Chapter – II

Background

The chapter is divided into three parts. The first part deals with the development of International Human Rights Law. The second part deals the core social and economic rights enumerated instruments. The third part of the chapter deals about economic and social rights in India and its International obligation has analyzed. For this purpose, various Social and Economic rights have been discussed for incorporation of such rights into India by process of incorporation through legislature, executive and judiciary.

2.1 Development of Human Rights in International Level

Traces of human rights thinking can be found in earlier religious and political systems.\(^1\) The Development of human rights in the international regime was operating at the beginning of the twenty-first country in the form of Eurocentric traditions of religious, moral, philosophical and political thought.\(^2\) It is recognized that the evolution of human rights in Western democracies have been complex, diffuse and shaped by their unique political and religious parts. The origins of the contemporary system are to be found in British, French and American thinking of the Seventeenth Century.\(^3\) Therefore, it is accepted that the Eurocentric tradition followed by more abstract concerns about any form of oppressive state power was gradually absorbed into a moral and political philosophy. It is fully based on the ideas of respect for human dignity, equality and autonomy in relation to the conduct of states towards


\(^3\) It is proclaimed in the American Declaration of Independence, 1776 and the French Declaration of the Rights of Man and the Citizen 1789.
individuals in their jurisdiction.\textsuperscript{4} The idea of respect for persons as a basis for public morality is prominent in Christian thought. For development in moral philosophical thought of ‘respect for persons’ as a fundamental principle of Social morality. It is antecedent to the three principles of utility, equality and liberty.\textsuperscript{5}

Historically human rights first covered ‘natural rights’ such as right to life, liberty, property and religion. Thereafter it not only to cover traditional Civil Liberties and Rights to participation but also covered the early part of the Twentieth Century influenced by the growing international labour movement includes Social, Economic and Cultural Rights. It reflects the duty of states to provide for material conditions of human existence such as education, welfare benefits and adequate decent standard of living.\textsuperscript{6} Many resolutions have contributed towards the development of human rights. First charter of human rights are to be found among the three British Constitutional Documents, namely, \textit{the Magna Carta}, 1215, the Petition of Rights, 1628 and the Bill of Rights, 1689. These documents were the forerunners of the modern bill of rights.\textsuperscript{7} The dignity and rights of man was the dominant theme of Political Philosophy of the 18\textsuperscript{th} Century. This theme was followed into practical significance in the Virginia Declaration of Rights, 1776, the American Declaration of Independence, 1776, the French Declaration of the Rights of Man and Citizen, 1789 and series of Amendments to the U.S. Constitution, 1791 as the American Bill of Rights.\textsuperscript{8}

\textsuperscript{4} \textit{Supra} note 2 at 3-50.
\textsuperscript{5} \textit{Id}.
\textsuperscript{7} Abdulrahim P. Vijapur, \textit{Human Rights in International Relations} 22 (Manak Publications, New Delhi, 2010).
\textsuperscript{8} \textit{Id}.
The British, American and French documents were gradually elaborated important Civil and Political Rights but the October revolution of Soviet Russia in 1917 brought to forefront the Social, Economic and Cultural Rights. The International Labour Organization (ILO) was founded the signing of the Treaty of Versailles 1919 with object ‘to establish fair and humane conditions of labour’. ILO is responsible for the origins of Socio-economic rights in an international context. International Human Rights Law is primarily a Post-World War II phenomenon. The development of comprehensive International Human Rights Law is responsible for atrocities of the horrors of Nazi persecution of the Jews. International Human Rights Law is intimately related to the United Nations System. The all global instruments relating to human rights were originated from the United Nations.

a) The United Nations and Human Rights

The modern human rights jurisprudence has been developed during post World War-II. The monstrous violation of human right occurred during the World Wars I & II. The events were responsible for inclusion of human rights clauses in the United Nations Charter. Franklin Roosevelt, then President of United States had addressed the U.S. Congress on 6th January 1941 about the “State of the Union”. He declared in his speech that “in the future days, which seek to make secure, we look forward to a world founded upon four essential freedoms”. After that he set out the four freedoms which would be applied to any person in every where in the world. These “four fundamental freedoms” were freedom of Speech and expression; freedom of worship; freedom from want; freedom from fear. He further asserted that “true individual freedom cannot exist without economic security and

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9 Supra note 6 at 12.

independence… We have accepted, so to speak, a second bill of rights, under which a new basis of security and prosperity can be established for all.”

This speech is responsible for the development of international human rights in the international sphere. After the end of World War-II on 8th May 1945, the San Francisco Conference on 26th June 1945 has replaced the league of Nation and responsible for the establishment of the United Nations. It came into force on 24th October 1945. One of the most significant features of the United Nation is the inclusion of the promotion of human rights as one of the basic aim of in this Charter. United Nations Charter referred to human rights and fundamental freedoms as one of the purpose the organization. It specifically mentioned that the right to self-determination of people and non-discrimination is internationally recognized human rights. The drafters of the United Nations Charter consciously recognized that Social Justice and human rights are foundations of a stable international order. This notion is reiterated in the preamble to a number of human right treaties. There are seven specific provisions of the charter which deals with human rights. These are Articles-1, 13(1) (b), 55, 56, 62, 68 and 76(c). The charter was the first universal multilateral treaty to embody human rights concerns. The first reference has been

11 Supra note 6 at 13.
16 Supra note 12 at 11.
17 Supra note 7 at 120.
found in the preamble. It reads as “we the people of the United Nations determined….. to reaffirm faith in fundamental human rights, the dignity and worth of human person, in the equal rights of men and women and of nations large and small…. have resolved to combine our efforts to accomplish these aims”.18

Article-1(3) of the charter states that one of the purposes of the United Nations is “to achieve international co-operation….. in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”. Article-13(1)(f) directs to General Assembly to fulfill its one of aim as “promoting international co-operation in the Economic, Social, Cultural, Educational and Health Fields, and assisting in the realization of human rights and fundamental freedoms for all – without distinction as to race, sex, language, or religion”. Article 55 of the charter clearly and expressly provides the extensive purposes of the United Nations in the field of human rights. It provides “respect for the Principles of equal rights and self-determination of people”, promotion of “high standards of living, full employment, and conditions of economic and social progress and development”19, “solution of international economic, social, health and related problems”20, and the “universal respect for, and observance of, human rights and fundamental freedoms for all, without distinction as to race, sex, language, or religion”21. Article-56 has imposed obligation that all states have pledged themselves to take joint and separate action in co-operation with the United Nations for the achievement of the purposes set fourth in Article-55. Para-(2) of Article-62 of the charter provides that the ECOSOC “may make recommendations for the purpose of promoting respect for, and observance of human rights and fundamental freedoms for

18 Preamble to the Charter of the United Nations, 1945.
20 Id, article 55(2).
21 Id, article 55(3).
al”. This Article contains additional general definitions of the competence of the
council; that it “may prepare draft conventions for submissions to General Assembly,
with respect to matters falling within its competence”\textsuperscript{22} and that it “may call…
international conferences on matters falling within its competence”\textsuperscript{23}. Therefore
Article-68 of the charter imposed obligation on ECOSOC. It is required to “set up
commissions in economic and social fields and for the promotion of human rights…”

The Chapter-XII deals with the international trusteeship systems. Under
Article-76(c) provides its one of the “basic objectives” of the systems “to encourage
respect for human rights and fundamental freedoms for all, without distinction as to
race, sex, language, or religion…….” and under Article-87 of the charter provides for
the supervision of the administration of trust territories through systems of reports,
examination of petitions and periodic visits to these territories. In addition to that
Article-73 provides in a declaration regarding other Non-Self-Governing Territories.
The Administering States accept “as a sacred trust”, its obligation to promote to the
utmost “the well being of the inhabitants of these territories”, and to this end to
ensure “their just treatment, and their protection against abuses”. The UN Charter
did not perfectly enumerate what are the human rights but it was a historic step in the
long march of mankind to a better world. The task of spelling out human rights was
assigned to the General Assembly, the ECOSOC under Articles 13 and 62; and the
Commission on Human Rights to be created under Article-68 of the Charter. As aptly
remark made by Professor Loins B. Sohn about human rights that just as the French
Revolutions ended the divine rights of Kings after that the human rights revolution
was begun at the 1945 UNCIO in Sam Francisco which has deprived the sovereign

\textsuperscript{22} Para (3) of Article 62 of the United Nations Charter, 1945.
\textsuperscript{23} Id. Para 4.
states of the lordly privilege of being the sole possessors of the rights under international law.\textsuperscript{24}

\textbf{b) The International Bill of Human Rights}

After the United Nation came into force, the preparatory Commission of the United Nations recommended that the Economic, Social Council should establish a Commission on Human Rights.\textsuperscript{25} It is to formulate \textit{“on International Bill of Human Rights”} and to prepare studies and recommendations in the field of Human Rights. Resolution No. 7(1) of General Assembly dated 12.02.1946 has approved the recommendations and ECOSOC’s Commission on Human Rights. The Commission on Human Rights is directed to submit to the council the proposals, recommendations and reports regarding an “International Bill of Rights”.\textsuperscript{26} The first regular session of the Commission on Human Rights held on January, 1947. Its first task was the drafting of International Bill of Rights. It declared that the Bill should have three parts\textsuperscript{27} i.e., a declaration, a convention containing legal obligations; and measurers of implementation. Mrs. Eleanor Roosvelt of the USA was the chairperson of the Commission and the drafting committee of the UDHR. After the examination of the Commission, the draft was submitted to the General Assembly through ECOSOC in 1948. The Declaration was finally adopted on 10\textsuperscript{th} December 1948 with 48 Votes in favour none of them against them but eight abstentions.\textsuperscript{28} The Declaration would provide a useful means of criticism and would help to bring about changes in present

\begin{itemize}
\item \textsuperscript{25}Report of the Preparatory Commission of the United Nations, Document PC / 20 (23 December 1945).
\item \textsuperscript{26}Atula Gaur, \textit{Protection and Implementation of International Human Rights in Domestic Law} 70 (Serial Publications, New Delhi, 2010).
\item \textsuperscript{27}Prof. S.R. Bhansali, \textit{Law Relating to Human Rights} 80 (Universal Law Publishing Co., New Delhi, 2013).
\item \textsuperscript{28}G.A.Res.217A(iii) U.N.G.A.,3\textsuperscript{rd} Session at 71 DN Doc. A/810 (1948). Byelorussia, Czechoslovakia, Poland, South Africa, Saudi Arabia, Ukrine, the USSR and Yugoslavia abstained.
\end{itemize}
legal practice. Mrs. Roosevelt, the chairperson of the Drafting Committee Opines that it was first and foremost declaration of the basic principles to serve as a common standard for all ‘nations’\textsuperscript{29}. It resembled well as become the \textit{Magna Carta} of the mankind, and that its proclamation by the General Assembly would be of importance comparable to the 1789 Declaration of the Rights of Man in Declaration of Independence of the United States of America\textsuperscript{30}. The similar kind of rights were recognized all countries in their written constitutions.

The UDHR consists of a preamble and 30 Articles. It is setting forth the human rights and fundamental freedoms to all men and women, everywhere in the world, one entitled without any discrimination. Article-1 days down the philosophy of the Declaration. It reads as: all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another is a spirit of brotherhood. Article-2 sets out the basic principle of equality. Articles-22 to 27 sets out the Economic, Social and Cultural Rights. These are including; right to Social Security; the right to work; the right to equal pay for equal work; the right to rest and leisure; the right to a adequate standard of living – health and well being; the right to education; and the right to participate in the cultural life of the community. These rights are indispensable for human dignity and the free development of personality. It indicates that these rights are to be realized \textit{“through national effort and international Co-operation”}. At the same time, it imposes limitation of realization because it depends upon the resources of the state. Articles-28 to 30 provides realizations and limitations of declaration.

Declaration is considered as a \textit{“soft law”} because it lays down a statement of principles of inalienable human rights and fundamental freedoms setting up a

\textsuperscript{29} \textit{Supra} note 26 at 81.

\textsuperscript{30} \textit{Id.}
common standard of achievement for all people and all nations. However Professor Lauterpacht was of the view that being a facile generalization of the U.N. Charter it lays down legal obligations of the members to act in accordance with these purposes.\textsuperscript{31} Prof. Louis B. Sohn has said that the declaration has become a part of the constitutional law of the world community and together with the charter of the United Nations. It has achieved the character of a world law superior to all other international instruments and to domestic law.\textsuperscript{32} The Universal Declaration of Human Rights is still the pre-eminent document in the growing corpus of human rights instruments.\textsuperscript{33} Therefore the UDHR has acquire the status of \textit{jus cogens} is international law by reason of the consistent practice of states as well as of international institutions is invoking its provisions as evidence of the content of the International Law.\textsuperscript{34} Now, UDHR is forms part of customary international law and so is finding on states whether or not they are members of the U.N.\textsuperscript{35} These Principles were automatically incorporated by all countries in the world to their legal system.

After the adaptation of the Declaration, the UN members urged the commission on Human Rights to draft finding covenants which forms port of the International Bill of Rights. The Declaration was just over drafted within 18 months. However, the covenants took 18 years for its force. In 1948, the General Assembly instructed the United Nations Commission on Human Rights to prepare on draft covenant on human rights and draft measures for implementation. After three years debate, it requested the commission that it should draft two covenants, i.e. Covenant on Civil and Political

\begin{itemize}
\item \textsuperscript{31} H. Lauterpacht, \textit{The International Law and Human Rights} 47 (Stevens&Sons, London, 1950).
\item \textsuperscript{32} Louis B. Sohn, \textit{International Law: Comparative Jurisprudence}, 1967, p.17.
\item \textsuperscript{34} Between 1958 and 1972, References to UDHR were included in 25 New National Constitutions and 8 Domestic Legislative Acts; U.N. Action in the field of Human Rights, pp.21-22.
\item \textsuperscript{35} \textit{Id., at} 14-18.
\end{itemize}
Rights and Covenant on Economic, Social and Cultural Rights. The Covenant on Civil and Political Rights were meant to be implemented immediate but the ICESCR were to be achieved progressively because this rights were programmatic in nature, therefore it is allowing for gradual implementation.\textsuperscript{36} The commission has review the two drafts in 1953 and 1954 after that General Assembly had recommended to third committee for article-by-article review of the text in its 1955 session. Then the Secretary – General of the United Nations, U. Thant stressed the importance of the adoption of the international covenants by his inspired words:

\textit{``Today’s decisions are the culmination and the outcome of sustained and complex preparatory work to which the United Nations has devoted itself since 1947. It was then decided that human rights and fundamental freedoms which had been referred to in general terms in the charter and which were soon to be proclaimed “standards of achievement” in the Universal Declaration of Human Rights must be made the subject matter of legally finding obligations in international treat is .... in the philosophy of the United Nations, respect for human rights is one of the main foundations of freedom, justice and peace in the world....''}\textsuperscript{37}

Both international covenants had adopted by the United Nations General Assembly on 16\textsuperscript{th} December 1966.\textsuperscript{38} These covenants opened for signature on 19\textsuperscript{th} December 1966. Both covenants were required 35 ratifications for its force. Both covenants have effective implementation mechanism. Therefore it may be called as a ‘hard law’. ICCPR contains negative rights. These rights restrict or prohibit the state from abridging or taking away enumerated rights under it. ICESCR enumerates positive rights. These rights enforced by the state by some positive action for

\textsuperscript{36} Supra note 7 at 141 and Oliver De Schutter, \textit{International Human Rights Law} 17 (Cambridge University Press, New Delhi, 2010).

\textsuperscript{37} General Assembly’s Official Report (GAOR), 21\textsuperscript{st} Session, Plenary Meetings, 1496\textsuperscript{th} Meeting, paras 70 & 74.

\textsuperscript{38} International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by United Nations General Assembly Resolution 2200A (XXI) of 16\textsuperscript{th} December 1966, Entry into force 3\textsuperscript{rd} January 1976 and 23\textsuperscript{rd} March 1976 respectively.
realization of this right. The ICCPR has guaranteed the right to marry and found a family\(^{39}\) and equality before the law.\(^{40}\)

c) **International Covenant on Economic, Social and Cultural Rights, 1966\(^ {41}\)**

The preamble of the ICESCR, 1966 specifically states that in accordance with Charter of the United Nations and Universal Declaration of Human Rights recongnising the “ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights…”\(^ {42}\) It has been divided into five parts consisting of 31 Articles. Part-I contains article-1 which provides that all people have right of self-determination, by virtue of that they freely determine their political status and freely pursue their economic, social and cultural development, all peoples may freely dispose their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation and the people of non-self governing and trust territories shall promote the realization of the right of self-determination and shall respect that right.

Part-II contains four Articles i.e. articles-2 to 5. Article-2 provides that with a view to achieving progressively the full realization of the rights to adopt legislative measures; these rights were exercised by the State parties without any discrimination of any kind as to race, colour, sex, language, religion, political or other status; the developing countries with due regard to human rights and their national economy may determine to what extent they would guarantee the economic rights recognized to the non-citizens. Article-3 states that the states shall ensure the equal right of men and women to the enjoyment of all Economic, Social and Cultural Rights started under the

\(^{39}\) *Id.* article 23.

\(^{40}\) *Id.* article 26.


\(^{42}\) Justice Hosbet Suresh, *All Human Rights are Fundamental Rights* 188 (Universal Law Publishing Co., New Delhi, 2010).
ICESCR, 1966. Article-4 provides that the states may promote the General Welfare in a Democratic Society and Article-5 impose restrictions for destruction of any rights or freedoms recognized in the covenant.

Part-III contains ten articles i.e. from article 6 to article 15. It has declared substantive rights relating to Economic, Social and Cultural Rights. These rights are the right to work, the right to just and favourable conditions of work including fair wages, equal pay for equal work and holiday with pay, the right to form and join trade unions, including the right to strike, the right to social security, protection of the family, including special assistance for mothers and children, the right to an adequate standard of living, including adequate food, clothing and housing and the continuous improvement of living conditions, the right to the highest attainable standard of physical and mental health, the right to education, primary education being compulsory and free for all, and secondary and higher education generally accessible to all (article 14 permits the progressive implementation of this right) and the right to participate in cultural life and enjoy the benefits of scientific progress.

Part-IV contains ten articles, i.e. articles-16 to 25. These deals about reports by states, arrangements by the ECOSOC with specialized agencies, transmission of reports to the Commission on Human Rights, comments on them by the states and International Actions for the achievement of rights. Article-16t provides report on the measures and the progress made by the states for realization of the covenant enumerated right in their states; it shall be submitted to the Secretary – General of the

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44 Id, article 7.
45 Id, article 8.
46 Id, article 9.
47 Id, article 10.
48 Id, article 11.
49 Id, article 12.
50 Id, article 13.
51 Id, article 15.
United Nation. Similarly Articles-17 and 18 make Economic and Social Council may make arrangements for realization of the ICESCR enumerated rights. Article-19 provides that the ECOSOC may transmit to the Commission on Human Rights for study and General Recommendations for information the reports concerning human rights submitted by states in accordance with Articles-16, 17 and 18. The states and the specialized agencies concerned may submit comments to the ECOSOC on any General Recommendation under Article-19 or reference to such General recommendation in any report of the Commission on Human Rights. Articles-21 provides that the Economic and Social Council may submit reports and recommendations to the General Assembly. Article-22 further provides that the Economic and Social Council may inform other organs to furnish Technical Assistance to U.N. Agencies.

Part-V contains six articles i.e. from articles-26 to 31. Article-26 provides that when a state signs a treaty, the signature in subject to ratification, acceptance or approval. Article-27 deals about entry into force. Further Article-28 states that covenant shall extend to all parts of federal states without any limitations or exceptions. Article-29 provides the amending procedures and Articles-30 and 31 states that signatures, rectifications, entry into force and language of the covenant. Implementation of these rights was monitored by the Committee on Economic, Social and Cultural Rights (CESCR) which was established by ECOSOC in 1985. It is examining reports submitted to it by the state parties on measures taken by them for realization of ESCR. It also assists the ECOSOC to fulfill its supervisory functions relating to the covenants by making suggestions and recommendations of a general

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52 Id, article 20.
nature based on its periodic reports by the states parties.\textsuperscript{53} Apart from Universal Declaration of Human Rights, 1948; and International Covenant on Economic, Social and Cultural Rights, 1966, these are other large number of specific global human rights treaties deals with human rights which also recognized social and economic rights.

d) Core Human Rights Treaties

According to Prof. Oliver De Schutter, nine treaties are having common characteristic regarding human rights. Therefore he called as ‘core human rights treaties’. These are fully based on values mentioned under Universal Declaration on Human Rights which sought states parties to protect and fulfill.\textsuperscript{54} These treaties are primarily based on a reporting procedure. It provides information on regular basis by state parties what are the measure they have done for develop and fulfill for realization of human rights. These treaties are as follow:\textsuperscript{55}

1. International Convention on the Elimination of All Forms of Racial Discrimination, 1965;
3. International Covenant on Civil and Political Rights, 1966;
5. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984;

\textsuperscript{53} Supra note 7 at 152.
\textsuperscript{54} Supra note 13 at 17.
\textsuperscript{55} Id., at 17-18.
8. Convention on the Rights of Persons with Disabilities, 2006; and

These nine core international human rights treaties differ from others treaties, because it has built a body of independent reports committees for supervising and implementation of human rights which contribute to the development of international development of human rights. Some of these conventions are guaranteed to social and economic rights. These are as follows:

1) Convention on the Elimination of All Forms of Discrimination Against Women, 1979: The Convention deals with the specific rights, Political, Social and Cultural Concerns of women. It was laid by the commission of the status of women. The other earlier instruments had also discussed women rights. These instruments were responsible for the recognition of women human rights in field of international interest on human rights. It has opened for signature on 1st March 1980 and entered into force on 3rd September 1981. Article-3 of the CEDAW requires state parties to “take is all fields, in particular in the Political, Social, Economic and Cultural Field, all appropriate measures in duding legislation, to ensure the full development and advancement of women” and “temporary special measures aimed at accelerating de facto equality between men and women.” The certain substantive

56 Id, at 19.
provision has provides that the states are required to take actions to realize women social and economic rights. These are\textsuperscript{61} to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations,\textsuperscript{62} to eliminate discrimination against women in order to ensure to them equal right with men in the field of education,\textsuperscript{63} employment,\textsuperscript{64} health care,\textsuperscript{65} in the areas of Economic and Social life,\textsuperscript{66} in the rural areas,\textsuperscript{67} and in all matters relating to marriage and family relations,\textsuperscript{68} and to accord to women equality with men before the law.\textsuperscript{69} The Committee on the Elimination of Discrimination Against Women was established by the CEDAW.\textsuperscript{70} The Committees main function is to receive and consider reports of states parties who are submitted to it. It lacks the complaint monitory system from states or individuals. The world conference on Human Rights held at Vienna in 1993. It proposed to adopt the optional protocol to CEDAW and the same was adopted by the commission on the status of women on 12\textsuperscript{th} March 1999 and also adopted by General Assembly on 6\textsuperscript{th} October 1999.\textsuperscript{71} The optional protocol contains two procedures. The first procedure enables women, or groups of women under the state parties to the protocol to submit Complaints for violation of rights conferred under CEDAW to the Committee on the Elimination of Discrimination against Women.

\textsuperscript{61} Supra note 58 at 224-25.  
\textsuperscript{62} Id, article 8.  
\textsuperscript{63} Id, article 10.  
\textsuperscript{64} Id, article 11.  
\textsuperscript{65} Id, article 12.  
\textsuperscript{66} Id, article 13.  
\textsuperscript{67} Id, article 14.  
\textsuperscript{68} Id, article 16.  
\textsuperscript{69} Id, article 15.  
\textsuperscript{70} Id, article 17.  
\textsuperscript{71} 39 ILM 281 (2000).
The second procedure enables the Committee to initiate inquiries into situation of grave violation of women rights recognized under CEDAW.\textsuperscript{72}

2) \textbf{Convention on the Rights of the Child, 1989:}\textsuperscript{73} The issue of Children’s right has been proposed at a conference organized by the League of Nations in 1924. The General Assembly of United Nations adopted the Declaration on the Rights of the Child in 1959. But The United Nations Celebrated in 1979 as international year of the child. It was the final impetus for Human Rights Commission (HRC). Human Rights Commission sponsored a forum that met for one week each year. The forum was responsible to produce a convention on the rights of children. The General Assembly adopted the convention on 20\textsuperscript{th} November 1989 without having vote and it came force on 2\textsuperscript{nd} September 1991.\textsuperscript{74} The substantive part of the convention provides various social and economic rights of the child. Their rights are include the right to name from birth, to acquire a nationality, and to know and be cared for by his or her parents;\textsuperscript{75} the right of a child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests;\textsuperscript{76} the right to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health;\textsuperscript{77} the right to education;\textsuperscript{78} the right to be protected from economic exploitation, hazardous work, or work that interferes with the child’s education or is detrimental to the child’s health or physical, mental, spiritual, moral, or social development;\textsuperscript{79} and the right to last and leisure, play, and recreational activities and to participate fully in

\textsuperscript{72} Supra note 58 at 227.
\textsuperscript{73} A/RES/44/25, 20\textsuperscript{th} November 1989, 1577 U.N.T.S. 3, 28 ILM 1448 (1989).
\textsuperscript{74} Supra note 58 at 227.
\textsuperscript{75} Id, article 7.
\textsuperscript{76} Id, article 9.
\textsuperscript{77} Id, article 24.
\textsuperscript{78} Id, article 28.
\textsuperscript{79} Id, article 32.
cultural and artistic life.\textsuperscript{80} The convention in imposed obligation on state parties to implement various rights enumerated under it through “\textit{all appropriate legislative, administrative, and other measures}”.\textsuperscript{81}

The Convention established the Committee on the Rights of the Child.\textsuperscript{82} The Committee receives and examines states reports submitted by state to measures taken for implementations of enumerated right under it and the progress that has been taken by states for enjoyment of rights. The Committee has power to make recommendations to state parties and report to the General Assembly.\textsuperscript{83} The CRC has two optional protocols. The first optional protocol deals the involvement of children in Armed Conflict, 2000 which seeks to put dimit on the use of children in armed conflict.\textsuperscript{84} The second optional protocol deals sale of children, child prostitution and child pornography.\textsuperscript{85} These protocols were adopted by United Nations General Assembly on May 2000.

\section*{3) International Convention on the Elimination of All Forms of Racial Discrimination, 1965:}\textsuperscript{86} The General Assembly of United Nation adopted a Declaration on the Elimination of All Forms of Racial Discrimination and it is guaranteeing certain social and economic rights the right of everyone to equality before the Law,\textsuperscript{87} and adopting immediate and effective educational measures to promote understanding, tolerance, and friendship among nations and racial or ethnical groups.\textsuperscript{88} The convention was the first United Nations Human Rights instruments to set up an international human right monitoring system. It included an individual

\footnotesize{\textsuperscript{80} Id, article 31.  
\textsuperscript{81} Id, article 4.  
\textsuperscript{82} Id, article 43.  
\textsuperscript{83} Id, article 44.  
\textsuperscript{84} 39 ILM 1285 (2000). It came into force on 12\textsuperscript{th} February 2002.  
\textsuperscript{85} 39 ILM 1285 (2000). It came into force on 18\textsuperscript{th} January 2002.  
\textsuperscript{86} A/RES/20/2106, 21\textsuperscript{st} December 1965, 660 U.N.T.S. 195; 5 ILM 352 (1966).  
\textsuperscript{87} Id, article 5.  
\textsuperscript{88} Id, article 7.}
complaint procedure. It provided the Committee on the Elimination of Racial Discrimination.\textsuperscript{89} It was established in 1969. The Committee empowered to receive the periodic reports from the state parties\textsuperscript{90} and inquires into and helps settle complaints made by a state against another.\textsuperscript{91} Convention also provides optional clause about individual complaints.\textsuperscript{92} The individual may file a complaint before the Committee after exhausting available local remedies. The Committee must first find the complaint whether admissible or not. After that the Committee must seek report from state concerned and it will make suitable “\textit{suggestions and recommendations}” to that state.

\textbf{4) International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990:}\textsuperscript{93} ICPRMWF was adopted by the United Nations General Assembly on 18\textsuperscript{th} December 1990. It came into force on 1\textsuperscript{st} July 2003. The convention deals with human rights violations of migrant workers. A special Reporter was appointed by the United Nation’s Commission on Human Rights to overview problems faced by Migrant Workers in 1999. The convention contains 93 Articles and divided into 9 Parts. The convention came into force on 1\textsuperscript{st} July 2003. This convention in applicable to all without any discrimination, as to race, religion, colour, sex, language or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth and other status. It will be applicable to entire period of migration process of migrant workers and their families. It also includes preparation for migration, departure, transit and the entire period of story and remunerated activity in the state on

\textsuperscript{89} Id, article 8.
\textsuperscript{90} Id, article 9.
\textsuperscript{91} Id, article 13.
\textsuperscript{92} Id, article 14.
\textsuperscript{93} A/RES/45/158, 18\textsuperscript{th} December 1990.
employment as well as return to the state of origin. The convention also provides certain substantive Economic, Social and Cultural Rights to Migrant Workers and their families. These rights are to provide decent work without any discrimination and right to not be arbitrary deprivation of property without fair and adequate compensation. The Convention established a Committee on the Protection of the Rights of All Migrant Workers and Members of their families. It is machinery for the implementation of rights conferred under the convention. The state parties to the convention submit its report to the Committee in which the state parties taken steps for realization of convention enumerated rights and progress. The Committee shall consider reports submitted by state parties and provide suggestion to be taken by state concerned. The convention enumerated rights were in a circumstance cannot be relinquished.

5) Convention on the Rights of Persons with Disabilities, 2006: The United Nations General Assembly adopted the convention on the Rights of Persons with Disabilities and its Optional Protocol on 13th December 2006. It came into force on 3rd May 2008. The convention mainly focused to promote, protect and ensure the full and equal enjoyment of all human rights of persons with disabilities. It covers key areas such as accessibility, personal mobility, health, education, employment, habilitation and rehabilitation, participation in political life and equality and non-discrimination. The convention imposes obligation on state parties in live with available resource to realize these rights by progressive realization through action

94 Articles 1 and 7 of the International Convention on the Protection of the Rights of all Migrant Workers and Members of their families, 1990.
95 Id, article 11.
96 Id, article 15.
97 Id, article 72.
98 Id, articles 73 & 74.
99 Id, article 82.
oriented policy, legislative and judicial systems of the concerned states. The convention provides substantive social and economic rights to persons with disabilities such as: right to participation in public life,\textsuperscript{102} respect for home and the family;\textsuperscript{103} right to live in the community;\textsuperscript{104} right to education;\textsuperscript{105} right to health;\textsuperscript{106} habitation and rehabilitation;\textsuperscript{107} right to work;\textsuperscript{108} right to adequate standard of living\textsuperscript{109} and right to participate in cultural life.\textsuperscript{110}

The convention established the Committee on the Rights of Persons with Disabilities.\textsuperscript{111} The function of the Committee is to receive report from state parties which the state parties taken steps for realization of rights under it and it submit report to Secretary-General of the U.N. The Committee also will make recommendations and suggestions after the consideration of states reports. The U.N. General Assembly adopted optional protocol to the convention on the Rights of Persons with Disabilities on 13\textsuperscript{th} December 2006.\textsuperscript{112} This protocol provides receiving complaints from the individuals or group of individuals after the exhaustion of local remedies available to that individual. The Committee has power to seek report of the state regarding the complaint. After consideration report, it many request to state concerned to take interim measures to avoid such violations.

6) International Convention for the Protection of All People from Enforced Disappearance, 2006:\textsuperscript{113} Enforced or involuntary disappearance is considered as serious violation of human rights. These problems are persistent now in conflict

\textsuperscript{102} Supra note 100, article 29.
\textsuperscript{103} Id, article 23.
\textsuperscript{104} Id, article 19.
\textsuperscript{105} Id, article 24.
\textsuperscript{106} Id, article 25.
\textsuperscript{107} Id, article 26.
\textsuperscript{108} Id, article 27.
\textsuperscript{109} Id, article 28.
\textsuperscript{110} Id, article 30.
\textsuperscript{111} Id, article 34.
\textsuperscript{113} U.N.G.A. Resolution No.A/RES/61/177 dated on 20\textsuperscript{th} December 2006.
facing countries in African continent. The Government forces and armed opposition
groups are restored to disappearance. In this regard, U.N. has adopted the declaration
on the Protection of All Persons from Enforced Disappearance, 1992. It states that an
enforced disappearance occurs when the “persons are arrested, detained or abducted
against their will or otherwise deprived of their liberty by officials of different
brambles or levels of Government, or by organized groups, or private individuals
acting on behalf of, or with the support, direct or indirect, consent or acquiescence of
the Government, followed by a refusal to disclose the forte or where about of the
person concerned or a refusal to acknowledge the deprivation of their liberty, which
places such persons outside the protection of the law”\textsuperscript{114} These practice are clearly
violates human rights of person which set out under the various international human
rights instruments. For crab these practice, the United Nations General Assembly
adopted the International Convention for the Protection of All Persons from Enforced
Disappearance on 23\textsuperscript{rd} September 2006.\textsuperscript{115} The convention is not yet in force. It has
only 13 State Parties as on 26\textsuperscript{th} August 2009. The preamble of the convention states
that the extreme seriousness of enforced disappearance constitutes a crime and in
certain circumstances defined under international Law as crime against humanity.\textsuperscript{116}
\textit{Intoto}, the convention asserted that no one shall be subjected to enforced
disappearance\textsuperscript{117} in whatever situations whether a state of war, a threat of war,
internal political instabiltity or any other public emergency may not be invoked as a
justification for enforced disappearance.\textsuperscript{118}

\textsuperscript{114} U.N.G.A. Resolution No.47/13, 18\textsuperscript{th} December 1992.
\textsuperscript{115} A/RES/61/177, 20\textsuperscript{th} December 2006.
\textsuperscript{116} Id, article 5.
\textsuperscript{117} Id, article 1(1).
\textsuperscript{118} Id, article 1(2).
The Convention established a Committee on Enforced Disappearance which is responsible to monitor the implementation of provisions of this convention.\textsuperscript{119} The state parties shall submit their reports in which states by state parties steps take for implementation of provision of this convention.\textsuperscript{120} The above stated core human rights treaties were adopted within the frame work of the United Nations. The treaties substantially lay stress for protection of human rights envisaged under the United Nations system. These instruments were drafted by the Commission on Human Rights. The nine cores international treaties differs from other human rights instruments because they have an effective implementation mechanism. It has a power to monitor the implementation of treaties stated human rights in their states. These are substantially contributed the development of the international human rights law.

\textbf{2.2 Social and Economic Rights in International Level}

The first international recognition of Economic, Social and Cultural rights occurred in 1919 within the constitution of the International Labour Organization (ILO). The Constitution of ILO guaranteed right to every worker against injustice, hardship and privation. It also guaranteed fair and human conditions of labour. The International Labour Organization (ILO) drafted treaties between World Wars-I and II regarding the right to organize trade unions, a minimum working age, maximum hours of work, weekly holidays, sickness protection, accident and old age insurance and freedom from discrimination in working place.\textsuperscript{121} During depression period in 19305, the International Labour Organization has stressed to the world countries provide unemployment insurance and the desirability of full employment. The preamble of the United Nations Charter obviously stated that the purpose of the U.N.

\footnotesize{\textsuperscript{119} Id, article 26.  \\ \textsuperscript{120} Id, article 29.  \\ \textsuperscript{121} Michael Hass, \textit{International Human Rights: A Comprehensive Introduction} 115 (Routledge, New York, 2008).}
is to promote Social Progress and better standards of life in large freedom.\textsuperscript{122} It was responsible for recognizing of Economic, Social Rights in the World. The U.N. Commission on Human Rights has created binding covenant on Economic, Social and Cultural Rights, 1966. The core treaties on Economic and Social Rights are International Covenant on Economic, Social and Cultural Rights, 1966; Convention on the Elimination of All Forms of Discrimination Against Women, 1979; United Nations Convention on the Rights of the Child, 1989; and International convention on the protection of the Rights of All Migrant Workers and Members of Their Families, 1990.\textsuperscript{123} Theses treaties are enumerated Economic and Social Rights. These are elaborately discussed and enumerated rights dealt under the genesis and development of social and economic rights of international human rights law.\textsuperscript{124}

a) \textbf{International Labour Organization (ILO)}:\textsuperscript{125} The International Labour Organization (ILO) was established on 1919 to improve betterment of workers Welfare i.e. working and living conditions of labourers. It is one of the specialized agencies to the United Nations. The main objective of the organization is to protect workers human rights through in the forms of conventions and recommendations. The I.L.O. conventions and recommendations has concerned to the promotion and protection of human rights. These conventions are particularly deals such as working hours and conditions of work and other aspects of Economic, Social and Cultural Rights. The I.L.O conventions are deals specifically certain fundamental rights and freedoms i.e. freedom of association, freedom from forced labour, equality of

\begin{flushright}
\textsuperscript{123} \textit{Supra} note 121 at 119.
\textsuperscript{124} \textit{Supra} notes 41, 57, 73 and 93. These notes are obviously deals convention enumerated rights in detail.
\textsuperscript{125} The I.L.O. was established by the Treaty of Versailles in 1919. It came into force on 29\textsuperscript{th} October 1919. In 1994 it had 170 members and it functions under Constitution of I.L.O.
\end{flushright}
opportunity and treatment in employment. The Philadelphia declaration of I.L.O has stressed that labour should be respected and improve their standard of life. The declaration proclaims that the “poverty any where constitutes a danger to prosperity everywhere. Labour is not a commodity; that freedom expression and of association are essential to sustained progress, and that common Welfare and Universal Prosperity are the objectives to be achieved, that universal and lasting peace can be established only if it is based on Social Justice”. The important I.L.O conventions to protects and promotes workers human rights are Convention Concerning Forced or Compulsory Labour, 1930; the Freedom of Association and Protection of Rights to Organize Convention, 1948; Convention on Workmen’s Compensation (Occupational Diseases) 1934; Convention on Equality of Treatment (Accident Compensation) 1925; Convention on Equality of Treatment (Social Security) 1962; Convention Concerning Employment, Promotion and Protection against Unemployment, 1988; The convention concerning the prohibition and immediate action for the elimination of the worst forms of Child Labour, 1999; Maternity Protection Convention, 2000; Convention concerning decent work for Domestic Workers, 2011; the Social Security (Minimum Standards), 1952; and the Convention Concerning Minimum Wages, 1970.

126 Supra note 13 at 180.
127 International Labour Organization’s Declaration of Philadelphia, 1944.
128 International Labour Organization Convention No.29 of 1930.
129 Id. No.87 of 1948.
130 Id. No.42 of 1934.
131 Id. No.19 of 1925.
132 Id. Nos.1 & 8 of 1962.
133 Id. No.168 of 1988.
134 Id. No.182 of 1999.
135 Id. No.183 of 2000.
136 Id. No.189 of 2011.
137 Id. No. 102 of 1952.
138 Id. No. 131 of 1970.
b) Declaration on Right to Development, 1986: The United Nations Development Programme (UNDP) has recognized that human development and human rights are common vision and purpose which are responsible to secure the well being and dignity of people in the world. The resolution was only symbolic, it requested to first world countries to provide more aid for the development in the third world countries. The Declaration proclaims that the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy Economic, Social, Cultural and Political development in which all human rights and fundamental freedoms may be fully realized. The states have primary responsibility for the creation of the National and International conditions favourable to realization of right to development. The states have duty to take policy programmes ensuring that individually and collectively attainment of right to development. The right to development includes the full sovereignty over natural resources; self-determination; popular participation in development; equality of opportunity and to provide to enjoyment of other Civil, Political, Economic, Social and Cultural Rights. The right to development maintains the unity of Civil, Political rights as well as Economic, Social and Cultural Rights and their individuality.

Article-2 of the Declaration has proclaimed that the human person in the Central subject of the development. All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the

140 Supra note 121 at 129.
142 Id, article 2.
143 Supra note 101 at 259.
144 Id.
community. It can alone ensure the free and complete fulfillment of the human being. Therefore they should promote and protect an appropriate Political, Social and Economic Order for development.\textsuperscript{145} The states have the right and the duty to formulate policies for realization of the right to development in all sphere of the individuals development. However, it is a recommendatory in nature but not having finding nature.

c) World Conference on Human Rights – Vienna, 1993:\textsuperscript{146} This Conference is popularly known as Vienna Declaration and Programme of Action. The conference welcomes states who were codified in their domestic sphere for realization of human rights which is a dynamic and evolving process. Therefore, the conference requested state parties to ratify the human treaties and asked to avoid reservations.\textsuperscript{147} However, the conference was filed due to disagreement existed between third world countries and first world countries particularly Anglo-American Countries. The developmentalist view was advocated by third world countries that the Economic, Social and Cultural Rights are superior to Civil and Political Rights. But this view was not accepted by the Anglo-American Countries, they advocated the libertarian view which states that Economic, Social and Cultural rights are not rights at all. The European Countries were adopted the middle position i.e. Social market capitalism.\textsuperscript{148} This conference has attempted that urge the all the nations to ratify the treaties and to develop and implement the rights enumerated under it.

\textsuperscript{145}Yash Ghai & Jill Cottrell, \textit{The Millennium Declaration, Rights and Constitutions} 51 (Oxford University Press, New Delhi, 2011).
\textsuperscript{148} \textit{Supra} note 121 at 131-132.
d) United Nations Millennium Declaration, 2000.\textsuperscript{149} The special session of the United Nation had adopted the Declaration, to be achieved in the twenty first century. It special emphasis is given to Economic, Social and Cultural rights. It also urges the first world countries to eliminate tariffs against 1\textsuperscript{st} World Countries and also urges cancel their debts. It supports the sustainable development in the third world countries.\textsuperscript{150} The Millennium Declaration is a sort of world New Year’s resolution which contains goals to be achieved in the new millennium. The declaration moved by the General Assembly for aspirations contained under United Nations Charter to be achieved.\textsuperscript{151} It has been adopted by 189 member countries. The vision of the declaration is to respect for human rights and fundamental freedoms;\textsuperscript{152} to promote democracy and strengthen the rule of Law;\textsuperscript{153} making the right to development a reality for every one;\textsuperscript{154} to grant more generous development assistance;\textsuperscript{155} sustainable development;\textsuperscript{156} and special attention should be accorded to the neediest countries and peoples for certain fundamental values to guide international relations. These are included\textsuperscript{157} - freedom i.e., dignity, free from hunger and from fear of violence, oppression or injustice and democratic and participatory governance based on the will of the people; equality of nations and individuals and specially with equal rights and opportunities for women and men must be assured; solidarity means that costs and burdens fairly distributed with the basic principles of equality; tolerance respected between the individuals without my discriminations as belief, culture and language; respect for nature means that the management of all living creatures should be

\textsuperscript{149} Res.No.55/2 Resolution adopted by General Assembly on 6-8 September 2000.

\textsuperscript{150} Supra note 121 at 137.

\textsuperscript{151} Supra note 145 at 3.


\textsuperscript{153} Id, principle - V of 24.

\textsuperscript{154} Id, principle - III of 11.

\textsuperscript{155} Id, principle - III of 15.

\textsuperscript{156} Id, principle - IV of 22.

\textsuperscript{157} Id, principle - I of 6.
maintained in the manner of sustainable development, shared responsibility among the nations with regard to Social and Economic development as well as treats to international peace and security. These values are faithfully reflected the human rights of every individuals. This declaration was adopted by the General Assembly without a vote. However, it is not binding force between the state parties. But it has a pervasive value. The Declaration provides following goals and timetables were adopted by the U.N. General Assembly-

“To halve, by the year 2015, the proportion of the world’s people whose income is less than on dollar a day and the proportion of people who suffer from hunger and, by the same date, to halve the proportion of people who one unable to reach or to afford safe drinking water. To ensure that, by the same date, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling and that girls and boys will have equal access to all levels of education. By the same, to have reduced maternal mortality by three quarters, and under-five child mortality by two – thirds, of their current rates. To have, by then, halted, and begun to reserve, the spread of HIV/AIDS, the scourge of Malaria and other major disease that afflict humanity. To provide special assistance to children orphaned by HIV/AIDS. By 2020, to have achieved a significant improvement in the lives of at least 100 million slum dwellers...”

The goals are for the improvement of the world population in every aspect of life. These are basic necessities of every state to follow the goals for well being the state’s population. The Declaration has listed out the Social and Economic rights to be achieved by the states progressive development available resources as well as sponsors from donor countries.

2.3 Human Rights in National Level

Under this topic, human rights in Ancient India, Human Rights in Indian Constitution and institutional frame work for protection of human rights in India in which protection of Human Rights Act is analyzed. Contribution of Supreme Court of India for protection of human rights has been analyzed. Since Indus Valley Civilization,

\[158\] \textit{Id.} principle - III of 19.
India has a unique culture and diversity. Indians have a policy of respect to respect policy that is followed by every human being. Similarly, the notes of the Jawaharlal Nehru told that “an unbroken continuity between the most modern and the most ancient periods of Hindu thought extending over three thousand years”. In all civilization in the world depicted that the rights of man is a main concern from time immemorial. The rights of man and fundamental rights were unknown to the people of earlier periods. The Indian concept of human rights begins with Dharma in the Vedic period. The Indian perspective of human rights is related to the individual, the Society and the Universe. Therefore all human beings are child of God and all are related to one another and they created a universal family. In similar context, the Father of the Nation, Mahatma Gandhi made a view that “I do not want to think in terms of the whole world. My patriotism includes the good of mankind in general. Therefore my service to India includes the service of humanity”. In this aspect, the spirit of unity and universality of our tradition extends to the whole world. The Rig Veda said that there is one race of human beings and traditions runs to attain one path to truth. Therefore this principle called as “Sarva Dharma Samman”. The Ancient treaties of Dharmasastras and the Arthasastras were regulates the duties of the Kings, Citizens, Judges and also laid down the judicial principles. Dharma was considered central point when dispensation of the justice. The human rights were only realistic when these rights are enforced by independent judiciary. These were ensured by the Dharmasstraas.

159 Jawaharlal Nehru, The Discovery of India 88 (Penguin Books India, New Delhi, 2004).
161 Supra note 159 at 420.
162 Manoj Kumar Sinha, Enforcement of Economic, Social and Cultural Rights 5 (Manak Publications, New Delhi, 2006).
non-violence and denial of materialistic life. Justice Nagendra Singh observed in this regard that “it is a humanitarian doctrine par excellence dating back to the third century B.C.”

There many references have been finding in Vedas regarding existence of human rights in ancient India. The Vedas have recognized right to freedom (Tan), right to shelter (Skirdhi) and right to life (Jibase). The Bahmani and Vijayanagar Kingdoms were entered agreement relating to treatment of prisoner of war in 1367 B.C. Therefore the human rights have occupied predominant place in Indian Sub-Continent on principle of “Vashudhaiva – Kutumbakam”. It means welfare of people is foremost important. The principle of Vashudhaiva-Kutumbakam was explained in detail by Justice Rama Jois as follows:

“According to Rajadharma, the King was given the power only to enforce the Law. Dharmasastras did not confer on or recognize any legislative power in the king. This is most important distinction between kingship in India and the concept of Kingship in the West. But under the Kingship is recognized and established under the Dharmasastras themselves. They did not authorize the king to lay down new Laws or amend provisions of the Dharmasastras. On the others hand, Dharmasastras also laid down the Laws governing the conduct of the king himself (Rajasdharma)”.

Kautilya’s Arthasastra has clearly explained and recognized the Economic, Social and Cultural rights. He proclaimed that rights into “ideal is the happiness of the subjects lies the happiness of the King, in their Welfare lies his Welfare; the good of the king does not consist in what is pleasing to himself, but what is pleasing to the subjects constitutes his good”. The king also guaranteed Social Security to his subjects those

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164 Supra note 162 at 6.
169 Supra note 162 at 7.
who were needy.\textsuperscript{170} Therefore the above analysis shows that the tradition of human rights brings peace, friendships, equality, respect of every human being and dignity. It provided the inspiration for our freedom struggle. There path was responsible for independence movement in these way. Therefore our independence movement represented a struggle for securing the fundamental human rights for all.\textsuperscript{171}

\textbf{2.4 Social and Economic Rights in National Level}

The Indian Constitution before came into force in 1925, Motilal Nehru Committee had finalized the draft of Common Wealth of India Bill. It was recognized a ‘Declaration of Rights’ because during the Company Rule in India had debarred the Indian’s enter into high office and deprived their Civil, Political and Economic and Social Rights. This imprison was responsible for incorporation of declaration of rights into the Bill. In 1927, Madras Session of the Indian National Congress had demanded that incorporation of a declaration of fundamental rights in future constitutional frame work. The Indian National Congress had appointed the Motilal Nehru Committee to study the fundamental rights.\textsuperscript{172} The Constitutional Assembly of India met in first time on 9\textsuperscript{th} December, 1946 for framing of Indian Constitution. The constitution has provided primary importance for the protections of human rights. At the time of Indian constitution was making when United Nation’s General Assembly has adopted and proclaimed the Universal Declaration of Human Rights on 10\textsuperscript{th} December 1948. The UDHR, 1948 influenced the framing of India’s Constitution. Therefore human rights in Indian view point have been synthesized not only in preambular of the constitution and also contained in various provisions of the

\textsuperscript{170} The King Asoka, founder of the Maurya Dynasty had constructed hospitals for men and animals, alms houses, rest houses, watering places, shady trees on the highways and irrigation tanks etc.

\textsuperscript{171} Supra note 162 at 7.

\textsuperscript{172} Supra note 165 at 58.
National Charter of 1950.\textsuperscript{173} The historic Objective Resolution was moved by Pandit Jawaharlal Nehru on 13\textsuperscript{th} December 1946 in the Constitution Assembly which was adopted by it on 22\textsuperscript{nd} January 1947. The Objective Resolution formed the basis for the incorporation of various human rights into the constitution not only various provisions but also preambular of the constitution. Pandit Nehru in his concluding speech in Constitution Assembly Stressed India into free from hunger i.e. to feed the starving people and clothes to the nacked people and to give opportunity to every Indian to develop himself according to his capacity.\textsuperscript{174} This speech was warned the Constituent Assembly in the following words:

\textit{``If India cannot solve this problem soon, all our paper constitution will become useless and purposeless….. If India goes down, all will go down; if India thrives, all will thrive, and if India lives all live……''}\textsuperscript{175}

Similarly, Dr. S. Radhakrishnan has emphasized that there must be a Socio-Economic revolution not only attainment of fundamental needs of common men but also to bring the fundamental structural change in the Indian Society. These are evident that the Constituent Assembly was mainly concerned with basic rights necessary for development of Indian masses through guaranteeing fundamental basic human rights in the Constitution. These are implicitly available from the preambular promise,\textsuperscript{176} fundamental rights under Part-III,\textsuperscript{177} directive principles of State Policy under Part-IV\textsuperscript{178} and other various provisions of the Indian Constitution. The International Bill

\textsuperscript{173}A.B.M. Mafizul Islam Patwaris, \textit{Fundamental Rights and Personal Liberty in India, Pakistan and Bangladesh} 63 (Deep and Deep Publications, New Delhi, 1991).
\textsuperscript{174}Supra note 166 at 62.
\textsuperscript{175}Id.
\textsuperscript{176}The preamble to the Indian Constitution, 1950. It expressly depicts human rights which represents the aspiration of the people.
\textsuperscript{177}Part - III of the Indian Constitution, 1950 deals fundamental rights under Articles 12 to 35. It is called as first generation human rights i.e. Civil and Political Rights.
\textsuperscript{178}Part - IV of the Indian Constitutions, 1950 deals directive principles which are stated under Articles 36 to 51. These rights are called as Second Generation Human Rights. i.e. Social and Economic Rights.
of Human Rights is responsible for building blocks of Indian Constitutional Rights. Incorporation of these instrument enumerated rights was necessitated by Constituent Assembly into Indian Constitution so Indian masses were deprived basic Civil and Political rights and social and economic rights under the British regime.

The Preamble of the Indian Constitution has declared that India is a Sovereign, Socialist, Secular, Democratic and Republic. Democratic means that the Government gets its authority from will of the people. It emphasized that all people are equal irrespective of religion, race, caste, sex, language and culture. The preamble of the Constitution guarantees to its people justice, social, economic and political, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and fraternity assuring the dignity of the individual and the unity and integrity of the nation. The preamble of the Constitution expressly guarantees basic human rights. If any conflict arises in interpretation of the provision of the Constitution, the interpretation should be taken on principle emphasised in the preamble.

a) Social and Economic Rights and Part-IV of the Constitution

The makers of the Constitution have been incorporated directive principles of State Policy under Articles 36 to 51. The main object of the directives is to ameliorate the social and economic conditions of the masses which are responsible for creating a Welfare State. These principles seek to promote the prosperity and well-being of the masses and usher in social and economic democracy in the nation. These principles even though shall not be enforceable before the Court of Law but it acts as fundamental in the governance of the Country. Therefore the duty of the State is to

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180 Supra note 165 at 61.

181 Dr. Ranbir Singh and Dr. Lakshninath, Constitutional Law 307 (LexisNexis, New Delhi, 2006).
apply these principles in the formation of policies and making of laws. DPSP’s lay
down the foundation of a new democratic India on the basis of welfare state.

According to Granville Austin stated about our Constitution in particular
reference to economic and social rights that

“the Indian Constitution is first and foremost a social document. The majority of its
provisions are either directly aimed at furthering the goals of the social revolution or
attempt to foster this revolution by establishing the conditions necessary for its
achievement. Yet despite the permeation of the entire Constitution by the aim of
national renascence, the core of the commitment to the social revolution lies in Parts
III and IV, in the Fundamental Rights and in the Directive Principles of State Policy.
These are the Conscience of the Constitution.” 182

The principles clearly made statement of the social revolution. This is a
positive duty imposed on the State. The preamble of the Constitution laid emphasis on
the socialist structure of the policy which emphasized that economic rights are
important as it is more than political rights. The Constitution acts upon this bedrock
and philosophy and it is described under Part-III and IV both classes of human rights
as fundamental rights. 183 These rights were incorporated into Constitution an
influence of international bill of rights. Art.51 of the Constitution specifically states
that foster respect for international law and treaty obligations in the dealings of
organized people with one another. On the basis of this principle most of the social
and economic rights conferred under International Bill of Rights have been
incorporated into the Constitution. The table shows as under.

182 Id. at 50.
183 Id. at 116.
Economic, Social and Cultural Rights in the UDHR, ICESCR and in the Part-IV of Constitution

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Name of the Rights</th>
<th>UDHR</th>
<th>ICESCR</th>
<th>Part-IV of Constitution</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>The right to work, to just and favourable conditions of work</td>
<td>Art.23(1)</td>
<td>Art.6&amp;7</td>
<td>Art.41</td>
</tr>
<tr>
<td>2.</td>
<td>Right to equal pay for equal work</td>
<td>Art.23(2)</td>
<td>Art.7</td>
<td>Art.39(d)</td>
</tr>
<tr>
<td>3.</td>
<td>Right to education</td>
<td>Art.26(1)</td>
<td>Art.13</td>
<td>Arts.21A, 41, 45, 46 &amp; 51A(k)</td>
</tr>
<tr>
<td>4.</td>
<td>Right to just and favourable remuneration</td>
<td>Art.23(3)</td>
<td>Art.7</td>
<td>Art.43</td>
</tr>
<tr>
<td>5.</td>
<td>Right to rest and leisure</td>
<td>Art.24</td>
<td>Art.7</td>
<td>Art.43</td>
</tr>
<tr>
<td>6.</td>
<td>Right to adequate standard of living</td>
<td>Art.25(1)</td>
<td>Arts.11 &amp; 12</td>
<td>Arts.39(a) &amp; 47</td>
</tr>
<tr>
<td>7.</td>
<td>Right to a proper social order</td>
<td>Art.28</td>
<td>Art.23</td>
<td>Art.38</td>
</tr>
<tr>
<td>8.</td>
<td>Right to Social Security</td>
<td>Art.22</td>
<td>Art.9</td>
<td>Art.41</td>
</tr>
</tbody>
</table>

The above mentioned table shows that most of the rights in the UDHR and in the ICESCR have been incorporated into the Constitution for fulfilling international obligations.

b) Institutional frame work for the Protection of Human Rights

The Protection of Human Rights Act, 1993\textsuperscript{184} has provided the effective institutional frame work for protection of Human Rights in India. The Act defined Human Rights as “the Rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the international covenants and enforceable by Courts in India.”\textsuperscript{185} The Supreme Court held that the Act, 1993 has


\textsuperscript{185} Sec. 2(1)(d) of the Protection of Human Rights Act, 1993.
been designedly kept very broad to encompass all rights relating to human beings. If a person has been guaranteed certain rights either under the constitution or under an international covenant or under a law, and he is denied access to such a right, then it amounts to a clear violation of his Human Rights.\textsuperscript{186}

The main object and reasons of the enactment is that India is a party to the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights which was adopted by the United Nations General Assembly on the 16\textsuperscript{th} December 1966. Right enumerated under the abovementioned instruments were clearly and substantially protected by the Indian Constitution. The Act was necessitate for enactment by changing social trends in the nature of crimes and violence and the Chief Minister’s Conference on Human Rights also recommended to this enactment. The Act was promulgated by the President on 28\textsuperscript{th} September 1993 under Article 123 of the Constitution. The Act has been effective provides the institutional frame work. These are National Human Rights Commission, States Human Rights Commission and Human Rights Courts.

1) National Human Rights Commission (NHRC):\textsuperscript{187} The NHRC is an independent and autonomous body. The main purpose of the establishment commission is to take effective steps for implementation of Human Rights. It is the first institution established in South Asian Countries. The commission came into effect on 12\textsuperscript{th} October 1993 by virtue of the Protection of Human Rights Act, 1993. The Commission established under Section 3 of the Act to exercise the powers conferred under Section 12.\textsuperscript{188} This commission consists of chairperson, who has been a Chief

\begin{flushright}
\textsuperscript{187} It is established under Section 3 in Chapter – II of the Protection of Human Rights Act, 1993.
\textsuperscript{188} Id, Sec 12: The Commission shall perform all or any of the following functions, namely: (a) inquire, suo motu or on a petition presented to it by a victim or any person on his behalf, into complaint of- (i) violation of human rights or abatement thereof; or (ii) negligence in the prevention of such violation, by a public servant; (b) intervene in any proceeding involving any allegation of
\end{flushright}
Justice of India and 7 members in whom three members are in capacity of former Judge of the Supreme Court and former Chief Judge of the High Court and two members from expert in the Human Rights field. Three ex-officio members were added by the protection of Human Rights (Amendment Act), 2006. They are chairpersons of National Commission for Minorities, National Commission for Scheduled Caste and Scheduled Tribes and National Women Commission.

The Commission has been divided into two parts for purpose of effective discharge of their functions assigned under the Act. The first part of the commission includes the chairperson and four other members as stated under Section 3 (2) shall perform the functions under Section 12(a). This section provides power to the commission that it can inquire into the violation of Human Rights either suo motto, or on a petition received from the any victim or any direction or order received from any Court. Another part of the commission includes the chairperson and all other eight members shall perform the functions assigned in clauses (b) to (j) of Section 12.189

2) State Human Rights Commissions (SHRCs): There are further states out of 29 has been established the State Human Rights Commissions. It was established by the concerned State Governments for the purpose of implementation of rights conferred under Section 29 of the Act. The Commission has power to inquire into a complaint under Sections 9, 10, 12, 13 to 18 of the Act. The Commission consists of the violation of human rights pending before a court with the approval of such court; (c) visit, under intimation to the State Government, any jail or any other institution under the control of the state Government where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon. (d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation; (e) review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures; (f) study treaties and other international instruments on human rights and make recommendations for their effective implementation; (g) undertake and promote research in the field of human rights; (h) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights, through publications, the media, seminars and other available means; (i) encourage the efforts of non-governmental organisations and institutions working in the field of human rights and (j) such other functions as it may consider necessary for the promotion of human rights.

189 Id.
chairperson who has been Chief Justice of High Court and two members, one member who is, or has been, a Judge of a High Court or District Judge in the state with a minimum of seven years’ experience as District Judge; another member to be appointed from among having knowledge or practical experience in matters relating to Human Rights.\textsuperscript{190}

3) **Human Rights Courts (HRC):** The Act established a Human Rights Court in each Session’s division for the better protection and speedy justice for violation of Human Rights. The State Government has power to establish Human Rights Courts in every District specify Court of Session to be Human Rights Court after obtainment of concurrence from Chief Justice of the High Court.\textsuperscript{191} The Court of Session does not have power to take Cognizance of any offence as a court of original jurisdiction under a magistrate commits the case to it under Section 209 of Cr. P.C. Therefore the Court of Session as Human Rights Courts also cannot take Cognizance of the offence as the Court of first instance.\textsuperscript{192} Apart from these institutional mechanism provided under the protection of Human Rights Act, 1993, the Constitution of India has provided ample power for enforcement of fundamental right under Article 32 to Supreme Court and High Courts under article 226.

### 2.5 Judiciary on Social and Economic Rights

The Supreme Court of India is the custodian of the constitution. The Constitution has enumerated basic Human Rights under Part – III and IV. In every democratic Systems of Government, Judiciary plays vital role for scrutinizing every Governmental action whether it would serve better protection to individual rights. The independent of judiciary is the live wire of our judicial systems. Therefore, the judiciary under the constitutional scheme has been performing positive and creative function in securing

\textsuperscript{190} Id, sec.21.
\textsuperscript{191} Id, sec.30.
and promoting Human Rights to the people.\textsuperscript{193} The Supreme Court of India has actively played to incorporate internationally recognized Human Rights into India. The numbers of cases the Courts have enlarged to meaning of constitutional provisions to effectuate Human Rights as mentioned under the provisions of the constitution and Parliament Laws and executive programmes in favour of the needy person. Because of India have actively parties to the various International Human Rights instruments. The Court has fulfilled the international obligation which is adopted by India. Articles 51(c)\textsuperscript{194} and 253\textsuperscript{195} entry 14 of List – I has specifically provides to fulfill the international obligation. Entry 14 of List – I has categorically provided that the Parliament can make laws for the implementation of any treaty or connection. Further Act.73 States that the executive power of the various shall extents as Parliament has power to make Laws. Merely Indian representative put in signature is international instruments, it is necessary to fulfill its obligation arising out such signature. Article 51 (c) clearly states all organs in the state including judiciary to foster and respect the international obligations.

Therefore the Supreme Court while interpreting various laws’ provisions of the constitution categorically applied the international instruments enumerated rights into domestic laws in accordance with international norms and treaty obligations. In this regard Justice V.R. Krishna Iyar, emphatically held that

\textit{“Article 51(C) of the constitution obligates the states to foster respect for international law and treaty obligations in the dealings of organized people with one another. Even so until the municipal law is changed to accommodate the Government, what binds the Court is the International law. International law must go through the }

\textsuperscript{193} \textit{Supra} note 166 at 129.
\textsuperscript{194} Article 51(c) of the constitution states to foster respect for international law and treaty obligations in the dealings of organized peoples with one another.
\textsuperscript{195} Article 253 of the Constitution states the Parliament has power to make any law for implementing any treaty,agreement or convention with any other country or countries or any decision made at any international conferences, associations or other body.
process of transformation into the municipal law before the International treaty can become an internal law.”  

Judiciary has interpreted the constitution exercising the judicial activism through PIL in catena of cases expending the scope of Human Rights in India through incorporating International Human Rights norms into India. The following cases are worth mentioning in this regard. The Court is Francis Coralie Mullin v. Administrator, Union Territory of Delhi observed that:

“the right to life includes the right to live with human dignity and all that goes along with it, namely base necessaries of life such as adequate nutrition clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings”.

Similarly the Court further observed in Bandhuva Mukti Morcha v. Union of India that:

“...Right to live with human dignity...must include protection of the health and strength of workers, men and women, and of the tender aged children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, first and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no state – neither the Central Government nor any State Government has the right to take any action which will deprive a person of the enjoyment of basic essentials.”

The Court further held in another judgment that “Right to life in Article 21 includes protection of the health and the strength of the worker. The expression ‘life’ in Article 21 does not connote rare animal existence. It has a much wider meaning, which includes right to livelihood, better standard of life, hygienic conditions in workplace and leisure.”

Therefore these judgments stressed on the state to take necessary steps to guarantee the social and economic rights to all sections of the people by virtue of Article 21 of the Indian constitution. The Supreme Court of India had progressively applied the Anglo-Saxon common law model. It was explained by the Supreme Court in Peoples Union for Civil Liberties v. Union of India. The Court observed:

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198 AIR 1978 SC 597.
199 AIR 1984 SC 802.
“International Law today is not confined to regulating the relation between the states. Scope continues to extent. Today the matters of Social concern, such as health, education and economic apart from human rights are fall within the ambit of International Regulations. International Law is more than ever aimed at individuals. It is almost an accepted proportion of law that the ruler of customary international law which is not contrary to the municipal law shall be deemed to be incorporated in the domestic law.”

The Anglo-Saxon principle of common law is now responsible for incorporation through which International Human Rights have been indicted into domestic sphere. Justice Sikiri, then the Chief Justice of Supreme Court had observed while interpreting Article 51 in Kesavananda Bharathi v. State of Kerala that “it seems to that, in view of Article 51 of the directive principles, this Court must interpret the language of the constitution, if not intractable, which is after all a municipal law, in the light of the United Nations Charter and the solemn declaration subscribed to by India.” The same principle was reemphasized by Justice Khanna in his minority opinion is A.D.M. Jabalpur v. Shivakant shukla. He observed as under:

“Equally well established is the rule of construction that if there be a conflict between the municipal law on one side and the International Law on the provisions of any treaty obligations on the other, the Courts would give effect to municipal law. If, however two constructions of the Municipal Law are possible the Court should bean in favour of adopting such construction as would make the provisions of the municipal law to be in harmony with the international law or treaty obligations Every state, according to this rule, is interpreted, so far as its language permits so as not to be on consistent with the comity of nations, or the established rules of international law, and the Court will avoid a construction which would give rise to such inconsistency unless compelled to adopt it by plain and unambiguous language.”

Justice B.P. Jeevan Reddy in Peoples Union for Civil Liberties v. Union of India categorically held that if any treaty was ratified by Parliament of India then it is tantamount to Act of Parliament. He pointed out in this regard as under:

“The main criticism against reading such conventions and covenants into national laws is one pointed by Mason, C.J. himself viz., the ratification of these conventions and covenants is done, in most of the countries by the Executive acting

202 (1997) 1 SCC 301, pp.311-312.
203 (1973) 4 SCC 225, p.333.
204 (1976) 2 SCC, p.754.
alone and that the prerogative of making the law is that of Parliament alone; unless Parliament legislates, no law can come into existence. For the present, it would suffice to state that the provisions of the covenant, which elucidate and so to effectuate the fundamental rights guaranteed by our constitutions, can certainly be relied upon by courts as facts of those fundamental rights hence, enforceable as such. So far as multilateral treaties are concerned, the law is, of course, different and definite." \(^{205}\)

The similar way the Supreme Court of India has been adopted in number of cases. Thereafter the Court has adopted the progressive and liberal interpretation of through which International Human Rights are incorporated covenant into the domestic law. \(^{206}\) India has treated the Human Rights treaties on different footings from other treaties because Part – III and IV provides similar rights under the Indian constitution. \(^{207}\) The Supreme Court observed in *Kubic v. Union of India:*

"It may not be out of place to bear in mind that the fundamental rights guaranteed under our constitution are in conforming line with those in the (Universal) Declaration and the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights to which India has become a party by ratifying them." \(^{208}\)

The Judgment clearly shows that India has adopted special treatment in regarding human right treaties. The Court has equalized that the rights contemplated under Part – III and IV treated same footing with International Bill of Human Rights. Therefore the Court, Parliament and executives has followed the Anglo-Saxon tradition through which internationally recognized human rights have been

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\(^{205}\) (1997) 3 SCC, p.442.


\(^{208}\) AIR 1990 SC 605, pp. 614-615.
incorporated into Indian Legal Systems. This principle incorporates unanimously international law as a part of the law of and Land unless which are not inconsistent domestic legal system. Ratification of International human rights instruments five rise to the binding nature of human rights treaty obligations in India.

2.6 India’s International Obligations

India’s international obligations specifically with regard to Human rights conventions/treaties are legally finding because India have consented to be found by the provisions of the conventions/treaties. These obligations were fulfilled by the India through incorporation international human rights into India by way executive action – responsible for framing policy for maintaining standard of life i.e. basic human needs through five year plan allocations to Social sector. The Parliament of India has directly or indirectly incorporated human rights laws on keep in mind while enacting laws. The Supreme Court of India has taken interpretation in various statutory and Constitutional provisions with assistance from international human rights law while deciding cases.209

International Economic, Social and Cultural Rights are predominantly recognized under the International Covenant on Economic, Social and Cultural Rights, 1966. It came into effect on 3rd January 1976. This instrument is legally binding upon every state which becomes a party to that covenant. Art. 2(1) of the International Covenant on Economic, Social and Cultural Rights categorically states that each state party to the present covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present covenant by all appropriate

209 P. Chandrasekhara Rao, The Indian Constitution and International Law 141 (Taxman, New Delhi, 1993).
Therefore it includes particularly legislative measures. In event of failure of legislative measures, the judiciary has actively played directly to legislative and executive authorities to implement, recognize and guarantee basic human rights to all individual by interpreting various statutory provisions. Therefore organs of the Government have incorporated international human rights into India for fulfilling international obligations.

2.7 Incorporative Process

The International human rights instruments categorically stated that Economic, Social and Cultural rights are implemented progressively par with available resources in the country. Hence the Government of India has established the Planning Commission on March 1950 for the purpose of asses the country’s needs of material capital and human resources so that to formulate economic and human resource development through Five Year Plans and same was followed every five year ones 1950-1951 onwards. The Planning Commission has established on basis of Directive Principle. The Planning Commissioner is responsible for human and economic development in India. The Planning Commission in every five years one formulate developmental policies so that it allocates finance to various sectors for development of Indian people. The Social Sector allocation is responsible for attainment of certain Social, economic rights. These are education, employment generation / work, family welfare programmes, housing, drinking and health programmes. The Allocation was allocated by the Planning Commission available resources in every five year ones for realization of above social and economic rights. Executive incorporation is involves keep in mind on planning commission’s allocation responsible for recognition of basic human rights Indian people through

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210 Supra note 14 at 197.
211 Datt & Sundaram, Indian Economy 184 (S. Chand& Co., New Delhi, 2014).
framing various welfare programmes. In similar way Central Legislative and Judiciary is responsible incorporation international human rights into India through IV period from 1950 to 2013.

a) Period-I (1950-1966)

Pandit Jawaharlal Nehru’s, his historic midnight speech recognized life and independent of Indian people. The speech was as: ‘long years ago we made a tryst with destiny and now the time comes when we shall redeem our pledge, not wholly or in full measure, but very substantially. At the stroke of the midnight hour, when the world sleeps, India will awake to life and freedom’. 212 The Country got independence from British regime by virtue of Indian Independence Act, 1947. During, the period Indian masses were deprived their economic and social rights by British Government. So that Pandit Nehru Motto is to wipe out from every eye. Similarly Gandhi, the father of the nation stated that “economic constitution should be no one under it should suffer from want of food and clothing… everybody should be able to get sufficient work to enable him to make the two ends meet”. 213 The great architecture of Modern India were visualized and influenced by the Universal Declaration of human rights, 1948, these rights has incorporated into Indian Constitution through incorporative process. During this period the Constitution of India came into force, it laid down principle how Government Police were framed on basis, basic human rights were guaranteed to illiterate masses. The poverty and unemployment rampant everywhere, the Central executive have formulated policies to solve this problem. The first Five Year Plan was dedicated to food production on basis that level of poverty minimized. For this, Government allocated sufficient funds to fulfill human basic needs. The second Five Year Plan also allocated sufficient funds to social

212 Bipan Chandra, Amales Tripathi and Barun De, Freedom struggle 1 (National Book Trust, New Delhi, 2001).
sector instead of this plan special emphasis on Core industries. Community development programme, poverty eradication programmes has been formulated. This period is responsible for guaranteeing fundamental primary education and every state has established educational boards. The Parliament has enacted the Constitutional (First Amendment) Act, 1951 for ensuring social development of educational, economical or social development of the backward classes of citizens. Similarly during this period various Zamindari Abolition Acts were enacted by states because land falls under State list in Seventh Schedule. This guaranteed landless Indian masses acquired right through ‘fillers of land’ as owner of the land. Apart from these various welfare laws were enacted by the Parliament.

The Judiciary during this period had taken restrictive interpretation while interpreting various provisions of the enactments. During this period was a cold war so that the principle of International law has been considered as vanishing point of jurisprudence. The Hon’ble Apex Court judge accepted jurisprudence envisaged by the UNO conventions in paper and recognized UDHR principles are guiding principle of the Court. Therefore S.P. Sathe categorically stated that during this period the Supreme Court did not intervene any law made by legislature. Hence, the Courts interpreted the law strictly to its letter and spirit in this period.214

b) Period-II (1966-1979)

This period is responsible for establishing Indian Society on Socialist and Secular set up through the Constitutional (Forty-Second Amendment) Act, 1976. The Chief Ministers Conference held on 23 July 1972 which lay down that the all State Government should frame land ceiling laws i.e. fixed ceiling per head and family.215

214 S.P. Sathe, Judicial Activism in India-Transgressing Borders and Enforcing limits 40 - 46 (Oxtard University Press, New Delhi, 2010).
215 S. Gopalan, Secretary General Lok sabha, India and Human Rights 275 (Govt. of India, Lok Sabha Secretariat, 1998).
These laws were included into Ninth Schedule to the Constitution through the Constitution (Thirty-fourth Amendment) Act, 1974. This period Parliament of India has enacted laws to guarantee basic social and economic rights. These are discussed appropriate places in subsequent Chapters. The Parliament has specifically active role for guaranteeing health, employment and maintaining welfare of the people.

The executive authorities first three years in this period faced serious problem because India-Pak war broke out. The Plan holiday was declared. After that executives focused on food production so that to guarantee right to food to poverty ridden people. During this period attained sufficient food grains through Green revolution. Further executive authorities framed various employment and poverty eradication programmes for raising standard of living of the people. The Government fixed goal as attainment of self-reliance and justice in all aspects of development. The Government allotted more funds to social sector for raising standard of living of the people.

During this period judiciary entered to correctness of the executive actions as well as test out the correctness of the validity of the laws enacted by the Parliament. The Supreme Court of India had adopted a highly positive attitude towards various statutory and constitutional provisions. Hence, the Courts had interpreted provisions of the Constitution and statutory provision in liberal manner. The Court in Keshavanta Bharati case, Menaka Gandhi case categorically incorporated international human rights law into domestic sphere by interpretation of the Article 21 of the Constitution. Further Justice H.R. Khanna in Habeas Corpus case is observed in his minority opinion that while interpreting the constitutional provisions care must be taken that it does not contradict Article 8 and 9 of the Universal Declaration of Human Rights, 1948. Hence, the Supreme Court of India in this period acted positive
role interpreting statutory and constitutional provision in aid of the International human rights law.

c) **Period-III (1979-1993)**

During this period Parliament of India took serious steps to provide right to health so that various laws enacted for protection of health of the people. The Parliament has enacted welfare of the labor oriented laws which guarantees welfare funds working conditions and employers liability to provide pure water, health facilities in working places. The most important legislation in this period is prohibition of Manual Scavengers Act.\(^{216}\) Similarly the Parliament has enacted more laws during this period because India ratified the covenants so that fulfilled an international obligations. These are discussed in subsequent chapters.

The Executive authorities have played vital role by allocation more funds for economic and human development of the people. These funds were utilized by implementing various welfare development programmes such drinking water, health, poverty eradication programmes, nutritional programmes etc. The sixth Plan document categorically allocated more funds to health sector on reason that India is signatories to the Alma-Ata Conference on Primary Health Care (PHC) which has held on 12\(^{th}\) September 1978.\(^{217}\) The Central executive programmes in responsible for stabilizing population, ensures continuous decree in poverty and unemployment. Hence over all the standards of living of the people moderately attained in this period.

The Supreme Court of India has actively played incorporation of international human rights into domestic sphere when Parliament and executive was sleeping through Social Action Litigation (SAL) / Public Interest Litigation (PIL). During this period the Court did not interfere the policy making decisions of the Government.


\(^{217}\) Sixth plan Document, Planning commission of India.
The Judiciary has taken the non-liquet tool where Courts are obliged to apply the principles of equity which is reflected in International Law whenever such situation arises the Court without hesitation applied this tool. During this period active judges have participated in judicial process, they guaranteed some basic rights to the Indian masses through and from international human rights law.

d) Period-IV (1993-2013)

During this period Parliament of India has enacted the protection of Human Rights Act 1993. It is most important the Parliament of India expressly incorporated implemental international Human Rights law into India. The Act categorically held that right relating to life, liberty and equality and dignity of the individual rights which are guaranteed under constitution of embodied in the international covenants and enforceable directly by counts in India.\(^{218}\) Thereafter India Parliament has enacted right to work Act, Food security rights to education Act and unorganized sector social security Act. These arts were expressly generators fundamental Human Rights to the ready Indian people.

The executive authority of the central has also desponded to development of the human development programmes. The UNDP has measured the human development Index (HDI) on basis of life expiatory, education and decent standard of living. Theses principle was preferred by the Pakistan Economist Mahbub UI Haq.\(^{219}\) Justice J.S. Verma categorically held that eradication of poverty is a human rights issue not merely a development project and the gent must be fulfilled Mahbub UI Haq recopied principle.\(^{220}\) Thereafter executive planning development focused on human capital formulation by guaranteeing basic rights of education, food health and work.

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\(^{218}\) Sec.2 (1) (d) of the Protection of Human Rights Act, 1993.


This period a witnessed executive authority has located more funds to social sector for attainment of basic human rights of Indian people.

This period Judiciary actively played Vital role incorporating human rights law into India whenever accusation arises by interpreting constitutional and statutory provisions. The Supreme Court of India in *Karnataka Industrial Area Development Board v. C. Kenchappa and others*\(^{221}\) categorically incorporated that rights to environment and rights to sustainable development into India which were recognized under the United National Convention on Environment through incorporative process. This period also witnessed that the court categorically recognized that rights to property as a fundamental basic human rights.\(^{222}\) The Court has responded to incorporate international human rights law into India by creative role while interpreting constitutional and statutory provisions.

\(^{221}\) *AIR 2006 SC 2038.*

\(^{222}\) *Chairman Indore Vikas Pradhikaran v. Pure Industrial Italics Cake and Chemicals Ltd., AIR 2007 SC 2458.*