized it as distorting the Constitution. There is no denying the fact that the Supreme Court by its interpretation particularly in post Maneka period, ventured to amend the Constitution.

It is interesting to note that the Supreme Court from Gopalan's case up to 1977 preferred positivistic interpretation and thereby adopted crime control model with only dissent by Justice Fazl Ali. In the case of Maneka Gandhi Judges were softer and dealt with it more emotionally than judiciously whereby opted for due process model. Thereafter, the Supreme Court played hide and seek with the phrase 'Due process'. This change basically is the contribution of two judges of the Supreme Court of India, namely Justice Bhagwati, Justice Krishna Iyer. The Court continued harping on the 'Due process' doctrine but in A.K. Roy case, the Supreme Court found itself caught in troubled waters. However, the Supreme Court managed to wriggle out of it by restricting justness, fairness and reasonableness only to the procedure. Therefore, the judicial activism is a befitting tributes to those who sacrificed their lives to give us this precious right to life and personal liberty.
In India, Art. 21 of our Constitution protects the right to life and personal liberty. It allows the deprivation of these rights only by adopting a 'procedure established by law'. Art. 22 provides for the safeguards both in the cases of arrests under ordinary laws and under law relating to preventive detention. Clause (1) and (2) of Art. 22 deals with detention under the ordinary law and ensure the right to be informed, as soon as may be, of the grounds of arrest, right to be produced before a Magistrate within 24 hours and freedom from detention beyond the said period except by order of the Magistrate. Under Clause (3) these four constitutional safeguards have been expressly denied to enemy aliens and persons who are arrested and detained under any law providing for preventive detention. The safeguards provided in our Constitution in the case of preventive detention are very meager. A thorough interpretation of clause (4), (5), (6) and (7) of art. 22 reveals that executive authority has been empowered so much that it can curtail right to life enshrined in Art. 21 with a great ease. In this Art. 22 if one clause provides a safeguard for the detenu, the next clause by making an exception abrogates that very safeguard. For example, Art. 22 (4) provides that opinion of Advisory Board is required if a person is detained for more than three months whereas Clause (7) provides exception to this safeguard by empowering Parliament to enact a law by which a person may be detained for more than three months without the opinion of Advisory Board. Similarly, Clause (5) gives right to the detenu to know the grounds of his detention whereas Clause (6) provides an exception whereby facts many not be disclosed to the detenu if the detaining authority consider to be against the public interest. Therefore, the cumulative effect of all Clauses of Art. 22 does not provide any safeguard to the detenu if the executive wants to do so. Moreover, own nationals are equated with enemy aliens in this regard.

The role of non-governmental organizations in the protection of human rights, particularly right to life is laudable. Working at the
international, national or state level, these organizations function as
unofficial ombudsmen safeguarding the right to life against governmental
infringement. These non-governmental agencies for protection of Human
rights used all the available techniques such as diplomatic initiatives,
reports, public statements, efforts to influence the deliberations of human
right bodies established by inter-governmental organizations, campaign to
mobilize public opinion, and attempt to affect the foreign policy of some
countries with respect to their relations to states which are regularly
responsible for violation of right to life. The reports of Amnesty International,
People’s Union for Civil Liberties, People’s Union for Democratic Rights,
The Citizens for Democracy, Andhra Pradesh Civil Liberties Committee and
Punjab Human rights organization have caused executions to be stayed,
death sentences to be commuted, torture to be stopped, prison conditions
to be ameliorated, prisoners to be released, and more attention to be paid
to the fundamental rights as of many citizens.

Judicial decisions; reports of various international, national and state
non-governmental organizations; newspaper reports; and public opinion are
indicative of the fact that violations of human rights in India is on the
increase. Political parties, basically, pay more attention to attain power and
remain in power than to check violations of right to life and to eliminate such
instances of repetition of such human rights violation. In fact, the
Government resorts to more and more wide ranging and fierce techniques
to curb, repress and crush the stirring of the people.

The study revealed that under trials are a dejected lot in Indian jails.
The Commencement of trial is delayed unreasonably or it does not
commence at all and they remain in jails even for a longer period than the
maximum term of sentence provided for that offence. Under trials in jails
outnumbered the convicts. Over-crowding and clubbing of political
prisoners and under trials with hardened criminals have led to the tensions
in jails and clashes among the prisoners. The under trials who are presumably innocent persons until proved guilty by a court of law are compelled to cook, wash, clean and carry out every kind of work like slaves. They are being killed, blinded subjected to all kinds of tortures and even sexually exploited. So much so that due to unbearable and despotic treatment they even commit suicide. The detenus, the under trials and convicts are the three categories under which a person is kept in jail. Overcrowding, understaffing, corruption in the supply and distribution of food, sleeping space, drinking and bathing water, poorly trained wardens, defective administration, ineffective supervision, lack of proper facilities for work and lack of education facilities are some of the factors which have resulted in unhappy incidents in jails.

India witnessed extreme example of violations of human rights during the era of internal emergency during 1975-76. Emergency itself makes a serious invasion of one's right to life and liberty. But the way various excesses were committed during emergency extinguishing the life of many people found no comparison with any democratic model of the World. As many as 6851 detentions of leaders of opposition parties were made under preventive detention laws. Peoples were forcibly sterilized, tortured and even killed. At no time the countrymen of free India had suffered such a colossal deprivation of right to life and personal liberty. At no time people were made to suffer such indignities as they had to face during this period of Internal Emergency.

Police brutality and torture during the last two decades shows that the custodian of law has become the law breakers. The lathi-wielding attitude, the brutal abuse, its brutality of power and the use of third degree methods by the Police has become the order of the day. After the horrid experience of police brutality during emergency, police repression at present in many states like Punjab, Andhra Pradesh, U.P., Tamil Nadu,
Assam and in Jammu & Kashmir is very common. In the seventies, police atrocities became the order of the day in the states of Andhra Pradesh, Kerala, Tamil Nadu, Bihar and West Bengal. In several Indian States, especially in Andhra Pradesh and Tamil Nadu, tortures and atrocities on political suspects is reported to have preceded their killing in staged ‘encounters’. The political suspects were mainly members of the Communist Party of India (Marxist Leninist), commonly referred to as ‘Naxalites’. But in the emergency period, police excess became more violent and alarming. Major techniques of physical torture adopted by the police were stamping on the bare body with healed boots, beating with cane on the bare soles of feet, beating on the spine, beating with rifle butt, inserting live electric wires into the crevices of the body, burning with lighted cigarettes and candle flames, rubbing of chilli powder in the nose and rectum. The news of blinding of the undertrials by the Bihar Police sent shock waves through the length and breadth of the country.

Torture has been institutionalized in Punjab and Haryana in the form of Criminal Interrogation Agencies (CIA). A CIA squad, very much part of the district police force, is headed by an official of inspector rank. Normally, it has no powers of arrest as the cases are registered and dealt with by the police stations. Usually 90% of the suspects in these two states are produced for remand more than two days after their arrest made by the CIA which is under no police stations, jurisdiction. Generally, CIA men arrest anyone on the faintest record and if the victim dies during interrogation the agency denies ever having seen him. If he confesses or helps the interrogators recovering anything connected with the crime, he is transferred to a proper police station and a case is registered against him. If he refuses to check or looks innocent after some rounds of torture, he is just let off, often at night, and told to be wise enough not to complain to anyone. People never complain anyone due to fear of torture again.
In Punjab torture after eighties has become the order of the day. Cross verification of reports of Amnesty International, People's Union for Civil Liberties, People's Union for Democratic Rights, Committee for Information and Initiative on Punjab, Citizens for Democracy, Punjab Human Rights Organisations, Desh Punjab Students' Union and other available material reveals the violations of human rights committed by the institutions of the state in Punjab. These reports vehemently criticized the government for its over action, when the Indian Army in the first week of June 1984 launched an attack, on the inmates of the Golden Temple in Amristar, under the name of Blue Star Operation. Virtually, the whole of Punjab was placed under army and undeclared emergency was in force, thereby Punjab was cut off from the rest of the country and a rigid press censorship was imposed. These reports indicated the government for brutalities committed by armed forces during this operation. These reports also concluded that the attack on Sikh Community in November 1984 riots after the assassination of Mrs. Gandhi was the outcome of a well-organised plan. The reports have indicated some politicians and police personal as guilty in instigating arson, rape and killing.

Pressure groups have identified various methods of torture which include – victim is made to be down on one side and the log of wood (Belna) would be kept under his leg and would be rolled on one leg and then on the other leg; legs of the victims are torn apart other men sit behind the back thereby backbone / spine can be fractured in this process and man becomes impotent; victim is made to stand in attention and his hand tied behind the neck on the back and he is made to stand for 3 to 4 hours to cause extra-ordinary pain; victim is made to stand upright, his hands tied behind and a rod is inserted in the tied hands and the man is hung in the door through the door; victim is made to sit on the ground and his both legs are pulled apart at ninety degree rupturing all the muscles and tissues; women victims are also tortured and even raped; passing of electric current
through the genitals of the victim to make him impotent. Fake encounters, illegal detentions, torture of detainees in custody and their extra-judicial executions and insult of women have become as pervasive as unequivocally sanctioned by ruling political elite.

SUGGESTIONS

The present work has revealed the deficiencies in the international machinery for promotion, protection and implementations of human rights as well as in the national Constitutional measures adopted by India. On paper, the Indian Constitution contains adequate measures for protection and implementation of human rights in India but the system in action is far from satisfactory. There is calculated curtailment or violations of human rights at the instance the ruling elite and by institutions of the Government which include the adoption of Black Laws at the Central and State levels, the illegal detentions, fake encounters, tortures, deaths in police custody, insult of women, disappearances etc. Following suggestions, if conceded, will strengthen the international as well as national machinery for implementation of human rights to eliminate the chances of violations of human rights so that everyone should live with dignity and honour in this society.

A. INTERNATIONAL AGENDA FOR ACTION

1. Acknowledgement of New Rights

The development International law of Human Rights should also take note of new emerging human rights which are waiting for their recognition and implementation. These rights are:

I. The right to peace.

II. The right to development.
III. The right to enjoy the common heritage of mankind.

IV. The right of resistance.

V. The right to humanitarian assistance.

VI. The right to healthy environment. Therefore, the International Covenants should be amended in the light of the rights stated above.

2. Formation of Specialised Agency of Human Rights

There is already a proposal pending with the Commission on Human Rights for the creation of an United Nations Organization for the promotion and implementation of human rights with the status of a Specialized Agency to take over the various functions which are now scattered among a multiplicity of bodies. This organ will systematize the existing law of human rights to make it centrally implementational.

3. Formation of an Assembly on Human Rights

There is also a proposal before the UN to formulate an Assembly on Human Rights in which the people of the United Nations should be directly represented. This Assembly is to discuss only problems relating to the promotion, protection and implementation of human rights and to advice the General Assembly in this regard.

4. The Creation of International Court of Human Rights

Due to the formation of a number of Conventions relating to human rights and thereby generating the International Law of Human Rights, there is an urgent need to interpret this law. Therefore, an independent Court of Human Rights should be created to which individuals and groups of individuals would have access by way of appeals, if available domestic
remedies have been exhausted. This suggestion, which was made by Australian delegate, is need of the day.

5. **Appointment of High Commissioner on Human Rights**

The issue for appointment of High Commissioner on Human Rights is already pending before the General Assembly. The High Commissioner, if appointed, would assist in promoting and encouraging universal respect for human rights. It can maintain close relationship with other agencies concerned for protection of human rights. He would also 'render assistance and service to States at their request and, with the consent of the States concerned submit a report of such assistance and service'. These functions assigned to the Commissioner would be an advisory nature.

6. **Appointment of Ombudsman**

Rowalt Donald made this proposal for constituting a body called the 'United Nations Ombudsman', to assist the national ombudsman. Since, most of the countries have no system of this office, the possibility of this proposal is doubtful till the States appoint their ombudsman.

7. **Raising of Public Opinion**

Raising of public opinion is the most important task to implement the human rights programme. It can be done by making known to everybody at best those minimum standards of treatment which he or she is entitled and in making known to every person about the violations of human rights wherever they may occur. Mass media should be used to bring the message to the masses. By influencing public opinion, the governments in the United Nations will automatically be influenced. In this way, it would become a political necessity for governments to support the schemes for human rights protection.
8. Repeated Reference of the Universal Declaration and the Covenants

Taking into account the realities of the existing world order, the UN General Assembly should continue its efforts to reiterate the human rights spelled out in the Universal Declaration on Human rights and the International Covenants and emphasise that in so doing it is merely explaining what is implicit in the provisions of the Charter. The States should be persuaded to accept this view and to speedily ratify the various conventions on human rights.

9. Limited Interpretation of ‘Domestic Jurisdiction Clause’

The trend of giving limited interpretation to ‘domestic jurisdiction clause’ has to be continued and strengthened so as to enable UN to take effective steps for the implementation of human rights provisions of the Charter. The violations of human rights in a State should not be treated as a matter “essentially within the domestic jurisdiction” of that State. It should be a matter of international concern.

10. Removal of Causes of Denial of Human Rights

Reasons for violations of human rights are economic imbalances, ideological divisions, threats to external or internal security. The violations of human rights depend upon the domestic circumstances like, the nature of regime, internal social tensions and racial discrimination. Removal of these causes would require the adoption of a variety of social tools by Government and human rights agencies so that human rights should be available to everybody in spite of these tensions.

11. Removal of Adverse Effects of Science and Technology

The UN and Governments should give proper attention to the establishment of measures to eliminate adverse effects of the impact of
Science and Technology, especially which lead to unemployment; adversely effect personal privacies, health and culture values of individuals.

12. Naming the Violators of Human Rights

In order to make violations of human rights an international criminal responsibility, the Specialised Agency of Human Rights (as has been envisaged in suggestion No.2) under the UN should register all serious crimes against humanity, including the name of all Governments and persons allegedly involved in violations of human rights. There exists a rich documentary source for a number of countries which only required to be arranged systematically. Such like registration would operate as a serious deterrent effect in the minds of those who are busy to remain in power even by violating human rights.

13. Addition of Article 99 (A)

U Thant's suggestion that a new Article 99 (A) should be incorporated in the Charter conferring power on Secretary General of the UN to bring to the notice of Security Council or other organs, of grave and serious violations of human rights, so that effective measures to check their violations, should be adopted without delay.

14. Adoption of Flexible Conventions

Further, conventions should be so construed as to permit nations, if they wish, to undertake minimal obligations at first and to expand the degree of their commitment as their internal circumstances permit. This can be achieved through a wider use of such devices as Protocols, liberal reservation clauses and optional clauses.

15. Universal Accountability

The principle of universal responsibility for the trial of persons guilty of gross violations of the human rights should be developed so that, even if
such persons are pardoned by their national Governments, for the atrocious
viruses which they have committed, they may be, if caught outside their
countries, be amenable to international proceedings.

B. NATIONAL AGENDA FOR ACTION

1. To Delete Preventive Detention Provisions of the Constitution

Under the present circumstances, when ruling Congress (I) party at
the Centre is not so strong, a collective effort should be made by all political
parties to repeal Constitutional provisions relating to preventive detention
laws. Some stringent provisions, if needed, may be added in the Indian
Penal Code to deal with anti-social elements who deserve punishment; for them preventive detention laws are inadequate. Therefore, Clauses (4) to (7) in Article 22 of the Indian Constitution must be deleted so that ruling party may not misuse it.

2. Incorporation of Due Process of Law

Indian Courts feel handicapped to further develop the right to life by liberal interpretation of Article 21 due to the presence of phrase 'procedure established by law' whereby courts can only check fairness of the procedure and not substance of law in strict sense of the terms. To check violations of this right and to develop it in its finest form the expression 'procedure established by law' should be replaced by 'due process of law'.

3. Non-derogability of Right to Life

The non-derogability of right to life should be strictly enforced so that in future the wrongful acts of ruling elite should have no place under the Indian Legal System.
4. **Acknowledgement of other Rights**

It is necessary not only to attack manifestations of violations of human rights but also to study in the light of Judicial decisions various expanding dimensions of right to life viz., right to realize full life expectancy, right to safe and healthy environment, right to peace; right to development; right to livelihood in positive sense; right against unwarranted deprivation of life etc. in our socio-economic fabric.

5. **Improvement in the Conditions of Jails**

All the three categories of inmates of jails, i.e. detenus, undertrials and convicts need separate attention by the jail authorities. They cannot be clubbed together. The position of jails in India is worse than a zoo where at least animals enjoy some freedoms and are properly nourished, whereas in jails men are forced to perish. The custodian violence has reached unimaginable heights and, therefore, jail staff behaves like cannibals. There techniques or tyranny are barbaric. Jail staff should be made responsible guardians of jail inmates. Various causes like over-crowding, understaffing, corruption in the study and distribution of food, inadequate sleeping space, scarcity of drinking and bathing water, lack of health facilities, lack of trained wardens, ineffective supervision, lack of proper facilities for work and education etc. need to be removed to ameliorate the plight of inmates of jails.

6. **Policing the Police**

The Police has become unruly and unscrupulous. It carries an image of terror and torture. The police in India is ruthless and outdated. The violence by police seems to be institutionalized in the police set up. Without policing the police, it is impossible to expect protection and promotion of human rights. Following measures are essential to make policemen socially responsible:
(I) The police training should be re-oriented so as to include in it compulsory educational course in the Constitution and human rights. Policemen should be trained from the point of view of victim i.e. they should consider it their first duty to help the victim and nabbing the culprit should come only next.

(II) Educated people may be recruited, who may not compromise with the primitive techniques of torture. Apart from physical fitness, the mental health of the police should receive due consideration. The value of ethics and mortality could be generated in police by a proper training and education.

(III) Section 176 of the Code of Criminal Procedure makes mandatory an independent judicial inquiry into all cases of deaths in police custody and in encounters. This mandatory requirement under the law has either been completely ignored or executive magistrates carry out the inquiries. The judicial determination of the circumstances of these death require procedures which cannot be influenced by executive compulsions and must therefore only be carried out by judicial magistrates.

(IV) No person should be detained without the reasons, the place, the time of detention, the identity of the relevant officials and the law applied, being recorded. Place of detention must immediately be communicated to the families and the lawyers who must also be allowed access to the detainees under the law.

(V) Detainees must be medically examined before the commencement of their interrogation.

(VI) Police must be ordered to maintain proper records of all persons held in detention which should be accessible to all.
(VII) The victims of the Governmental lawlessness should have a remedy available against the State. A suit against the State should be maintainable under the Constitution for breach of fundamental right to life under Article 300.

(VIII) Policemen responsible for illegal acts should also be punished so that others may desist from such practices. Mere transfer is not enough as is the general practice.

7. Inspection by Human Rights Organizations

Government should allow inspection by Human Rights Organizations where there are violations of human rights. Investigation of violations of rights by such agencies will enable the people to know the exact position of state of affairs of their country with regard to the protection of human rights.

8. Co-operation of Public

Human Rights Organizations play an important role in building Police Opinion against violations of human rights. It is the moral duty of the Government to make reports of these organizations action-oriented.

9. Human Rights Education

Illiteracy and poverty are the two basic reasons for violations of human rights. People should be made aware of their rights by imparting them education of human rights at elementary level.

10. National Unity

Protection and promotion of human rights require a strong political will and a firm hand to implement it. All political parties and pressure groups must unite for this common cause; then and only then can we think of attaining this goal.
11. Public Interest Litigations

Public interest litigation system introduced by Supreme Court is an interesting and encouraging trend by which any individual can seek judicial redress for the benefit of those persons who are poor, illiterate or those who are in socially and economically disadvantageous position. Interim compensation of Rs. 50,000 awarded by Supreme Court to each Pillibhit victim through public Interest Litigation is a right step in the direction of protection of human rights. Recently, in a Public Interest Litigation, Supreme Court has ordered an inquiry by the C.B.I. in the case of Kulwant singh, a Ropar-based advocate, his wife and their two-year old son who were allegedly killed by the police. This system should now be incorporated into the Constitution itself to make it wide ranging and authoritative for enforcement.

12. To make National Commission on Human Rights an Independent Body

Recently, National Human Rights Commission has been formed by the Central Govt. to inquire into the cases of violations of human rights. It should be made an independent body like judiciary so that the Government may not influence its working. This Commission should try to co-ordinate the work done by Human Rights Organisations in India. This Commission can put forward certain concrete proposals to check violations of human rights. It can be more effective if it has its own independent investigating machinery with punitive powers. It should be empowered to grant compensation or even immediate interim relief to the victims or the members of their family.

13. Amendment of the Constitution

The Indian Constitution should be amended in such a way as to guarantee those rights which have been left over to make it strictly in
accordance with the Universal Declaration and the International Covenants. Indian Government should withdraw reservations made while acceding to the International Covenants on Human Rights so as to set an example before the international community.

14. The Creation of Human Rights Department

It is desirable that at Central and State levels, a separate department for the implementation of human rights should be created. The department would help the Government to discharge its various duties relating to human rights more effectively.

15. Compensation in Cases of Violations of Human Rights

A positive trend has been set by our honourable Supreme Court to award compensation in case of violations of human rights. Recently, Punjab and Haryana High Court has also followed it when it awarded Rs. 50,000 each to the four women as an interim relief on a petition filed by them alleging that the Punjab Police had tattooed the word "jebkatri" on their foreheads. This healthy trend will certainly reduce the cases of violations of human rights. It will also bring the erring public officers to the right track.