CHAPTER-II
EVOLUTION AND HISTORICAL DEVELOPMENT OF HUMAN RIGHTS AND INDIAN CONSTITUTION

A) Introduction
The concept of Human Rights has evolved and developed gradually through ages in different parts and religions of the world so as to attain the present status. It needs to be probed and studied in this chapter.

B) Position in Hindu Jurisprudence
Long before civilization dawned in Egypt and Greece, we have the Hindu jurisprudence of about 4000 B.C

“A king should enter the court-room with all humility”

“More cruel than the man who lives the life of a murderer is the king who gives himself to oppress and act unjustly (towards his subjects).”

“For it is punishment alone that guards this world and the other, when it is evenly met by king to his son and his enemy, according to the offense.”

The Hindu jurists have elaborated the procedures for civil and criminal cases as well as investigations, Hindu jurists like NARADA, BRHASPATI and KATYAYAN have elaborated rules to the innocent and stressed the king should not shrink from punishing the guilty. It was laid down that if thieves’ robbers have a free run in any kingdom the king was doomed to eternal damnation in hell.

The Indian mind, thousands of years before the dawn of Christian era, could perceive the existence of all living being in PARAMATMAN and visualized Paramatman in all creatures, thus leaving behind no room for hatred towards any one. The Vedic Rishis always prayed for the well-being of everyone in society. These Rishis were first to conceive the whole world as one family. In the above context, it was considered foremost duty of the state or king to protect the citizens or praja. The protection of citizens in those days was considered necessary from high officials, criminals, enemies of the state and from the kings and those who were

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1 See, W.H. Drew and J. Lazarus, (trans.) *Thirukkural (The voice of nobility, written by Thiruvallavar around 300 B.C. in Tamil language)*, 1991, p. 112-113

2 See, K. D. Irani and Silver Morris,(ed.) *Social justice in the ancient world*, 1995, p. 95
close to him. One can very well realize how ancient is the concept of protecting rights of citizens against the avarice or greed of the king or the state. Thus we find that the concept of rights of human beings is neither entirely western nor modern, Rig Veda cites three civil rights –that of Tana (Body), Skridhi (Dwelling place) and Jibhasi (Life). Mahabharata tells about the importance of the freedoms of the individual (civil liberties) in a state. Concept of Dharma – rights and duties of individuals, classes, communities and castes – has been delineated in our scriptures. Before second century B.C, Indian states could boast of elected kings. Arthashastra elaborates on civil and legal rights first formulated by Manu which also included economic rights.

C) Historical Foundations of Human Rights

Ever since the beginning of civilized life in a political society, the shortcomings and tyranny of the powers that be have led men to the quest of a superior order. Dissatisfaction with laws ordained by tyrants or even benevolent depots generated an appeal to a natural law which was to be an embodiment of reason, justice, immutability and universality, which were lacking in man-made laws.

The roots for the protection of the rights of man can be traced as far back as to the Babylonian laws. The Babylonian King Hammurabi issued a set of laws to his people called ‘Hammurabi’s Codes.’ It established fair wages, offered protection of property and required charges to be proved at trial. The Assyrian Laws, the Hittite laws and the Dharma of the Vedic period in India also devised different sets of standards by which the rights of one were respected by another. All the major religions of the world have a humanist perspective that supports human rights despite the differences in their content.

Human rights are also rooted in ancient thought and in the philosophical concepts of ‘Natural Law’ and ‘Natural Rights.’ Western scholars date the genesis of this ideal of natural law to Sophocles, more than 400 years before Christ. A few Greek and Roman philosophers recognized the idea of Natural Rights. Plato (427-348 BC) was one of the earliest thinkers to advocate a universal standard of ethical

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4 See, Vijay Kumar, Human Rights Dimensions and Issues, 2003, 9
5 See, William A. Wines, Ethics, Law and Business, 2006 p. 21
According to the Roman jurist, Ulpain, natural law was that “which nature and the State assure to all human beings.” This meant that foreigners must be treated in the same way as one deals with one’s compatriots. It also implied conducting of wars in a civilized manner. Plato in his treatise, The Republic (400 BC) proposed the idea of universal truths that should be recognized by all. Aristotle (384-322 B.C) wrote in Politics that justice, virtue and rights change in accordance with different kinds of institutions and circumstances. Cicero (106-43 B.C), a Roman statesman, laid down the foundations of “natural law” and “human rights” in his work, The Laws (52 B.C). Cicero believed that there should be universal human rights laws that transcend customary and civil laws.

D) Development of Concept of Human Rights

In England, the case for a natural law, superior to man-made law, was argued by Blackstone in the 17th century. In his “Commentaries on the Laws of England” Blackstone had identified three rights which he aptly remarked to have been “founded on nature and reason”: the right to personal security, the right to personal liberty and the right to private property. However, Dicey had demonstrated that rights were derived from the rule of law by discussing the right to personal freedom, freedom of discussion and the right to assembly.

i) Natural rights

Once the concept of a higher law binding on human authorities was evolved, it came to be asserted that there were certain rights anterior to society, which too were superior to rights created by the human authorities, were of universal application to men of all ages and in all climes, and were supposed to have existed even before the birth of political society. These rights could not, therefore, be violated by the State.

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14 See, Albert Venn Dicey, Introduction to the Study of the Law of the Constitution, 1902 (“the right not to be subjected to imprisonment, arrest or other physical coercion in a way which does not admit of legal justification”)
The deficiencies of this doctrine of natural rights, from the legal standpoint, however, were that it was a mere ideology, and there was no agreed catalogue of such rights and no machinery for their enforcement, until they were codified into national Constitutions, as a judicially enforceable Bill of Rights.

ii) Justifiability of Human Rights and further codification

The concept of human rights, embodying the minimum rights of an individual against his own State, assumed a concrete and justifiable shape when these individual rights came to be guaranteed against the State in written Constitutions adopted since the Constitution of the U.S.A. in 1787, to which the Bill of Rights\(^{15}\) was formally added in 1791. Incorporation of these individual rights in a written Constitution consequently led to incorporate human rights into the municipal law of a State, and to make them legally enforceable by an aggrieved individual against his State to invalidate any State act, legislative or executive, which is found by a court of law to have violated any of the constitutionally guaranteed human rights belonging to the aggrieved individual.

Though the concept of human rights is as old as the ancient doctrine of ‘natural rights’ founded on natural law, the expression ‘human rights’ is of recent origin, emerging from (post-Second World War) international Charters and Conventions\(^{16}\).

The first documentary use of the expression ‘human rights’ is to be found in the Charter of the United Nations, which was adopted (after the Second World War) at San Francisco on June 26, 1945\(^{17}\) and ratified by a majority of its signatories in October that year.

The Preamble and articles of this Charter\(^{18}\), which were drawn up to prevent a recurrence of the destruction and suffering caused by the Second World War, by setting up the international organization called the United Nations\(^{8}\), declared that the United Nations shall have for its object, \textit{inter alia}, “to reaffirm faith in ‘fundamental human rights’…”\(^{18}\). It is thereafter stated that the ‘purposes’ of the United Nations shall be,

\(^{15}\) See, Jean E. Krasno (ed.), \textit{The United Nations-Confronting the challenges of a Global Society}, 2005, p. 61
\(^{16}\) See, Jean E. Krasno (ed.), \textit{The United Nations-Confronting the challenges of a Global Society}, 2005, p.79
“to achieve international co-operation … in promoting and encouraging respect of human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion ….” (Article 1) 

The U.N. Charter, however, was not a binding instrument and merely stated the ideal which was to be later developed by different agencies and organs.

### iii) Universal Declaration of Human Rights, 1948

The first concrete step by way of formulating the various human rights was taken by the U.N. General Assembly in December, 1948, by adopting the Universal Declaration of Human Rights. It was intended to be followed by an International Bill of Rights which could be legally binding on the covenantee parties.

Subsequently there has been further codification, particularly on an international and pan-national level in the form of International Covenants, Conventions, European Court of Human Rights and remedies provided under Human Rights Act, 1998.

### iv) International Covenants

The Universal Declaration operated merely as a statement of ideals, which was not a legally binding Covenant and had no machinery for its enforcement. That deficiency was sought to be removed by the U.N. General Assembly by adopting in December, 1966, two Covenants for the observance of human rights:

- The Covenant on Civil and Political Rights (General Assembly resolution 2200A (XXI))
- The Covenant on Economic, Social and Cultural Rights (General Assembly resolution 2200A (XXI))

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24. See, Supra Note 20, p. 181.
While the former formulated legally enforceable rights of the individual\textsuperscript{25} the latter was addressed to the States to implement them by legislation\textsuperscript{26}.

The two Covenants came into force in December, 1976, after the requisite number of member States (35) ratified them. Many other States have ratified the Covenants subsequently.\textsuperscript{27}

The effect of such ratification is that the ratifying State is obliged to adopt legislative measures to implement the Covenant to ensure the rights proclaimed in the Covenant so that, though the Covenant itself is not part of the domestic law of the ratifying State, the rights embodied in the relevant legislation are enforceable through the domestic Courts. These Covenants are, therefore, legally binding on the ratifying States.

v) European Convention\textsuperscript{28}

In between the Universal Declaration and the two International Covenants of 1966, a collective implementation of the Universal Declaration was made by a group of States who were members of the Council of Europe, by adopting in 1950, a European Convention for the Protection of Human Rights. This Convention is legally binding on those States who have ratified it. After such ratification, it came into force in 1953\textsuperscript{29}.

Though people outside Europe are not directly interested in the working of the European Convention, it has an important role for the entire world interested in the constitutional protection of human rights, because the Convention had set up a


\textsuperscript{26} See, Abdulrahim P. Vijapur, \textit{The United Nations at fifty, Studies in Human Rights}, 1996, p.196. The Covenant on Economic, Social and Cultural Rights, 1966, recognized wide range of rights which were not so far recognized viz. The right to work, right to just conditions of work, equal pay for equal work, a decent living, safe and healthy working conditions, social security, right to form trade unions and right to strike. Also see, \textit{http://treaties.un.org/Pages/ViewDetails.aspx}, numbering 69 at the end of 1981 (Status as at: 21-07-2010, 07:16:36 EDT Signatories : 69. Parties : 160)

\textsuperscript{27} See, U.K. ratified them in 1976 and India on 10-4-1979. In Canada, it was brought into force on 19-8-1986. Informatin available at \textit{www2.ohchr.org/english/law/ccpr.htm}, visited on 30 Dec.2010


\textsuperscript{29} See, \textit{http://www.hrcr.org/docs/Eur_Convention/euroconv.html} visited on 30 Dec. 2010
European Court of Human Rights in 1959\(^{30}\). This Court has the function of determining disputes arising from the enforcement of the Convention, and its decisions are pronounced in the form of legal judgments. These decisions involve the interpretation of the text of the Convention, and are valuable guides in the interpretation of any national Constitution which embodies identical or similar guarantee of Fundamental Rights.

The European Court of Human Rights, has greatly contributed towards affirming and implementing Human Rights in a large variety of cases including: Detention and Pre-detention Trial; Abolition of Capital Punishment; Fair trial; Against degrading treatment; Right to life and many more areas of its application. The increasing impact of European Convention of Human Rights has helped development of law on the subject, much in the U.K. and appreciably at the international levels.

E) **Promotion and protection of Human Rights by the United Nations**

i) **Human Rights Consciousness**

The first and the most important role which the United Nations has played is that it has made the people and the States conscious about the human rights and fundamental freedoms. It has set a pace in establishing minimum standards of acceptable behavior by States. The proclamation of the Universal Declaration of Human Rights containing the universal code of human rights may be regarded as the first step towards the promotion and protection of human rights.

ii) **Codification of the Law of Human Rights**

The United Nations has codified the different rights and freedoms by making treaties for all sections of the people such as women, child, migrant workers, refugees and stateless persons\(^{31}\). In addition to the above, the prohibition on the commission of inhuman acts such as genocide, apartheid, racial discrimination and torture have been brought within the ambit of international law.

\(^{30}\) Information available at, [http://conventions.coe.int/general/v3IntroConvENGasp](http://conventions.coe.int/general/v3IntroConvENGasp) visited on 23 Oct. 2010


\(^{33}\) Ibid, p. 61
iii) Monitoring of Human Rights

Treaty bodies, Special Rapporteurs and Working Groups of the Commission on Human Rights have procedure and mechanism to monitor compliance with conventions and investigate allegations of human rights abuses. A number of expert committees have been established under particular treaties. These are not subsidiary organs of the United Nations, but are autonomous. The committees are termed U.N. Treaty Organs. The resolutions on specific cases carry a moral weight that few Governments were willing to send these to many trouble torn countries such as El Salvador and Cambodia. Human Rights monitors have also worked as part of peacekeeping operations in Haiti, Rwanda, Guatemala and the former Yugoslavia.

iv) Procedure for Individual’s complaints

A number of human rights treaties permit individuals to make petition before the appropriate international bodies. For instance, the Optional Protocol to the International Convention on Civil and Political Rights (1966), the International Convention on the Elimination of all Form of Racial Discrimination (1965) and Convention against Torture (1984), have permitted individuals to make petitions against their States that have accepted relevant international legal procedures. Also, under procedures established by the commission on Human Rights, the commission, its Sub-Commission on the Promotion and Protection of Human Rights (earlier known as Sub-Commission on Prevention of Discrimination and Protection of Minorities) and their Working Groups, hear numerous complaints annually submitted by individuals as well as by non-governmental organizations (NGOs). The Commission on Human Rights is authorized to discuss human rights situations anywhere in the World and examine information from individuals, NGOs and other sources.

36 See, Information available at- http://treaties.un.org/Pages/ViewDetails.aspx visited on 11 Nov. 2010
38 See, Ibid, p. 168
39 See, Ibid, p. 144
The Economic and Social Council in 1970, adopted Resolution 1503\textsuperscript{40} entitled ‘Procedure for Dealing with Communications Relating to Violations of Human Rights and Fundamental Freedoms, commonly known as ‘1503 Resolution’ wherein individuals and non-governmental organizations (NGOs) were allowed to make a communication to the Commission concerning “situations which appear to reveal a consistent pattern of gross and reliable attested violations of human rights. A communication i.e., a complaint is sent to the Office of the UN High Commissioner for Human Rights\textsuperscript{41} in Geneva. The Commission has focused the 1503 procedure mainly on civil and political rights using Rapporteurs and working Groups in specific countries and specific problems.

It is to be noted that individual petitions help to provide some check on governmental violations of human rights by giving international organizations a source of information.

\textbf{v) Compilation of Information on the Violations of Human Rights}

The original mandate of the Commission on Human Rights to examine situations where massive violations of rights appears to be taking place has been complemented by a new function, i.e., compiling information on the incidences of certain kinds of violations in a specific country. This task is performed by Special Rapporteurs/Representatives or Working Groups\textsuperscript{42}. They gather facts, keep contacts with local groups and government authorities, conduct on-site visits when Governments permit, and make recommendations on how human rights institution might be strengthened.

\textbf{vi) Examination of Human Rights Situations}

The Commission on Human Rights\textsuperscript{43} may ask the Secretary-General to intervene or send an expert to examine a Human rights violation. Assistance may be given to draft a constitution, to improve electoral laws, establish or upgrade human rights institutions, prepare new criminal codes or overhaul the judiciary.

Thus United Nation has been performing a variety of functions successfully to promote and protect human rights. It has promoted global culture of human rights

\textsuperscript{40} See, Abdulrahim P. Vijapur, \textit{The United Nations at fifty, Studies in Human Rights}, 1996, p. 72-73
through education and awareness. Human rights which was regarded as a matter of domestic jurisdiction of the States, has acquired the international character, vis-à-vis, international human rights. It is appropriate to call international Human rights because first of all, Human rights are increasingly a well established area of international politics. Secondly, States are increasingly obligated to respect Human rights norms, and thirdly, individuals have increasingly obtained legal personality, in the form of partial subjectivity, with regard to human rights matters. However, it has to be conceded that the impact of the U.N. activities on international human rights issues has been indirect and it has long term effect. All of its promotion efforts and most of its protection attempts entail considerable time to be widely recognized and respected around the globe. Fundamental rights of individual’s life, liberty and physical security, right to health, housing and work as well as cultural rights continue to be threatened by the forces of repression, ethnic hatred and exploitation. Torture, cruel and inhuman punishment for seemingly minor crimes to spousal and child abuse have led to the disruption of societies and ethnic, religious and other conflicts. In the face of these challenges, the United Nations has to be more active. It has to intervene in cases of massive human rights violations. It has to work with the cooperation of the member States to strengthen the commitments of promoting and protecting Human rights.

F) Commission on Human Rights

The Economic and Social Council (ECOSOC), a principal organ of the United Nations was most directly concerned with the question of Human Rights. The Council under Article 68 of the U.N. Charter was empowered to set up commissions for the promotion of Human Rights and such other commissions as may be required for the performance of its functions. Accordingly, it appointed a Commission on Human Rights which was approved by the General Assembly on February 12, 1946. The Commission was composed of 18 members who were elected by the ECOSOC. Each State member selected its own representatives. In 1962, the membership was increased to 21, and in 1966 to 32. Since 1991, the

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Commission has 53 member Governments. The Commission meets annually in Geneva for six weeks beginning in March. The Commission reports to ECOSOC which, in turn, reports to the General Assembly.

The Commission, as determined by its term of reference, was directed to prepare recommendations and reports on the following items:

- On International Bill of Rights;
- International declarations and conventions on civil liberties, the status of women, freedom of information and similar matters;
- The protection of minorities;
- The prevention of discrimination on grounds of race, sex, language or religion.

The Commission was empowered to carry out studies, make recommendations and draft new international treaties. In addition, it could investigate allegations of Human rights violations and could take action when presented with evidence of large scale violations. It was also empowered to establish sub-commissions.

The Commission started its work in January 1947 under the chairmanship of Mrs. Franklin D. Roosevelt. In its First Session, the Commissions on Human Rights established the Sub-Commission on Prevention of Discrimination and Protection of Minorities, a body of independent experts. The Commission in the same Session appointed a committee which is known as Drafting Committee for the preparation of the draft of an International Bill of Rights. It drafted the Universal Declaration of Human Rights which was adopted by the General Assembly on December 10, 1948. Since then the commission concentrated its efforts on formulation of standards. Using the Declaration as the basis, the commission prepared International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights in 1966. In 1967, the council started to deal with violations of human rights For instance in 1967, the commission set up an ad hoc working group of experts on South Africa and has since established working groups on Chile.

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Situations revealing a consistent pattern of gross violations of Human Rights; Disappearances and the right to development.

The commission has set up elaborate machinery and procedures, country oriented or thematic to monitor compliance by States with international human rights law and to investigate alleged violations of human rights. It is done mainly by dispatching fact-finding missions to countries in all part of the World whether they are rich or poor, developing or developed countries. For instance, in 1994, the Special Rapporteur on Religious Intolerance visited China \(^{50}\) and the Special Rapporteur on Contemporary Forms of Racism visited the United States of America \(^{51}\). During 1970s and 1980s, it has increasingly turned its attention to provide with advisory services and technical assistance to the needy States so that they may overcome the obstacles in securing the enjoyment of human rights by their citizens. At the same time, more, emphasis has been put on the promotion of economic, social and cultural rights, including the right to development and the right to an adequate standard of living. Increased attention is also being given to the protection of the rights of vulnerable groups in society, including minorities and indigenous people and to the protection of the rights of the child and the women.

G) U.N. High Commissioner for Human Rights:

A proposal for the creation of the post of the United Nations High Commissioner for Human Rights was approved by the Economic and Social Council in 1967 through resolution 1235 (XLII) \(^{52}\), authorizing the Commission on Human Rights and the Sub commission on Prevention of Discrimination and Protection of Minorities to examine information relevant to gross violations of human rights and fundamental freedoms. However, it was not established by the General Assembly at that time. In December 1993, Assembly adopted resolution 48/14 \(^{53}\), establishing the post of United Nations High Commissioner for Human Rights in order to promote and protect the effective enjoyment of all civil, political, economic, social and

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cultural rights by all. In April 1994, Mr. José Ayala Lasso of Ecuador assumed the post of first United Nations High Commissioner for Human Rights.

The High Commissioner is appointed by the Secretary-General. However, his name is approved by the General Assembly. He shall be a person of high moral standing and personal integrity possessing expertise in the human rights field and an understanding of diverse cultures. Due regard is paid to geographical rotation. The High Commissioner shall serve a four-year term at the rank of the Under-Secretary-General. The office of the High Commissioner shall be located at Geneva with a branch office in New York. Jose Ayala Lasso of Ecuador was nominated by the Secretary-General as the first High Commissioner when his name was confirmed by the General Assembly on February 14, 1994. He assumed office on April 5, 1994.

The High Commissioner was given the specific responsibilities by the General Assembly which included the following:

- To promote and protect the effective enjoyment by all of all civil, cultural, economic, political and social rights, including the right to development;
- To provide advisory services, technical and financial assistance in the field of human rights to States that request them;
- To co-ordinate United Nations education and public information programmes in the field of human rights;
- To play an active role in removing the obstacles to the full realization of human rights and in preventing the continuation of human rights violations throughout the world;
- To engage in dialogue with Government in order to secure respect for human rights;
- To enhance international co-operation for the promotion and protection of human rights;
- To co-ordinate human rights promotion and protection activities throughout the United Nations System;
- To rationalize, adapt, strengthen and streamline the United National machinery in the field of human rights in order to improve its efficiency and effectiveness.

The High Commissioner was required to report annually to the Commission on Human Rights and through the Economic and Social Council to the General Assembly.

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In addition to the above, the High Commissioner carried out the ‘good offices’ function in the field of human rights on behalf of the Secretary-General and therefore is a United Nations official with principal responsibility for human rights activities. He was responsible for promoting and protecting human rights for all and maintains a continuing dialogue with Member States. The Policies proposed by the High Commissioner were implemented by the Center for Human Rights.

In 1997, the office of the U.N. Commissioner for Human Rights was consolidated along with the Center for Human Rights into single Office of the United Nations High Commissioner for Human Rights (OHCHR)55.

H) Implementation and Monitoring of Human Rights

There cannot be international protection of human rights unless there is strong and effective machinery for its implementation. This is the key to making the system of international protection of human rights effective. But the protection of human rights at international level is a difficult problem because of a variety of reasons. Firstly, the International Court of Justice is open to States only. It implies that individual have no access to the Court. Thus, it has always refused to entertain the petitions and requests which have often been addressed to it by individuals. Secondly, the jurisdiction of the International Court of Justice depends upon the consent of the States involved, and this has been done by few States to disputes involving human rights. Thirdly, even if the International Court in a few cases is able to render judgments against the State, which violates human rights, there is no international police to enforce the decisions of the Court. No doubt, the Security Council has been empowered to enforce the decisions of the Court against a party to a case which has failed to perform the obligations under a judgment of the Court, if the matter is brought before it by the aggrieved party. But it is regarded as a political body and its recommendations are sometimes motivated by political considerations. If the barrier of veto is not crossed, the Council becomes incompetent to take any decision against the State which has failed to comply with the decision of the Court.

Fourthly, although the International Law of Human Rights has fostered a growing

political and legal support for the protection of human rights, many States still regards that enforcement of human rights is an intervention act\textsuperscript{57}. Consequently, implementation of International Human Right Law, depends largely on voluntary compliance by a state and forced compliance is likely to endanger international peace and security.

The above limitations on the implementation of human rights at international level makes it clear that the most effective way to implement human rights vests within the legal systems of the different States. Domestic law of a State is required to provide an effective system of remedies for violation of international human rights obligations. International Human Rights Law has not become that strong so as to enforce and implement human rights violations committed by a State. However, a variety of international bodies have been monitoring and dealing with the cases of violations of human rights. A number of committees, working groups and special rapporteurs have been set up to monitor the violations of human rights. Monitoring mechanism may broadly be divided into two categories which are as follows:-

i) **Conventional Mechanism**:- There are at least six core human rights treaties which have set up committees to perform the task of monitoring State parties compliance with their obligations which are as follows:\textsuperscript{58}

1) Human Rights Committee (HRC) by the International Covenant on Civil and Political Rights (ICCPR).
2) Committee on Economic, Social and Cultural Rights (CESCR) by the International Covenant on Economic, Social and Cultural Rights (ICESCR).
4) Committee against Torture (CAT) by the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment.
6) Committee on the Racial Discrimination (CRD) by the Convention on the Elimination of All Forms of Racial Discrimination.

The above Committees monitor the State’s obligations through a dialogue with the representatives of each of the State’s parties on the basis of a detailed report (an initial report followed by record of the resulting dialogue and the Committee’s own summary of the key points which provide an opportunity for individual member or the Committee as a whole, to indicate the extent to which the State party appears to be in compliance or otherwise. Some of these Committees such as HRC, CEDAW, CAT and CRD deal with complaints from individuals alleging violations of their rights under the treaty concerned. The Convention on the Protection of the Rights of All Migrant Workers and Members of their Families also provides for the setting up of a Committee to hear and consider communications from the individuals of the State party who claim that their rights have been violated.

ii) Extra Conventional Mechanism: In addition to treaty mechanism the most important procedures designed to protect human rights have been established within the United Nations Commission on Human Rights and its Sub-Commission on the Protection of Human Rights (earlier named as Sub-Commission on Prevention of Discrimination and Protection of Minorities). The ad hoc nature of the special procedures of the Commission on Human Rights allows for a more flexible response to serious human rights violations than the treaty bodies. Experts entrusted with special human rights mandates act in their personal capacity and are designated either as Special Rapporteurs, Representatives or independent experts. When several experts are given a mandate a group is sent which is known as working group. These experts examine, monitor and send report to the Commission either on human rights situations in specific countries and territories or on global phenomena that cause serious human rights violation worldwide.

The activities of the rapporteurs and groups include seeking and receiving information’s, asking governments to comment on information concerning legislation or official practices and forwarding to government for clarification alleging about urgent cases that fall within their mandates. The annual report of each rapporteur or group contains information on all of the above activities, as well as

summaries of correspondence, details of meetings with sources of information and governments and general analysis and recommendations.

Resolution 1503 (XLVIII)\textsuperscript{62} adopted by the Economic and Social Council in 1970 allows individuals and non-governmental agencies such as non-governmental organizations to make petitions to the Human Rights commission and its Sub-Commission on Prevention of Discrimination and Protection of Minorities on “situations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights” and fundamental freedoms.

The Sub-Commission was authorized to appoint a working group consisting of not more than five of its members for a period not exceeding ten days immediately before the sessions of the Sub-Commission to consider all communications, including replies of Governments thereon.

The above monitoring mechanisms show that some of them relate to general situations in a country and others to individual complaint. Some of them relate to general situations in a country and others to individual complaint. Some are concerned with the whole field of human rights, others with specific types of violations. Their procedure also varies depending upon their mandate. It is to be noted that the various monitoring procedures adopted by the Commission on Human Rights have not been very successful in curbing the human rights violations which have been taking place in different parts of the World, may be due to its inherent weaknesses and also because these protection efforts transcend a relatively small span of time compared with whatever the government does in its territory which is not concerned to any outsider. It would not be therefore inappropriate to state that while U.N. regime is a strong promotional one but it has a weak monitoring procedure.

I) Human Rights and Domestic Jurisdiction:-

It may be stated that presently there is a general agreement that human rights are a matter of international concern and appropriately a part of the international legal system. The promotion and protection of human rights and respect of human rights has become a fundamental task of the United Nations. It has been one of the

purposes for the establishment of the United Nations. Thus the protection of human rights no longer remains a subject of domestic jurisdiction.

Henkin⁶³ has rightly stated that:-

“If human rights were always a matter of domestic jurisdiction and never a proper subject of external attention in any form, provisions of the U.N. Charter, the Universal Declaration of the Human Rights, the various International covenants and conventions and countless activities, resolution and actions of the U.N. and other international bodies would be ultra-virus.”

The United Nations may not ‘intervene in matters which are essentially within the domestic jurisdiction of any State’ as per the provisions of Article 2 Para 7 of the U.N. Charter⁶⁴. However, if human rights are outraged grievously so as to create conditions which threaten international peace and security, the Security Council may take action against such States under Chapter VII⁶⁵. It is to be noted that Article 2, Para 7 has been rarely utilized by the United Nations. If a State is charged with violation of specific human rights, the organs of the United Nations take up the matter for discussion, recommendations, investigations and publications. Although such measures have not been found effective, sometimes they do exert pressure on the States. They also educate and help in creating conditions in the States for the protection of human rights. The fact is that the various activities of the United Nations and other international agencies go to prove that the protection of human rights at present is no longer a matter of domestic concern.

Although human rights has become a matter of international concern, it does not mean that a State has a right to intervene in another State if the latter is guilty of cruelties against the persecution of its nationals in such a way as to deny their fundamental human rights and to shock the conscience of mankind.

Justification of intervention on humanitarian ground is given by some authors because cruel treatment by a State against its nationals is regarded as a violation of the international law of human rights. It is to be noted that intervention in violation of human rights in a State cannot be justified. Obligations of States in

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⁶⁵ See, Charter of UN-Chapter-7, Action with respect to threats to the peace, breaches of the peace and acts of aggression. Published in, Filip Spagnoli, Making Human Rights Real, 2007, p. 158.
the U.N. Charter for the violation of human rights in a State have been purposefully limited to co-operation with the organization to human rights. One cannot therefore argue that the final phrase in Article 2 (4) ‘or in any other matter inconsistent with the purposes of the United Nations’ was meant to use the force on the ground of violations of human rights. No doubt, since 1945 there have been many successful unilateral humanitarian interventions, such as, Tanzania in Uganda (1979), France in Central Africa (1970) and the United States in Grenada (1983) and in Panama (1989). The above cases might give an impression that it has become a new customary law to intervene on humanitarian ground, but the truth is that intervention on humanitarian ground cannot be justified. State’s treatment of its own subjects is a matter which exclusively lies within its own domestic jurisdiction. The principle of territorial sovereignty and non-interference in internal affairs cannot be violated for the violations of human rights, which is too common a phenomenon in most States. If States would be allowed to intervene on the ground of violations of human rights, independence and security of all such States would be on stake. Use of force by a State in another State cannot be allowed as a means of rectifying a legal wrong. Lauterpacht, the great protagonist for the recognition of human rights, felt bound to concede that the doctrine of humanitarian intervention had never become a fully acknowledged part of the positive international law. Presently, humanitarian intervention has been condemned as illegal by most of the States. It has been held illegal by the International Court of Justice in the case concerning Military and Para-Military Activities in and against Nicaragua by stating that the use of forces could not be appropriate method to monitor or ensure such respect.

Neither International Law on Human Rights nor International Law on the use of force permits a State to intervene in the affairs of another State on the humanitarian grounds. Human rights have not received a rank superior to that of the prohibition of intervention and the prohibition of the use of force. The U.S. missile

attack in Kurdish area of Iraq in 1996\textsuperscript{69} to prevent the suppression of the Kurdish people, after the deployment of troops by Iraq in the city of Arbil and Sulaimaniyah which lie wholly within the territory of Iraq is a clear violation of the International Law. A sovereign State has a right to deploy its troops anywhere within its territory and missile attack in the territory of Iraq is a clear violation of the International Law. A sovereign State has a right to deploy its troops anywhere within its own territory. No State has a right to intervene in the affairs of other States on the plea of saving the people from the ill-treatment by their governments. Most of the States expressed either condemnation or grave reservations at this illegal and arbitrary attack on the territory of Iraq – a sovereign State. Humanitarian intervention is a misconceived and highly dangerous doctrine. Violation of human rights, no doubt, imperils peace, but it cannot be defiance for eroding the sovereignty of States.

A State is not permitted to intervene in the affairs of another State on humanitarian ground; the proposition does not apply to collective intervention taken by the Security Council under Chapter VII of the Charter if the violations of human rights are likely to endanger international peace and security. The Council in the past took action in a few cases including against South Africa, (1977), Iraq (1991), Somalia (1992) and Rwanda (1994) on humanitarian grounds\textsuperscript{70}.

\textbf{J) Human Rights ‘Hot Line’:-}

The United Nations High Commissioner for Human Rights, in 1994 established a Human Rights Hot Line\textsuperscript{71}, a 24 hour facsimile line that will allow the Office of the High Commissioner for Human Rights in Geneva to monitor and react rapidly to human rights emergencies. The Hot Line is available to victims of human rights violations, their relatives and non-governmental organizations. The Hot Line is available to those wishing to establish urgent, potentially life-saving contact with the Special Procedures Branch of the office of the High Commissioner for Human Rights.


\textsuperscript{71} See, 24-hour “Hot Line” for Reporting Human Rights Violations, Information available at-\textit{http://www.un.org/rights/dpi1550e.htm}, visited on 20\textsuperscript{th} Nov. 2010.
K) **Development of Human Rights in India**

The Indian constitution was drafted after the adoption of the universal Declaration Human Rights (1948) by United Nations, but it was adopted at a time when the deliberations for the Universal Deceleration were in air, so that the framers of the Indian Constitution were influenced by the concept of human rights, and they already guaranteed most of the human rights which later on came to be embodied in the international covenant in 1966.

Even prior to the framing of the constitution for free India, Mahatma Gandhi had announced before the second round table conference that his aim was to establish a political society in India in which there would be no distinction between high and low class people, that women should enjoy the same rights as men; and dignity and justice, social, economic and political, would be ensured to the teeming millions of India. This was one of the objects which inspired Pt. Jawaharlal Nehru in drafting the historic objectives resolution in the constituent assembly and which was adopted on January 22, 1947. Principle (1) of this resolution stated:

“this constituent assembly declares, affirms and solemn resolved to proclaim India as an independent, sovereign, republic and to draw up for her future governance – a constitution:
(Principle 5 where in shall be guaranteed and secured to all the people of India justice, social economical and political ;equality of status, of opportunity, and before the law ; freedom of thought expression , belief, faith, worship, vocation ,association and action , subject to law and public morality …………………………………..)

This ideal of the objectives resolution was reflected in the preamble which was adopted in November 1949 with the specific mention of dignity of the individual.”

It is thus evident that during the period between 1946 and 1949 India had formulated the concept of human rights. The importance of these rights was explained by Justice Bhagwati in *Menka Gandhi v. Union of India* as follows:

77 See, Some Facts of Constituent Assembly - Parliament of India, information available on-parliamentofindia.nic.in visited on 5 Dec. 2010
These fundamental rights represent the basic values cherished by the people of this country since the Vedic times and they are calculated to represent the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. They weave a pattern of guarantee on the basic structure of human rights and impose negative obligations on the state not to encroach on individual liberty in its various dimensions.

In the substantive provisions of the constitution, the human rights were divided in two parts, in much the same way as the International Covenant on Civil and Political rights\(^{80}\) and the Economic, Social and Cultural rights\(^{81}\) did later (1966), see ante. In the Indian constitution, the justiciable human rights broadly speaking were included in part III, while the non-justiciable social and economical rights were set forth in part IV as the Directive Principles of State Policy\(^{82}\).

India took a lead in this behalf and enacted Protection of Human Rights Act, 1993.\(^{83}\) This Act besides other provisions provides for the creation of a National Human Right Commission\(^{84}\). The apex court significantly held that it was fully empowered to look into the propriety of orders passed by such commissions and observed “the National Human Right Commission headed by a former chief justice of India is a unique expert body in itself. The chairman of the commission in his capacity as a judge of Supreme court or as Chief Justice of India, and so also to other members who have held high judicial offices as Chief Justice of the High Courts, have throughout their tenure, considered, expounded and enforced the fundamental rights and are, in their own way, expert in the fields\(^{83}\). In deciding the matters referred by Supreme Court, National Human Rights Commissions is given a free hand and is not circumscribed by any conditions Therefore the jurisdictions exercised by the National Human Right Commission in these matters is of a special nature not covered by enactments or law, and thus acts *sui generis*.

Holding that the powers of the Supreme Court in all cases are there to protect Human Rights, the court observed, “the power and jurisdiction of the Supreme court under art. 32 of the constitution cannot be curtailed by any statutory limitation, including those contained in sec. 36(2) of the act. If Supreme Court can exercise that


\(^{81}\) Ibid, p. 7-16


\(^{84}\) See, Ibid, p. 291-310.
the power unaffected by the prohibition contained in s.36(2), there is no reason why
the commission, at the request of supreme court, cannot investigate or look into the
violations of human rights, when though the period of limitation indicated in
sec.36(2) might have expired.

(18)Scope and extent of Human Rights protected under the Constitution as
well as other laws in India.

There have been some people, mostly British, who have questioned the
utility of having the Bill of Rights, that is to say a declaration of fundamental rights
in a constitution, but today that view must be said to have been rejected by the
history of the world because if it is utterly useless or futile, almost every written
collection made after the constitution of United States and more particularly those
made during the two world wars, would not have adopted such declaration.

Even a representative legislature can be arbitrary, and it was such painful
experience of the American colonist at the hands of British parliament itself, that
led to the Americans to adopt a Bill of Rights in their state constitution and
eventually in the federal constitution. The treatment received by the Indians from
Britishers was not dissimilar, and we find that even a British who was a staunch
advocate of British institution, acknowledged that in the matter of adoption of Bill of
Rights, “the Indian reaction, like the American reaction is in large measure, a
product of British rule.”

In 1855, when Dicey said that “the habeas corpus Acts declare no principal and
define no rights, that they are for practical purposes worth a hundred constitutional
articles guaranteeing individual liberty,” and that a mere declaration of right in an
instrument may be meaningless if there is no remedies by which they might be
enforced. He was indeed uttering a profound truth. However, the makers of new
Constitutions in the World since then have assumed that a guarantee of fundamental
rights in a written constitution is a better safeguard of liberty than leaving the
matters to courts to apply the common law to the particular cases, especially

86 See, Jeremy Bentham, The Works of Jeremy Bentham, vol. 2 [1843], Anarchial fallacies; Being an
examination of the Declarations of rights issued during the French Revolution, p. 497-501 published
under the Superintendence of his Executor, John Bowring (Edinburgh: William Tait, 1838-1843). 11
vols. Vol. 2
87 See, Warren C. F., Congress, The Constitution and the Supreme Court, 1925, p.1
88 See, Ivor Jennings, Some characteristics of the Indian Constitution, 1953, p. 34
because, as we have seen at the outset, the common law does not set any limitation on the legislature, as does a Bill of Rights in a written constitution.

The model of the American Bill of Right was followed by so many of the states formed after the First World War, that the Simon Commission’s pleadings against a Bill of Rights in 1934 were nothing but a pleading against history. So said the Commission:

“We are aware of the fact that such provisions have been inserted in many constitutions, notably in those of the European states formed after the war. Experience, however, has not shown to be of any great practical value. Abstract declaration is useless unless there exists the will and means to make them effective.”

The dilemma which the Joint Parliamentary Committee presented, in order to support the view of the Simon Committee, like all dilemmas, contained an inherent logical fallacy. The committee said.

“Either the declaration of rights is of so abstract a nature that it has no affect of any kind, or its legal effect will be to impose an embarrassing restriction on the power of the legislature and to create a grave risk that a large number of laws may be declared invalid by the Court because of the inconsistency with one or the other rights so declared.”

Fortunately, the fathers of the Indian Constitution were not beguiled by that dilemma and preferred to follow the famous words of Jefferson,

“The inconveniences of the declaration are that it may cramp government in its useful exertions. But the evil of this is short-lived, moderate, and reparable. The inconveniences of the want of the declaration are permanent, afflicting and irreparable....”

The reason is that the freedom fighters in India like the American colonist gathered from their experience under an imperialistic regime that even a representative assembly of man might be arbitrary and hostile to the cherished rights.

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90 See, E.G. FINLAND(1919);IRAQ(1925);TURKEY(1924);LEBNON(1926);EIRE(1937). Published in- Louis Henkin, The rights of man today, 1979, p. 78
of men. They could not therefore implicitly believe the representatives of the people, for uncontrolled and unrestricted power might lead to an authoritarian state\textsuperscript{94}. The Indian constitution therefore

“Preserves the natural rights against state’s encroachment and constitutes the higher judiciary of the state as the sentinel\textsuperscript{95} of the said rights \textsuperscript{96} ……”.

A demand for the guarantee of fundamental rights was thus made as early as the constitution of India bill 1895\textsuperscript{97}, drafted so soon after the birth of Indian National Congress in 1885. The urge for incorporating a guarantee of fundamental rights in the Indian Constitution was later accentuated by the need for establishing “a sense of security\textsuperscript{98}” among the different minorities groups, religious, linguistic and social. This object was developed ever since in different congress proceedings, and led to the report of the committee on fundamental rights of the constituent assembly and the framing of part III of the draft constitution in the light thereof.

L) **Constitutional Context of Human Rights:**

The important developments along with the adoption of Universal Declaration of Human Rights (1948), and prior establishment of Human Rights Commission\textsuperscript{99} in February 1946, which had been assigned the function of preparing, Inter-alia, an International Bill of Human Rights had started a movement for the promotion, and protection of Human Rights all over the world. India being an original member of the U.N. and member State which voted\textsuperscript{100} for the adoption of Universal Declaration of Human Rights on 10 December, 1948 could not be oblivious of all these developments yet the Constitution of India is conspicuous by its absence of the words ‘Human Rights’. It is difficult to say whether this Commission was deliberate or just incidental.

The Indian Constitution bears the impact of the Universal Declaration of Human Rights and this has been recognized by the Supreme Court of India. While


\textsuperscript{99} See, Abdulrahim P. Vijapur, The United Nations at fifty, Studies in Human Rights, 1996, p. 64


referring to the Fundamental Rights contained in Part III of the Constitution, Sikri, C.J., of unable to hold these provisions show that rights are not natural or inalienable rights. As a matter of fact, India was a party to the Universal Declaration of Rights…. And that Declaration describes some fundamental rights as inalienable.

Earlier, In Golak Nath v. State of Punjab REF, the Supreme Court observed:

“Fundamental rights are the modern name for what have been traditionally known as ‘natural rights.”

The Supreme Court has also recognized the interpretative value of the Universal Declaration of Human Rights. The Universal Declaration of Human Rights does not define the term ‘Human Rights’. It refers them as “the equal and inalienable rights of all members of the human family”. The framers of the Indian constitution were influenced by the concept of human rights and guaranteed most of human rights contained in the Universal Declaration. The Universal Declaration of Human Rights contained civil and political as well as economic, social and cultural rights. While Civil and Political rights have been incorporated in part III of Indian constitution, economic, social and cultural rights have been incorporated in Part IV of the Constitution.

i) **Preamble:**

Preamble to our Constitution is the key to understand Constitution. According to the Preamble of Indian Constitution, India is a “Sovereign, Socialist, Secular and Democratic Republic.” Preamble begins with the words “We, the people of India, having solemnly resolved to constitute India into a Sovereign, Socialist, Secular, Democratic, Republic...”. The opening words of the preamble are identical with the opening words of the Charter of the United Nations viz, “We the people of the United Nations...” which represents a new trend and a new are in the International field and which might have inspired the framers of our Constitution to emulate the example. Speaking about the said words of the preamble of Indian Constitution, Bhagwati, J., while delivering the judgment in Dr. Pradeep Jain v. Union of India observed that they embody the hopes and aspirations of the

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102 See, AIR SC 1984 p.1420, 1424.
people. It is significant to note that the preamble emphasizes that the people who have given to themselves the glorious document are the people of the India and it gives expression to resolve the people to constitute India into a sovereign, socialist, secular decorate republic, and to promote among all its citizens fraternity assuring the dignity of all the individual and unity and integrity of the nation.

In exercise of their sovereign will, expressed in the Preamble, people of India have adopted the democratic model. Following the American model, while they have delegated to the Legislature, Executive and the Judiciary their respective powers, they have reserved for themselves certain fundamental rights.

Through the Preamble, the people of India have constituted India into a Sovereign, Socialist, Secular, Democratic Republic. The term ‘Sovereign, Democratic Republic’ (The words Socialist and ‘Secular’ were added later on) is of utmost importance, rather sacrosanct for it forms the ‘basic structure” of the Constitution103. The Preamble, however, does not make it clear as to what type of democratic republic has to be established. A perusal of the provisions of the Constitution makes it crystal clear that parliamentary democracy similar to the federal constitution of Canada and Australia has been established.

Preamble attaches a great importance to the concept of democracy. The Supreme Court has rightly declared that democracy (along with federalism) is an essential feature of our Constitution and is part of its basis structure104.

In order to appreciate the concept of human rights under Indian Constitution, it is also pertinent to look to the aims and objects of the preamble, which are indeed the aims and objects of Indian Constitution. The preamble reflects the high purposes and noble objectives of the framers of the Constitution. The words of the preamble embody the hopes and aspirations of the people and capture and seek to reproduce the social, economic and political philosophy underlying the Constitution and running through the Warf and woof of the entire fabric105. Through the preamble the people of India has resolved to secure to all citizens the following four objectives106:

104 See, Kesavanand Bharti v. State of Kerala, AIR SC 1973 p.1461,1535, per Sikri, C.J. at p. 16

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• Justice, Social, economic and political;
• Liberty of thought, expression, belief, faith and worship;
• Equality of status and opportunity, and to promote among them all;
• Fraternity assuring the dignity of the individual and the unity and integrity of the Nation.

**ii) Specifically Enumerated Rights**

<table>
<thead>
<tr>
<th>Universal Declaration of Human Rights</th>
<th>Indian Constitution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Right to Life, liberty and security of person (Art. 3)</td>
<td>Article 21</td>
</tr>
<tr>
<td>Prohibition of Slavery, slavery trade etc. (Art. 4)</td>
<td>Article 23</td>
</tr>
<tr>
<td>Equality before law and non-discrimination (Art. 7)</td>
<td>Article 14 and 15 (1)</td>
</tr>
<tr>
<td>Right to effective remedy (Art. 8)</td>
<td>Article 32</td>
</tr>
<tr>
<td>Right against arbitrary arrest, detention etc. (Art. 9)</td>
<td>Article 22</td>
</tr>
<tr>
<td>Right against ex-post factor Laws [Art. 11(2)]</td>
<td>Article 20 (1)</td>
</tr>
<tr>
<td>Right to freedom of movement [Art. 13(1)]</td>
<td>Article 10(1)-(d)</td>
</tr>
<tr>
<td>Right to own property and not to be deprived of property (Art. 17) (But it was omitted by the constitution (42 Amendment) Act, 1978)</td>
<td>Article 19 (1) (f)</td>
</tr>
<tr>
<td>Right to freedom of thought, conscience and Religion (Art. 18)</td>
<td>Article 25 (1)</td>
</tr>
<tr>
<td>Right to freedom of opinion and expression (Art. 19)</td>
<td>Article 19(1)(a)</td>
</tr>
<tr>
<td>Right to freedom of peaceful assembly and Association [Art. 20 (1)]</td>
<td>Article 19(1)(b)</td>
</tr>
<tr>
<td>Right to equal access to public service</td>
<td>Article 16 (1) [Art. 21(2)]</td>
</tr>
<tr>
<td>Right to social security (Art. 22)</td>
<td>Article 29 (1)</td>
</tr>
<tr>
<td>Right to form and to join trade unions</td>
<td>Article (19(1)(c) [Art. 23 (4)]</td>
</tr>
</tbody>
</table>

**iii) Rights not specifically Enumerated or other Rights:**

It would not be correct to contend that the above rights are the only rights incorporated in Indian Constitution. Though, some rights which do not find express mention in the Constitution do exist. These are either subdued under the existing fundamental rights or have been held to emanate from the existing rights under the theory of emanation108. ‘Supreme court of India elaborating the meaning of

108 See, Dr. Pradeep Jain v. Union of India, AIR SC 1954, p. 1420, 1423 ,per Bhagwati, J.
expression, religion, dharma, religious education, religious instruction and religious pluralism has highlighted the need of religion in Aruna Roy. For example, it has been held that right to life and personal liberty enshrined in Article 21 of Constitution is of widest amplitude and several un-enumerated rights fall within Art. 21. These right are:

a) Right to go abroad;

b) Right to Privacy;

c) Right Again Solitary Confinement;

d) Right Against Bar Fetters;

e) Right to free legal Aid in criminal trial;

f) Right to Speedy Trial;

g) Right against Handcuffing;

h) Right Against delayed execution;

i) Right Against custodial violence;

j) Right Against Public Hanging;

k) Right to Health care or Doctor’s assistance;

l) Right to shelter;

Other Rights which have been held to emanate from Article 21 are following:

a) Right to know;

b) Right to compensation;

c) Right to Release and Rehabilitation of Bonded Labour;

d) Right Against Cruel and Unusual Punishment;

e) Right of Inmates of Protective Homes.

Besides, the declaration of above rights within the expanding ambit of Article 21, this article has been applied in various fields such as Drugs; Environment;

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109 See, Menka Gandhi v. Union of India, AIR SC 1978 p.597
116 See, Sheela v. Union of India , AIR SC 1986 p.1773
117 See, AG of India v. Lachma Devi, AIR SC 1985 p. 467
118 See, Parmanaand Katr v. Union of India SCC 1989 (4) p. 286
Hazardous Chemicals; Insane Persons; Passports; Atomic Energy Radiation; Forests\textsuperscript{121} etc.

It is clear from the above discussion that the scope of human rights in the form of fundamental rights is far greater than that of Universal Declaration of Human Rights while doubts are expressed about the binding nature of rights proclaimed. Unlike the Universal Declaration of Human Rights, Fundamental Rights enshrined in Part III of the Constitution are not only binding, they are also enforceable through the Courts of law. They serve as limitations on the legislative and executive powers of the State. Article 13 (1) of the Constitution provides that all laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with Part III, shall, to the extent of such inconsistency, be void. Further Article 13 (2) provides that the State shall not make any law which takes away or abridges the rights conferred by Part III and any law made in contravention of this clause shall to the extent of the contravention, be void.

\textbf{iv) Economic, Social and Cultural Rights\textsuperscript{122}:—}

<table>
<thead>
<tr>
<th>Universal Declaration of Human Rights</th>
<th>Indian Constitution</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Right to work, to free choice of employment, to just and favourable conditions of work etc. [Art. 23 (1)]</td>
<td>Article 41</td>
</tr>
<tr>
<td>2. Right to equal pay for equal work [Art. 23(2)]</td>
<td>Article 39(d)</td>
</tr>
<tr>
<td>3. Right to just and favourable remuneration [Art. 23 (3)]</td>
<td>Article 43</td>
</tr>
<tr>
<td>4. Right to rest and leisure (Art. 24)</td>
<td>Article 43</td>
</tr>
<tr>
<td>5. Right of everyone to a standard of living adequate for his and his family [Art.25(1)]</td>
<td>Article 39(a) and Article 47</td>
</tr>
<tr>
<td>6. Right of education and free education in the elementary And fundamental stages [Art. 26(1)]</td>
<td>Article 41&amp;45</td>
</tr>
<tr>
<td>7. Right to a proper social order (Art.28)</td>
<td>Article 38</td>
</tr>
</tbody>
</table>

\textsuperscript{121} See, M.C. Mehta v. Union of India, 1987(4) SCC p.463.

M) **Classification of Human Rights Under Indian Constitution**

A perusal of Indian Constitution shows that human rights have been classified under Indian Constitution into the following categories:

a) Fundamental Rights and Rights to freedom (Fundamental Freedoms)
b) Civil, Political, Economic, Social and Cultural Rights,
c) Human Rights for all and Human Rights for Citizens only.
d) Justiciable Human Rights and Non-Justice able Human Rights

Thus being influenced by the Ninth Amendment of the American Constitution, the Supreme Court of India has also applied the theory of emanation and has availed distinct and independent rights out of the existing fundamental rights. The guarantee of equal protection under art. 26 of the International covenant on Civil and Political Rights does not appear in art.14 of the European convention. Again the right of fair hearing in article 6 of the convention is elaborated in greater detail in art.14 of the covenant. The right to get a fair trial is a basic fundamental/human right. Any procedure, which comes in the way of a party in getting a fair trial, would be violative of art.14. Right to a fair trial by an independent and impartial tribunal is part of art. 6 (1) of the European convention for the protection of Human Rights and Fundamental Freedom, 1950.

Following are some of the rights which have been evolved by being parts or having emanated from one or more of fundamental rights:

1. Right to travel abroad; (Art. 21)
2. Right to privacy; [Art. 21 and 19 (i) (d)]
3. Right against solitary confinement; (Art. 21)
4. Right against bar falters (Right to human dignity)[Articles 21, 14 and 19]
5. Right to free legal aid in a criminal trial; [Art 21, Art. 39-A]
6. Right to Speedy Trial; [Art. 21]

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g) Right against Handcuffing; (Art. 21)

h) Right against Delayed execution; [Art. 21]

i) Right against Custodial violence; [Art. 21]

j) Right against Public Hanging; (Art. 21)

k) Right to Health care or Doctor’s Assistance; (Art. 21)

l) Right to Shelter; (Art. 21)

m) Right to pollution free environment; (Art. 21)

n) Right to education of a child till he attains the age of 14; (Arts 21, 45 and 41)

o) The Freedom of Press; (Art. 19 (a))

p) Right to know; (Art. 21)

q) Right to compensation; (Art. 21)

r) Right to Release and Rehabilitation of Bonded Labor; [Art. 21, 23]

s) Right of Inmates of Protection Homes (Arts. 21).

The above list is simply/illustrative and by no means exhaustive. However, it is clear from the above discussion that under Indian Constitution, besides the Fundamental Rights which have been enumerated under Part III of the Constitution, some other fundamental rights have been evolved by being connected with or having emanated from one or more of fundamental rights.

N) India and International Conventions on Human Rights:-

In this Chapter a comparative Study of the International Covenants on Human Rights and the Indian Condition and their relationship will be discussed. But besides the International Covenants on Human Rights, of which India has become party to other International Conventions on Human Rights, shall also be discussed. A brief mention of such conventions will be desirable here. India has become party to the following International Conventions 129:-


iv) Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery.


vii) 1953 Protocol amending the 1926 Slave convention.

viii) International convention against Apartheid in Sports.


x) Convention for the Suppression of the Traffic in Person and of the Exploitation for the Prostitution of others.

xi) Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

xii) Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

xiii) Convention on the Nationality of Married Women.

xiv) Slavery Convention of 1926.

xv) Slavery Convention of 1926 (as amended)

These Conventions obligate the State Parties to submit periodic reports stating the measures they have taken to give effect to the provisions of the Convention. Like other States Parties India has also not submitted the requisite reports in time. Instead of emulating the examples of other State Parties, India should promptly submit the requisite reports so as to demonstrate to the whole world, that India is in forefront of the countries that have become not merely parties to the International Conventions on Human Rights but also faithfully perform their International obligation.

It is heartening to note that National Human Rights Commission reviews these International Conventions every year and reminds and impresses upon the Government the desirability to fulfill its obligations under these conventions.

O) **Sum-up**

Evolution and historical development of Human Rights at international level has been studied in this chapter. The civil, political, social, cultural and economic safeguards provided under Indian Constitution in form of fundamental rights and directive principal of state policies have also been elaborated along with judiciary's role in promoting and protecting Human Rights in country, whenever the situation
arose. These Human Rights granted under Constitution and the freedoms which we enjoy under Constitution form the very essence of civilized life as we know it. Further, in discourse on Human Rights, it is often assumed that the state is the perpetrator of violations of rights or that it is the sole responsibility of the state to ensure human welfare but in the ultimate analysis, it is realised as a co-operative venture of all individuals constantly acting together and caring for one another as a humane society. So, knowing the fragile and nascent nature of these freedoms, we have to be constantly vigilant to see that our constitutional structure is not eroded and we are ever vigilant to protect our freedoms and our basic human rights. The spirit of liberty is an eternal flame which we must keep burning with every means at our command, if we are going to create the kind of social, economic and political structure that was envisaged by our founding fathers.