PART-I

Conceptual Analysis of Human Rights
Recall that the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.¹

I. MEANING OF HUMAN RIGHTS

Human Rights are integral to the concept of justice. Justice means fairness. Dealing fairly to a person is justice. There is upholding of right if there is justice. For humanness, justice is essential. The denial of justice is the denial of human rights. Human Rights uphold the dignity and status of the persons. Human Rights mean the affirmation of a dignified life to each individual. It involves love, mercy, humanness and just relationship. Human rights look for the sustenance of each person in dignity, it demands the holistic development of persons and community. Human rights are the rights which all human beings possess by virtue of human conditions. They are generally called 'Fundamental Rights' or 'Natural Rights' or 'the Rights of Man'. Human rights are fundamental in the sense that they are not denied in any circumstance, thus they are not dependent upon grant or permission of the state or government and can not be withdrawn by the authorities. Human rights are not only rights rather they are the ideals based on the demand of humanity regarding dignity, respect, justice, freedom and protection. Thus they should be enjoyed by every member of human society without discrimination of caste, creed, race, gender, religion, nationality or other status. Human rights are inalienable rights as these rights belong to them because of the very existence, they became operative with their birth.
These rights are essential for all the individuals as they are consonant with their freedom and dignity and are conducive to physical, moral, social, and spiritual welfare. They are also necessary as they provide suitable conditions for the material and moral uplift of the people.

It is difficult to define the expression human rights mainly because of difference in cultural background, legal systems, ideology and economic, social and political conditions of different states. However, it can be said that the idea of human rights bound us with the idea of human dignity. Thus, all those rights which are essential for the maintenance of human dignity may be called human rights. D.D. Basu defines human rights as those minimum rights which every individual must have against the state or other public authority by virtue of his being a member of human family, irrespective of any other consideration. Rights being immunities denote that there is a guarantee that certain things can not or ought not to be done to a person against his will. According to this concept human beings by virtue of their humanity, ought to be protected against unjust and degrading treatment. In other words, human rights are exemptions from the operation of arbitrary power. An individual can seek human rights only in an organized community i.e., state, or in other words, where the civil social order exists. No one can imagine to invoke them in a state of anarchy where there is hardly any just power to which a citizen can appeal against the isolation of rights. Thus, the principle of the protection of human rights is derived from the concept of man as a person and his relationship with an organized society, which can not be separated from universal human nature.
In the words of Subhash C. Kashyap: “The fundamental norm governing the concept of human rights is that of the respect for human personality and its absolute worth. Human rights may be said to be those fundamental rights to which every man or woman inhabiting any part of the world should be deemed entitled merely by virtue of having been born a human being”.

Youcef Bouandel argued that most schools suggest that the term human rights is generally taken to mean a twentieth century name for natural rights.

J. Donnelly said that: “Human Rights are those held imply by virtue of being a person. To have a human rights one need not be or do anything special, other than to be born as human being.” According to Donnelly: “rights encompass at least two concepts. On the one hand, rights refer to moral righteousness. On the other hand, rights may refer to entitlements as in the claim I have a right to”. This second sense of entitlement distinguishes rights, as human or otherwise. Human rights are entitlements for everybody. He distinguishes between political and moral rights and concludes that human rights are political one.

Maurice Coronation, on the other hand, claims that human rights are moral rights. He said “Human rights are a form of moral rights and they differ from other moral rights in being the rights of all people at all times and in all situations. According to him legal rights do not constitute human rights because they are limited in scope, either they deal with a person and a privileged group or with people under a given jurisdiction. He identified three types of moral rights: (a) moral rights of one person only, (b) moral rights of any one in a particular situation and
(c) moral rights of all people in all situations. Human rights to Cranston fall in the moral rights category. 6

Macfarlane also considers human rights as moral rights. According to him human rights are those moral rights which are owned by each man and woman solely by reason of being a human being. 7

In the view of Alan Gewirth, human rights are a species of moral rights: they are moral rights because firstly in human rights all persons are equal simply because they are human and secondly they are justified on certain valid moral principles, 8 on the contrary, R.J., Vincent argued human rights are founded in the human nature. He said: "they are rights that every one has, and everyone equally by virtue of their very humanity. They are grounded in our appeal to human nature." 9

Some human rights thinkers interpret human rights as the essential conditions required for the development of human dignity and personality and for the happiness of individual. The material and moral upliftment of the people can only be possible in the presence of human rights. In this light A.A. Said says, "human rights are concerned with dignity of the individual, the level of self-esteem that secures personal identity and promotes human community." 10

All the above definitions talk about the nature and significance of human rights. But M. Freedon has highlighted a more practical approach of human rights. In his opinion, a human right is a conceptual device, expressed in linguistic form that assigns priority to certain human or social attributes regarded as essential to the adequate functioning of human being; that is intended to serve as a protective capsule for those
attributes and that appeals for a deliberate action to ensure such a protection. 11

It is now proved that there is no precise and universally agreed definition of human rights, but Edward lawson's definition can be considered as the most comprehensive and appealing. He, in the 'Encyclopedia of Human Rights', says, 'human rights are the universally accepted principles and rules that support morality and that make it possible for each member of the human family to realize his or her full potential and to live life in an atmosphere of freedom, justice and peace.' 12

What are Human Rights? It is the most controversial question in the debate on human rights. Agreement among scholars has yet to be reached on what human rights are. Human rights are the product of a evolutionary process. Different philosophies and circumstances have added new rights to the original list of human rights. There are, broadly, three categories of human rights. First, the civil and political rights which most scholars refer to as the 'first generation of human rights'. These rights were first developed in the Liberal traditions and are considered to be 'the original set of human rights'. Second the economic, social and cultural rights, which have come to be known as the 'second generation of human rights.' These rights were first highlighted by Marx and his followers. Third, a group of new rights, which is called 'third generation of human rights' started their claim to be included in the human rights only after the emergence of third world/developing countries. Now, we will first focus on the controversies involved in the first two categories of rights. Whether human rights should include both generations of rights or just the first
is a question which has created a lot of controversy. Some human right theorists like Maurice Cranston and R. S. Downie have argued that human right should be limited to civil and political rights and should not include economic or welfare rights and social rights. Cranston argues that the second generation cannot possibly be accepted as human rights and its inclusion hinders the protection of the traditional human rights. He has developed three fold tests upon which the authenticity of human rights is judged. These criteria are: practicability, paramount importance and universality. First, he argues that the economic and social rights are not practicable since they require resources that are beyond the capacities of states to provide. By contrast, he holds that the traditional rights to life and liberty requires only forbearance from action on the part of state and thus are practicable. Second, in his view, only the rights to life and liberty are of paramount importance. Third, he claims that human rights are universal. The first generation rights like rights to life and liberty, can be universally protected but the socio-economic rights differ from society to society since their fulfillment depend upon adequate resources. It is held generally by the liberal thinkers that economic and social rights require the state to provide positive benefits and this would lead to increased state action and inevitable interference with an individual's liberty. Because of the above fact the second generation rights is not included in the human rights.

Human rights theorists like Alan Gewirth, Richard Wasserstom, Henry Shue, and many others consider the socio-economic and cultural rights as human rights. Gewirth and Wasserstom argue for the right to well-being as a human right, where such well-being includes economic or welfare consideration. Similarly, Henry Shue, Raymond Plant, Harry
Lesser and Peter Taylor-Gooby argue for subsistence or for survival as a basic human right.\textsuperscript{14} This view believes that the second generation rights are as important for human beings as the first generation. Gould argues for a conception of human rights that emphasis both economic rights and civil and political rights and see them in relation to each other. According to her, the protection of civil and political rights requires the realization of social and economic rights. Freedom from the socio-economic exploitation and domination should be recognized as a right and that is necessary for the realization of civil and political rights. She claimed that the right to life includes right to subsistence and healthcare, in addition to security.\textsuperscript{15} She advocates that the most important human right is the right to have positive freedom or right to self-development that includes both generations of rights.\textsuperscript{16}

This controversy has been ended with the collapse of communism and the end of 'cold war'. In the last few decades we observe the recognition of both sets of rights in all societies whether it is liberal democratic or socialist system. The universal declaration of human rights contains both civil and political rights and economic, social and cultural rights. The American Secretary of State (Cyrus Vance) in his address on human rights policy (1977) mentioned three categories of rights that come under human rights. First, the right to be free from governmental violation of the integrity of the person. Second, the right to the fulfillment of such vital needs as food, shelter, health care and education. Third, the right to enjoy civil and political liberties.\textsuperscript{17} In the similar manner almost all the contemporary human rights thinkers agree on the fact that human rights include the right of both generations.
Now, we will switch over to the 'third generation' of human rights which Karal Vasak calls the right to solidarity. It refers to certain rights which were not mentioned either in the liberal or Marxist tradition or in the UN declaration. These rights emerged due to mainly two reasons: first the independence of the third world countries and second, the newly recognized threats to the entire mankind. Karal Vasak included four rights in this category. He writes:

"Third generation rights include the right to development, the right to a healthy and ecologically balanced environment, the right to peace, and the right to ownership of the common heritage of mankind".  

The right to development and ownership of the common heritage of mankind could be identified with the demands of third world, while the other two rights are of a general character and of a genuine importance to everybody in the world. The question of inclusion of the rights of the third generation into the concept of human rights has created more ambiguity surrounding the concept. They are not included in the human rights, as it is argued, because these rights refer to something vague and ambiguous. Marks stresses that the rights of new generation are too vague to be justifiable and are no more than slogans. But on the other hand, there are strong arguments in favour of their inclusion into the human rights. These rights, it is argued, are pre-conditions or related to the most basic right i.e. the 'right to life'. In Gould's view the right to peace and right to live in a clean environment are also included into 'right to life'. Therefore, the third generation of rights can be considered as inalienable human rights. They have definitely widened the scope of human rights.
In the present days, rights have been claimed to things that were not generally claimed as right in the earlier days. Changes in moral and political thinking have affected people's ideas about the content of human rights. Peter Jones argues that the idea of natural or human rights has remained constant; all that has changed is people's thinking about what individuals have natural or human rights to. An attempt will be made to find out the special characteristics of human rights by which they can be distinguished from the traditional rights. We will also discuss and clarify some of the issues surrounding the concept of human rights. First, human rights are universal. They are moral rights for everybody wherever they are. The entire mankind enjoys it and for that people do not require any qualification to enjoy them. But there is a great debate on its universality. Economic and social rights, in the opinion of Cranston and others, are not universal on many grounds which we have already discussed. But scholars like Macfarlane argue that the enjoyment of both socio-economic rights and civil and political rights requires resources and positive action of the state. The traditional division of rights into two categories is no longer relevant and it is argued all human rights are universal in nature. Practicability is another important issue related to the concept of human rights. According to Cranston, these rights can be a part of human rights which can be exercised. Social and economic rights, to him, are not practicable, therefore are not human rights. But Macfarlane rejected Cranston's argument and concluded that practicability is an issue with all human rights not only with economic and social rights. He argues that the enjoyment of civil and political rights requires qualified judges, the training of the police and the military forces, for which resources are needed.
According to Cranston human rights include those rights which are of paramount importance. In his opinion civil and political rights are more important than social and economic rights and therefore are human rights. But this argument is questioned. It is very difficult to judge whether one set of rights is more important than the other. The satisfaction of one set of rights depends upon other. It can be said that within the civil and political rights for instance, the right to life is more important than the denial of freedom of speech. Boundel observes that the importance of something can be very flexible. The degree of importance may vary from person to person and from society to society. Therefore, cannot be concluded that one human right is more important than another. The division of rights into different groups and giving priority to one set of rights over another, goes against the basic purpose of human rights, i.e. the all round development of the people. Robertson and Merrills believe in the indivisibility of human rights. The idea of indivisibility is clearly understood if we look at the recently developed ‘right to development’ which includes both sets of rights. The traditional division of rights into ‘negative’ and ‘positive’ has lost its ground in the doctrine of human rights. A new approach is developed in the human rights tradition which considers all rights whether civil and political or social and economic as positive rights. Gould has advocated that the ‘right to life’ as generally held is a negative right because it contains the right not to be killed. But she believes that the right to life includes other benefit rights, the right to the means of subsistence; the right to peace and the right against avoidable environmental harm or risk.

Human Rights, being essential for all round development of the personality of the individual in the society, be necessarily protected and
be made available to all the individuals. Perhaps the most important challenge to mankind today is not that all people should be aware of the various ‘rights’ with we have because we are “all born free and equal in the dignity and rights”, should act toward one another spirit of brotherhood.

II. DIFFERENT APPROACHES TO HUMAN RIGHTS

David argues that philosophical approaches of Human Rights are inherently controversial. Human Rights law presents the conclusions of certain arguments. Human Rights approaches provide the arguments. He suggests that human rights law and practice should be evaluated, not by ideal standards, but by real possibilities. The various approaches to human rights are noted below:

Natural Law Theory

Natural law theory has underpinnings in Sophocles and Aristotle, but it was first elaborated by the Stoics of the Greek Hellenistic period and later of the Roman period. Natural law, they believed, embodied those elementary principles of justice which were right reason that is in accordance with nature, unalterable and eternal. Mediaeval Christian philosophers, such as Thomas Aquinas, put great stress on natural law, as conferring certain immutable rights upon individuals as part of the law of God. But there were critical limitations in the mediaeval concepts which recognized slavery and serfdom, thus excluding central ideas of freedom and equality. As feudalism declined, modern secular theories of natural law arose, particularly as enunciated by Hugo Grotius and Samuel von Pufendorf. Grotius defined natural law as a 'dictate of right reason'; that is, an act, according to whether it is or is not
in conformity with rational nature, has in it a quality of moral necessity or moral baseness. Grotius, it should be noted, was also a father of modern international law. This theory, of course, has immense importance for the status and legitimacy of human rights as part of a system of international law. Natural law theory led to natural rights theory, the theory most closely associated with modern human rights. The chief exponent of this theory was John Locke. Locke imagined the existence of human beings in a state of nature. In that state, men and women were in a state of freedom, able to determine their actions and also in a state of equality in the sense that no one was subjected to the will or authority of another.  

Natural rights theory makes an important contribution to human rights. It affords an appeal from the realities of naked power to a higher authority which is asserted, for the protection of human rights. It identifies with human freedom and equality from which other human rights easily flow. And it provides properties of security and support for a human rights system, both domestically and internationally.  

**Positivism Theory**

John Stuart Mill claimed that rights are founded on utility. Karl von Savigny in Germany and Sir Henry Maine in England claimed that rights are a function of cultural variables. Under positivist theory, the source of human rights is to be found only in the enactments of a system of law with sanctions attached to it. Views on what the law 'ought' to be having no place in law and are cognitively worthless. If the state's processes can be brought to bear in the protection of human rights, it becomes easier to focus upon the specific implementation which is necessary for the protection of particular rights. Indeed,
positivist thinkers such as Bentham and Austin were often in the vanguard of those who sought to bring about reform in the law. The human rights treaties adopted by the United Nations reflect a positive set of rights that is rules developed by the sovereign states themselves and then made part of a system of international law. While many states may differ on the theoretical basis of these rules, the rules themselves remain to provide a legal grounding for human rights protection. On the other hand, in theory, positivism tends to undermine an international basis for human rights because of the emphasis positivists place on the supremacy of national sovereignty without accepting the restraining influence of an inherent right above the state. Furthermore, by emphasizing the role of the nation-state as the source of law, the positivist approach produces the view that the individual has no status in international law.

**Marxism Approach**

Contrasted with natural law is Marxist theory, an approach which is also concerned with the nature of human beings. Marx regarded the law of nature approach to human rights as idealistic and a historical. He saw nothing natural or inalienable about human rights. He regarded the notion of individual rights as a bourgeois illusion. Concepts such as law, justice, morality, democracy, freedom and so on were considered as historical categories, whose content is determined by the material conditions and the social circumstances of a people. As the conditions of life change, so the content of notions and ideas may change. Only rights which are granted by the state exist, and their exercise is contingent on the fulfillment of obligations to society and to the state. On an international level, Marxist theory has proved incompatible with
a functioning universal system of human rights. The prior claims of a communist society do not recognize overruling by international norms. Be that as it may, the influence of Marxism on human rights concepts has declined, as Marxism itself has ironically become a historical category with lessening philosophical impact.

The Sociological Approach

Natural and social sciences developed and began to increase understanding about people and their cultures, their conflicts and their interests. Anthropology, psychology and other disciplines lent their insights. This approach, insofar as it relates to human rights, sometimes directs attention to the questions of institutional development; sometimes focuses on specific problems of public policy which have a bearing on human rights; sometimes aims at classifying behavioural dimensions of law and society. In a human rights context, the approach is useful in that it identifies the empirical components of a human rights system in the context of the social process. In many ways this approach can be said to build on William James's pragmatic principle that the essence of good is simply to satisfy demand. This approach also was related to the development in twentieth century society of increased demands for a variety of wants beyond classical civil and political liberties: such matters as help for the unemployed, the handicapped, the underprivileged, minorities and other elements of society. Pound pointed out that, during the nineteenth century, the history of the law was written largely as a record of an increasing recognition of individual rights. The approach of Pound and his progeny usefully enlarges our understanding of the scope of human rights and their correlation with demands. He makes us 'result-minded, cause-minded and process-
A descriptive science in the social human rights field is helpful but not enough to satisfy the need of goal identification.

**Rights Based on Natural Rights Theory**

In variant forms, modern human rights core theories seem to be settling for concepts of natural necessity, that is, necessity in the sense of prescribing a minimum definition of what it means to be human in any morally tolerable form of society. It views human life as encompassing certain freedom and sensibilities without which the designation 'human' would not make sense. To use a linguistic metaphor, humanity has a grammatical form of which certain basic human rights are a necessary part. To be sure, there is a certain aspect of vindication to many of the new individualist theories. They can be viewed as saying that if we adopt certain human rights (freedom of thought, equality) as norms, we can produce a certain kind of society; and, if one finds that kind of society desirable, one should adopt the norms and call them absolute principles. The renaissance of qualified or modified natural rights or core theories has had a seminal influence on conventional international human rights norms. A reflection of that influence is found in the Universal Declaration of Human Rights itself, which begins with the following concept: 'Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.'

**Rights Based on the Value of Utility Theory**

Generally, it may be described as holding that actions and other objects of moral assessment are justified only if their consequences
have more intrinsic value than alternative actions. Classic utilitarianism, the most explored branch of this school, is a moral theory that judges the rightness of actions which affect outcomes in terms of securing the greatest happiness to all concerned. Jeremy Bentham, who expounded classical utilitarianism, believed that every human decision was motivated by some calculation of pleasure and pain. He thought that every political decision should be made on the same calculation that is to maximize the net produce of pleasure over pain. Hence, both governments and the limits of governments were to be judged not by reference to abstract individual rights but in terms of what tends to promote the greatest happiness of the greatest number. Utilitarian philosophy thus leaves liberty and rights vulnerable to contingencies and therefore at risk. In Ronald Dworkin's felicitous phrase, rights must be 'trumps' over countervailing utilitarian calculations.

Rights Based on Justice Theory

The monumental thesis of modern philosophy is John Rawls's *A theory of Justice*. Justice is the first virtue of social institutions; says Rawls. Human rights, of course, are an end of justice; consequently, the role of justice is crucial to understanding human rights. No theory of human rights for a domestic or international order in modern society can be advanced today without considering Rawls's thesis, and we discuss this theory here more than any other contemporary ones. Principles of justice, according to Rawls, provide a way of assigning rights and duties in the basic institutions of society. Rawls's thesis is that each person possesses 'an inviolability founded on justice' which even the welfare of society as a whole cannot override. 'Justice denies that the loss
of freedom for some is made right by a greater good shared by others. Therefore, in a just society the liberties of equal citizenship are settled; the rights secured by justice are not subject to political bargaining or to the calculus of social interests. Rawls’s system thus allows us to derive universal principles of justice (morality) acceptable to all rational human beings. Rawls claims that, if the contractors in the original position are rational and act in a condition of disinterestedness or ignorance of their own status and prospects, they will choose two principles of justice.

Rawls’s First Principle is that ‘each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all’.

Rawls’s Second Principle deals with distributive justice. It holds that ‘Social and economic inequalities are to be arranged so they are both (a) to the greatest benefit of the least advantaged, consistent with a just savings principle and (b) attached to positions and offices open to all under condition of fair equality of opportunity’.

Rawls’s overriding principle of justice requires that all citizens share these liberties equally, as indeed international law provides. Rawls holds that a condition of distributive justice is fair equality of opportunity. Opportunity, stated as a principle of non-discrimination, is easy to put into legal precept and, in fact, international human rights covenants and many domestic constitutions provide that there should be no discrimination by virtue of sex, race, religion or national origin. If Rawls’s moral principles produce justice for individuals in a domestic state that is a long step towards gaining the domestic state’s endorsement of and adherence to international human rights
principles. In this regard, the international world order is no greater than the sum of its state parts. Hence, if the Rawlsian moral schemata contribute to a realization of domestic justice by the various state parts, the prescriptions of international human rights will invariably be served. Rawls's theory is obviously comforting for the construct of constitutional democracy as well as for the concept of the universality of human rights.

**Rights Based on Reaction to Injustice Theory**

Professor Edmund Cahn's theory of justice appeals to human rights activists. Cahn asserts that, although there may be universal a priori truths concerning justice from which rights or norms may be deduced, it is better to approach justice from its negative rather than its affirmative side. In other words, it is much easier to identify injustice from experience and observation than it is to identify justice. Therefore, he concludes, justice is the active process of remedying or preventing what arouses the sense of injustice. Such an approach obviously will find a response in human rights advocates anxious to focus public attention on the injustice of the wide variety of egregious human rights abuses which remain prevalent. Here we need an overall structure of the type presented by moral philosophers such as Rawls, Ackerman or Gewirth. Still, Cahn's insight is useful; in the end it may well be that we will secure only those rights for which we are aroused to fight.

**Rights Based on Dignity Theory**

A number of human rights theorists have tried to construct a comprehensive system of human rights based on a value-policy oriented approach founded on the protection of human dignity. A
secular exposition of that theory is best presented by McDougal, Lass
well and Chen, who proceed on the premise that demands for human
rights are demands for wide sharing in all the values upon which human
rights depend and for effective participation in all community value
processes. The interdependent values, which can all fall under the rubric
of human dignity, are the demands relating to (1) respect, (2) power, (3)
enlightenment, (4) well-being, (5) health, (6) skill, (7) affection, and (8)
rectitude. The ultimate goal, as they see it, is a world community in
which a democratic distribution of values is encouraged and promoted,
all available resources are utilized to the maximum, and the protection
of human dignity is regarded as a paramount objective of social policy.

Rights Based on Equality of Respect and Concern Theory

Ronald Dworkin, 39 offers a promising reconciliation theory between
natural rights and utilitarian theories. Dworkin proceeds from the
postulate of political morality; that is, that governments must treat all
their citizens with equal concern and respect. In the absence of such a
premise, there is a lack of a basis for any valid discourse on rights and
claims. He believes that the state may exercise wide interventionist
functions in order to advance social welfare. Dworkin believes that a
right to liberty in general is too vague to be meaningful. However,
certain specific liberties, such as freedom of speech, freedom of
worship, rights of association and personal and sexual relations, do
require special protection against government interference. Liberties to
be protected against such external preferences must be given a
preferred status. By doing so, we can protect the fundamental right of
citizens to equal concern and respect because we prohibit "decisions
that seem, antecedently, likely to have been reached by virtue of the
external components of the preferences democracy reveals'. Dworkin (like Rawls, but in a different way) has minimized the tension between liberty and equality.

Theory Based on Cultural Relativism

The universalist (foundationalist, individualist) thesis is that human rights are universal, reflecting the autonomous, individual nature of the human being. Cultural relativists, in their most aggressive conceptual stance, argue that there are no human rights absolutes, that the principles which we may use for judging behaviour are relative to the society in which we are raised, that there is infinite cultural variability and that all cultures are morally equal or valid. Put into a philosophical calculus, the relativist says, 'Truth is just for a time or place' identified by the standards of one's cultural peers. Relativism thus shifts the touchstones by which to measure the worth of human rights practice. To suggest that fundamental rights may be overridden or adjusted in the light of cultural practices is to challenge the underlying moral justification of a universal system of human rights. A universal moral philosophy affirms principles which protect universal, individual human rights of liberty, freedom, equality and justice everywhere, giving them a non-transient, non-legal foundation. We can all cite examples of repressive rulers who seek to rationalize repressive practices by claiming that the culture of their society accepts those practices over universalist international human rights prescriptions, and that to criticize their society's human rights practices is to impose Western cultural imperialism over their local culture. Thus cultural relativist arguments are used to justify limitations on speech, subjugation of women, female genital mutilation, amputation of limbs
and other cruel punishment, arbitrary use of power, and other violations of international human rights conventions. It is no wonder that the doctrine that human rights are contingent on cultural practice has been called the 'gift of cultural relativists to tyrants' cultural relativism? It is that cultures manifest so wide and diverse a range of preferences, motivations and evaluations that no human rights principles can be said to be self-evident and recognized in all times and all places.

John Finnis points out.

"All human societies' show a concern for the value of human life in none is the killing of other human beings permitted without some fairly definite justification. In all societies there is some, prohibition of incest, some opposition to boundless promiscuity and to rape, some favour for stability and permanence in sexual relations. All human societies display a concern for truth all societies display a favour for the values of co-operation, of common over individual good, of obligation between individuals, and of justice within groups. All know friendship. All have some conception of meum and tuum, title or property, and of reciprocity. All display a concern for powers or principles which are to be respected as superhuman; in one form or another, religion is universal."42

One, therefore, should not have to probe deeply to conclude that there is a universal cultural receptivity to such fundamental rights as freedom from torture, slavery and arbitrary execution, due process of law and freedom to travel. Further, there are many examples of peoples of like cultures living virtually side by side, where one state condemns human rights abuses and a counterpart state creates abuses. Thus most human rights abuses are not legitimately identified with the authentic culture of any society, only with authoritarian rulers of that society.43
Jacob Raz grounds rights in interests which are themselves grounded in values. Richard Rorty argues that human rights activists should rely, not on reason and theory, but on passion and the courage of their convictions. Other theorists produce other rationales. It is still an open question among some theorists whether, at the end of the day, individualists and relativists will recommend the same policies but on different moral grounds. While such reconciliation may not satisfy the universalist thesis, human rights proponents should take comfort from the moral compulsion a good person feels to combat evil and to vindicate human rights. If enough feel that moral compulsion, the universalist goals will have then been fulfilled.

III. ANALYSIS OF DIFFERENT APPROACHES

Human rights must be a special kind of right. They are often contrasted with legal rights or civil rights that derive from the laws or customs of particular societies. Donnelly says that human rights are the rights one has simply because one is a human being. This is very common and very un-satisfactory formulation. It is not clear why one has any rights simply because one is a human being. Human rights may not be rights one has simply because one is a human being, but they are rights of exceptional importance, designed to protect morally valid and fundamental human interests, in particular against the abuse of political power. They carry special weight against other claims, and can be violated only for especially strong reasons. Ronald Dworkin has made the influential suggestion that rights are 'trumps', but this is misleading if it is interpreted to mean that rights always defeat other moral and political considerations. Dworkin's view was that rights 'trump' only the routine goals of political administration, which is a relatively weak
conception of rights. Human rights may be trumps in a stronger sense, in that they override more than routine political policies, but it is not plausible to claim that they override all other considerations. Critics of rights discourse sometimes say that there are more important moral values than rights, and that appeal to rights may undermine these values. Rights which may be ideally superior, fail. People are likely to claim their rights when their enjoyment of the objects of those rights is threatened. Rights are safest, however, if the enjoyment of their objects is normal, and their exercise is rare. A principal justification of rights discourse is that it legitimates challenges to social order when that order is unjust. Where justice prevails, appeals to rights are unnecessary. This answers the objection that the concept of rights undermines social harmony. Some theorists say that unenforceable rights are not rights at all. One can, however, have a moral right to something even if that right is unenforceable. The Jews in Nazi Germany had many moral rights that were not enforceable. The recognition of moral rights that are unenforceable now may help to get them enforced in the future. Donnelly also makes the point that rights can exist in a hierarchy from local custom up through national and international law to a universalist philosophy. Rights claimants will normally prefer the lowest possible level. It is usually easier and more effective to appeal to a local law than to the Universal Declaration of Human Rights or to the moral philosophy of Immanuel Kant. Philosophers sometimes talk of 'rights-based' moralities, and human rights may seem to be an example of such a morality. There are good reasons, however, for rejecting this view. Firstly, if rights form the basis of morality, it may not be possible to defend rights against their critics by appeal to more fundamental values.
Secondly, rights ought to be balanced with other values, and it would be
dogmatic to assume that rights are always more fundamental than other
values. This allows us to give human rights their appropriate priority.
We must nevertheless take account of other values if we are to give a
plausible account of the limits of rights. The question of whether I have
the right to insult another person’s religion, for example, cannot
reasonably be answered simply by assuming that rights always trump
other values, for I should identify and evaluate the moral weight of the
other values at issue. Rights are important, but they are not the whole
of morality. We can have the right to do something that it is not right to
do: to criticize our government unfairly, for example. We can have a
moral duty to do something that no one has the right to insist that we do;
for example, to give generously to humanitarian organizations. There
may be ‘a right to do wrong’, and there may be a duty of benevolence, to
which there are no corresponding rights. Everyone may have the right
to certain freedoms, but no one has the right to a free society, since no
one can have the obligation to provide a free society. A free society may,
therefore, be a collective good that is not reducible to individual rights.
There may also be individual and collective justifications for rights. The
right to freedom of speech, for example, may be justified by the right of
the speaker to express his or her views, the right of the audience to hear
those views, or the collective good of a free society. Freedom of the
press is more adequately thought of as a collective good of a free
society than as reducible to a set of individual rights of publishers,
editors, journalists or readers. We do not have a human right to
everything that is good, or to everything that we need. We may need to be
loved, and it may be good to be loved, but we do not have a human right
to be loved, because no one has a duty to love us. The relations among
rights and other moral values is complex, therefore, even if it is true that human rights are especially important values. There is a controversy as to who has human-rights obligations. The orthodox view is that it is only, or mainly, states that have them. Why should we believe that human rights should trump traditional values that conflict with them? Donnelly argues that the forces of modernization have undermined traditional communities and the protections that they may have given to their members, who now need the protection of human rights, even if the concept is alien to their traditional cultures. There may be merit in political and cultural self-determination but the concept of human rights sets limits to self-determination for the sake of human dignity. This states the human rights position well enough, but it does not provide a defence of human rights against those who believe that a culture that violates human rights in certain respects (by privileging a certain religion, for example) is superior to one which adheres more closely to the Universal Declaration.

Donnelly, supports his 'modernization' argument with an appeal to the international consensus on human rights, which, he says, is based on a plausible and attractive theory of human nature. There are three bases of human rights here: consensus; a plausible theory of human nature; and an attractive theory of human nature. Donnelly seems to like the argument from consensus because it avoids controversial philosophical theories of human nature. It is unconvincing, however, not only because it is not clear that a sincere consensus exists, but also because consensus is factual not moral, and therefore, in itself, justifies nothing. Donnelly implicitly recognizes this by appealing to a theory of human nature that is 'plausible' and 'attractive', and which is based on the liberal value of autonomy. This alternative also
raises problems some cultures do not value autonomy, and even liberals, who do generally value autonomy, disagree about its meaning and importance. Donnelly rejects the idea that human rights are based on human needs, because, he argues, there is no scientific way to establish an agreed set of human needs, and the need for dignity rather than needs as such is the basis of human rights. However, the link between human rights and ‘dignity’ is as problematic as the link with ‘needs’: the right to security of person, for example, might be based on human need or a requirement of dignity.

Although human rights cannot be derived directly from needs, certain needs, such as the need for food, seem to be the basis of some human rights. A certain level of food may be necessary to a life of dignity, and this may ground the human right to food, but the human need for food seems also to support this right. The combined use of needs and dignity is implicit in the 'capabilities' theory of Martha Nussbaum. This theory attempts to articulate the basis upon which we recognize others as human beings across historical change and cultural difference. Certain capabilities, according to this theory, are essential to the definition of human beings. These capabilities are derived not from a controversial metaphysical theory of human nature, but from historical evidence. The theory of human capabilities aims to be as universal as possible, crossing religious, cultural and philosophical gulfs, while being sensitive to history and cultural difference. What are the implications of this approach? We begin by recognizing that human beings are mortal, and have a general aversion to death, even though they may prefer death to its alternatives in special circumstances. They have bodies. They need at least minimal levels of food, drink and shelter. They begin life as needy and dependent babies. They experience pleasure and pain, and have a
general aversion to pain. Most experience sexual desire. They live in a natural world with which they have to maintain a satisfactory relationship. They play and laugh. They are separate individuals; in all cultures human beings are born and die as individuals, and, however close their relations with other human beings, they relate as separate individuals. The theory specifies two thresholds. The first is one below which life is not human. The second is one below which life is not good. Insofar as the theory provides for human autonomy, it cannot say too much about how people who have reached the first threshold should proceed to the second. All the basic capabilities are, however, distinct and fundamentally important. The validity of the theory of capabilities does not require actual universal agreement. The theory provides for a conception of common humanity, respect for cultural difference, and a basis for criticizing particular cultural practices. The theory is sustained by participatory dialogue among those who interpret its deliberately vague principles differently in response to their different circumstances. The theory, by treating practical reason as a fundamental human capability, respects the value of autonomy. The theory is robustly anti-racist and anti-sexist, for racists and sexists deny precisely the conception of common humanity that the theory affirms. The theory of capabilities is the basis for evaluating traditions, social conditions and societies by reference to the quality of life for each human being in the society. Both the theory of natural rights and the entrenchment of human rights in international law suggest that the content Human right is relatively fixed. However, conceptions of human rights change over time. Such changes can be explained by reference to changes in
values and in threats to nose values. The capabilities theory would distinguish between the more stable and the more dynamic capabilities. It may explain changes in rights less well than Donnelly’s view that human rights are ‘socially constructed’ can, but it is better suited to evaluate such changes by reference to its conception of the quality of life. Donnelly suggests that human rights create the conditions for healthy development, but ‘social constructivism’ can not explain what healthy development is without relying on a theory such as that of capabilities. Donnelly admits that the constructivist theory requires a politically relevant philosophical anthropology to provide a substantive theory of human nature that would generate philosophically defensible lists of human rights. The justification and objective of human-rights action, he maintains, is to make human beings truly human, which brings his theory even closer to the capabilities approach. The concept of human rights has historically been challenged by the philosophy of utilitarianism. Utilitarianism rejected natural rights as unscientific and as subversive of social order, and proposed, as an alternative criterion for the legitimacy of governments, the principle of utility, which can be interpreted as the common good, the greatest happiness of the greatest number, the maximization of welfare, or by some similar reading. The concept of human rights, was revived after the Second World War as a concept better suited than that of utility to articulate what was wrong with Fascism. The problem with the utilitarian conception of maximizing happiness was that it did not condemn Fascism in principle, and might endorse it in some circumstances. However, even the new concept of human rights recognized the appeal of utilitarianism in
Article 29 of the Universal Declaration, which states that human rights may be limited for the purpose, among others, of the general welfare in a democratic society.

We have seen that human-rights theorists often express the relation between human rights and the common good in terms of Dworkin's idea that human rights trump the common good, but the meaning and justification of this formula are typically unclear. If the human rights of one individual should endanger the good of society, why should rights trump the common good? This problem is more difficult if the common good can itself be analyzed in terms of human rights. Suppose that, by killing one person, we could use their organs to save the lives of ten? Those ten people have the human right to life, but human-rights supporters would intuitively be reluctant to kill one person to save ten. Doing so could be justified by what is sometimes known as 'the utilitarianism of rights', which says that we should maximize the protection of rights, but human-rights supporters are typically reluctant to sacrifice the human rights of one person to protect those of others. There is no agreement as to how such conflicts of rights should be resolved. Jones suggests that rule-utilitarianism might paradoxically come to the rescue of human-rights theory here. Rule-utilitarianism says that we ought to live by those rules that best promote the common good. The rule-utilitarian reason for not violating the human rights of one person even to protect the human rights of others is that it would violate a justified rule, and rule-utilitarianism says that this should not be done even if, in the short run, it does more good than harm. This is a plausible solution for those who believe that the human rights of some should never be violated to protect the human rights of a larger number of others, but it is not certain that we should
always take this position. The underlying problem is that human rights are deep values, but, even so, they may conflict with other human rights, or the same human rights of other persons, or with other values. Donnelly's constructivism is useless in the face of such conflicts. The theory of Alan Gewirth offers a solution. Human rights, according to Gewirth, are justified because they are necessary to moral action. When human rights conflict, those rights that are more important to moral action ought to have priority over those that are less important the right not to starve would, for example, have priority over the right to holidays with pay. This theory, however, offers no resolution of conflicts between equally important rights. The concept of 'basic rights' has been adopted by some political theorists, who believe that the concept of universal human rights might be 'imperialistic', and yet who do not wish to abandon the idea of minimal standards of decent governmental behaviour. Shue has defined basic rights as those rights, enjoyment of which is essential to the enjoyment of all other rights. To secure basic rights, other rights may be violated, if necessary, but basic rights may not be violated to secure other rights. The concept of basic rights provides some guidance in the face of conflict among rights. Donnelly worries also that the identification of basic rights may lead to the neglect of other human rights, which are, according to his theory necessary to a life of dignity. The concept of 'basic rights' is, therefore, controversial, and consequently not very helpful in solving the problem of conflict among rights.

Steiner argues that conflicts of rights lead to intolerable arbitrariness, and that rights therefore should be 'compassable', that is, only a theory of rights that avoids conflicts is rational. His theory of rights, however, recognizes only rights to private property that exclude most of the
economic and social rights recognized by the UN critics complain that his theory would allow an intolerable trumping of basic human rights by property rights. There is a common view that only civil and political rights are genuine human rights because they require only inaction by governments and therefore can be fulfilled universally, whereas economic and social rights depend on specific not universal institutions (such as a welfare state), and are too expensive for some governments to afford. Democratic theory asks who ought to rule, and answers 'the people'. Human rights theory asks how rulers ought to behave, and answers that they ought to respect the human rights of every individual. Democracy is a collective concept, and democratic governments can violate the human rights of individuals. The concept of human rights is designed to limit the power of governments, and, insofar as it subjects governments to popular control, it has a democratic character. But human rights limit the legitimate power of all governments, including democratic governments. Human rights are consequently often protected by entrenching them in constitutions.

Waldron has made a rights-based critique of the constitutional entrenchment of rights. He argues that if the value of human rights derives from the dignity of individuals, the outcome of democratic participation by such individuals should have priority over the judgments of course. Dahl argues, similarly, that the people are the best judges of what is good for them, and are, therefore, the safest guardians of their rights. Democracy is, in this sense, prior to rights. Dworkin, however, makes a distinction between majoritarian and egalitarian democracy. Majoritarian democracy permits the 'tyranny of the majority', and is a defective form of democracy, since it denies the equality of all citizens. Egalitarian democracy recognizes the equality of all citizens, and therefore
entrenches their rights in a constitution to protect them from violation by majorities. Most actual democracies entrust the protection of basic rights to independent courts. However, neither courts nor elected legislatures guarantee the defense of human rights or democracy. Some theorists argue that a strongly supportive political culture is a better safeguard for human rights and democracy than specific institutions.

Conclusion:

No doubt, it is difficult to define the expression ‘Human Rights’ due to different ideologies, legal systems, cultural diversities and alongwith economic, social, geographical and political conditions of different states of the globe. Nevertheless, the human dignity is the basis of human rights. Maintenance of human dignity is essential for human rights. The researcher agrees with D.D. Basu who observes that the human rights are those minimum rights which any individual must have against the state or public authority by virtue of being a member of human family. Every human being ought to be protected against unjust and degrading treatment. Use of arbitrary power is the antithesis of human rights. As a matter of conclusion, the very principle of the protection of human rights is derived from the concept of man as a person and his relationship with an organized society, which can not be separated from universal human nature. The principal norm governing the concept of human rights is that of the respect for human personality and its worth. Another dimension of human rights is the moral aspect as it includes moral rights. This is the reason Mac Farlane observes that human rights are those moral rights which are owned by each man and women solely by reason of being a human being. The material and
moral upliftment of the people can only be possible when human rights are ensured. On the issue of the concept of human rights there is a good deal of difference of opinion as it has been the subject of debate from very beginning.

The protection of civil and political rights requires the realization of social and economic rights. Right to have positive freedom and right to self development are the part and parcel of human rights. Human rights being essential for all round development of the personality of the individual in the society, necessarily it must be protected and be made available to all the individuals.

This part of the research underlines that we are all born free, and are equal in the dignity and rights, hence we all must work with the spirit of brotherhood. Natural law theory led to natural rights theory which is closely associated with modern human rights. The chief exponent of this theory was John Locke. This theory makes an important contribution to human rights. It identifies with human freedom and equality from which other human rights flow. John Stuart Mill was of the views that right are founded on utility, while Carl Von Savigny in Germany and Sir Henry Maine in England claimed that rights are the function of cultural variables. Marx regarded the law of nature approach to human rights as idealistic.

Anthropology, psychology and other disciplines directed attention to the question of institutional development. In human rights context this approach is useful as it identifies the context of social process. Rosco Pound affirmed that the history of law was written as a record of an increasing recognition of Individual rights. Modern human rights seem to be settling the concept of natural necessity. It views human life as
encompassing certain freedoms and sensibilities without which the human rights would not make sense.

The renaissance has had a seminal influence on conventional international human rights norms. Its influence is found in the Universal Declaration of Human Rights.

John Rawls in his acclaimed book: A Theory of Justice viewed 'Justice is the first virtue of social institutions'. To him human rights are an end of justice. Principles of justice provide a way of assigning right and duties in the basic institutions of the society. Rawls dealt with distributive justice. He is of the view that social and economic inequalities to be arranged so that they are both to greatest benefit of the least advantaged.

The ultimate goal for world community is a democratic distribution of values must be encouraged and promoted. It must be utilized to the maximum and the protection of human dignity is regarded as a paramount object of social policy.

Dworkin postulated political morality that is government must treat all their citizens with equal concern and respect.

The concept of human rights was revived after the Second World War as a concept better suited than that of utility to articulate what was wrong with Fascism. The new concept of human rights recognized the appeal of utilitarianism enshrined under Article 21 of Universal Declaration of Human Rights which lays down that human rights may be limited for the purpose sharing the general welfare of a democratic society. The concept of human rights is obligated to promote egalitarian democracy which recognizes the equality of all citizens.
REFERENCES

1. See Preamble of Universal Declaration of Human Rights.


5. Ibid. p. 3.


15. Ibid. pp. 191-197.

16. Ibid. p. 198.


19. Ibid. p. 59.


24. Maurice Cranston, op. cit., p. 41.


26. Ibid. p. 51.

27. Supra note 20.

28. Nearly a century later, Rousseau refined the concept of a social contract. He saw the first virtue of the social contract as its capacity to organize in collective defence of liberty and order. Second the social contract establishes a community with potential for doing justice, thereby giving the citizens the morality which had been wanting in the state of nature. (J.J. Rousseau, on the social contract, 1762). See the social contract and discourses, trans. G.D.H. Cole, London, J.M. Dent, 1973.

29. Jeremy Bentham, for example, considered natural rights as so much ‘bawling on paper’. Oft-quoted is his colourful attack: Right is a child of law, from real laws come real rights but from imaginary law, from laws of nature, come imaginary rights [...] Natural rights, is simple nonsense: natural and imprescriptible rights, rhetorical nonsense, nonsense upon stilts' (Bentham, anarchical Fallacies, Works of Jeremy Bentham Edinburgh, William Tait, 1845).


31. Modern rights theorists display a number of common characteristics, First, they are eclectic, borrowing from each other’s insights so that it is somewhat imprecise to characterize their theories as simply utilitarian, naturalist, positivist or any of the other classifications which philosophers use. Second, most rights theorists recognize the need to identify the justifications which can validate the moral principles of human rights. Third, they acknowledge the benefits of constructing an entire system of rights which can satisfy all morally relevant actions and institutions in consistent and conflict resolving ways. Unfortunately, many theorists also get caught up in the distinctions and fine tunings of contractualism, consequentialism, value neutrality, objectivity, relativism, pluralism and other branches of epistemological, metaphysical or ethical philosophy without advancing our understanding of the moral foundations of human rights much beyond the classic theories. In the discussion which follows, there is space to address only the more influential modern theories, and then only in bare bones outline.

32. The term ‘consequentialism’ was introduced into technical philosophy in 1958 by G.E.M. Anscombe. It has come to describe a whole family of utilitarian grounded theories, some egoist in principle, some altruistic, some benevolent, and so on. Consequentialist, theorists, are often at odds, with each other. See J. Raz (1986).

33. Some utilitarians, notably J.S. Mill, allow that in moral and legal practice, justice and rights may be considerations superior to interests and to the liberty to pursue the satisfaction of interests. But they insist that justice and
rights are derivative of interest and desires and are to be given context by determining what is necessary to maximize the satisfaction of the latter. That, of course, makes justice and rights contingent and does not satisfy the theories which assign to rights superior moral standing. In other words so long as utility is what Mill said it is, namely, 'the ultimate appeal on all ethical questions,' individual rights can never be secure.

34. Rawls (1971). The essence of Rawls theory is found in sections 1-4, 9, 11-17, 20-30, 33-5 and 39-40. References herein are to sections.

35. Rawls' savings principle is a complex restraint on distribution to any one generation by allowing for accumulation of savings to improve the standard of life of later generations of the least advantaged.


37. Alan Gewirth is another influential neo-Kantian philosopher who merits study. Gewirth holds that, in reasoning ethically, an agent abstract from his or her particular ends and thinks in terms of what generic rights for rational autonomy the agent would demand on the condition of a like extension to all other agents. These rights are those of freedom and well being, which Gewirth calls generic rights. He frames his moral thesis on the principle of generic consistency: 'Act in accord with the generic rights of your recipients as well as yourself.' From these generic rights flow an entire structure of civil, political, economic and social rights. (Gewirth, 1982).


40. R.E. Howard, Human Rights and the search for community, Boulder, Colo., West view Press, 1995; See also her article, 'Cultural absolutism and the nostalgia for Community', Quarterly, 15, (315), 1993', and Dignity, Community and Human Rights' in A.A. An Na-im (ed.), Human Rights in Cross Cultural Perspectives, Philadelphia, University of Philadelphia Press, 1992. Howard points out that, 'Cultural Relativists' convert to cultural absolutists' when they maintain that there is one universal principle, which is to act in accordance with the principles of one's own group. Howard has written most perceptively in this area.

41. In many ways, the conflict builds on Hegel's distinction between moralitat (abstract or universal rules of morality) and Sittlichkeit (ethical principles specific to a certain Community).

43. Related to whether cultural attributes are real or pretextual is the fact that cultural norms are often subject to different interpretations and to manipulation by individuals or groups. For example male chauvinism of the early nineteenth century made the time in concept of a women’s place being in the home a cultural attribute of that time in Victorian England.


46. Ibid. 15-21.

47. Ibid. 82-5.


51. Supra note 45 at p. 35.

52. Ibid, 38,40

53. Ibid, 36-7

54. Supra note 48 at pp. 17-19, 21.


I. ORIGIN OF HUMAN RIGHTS

The concept of human rights is as old as the human civilization. The question of human rights was inherent in some forms or others in different 'religious' texts. All societies and cultures have developed some conception of rights and duties for their members. The concept of human rights is not entirely western in origin. It is a crystallization of values that are the common heritage of mankind. As Mary Ann Glendon points out, the Universal Declaration of human rights did not suddenly drop from heaven engraved on tables but rather was a milestone on a path on which humanity had already been travelling for countries. In fact, the language of human rights is a product of the European Enlightenment. But the Concepts of Human Rights are as old as the Indian Culture as believed by the people of India. The political thinkers and philosophers have expressed concern over securing human rights and fundamental freedoms for all human beings everywhere since the very early times of Vedic age. The Indian thinkers are of the view that it is not justified to limit the origin of the concept of human rights to only western civilization what the west has discovered today in the field of human rights has been an accepted principle of India's rich legacy of historical tradition and culture since immemorial which is evidenced by the declarations made in the Vedas.

The "Rigveda," which is regarded as the oldest document, declares that all human beings are equal and they are all brothers. The "Atharvaveda"
advocates equal rights of all human beings over natural resources like air, food and water, like wise right to happiness, right to education, right to practice any religion, right to social security, right to get fair treatment and protection etc have been accepted and emphasized in various Vedic and post Vedic ancient Indian literatures. The Rigveda (Mandala-5, Sukta-60, Mantra-5) says “No one is superior or inferior, All are brothers. All should strive for the interest of all and should progress collectively.” Manu describes the Raj Dharama of king as “Just as the mother earth gives equal support to all the living beings, a king should give support to all without any discrimination.” (Manuix-31). Manu further commands the king as “The highest duty of a king is to protect his people. The king, who receives the prescribed taxes (from his subjects) and protects them alone, acts according to Dharma.” Kautilya beautifully sums up the entire concept of welfare state: “The happiness of the king lies in the happiness of his subjects, in their welfare, his welfare whatever pleases himself the king shall not consider as good, whatever pleases his subject the king shall consider as good. He disapproved the theory of absolutism of king and subordinated him to the law and duties. Arthashastra not only affirmed and elaborated the civil and legal rights first formulated by Manu but also added a number of economic rights. He categorically ordained that the king shall provide the orphan, the aged, the infirm, the afflicted and helpless with Maintenance, he shall also provide subsistence to the helpless expectant mothers and also to the children they give birth to.” It is revealed that society in Vedic period was well structured, highly organized and committed to human rights.

In Buddhism the humanitarian feelings are equally present. Its tenets teach kindness to all creatures. The basic tenets of Buddhism are non-
violence, non-hatred, and friendliness to all. Buddha rejected the caste system for it was based upon inequality and treated some individuals as morally superior purely on grounds of birth. One of the most significant contributions of Buddhism was the introduction and spread of secular education - Education for all.

The Bible gives Ten Commandments in Nirgaman 20(1-17) which enshrine human rights issues. They are as follows:

- Thou Shalt not kill
- Thou Shalt not commit adultery
- Thou Shalt not steal
- Thou Shalt not bear false witness against thy neighbors.
- Thou Shalt not covet thy neighbour's house, thou Shalt not covet thy neighbour's wife, nor his servant nor his maid-servant, nor his ox, nor his ass, nor anything that is thy neighbour's.

Similarly, the Quran also shows equal concern for human beings as well as their rights in Para 6, Surah 5, Ayah 6 and Para 26, Surah 49, Ayah 9. The following paragraph clearly highlights its concern:

The society thus organized
Must live under laws
That would guide their every day life—
Based on external principles
Of righteousness and fair dealings Cleanliness and sobriety,
Honesty and helpfulness, one to another— yet shaped
Into concrete forms, to-suit
Times and circumstances,
And the varying needs
Of average men and women;
The food to be clean and wholesome;
Blood feuds to be abolished;
The rights and duties of heirs
To be recognized after death, not in a spirit of Formalism,
But to help the weak and the needy
And check all selfish wrongdoing;
The courage to fight in defence
Of right, to be defined;
The Pilgrimage to be sanctified
As a symbol of unity;
Charity and help to the poor
To be organized; unseemingly riot and drink and gambling
To be banished; orphans to be protected;
Marriage, divorce and widowhood
To be regulated; and the rights of women,
Apt to be trampled under foot,
Now clearly affirmed.

Despite these religio-political instructions human society could not attain justice for all. It was ridden with conflicts and more often was divided on the lines of religion, nationalism, caste, race, colour, sex, etc. One dominant community or group did not treat another weakened community or group as equal. The domination process was more often based on the assumption of ‘natural superiority’ over others and thought
to be divine ordained. Those who practiced their 'superiority' over others, they 'believed' in it and those who were dominated, they simply obeyed. This state of human society did not permit the idea of oneness of human society as it is visualized today. This visualization came as an international concern. However, the international concern was preceded by important individual concerns. Davidson clearly underlines this process:

*International concern with human rights is a phenomenon of comparatively recent origin. Although it is possible to point to a number of treatises or international agreements affecting humanitarian issues before the second World War, it is only with the entry into force of the United Nations Charter in 1945, that it is possible to speak of advent of systematic human rights protection within the international system. Nonetheless, it is clear that the international protection of human rights has its antecedents in domestic efforts to secure legal protection for individuals against the arbitrary excesses of state power. Such domestic attempts have a long and dignified history, and are intimately connected with revolutionary activity directed towards the establishment of constitutional systems based on democratic legitimacy and the rule of law. Even today, the protection of human rights at both the national and international level is intimately connected, if not symbiotic. All international instruments require states' domestic and constitutional systems to provide adequate redress for those whose rights have been violated.*

One important aspect of human rights is the position of state vs. individuals. A state is supposed to protect individuals, and is not expected to be partisan in its approach. But in practice what happens is that state more often than not uses its organized might against any dissenting voice either expressed by an individual or a group of individuals. Since state still represents the interest of the powerful
section of society, it often suppresses individuals and groups which may not accept the state's power. Hence protection of individuals and groups against state suppression was and is an important issue. From this premise emanated other human right issues. The greatest landmarks in human rights history are not many. However, in due course of development of democratic values and realization of peoples' organized power, the embryo of human rights was sown in certain charters and declarations by the states. We present them here briefly to trace the evolutionary process of the revolutionary concept: 'human rights'.

The Magna Carta

Magna Carta is often cited as one of the early documents upholding 'human rights' in crude forms. This opinion however, has been contradicted. Davidson says:

While Magna Carta (1215) is often erroneously seen as the origins of the liberties of English citizens (it was in reality, simply a compromise on the distribution of powers between King John and his nobles, the language of which later assumed the wider significance which is attributed to it today), it was not until the Bill of Rights (1689) that rules directed towards the protection of individuals rights or liberties emerged. But even this development must be seen in context. The Bill of Rights, which is described in its long title as 'An Act Declaring the Rights and liberties of the Subject and setting the Succession of the Crown,' was the outcome of the seventeenth century struggle of Parliament against the arbitrary rule of the Stuart monarchs.

In Marxist analysis, the glorious revolution of 1688 and the Bill of Rights which institutionalized it, was a bourgeois revolution; it simply
confirmed the ascendancy of the gentry and merchant class over the monarchy. There are some elements of truth in the above observations. But the important fact that lies in the Magna Carta is that it was for the first time the absolute power of a monarchy was curtailed. The earlier unbridled right of the monarch was also questioned which further paved the way for democratic governance. Hence, the historical importance of the Magna Carta could not be belittled by the historians of human rights. The following articles are the glimpses of nascent expressions that embodies human right issues:

1. The English shall be first and shall have her rights entire and her liberties inviolate we have also granted to all freemen of our kingdom, for us and our heirs forever, all the liberties herein underwritten, to be had and held by them and their heirs of us and our heirs.

2. A freeman shall be amerced for a small offence only according to the degree of the offence; and for a grave offence he shall be amerced according to the gravity of the offence, saving his containment.

3. No freeman shall be arrested, or detained in prison, or deprived of his freehold, or outlawed, or banished, or in any way molested; and we will not set forth against him nor send against him, unless by the lawful judgment of his peers and by the law of the land.

4. To no one will we sell, to no one will we deny or delay right or justice.

5. All merchants may safely and securely go away from England, come to England, stay in and go through England, by land or by water, for buying and selling under right.
6. No one shall be arrested or imprisoned upon the appeal of a woman, for the death of any other than her husband.

7. Wherefore it is our will, and we firmly enjoin, that the English Church be free, and that the men in our kingdom have and hold all the aforesaid liberties, rights, any concessions, well and peaceably, freely and quietly, fully and wholly, for themselves and their heirs, of us and our heirs, in all respects and in all places forever as aforesaid.

During this period a number of philosophers and social thinkers discussed human rights issues in different situations and circumstances. All of them overtly or covertly raised the issues of human rights, though in relation to state and its sovereignty. In human society's evolution and development process one of the phases has remained most important. The phase was the period when 'socialism' was the philosophy of human society's governance. Earlier, the talk of equality, justice, peace and fraternity, was rather euphemistic because the fundamental question i.e., the production process and distribution of products was missing from the discourse. The whole perspective of human rights question took dramatic reversal when Pierre-Joseph Poudhon, Karl Marx and Frederic Engels incisively analyzed the causes of violation of human rights. Discussing threadbare they questioned the role of property and capital and how it was used to exploit a section, albeit, the largest section, the workers by a small section of society who happened to own the means of production. Poudhon Writes:

*If I were asked to answer the following question: What is slavery? I should answer in one word, It is murder; my meaning would be understood at once. No extended argument would be required to show that the power to*
take from a man his thought, his will, his personality, is a power of life and death; and that to enslave a man is to kill him. Why then, to this other question: What is property? May I not likewise answer? It is robbery, without the certainty of being misunderstood; the second proposition being no other than a transformation of the first?8

The most strident voice for equality and thereby establishing human rights has been expressed by Karl Marx. He says:

All emancipation is a reduction of the human world and relationship to man himself. Political emancipation is the reduction of man, on the one hand, to a member of civil society, to an egoistic, independent individual, and, on the other hand, to a citizen, a juridical person.

Only when the real, individual re-absorbs in himself the abstract citizen, and as an individual human being has become a specis-being in his everyday life, in his particular work, and in his particular situation, only when man has recognized and organized his "forces progress" as social forces, consequently no longer separates social power from himself in the shape of political power, only then human emancipation have been accomplished.9 Marx has not only enunciated the fundamentals of emancipation of human beings, but he has also pointed out what strategy should be adopted in order to achieve the emancipation. In the Communist Manifesto he says:

We have seen that the first step in the revolution by the working class is to raise the proletariat to the proposition of ruling class, to establish democracy.

To achieve this Marx proposes the following measures which 'will of course be different in different countries:'
1. Abolition of property in land and application of all rents of land to public purposes.

2. A heavy progressive or graduated income tax.

3. Centralization of the means of communication and transport in the hands of the state.

4. Extension of factories and instruments of production owned by the state; the bringing into cultivation of waste lands, and improvement of the soil generally in accordance with a common plan.

5. Equal obligation of all to work. Establishment of Industrial armies, especially for agriculture.

6. Combination of agriculture with manufacturing industries; gradual abolition of the distinction between town and country, by a more equitable distribution of the population over country.

7. Free education for all children in public school. Abolition of child factory labour in the present form. Combination of education with industrial production etc.

The Declaration of Independence: 1776

North America adopted the declaration of Independence on July 4, 1776. This declaration consists of a number of human rights issues which contributed to the continuum of human right struggle. We hold the truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights that among these are Life, Liberty, and the pursuit of Happiness. That to secure these rights, government is instituted among men, deriving their
just powers from the consent of the governed. That whenever any form of Government becomes destructive of these ends, it is the Right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to affect their Safety and Happiness.

Declaration of the Rights of Man and Citizen

French Revolution in 1789 was an epochal event. In 1789 the National Assembly of France adopted the Declaration of the Rights of Man and Citizen on 26 August, 1789 as a preamble to the new constitution that it was framing for France. This Declaration was truly international in its appeal and inspired revolutionary and democratic movements in almost every country of Europe and in Central and South America and later, in Asia and Africa. The Assembly consequently recognizes and declares, in the presence and under the auspices of the Supreme Being, the following rights of man and the citizen.

1. Men are born and remain free and equal in rights. Social distinctions may be based only on common utility.

2. The aim of all political association is to preserve the natural and imprescriptibly rights of man. These rights are liberty, property, security and resistance to oppression.

3. Liberty consists in the ability to do whatever does not harm another; hence the exercise of the natural rights of each man has no limits except those which assure to other members of society the enjoyment of the same rights. These limits can only be determined by law.
4. Law may rightfully prohibit only those actions which are injurious to society. No hindrance should be put in the way of anything not prohibited by law, nor may any man be forced to do what the law does not require.

5. Law is the expression of the general will. All citizens have the right to take part, in person or by their representatives, in its formation. It must be the same for all whether it protects or penalizes. All citizens being equal in its eyes are equally admissible to all public dignities, offices and employments, according to their capacity and with no other distinction than that of their virtues and talents.

6. No man may be indicted, arrested or detained except, in cases determined by law and according to the forms which it has prescribed. Those who instigate, expedite, execute or cause to be executed arbitrary orders should be punished; but any citizen summoned or seized by virtue of the law should obey instantly, and renders himself guilty by resistance.

7. Only strictly necessary punishments may be established by law, and no one may be punished except by virtue of a law established and promulgated before the time of the offence, and legally put into force.

8. Every man being presumed innocent until judged guilty, if it is deemed indispensable to keep him under arrest, all rigor not necessary to secure his person should be severely repressed by law.

9. Free communication of thought and opinion is one of the most
precious rights of the man. Every citizen may therefore speak, write and print freely, on his own responsibility for abuse of this liberty in cases determined by law.

10. Society in which guarantee of rights is not assured or the separation of powers not determined has no constitution.

11. Property being an invincible and sacred right, no one may be deprived of it except for an obvious requirement of public necessity, certified by law, and then on condition of a just compensation in advance.

Declaration of the Rights of Working and Exploited People

Another important event which has a far reaching implication for human rights is the October Revolution which took place in 1917. The Declaration consists of a number of decrees pertaining to peace and rights of the people of the then Union of Soviet Socialist Republic (USSR). Setting as its fundamental task the destruction of any exploitation of man by man, the complete abolition of the division of society into classes, the merciless suppression of the exploiters, the establishment of a socialist organization of society and the victory of socialism in all countries, the Constituent Assembly further resolves:

1. In order to realize the socialization of the land, private property in land is abolished and the entire land reserve is declared the general property of the people and is handed over to the workers without any purchase, on the principle of equalized use of the land. All forests, minerals and waters of general state significance, all livestock and machinery, all estates and agricultural enterprises are declared national property.
2. The Soviet law on workers control and on the Supreme Economic Council is confirmed for the purpose of assuring the power of the workers over the exploiters, as a first step towards the complete passing of the factories, mines, railroads and other means of production and transportation into the possession of the Soviet Workers and Peasants Republic.

3. General liability to labour service is introduced for the purpose of destroying the parasite classes of society and for the organization of economic life.

The concept of human rights is as old as the human civilization. The struggle for recognition of some basic rights of individuals against political, social, economic and cultural oppression, injustice and inequalities has been an integral part of the history of all human societies. The recognition that every individual is entitled to enjoy certain basic rights merely by worth of being born in human species has evolved through this struggle. In this context the Indian values regarding human rights, perhaps, have the oldest pedigree. The evolution and development of the concept of human rights reflects on the long journey, which it has traveled to take its present shape. Through its roots may be traced in ancient Indian and western scriptures yet the modern concept of human rights is the product of liberal political thought of post seventeenth century. The Magna Carta, American Declaration of Independence (1776), Declaration of Rights of Man and Citizens (1789) and Declaration of the Rights of working and Exploited People (1917) influenced the principles of human rights and liberties.
II. DEVELOPMENTAL ANALYSIS OF HUMAN RIGHTS

In the nineteenth and early twentieth centuries the founding fathers of sociology-Marx, Weber and Durkheim-were impressed by the massive social changes introduced by modern industrial capitalism, and sought to understand the larger historical forces that had brought them about. Individuals and their supposed natural rights dropped out of the picture. They were all in a sense neo-Aristotelians, seeing society as a natural entity to be understood scientifically, and not as an artificial creation to be shaped by ethical principles. Sociology superseded philosophy. The science of society replaced the rights of man. Rights survived in the US Constitution, and thinkers such as de Tocqueville, J. S. Mill and Weber worried about individual freedom in the age of large-scale, impersonal organization. However, utilitarianism generally replaced natural rights as the basis of movements for social reform. 10 The working-class and socialist movements nevertheless played a vital role in the struggle for economic and social rights. However, when the Covenant of the League of Nations was adopted in 1919 at the end of the First World War, it made no mention of the rights of man. It took the horrors of Nazism to revive the concept of the Rights of Man as human rights.

The present day human rights movement is the result of the experiences of the World War II. During the War shocking crimes were committed against the humanity and there was a total suppression of fundamental human rights. Nazi leaders of Germany had established a regime of complete lawlessness and tyranny. They had barbarously legated human values and dignity within their territories under their occupation. It was at that time realized that the restoration of the freedoms and rights to the people is one of the essential conditions for the establishment of
international peace and security. This conviction was reflected in the proclamation issued by the president Franklin D. Roosevelt on January 6, 1941 which came to be known as 'Four Freedoms'. These he listed as freedom of speech, freedom of religion, freedom from want and freedom from fear. In the message he declared: "Freedom means the supremacy of human rights everywhere. Our support goes to those who struggle to gain these rights or keep them." The efforts for the creation of an international organization, in order to establish peace, were being made even when the World War II was in progress. A number of conferences and meetings were held before the United Nations, an international organization, was established in 1945. Many declarations adopted by the conferences laid down the importance of human rights. The Joint Declaration issued by the President Franklin D. Roosevelt of the United States and the Prime Minister Winston Churchill of the United Kingdom on August 14, 1941 in a document known as the Atlantic Charter, cherished the hope for a peace which will afford assurance that all the men in all the lands may live out their lives in freedom from fear and want. The Declaration of the United Nations signed on January 1, 1942 at Washington confirmed the principles of the Atlantic Charter when it proclaimed that the protection of human rights in all countries was to be one of the results, which was desired to be obtained from the victory over the Axis. Dumbarton Oaks proposals contained only a brief reference to the promotion of human rights as one of the activities to be performed by the proposed General Assembly, and, under its authority, the Economic and Social Council.

The United Nations and the Human-Rights Revival

Since the General Assembly of the United Nations proclaimed its
Universal Declaration of Human Rights on 10 December 1948, the concept of human rights has become one of the most potent in contemporary politics. In historical perspective, this fact is astonishing. A concept not long ago discredited has made a remarkable revival, and a concept widely perceived as Western has become global. The period from the French Revolution to the Second World War was the dark, age of the concept of human rights. International concern with what we now call human-rights issues had been shown intermittently in modern history in the campaigns against the slave trade and slavery, and in those for humanitarian laws of war, the protection of minorities and the emancipation of women.\textsuperscript{14} International concern with human rights between the two world wars was limited mainly to some work of the International Labour Organization on workers' rights and certain provisions in the treaties of the League of Nations for the protection of minorities, although the latter applied only to a few countries.\textsuperscript{15} The immediate cause of the human-rights revival, however, was the growing knowledge of Nazi atrocities in the Second World War. The allied governments asserted in the declaration by the United Nations on 1, January 1942 that victory was essential 'to preserve human rights and justice.\textsuperscript{16} The language of human rights seemed much more appropriate. After the war, the United Nations Organization was set up to establish a new world order in accordance with the principles upon which the war had been fought. The UN's San Francisco conference of 1945 included a number of human-rights provisions in the UN Charter. The preamble to the charter declares that one of the chief aims of the organization is 'to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.' Article 1 States that one of the principal purposes of the
UN is 'to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all. Article 55 provides that the UN shall promote 'universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.' Article 56 tells us that all members of the UN pledge themselves to take joint and separate action in co-operation with the UN for the achievement of the purposes set forth in Article 55. Article 68 required the Economic and Social Council to set up commissions for the promotion of human rights, and on this basis the council set up the Human Rights Commission that was to draft the Universal Declaration. Article 62 said that the council may make recommendations for the purpose of promoting respect for and observance of, human rights and this was the basis on which it recommended to the General Assembly that it adopt and proclaim the declaration.17

The Universal Declaration of Human Rights

The General Assembly adopted the declaration on 10 December 1948, with forty-eight states. The Universal Declaration was intended to prevent a repetition of atrocities of the kind that the Nazis had committed. This is expressed particularly in the second paragraph of the preamble, which states that 'disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind.' The Human Rights Commission, aware of the religious, philosophical and ideological diversity of UN members, displayed no interest in the philosophical foundations of human rights. Nevertheless, given that Nazism violated human rights in theory and practice, the adoption of the concept of human rights by the UN in opposition to
Nazi ideology clearly implied the commitment to some kind of neo-Lockean political theory. The substitution of the term 'natural rights' by that of 'human rights' may have been to eliminate the controversial philosophical implications of grounding rights in nature.18 The declaration set aside the traditional, but controversial, foundation of natural rights, without putting any new foundation in its place. However influential the concept of human rights may be, and however appealing it may be to many people, it is philosophically ungrounded.19 The declaration was not intended to impose legal obligations on states but, rather, to set out goals for which states were expected to strive.20 It was the first declaration of moral and political principles that could make a prima fade plausible claim to universality.21 Whatever its philosophical limitations, the declaration has had great legal and political influence. Before the Second World War there was almost no international law of human rights. There are now approximately 200 international legal human-rights instruments, of which sixty-five acknowledge the Universal Declaration as a source of authority. The declaration is also the source of an international movement, and of numerous national movements, of political activists who struggle against oppression, injustice and exploitation by reference to this document.22

Article 1 announces that 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 in a spirit of brotherhood. Article 2 says that everyone is entitled to all the rights and freedoms set forth in the declaration 'without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 2 is elaborated by Article 7, which states that all are equal before the law and are entitled to equal
protection of the law without any discrimination. Articles 3-5 deal with what are sometimes called 'personal integrity rights'. Article 3 restates the classic rights to life, liberty and security of person. Article 4 forbids slavery, servitude and the slave trade. Article 5 forbids torture and cruel, inhuman or degrading treatment or punishment. Articles 6-12 deal with legal rights. These provisions are not controversial in general, although their particular applications may be, but the balance between legal rights, on the one hand, and social and economic rights, on the other hand, has been criticized for being excessively influenced by the Western history of rights as legal protections for private individuals against the state rather than as positive contributions to the life of dignity. Article 14 says that everyone has the right to seek and to enjoy in other countries asylum from persecution. Article 16 states that men and women of full age have the right to marry and to found a family without any limitation due to race, nationality or religion. They are entitled to equal rights as to marriage, during marriage and at its dissolution. Marriage shall be entered into only with the free and full consent of the intending spouses. Article 16 (3) asserts that the family 'is the natural and fundamental group unit of society and is entitled to protection by society and the state. Article 17 of the declaration states that everyone has the right to own property alone and in association with others, and that no one shall be arbitrarily deprived of his property. Article 18 says that everyone has the right to 'freedom of thought, conscience and religion' and 'to manifest his religion or belief in teaching, practice, worship and observance. Article 19, says that everyone has the right to freedom of expression. Article 22 says that everyone has the right to the economic, social and cultural rights indispensable for his dignity and the free development of his
personality, 'through national effort and international co-operation' and 'in accordance with the organization and resources of each state'. Article 25 states that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Article 22 makes the realization of economic, social and cultural rights dependent on the resources of each state, whereas Article 25 does not. Article 27 says that everyone has the right 'to participate in the cultural life of the community'. Article 29, paragraph 1, of the Universal Declaration states that everyone 'has duties to the community in which alone the free and full development of his personality is possible.' Paragraph 2 allows the limitation of human rights in order to secure the rights of others and to meet 'the just requirements of morality, public order and the general welfare in a democratic society'. Donnelly holds that the Universal Declaration entails a relatively specific set of institutions, namely, the liberal-democratic welfare state. The Universal Declaration is a manifesto, and not a philosophical treatise or a social policy for the world. It was written for a popular audience in relatively simple terms, and it is therefore necessarily oversimplified as a guide to policy-making. The declaration should be judged by clarifying and evaluating its underlying principles, and by investigating its empirical impact.

The Cold War

The Universal Declaration of Human Rights is only a declaration. It makes no provision for its implementation. It allocates rights to
everyone. It says little about who is obliged to do what to ensure that these rights are respected. In 1948 the UN was committed to state sovereignty and human rights. It could not decide what was to be done if sovereign states violated human rights. At that time virtually all governments said that the declaration was not legally binding. No human-rights violations, except slavery, genocide and gross abuses of the rights of aliens, were illegal under international law. The UN established a Commission on Human Rights, but it was composed of the representatives of governments, and NGOs had limited access to it. The commission's mandate was confined largely to drafting treaties and other legal texts. In 1947 the Economic and Social Council declared that the commission had no authority to respond to human-rights violations in any way. From 1948 until the late 1960s the ability of the UN or the 'international community' to take effective action to protect human rights was extremely limited. The cold war reinforced the reluctance of states after 1948 to submit to the international regulation of human rights, and, consequently, notwithstanding the Universal Declaration, human rights returned to the margins of international politics in the 1950s. The two main cold-war protagonists, the USA and the USSR, used the concept of human rights to score propaganda points off each other, while directly or indirectly participating in the gross violation of human rights. Plans to introduce binding human-rights treaties were delayed until the mid-1960s. In the 1960s the world-wide decolonization movement created many new member-states of the UN, with new issues for the human-rights agenda: anti-racism, decolonization and the right to self-determination. The Convention on the Elimination of all Forms of Racial Discrimination was adopted by the General Assembly in 1965. The arrival of new states at the UN, therefore, injected a new activism,
although it was very selective: South Africa, Israel and Chile received particular attention. As UN human-rights activism grew, so human-rights politics threatened the universality of the concept in practice. In 1966 the General Assembly asked the Economic and Social Council and the Commission on Human Rights 'to give urgent consideration to ways and means of improving the capacity of the United Nations to put a stop to violations of human rights wherever they might occur.' This led to the adoption of two new procedures. In 1967, Resolution 1235 of the Economic and Social Council authorized the commission to discuss human-rights violations in particular countries. In 1970 Resolution 1503 of the council established a procedure by which situations that appeared to reveal 'a consistent pattern of gross and reliably attested violations of human rights' could be pursued with the governments concerned in private. The post-colonial states had wanted the commission to deal with racism. The communist states thought that this would embarrass the "West. The West did not want to appear to condone racism, but did not want racism to dominate international human-rights debates. Thus cold-war and third-world politics generated new procedures and wider powers for the UN Human Rights Commission. The 1235 procedure is an advance in the implementation of UN human-rights standards, but it works unevenly and remains marginal to the world's human-rights problems. The 1503 procedure enables individuals to petition the UN about human-rights violations, but offers them no redress. The commission names countries that it has considered, and may therefore put some pressure on governments by publicity. 1503 has had little impact on situations of gross human-rights violations. In 1966 two international treaties—the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural
Rights- were opened for signature and ratification. They entered into force in 1976, when the necessary thirty-five ratifications had been received. The 1966 covenants leave out the right to property, but include the right to self-determination. The Universal Declaration and the two covenants, together known as the International Bill of Rights, constitute the core of international human-rights law. By August 2001 more than 140, or slightly more than three-quarters of the 190 UN states, had ratified the two covenants.²⁷ The Human Rights Committee was established in 1976. It consists of independent experts whose task is to monitor compliance with the Covenant on Civil and Political Rights. The states that are parties to the covenant are obliged to submit reports on what they have done to implement the rights in the covenant. The committee can also receive complaints from states under the covenant and complaints from individuals under its optional protocol. The committee has jurisdiction only over states that are parties to the covenant, but most states are now parties. Co-operation with the committee by states is variable, but the committee has brought about legislative changes in some countries, and can contribute to human-rights improvements through discussion, debate and advice. In a few cases, individual complainants have benefited from a decision of the committee.²⁸ The UN adopted the Convention on the Elimination of Discrimination against Women in 1979, the Convention against Torture in 1984, and the Convention on the Rights of the Child in 1989. New 'thematic' procedures evolved. A Working Group on Enforced or Involuntary Disappearances was established in 1980 in response to events in Argentina and Chile. Developments in the UN were overshadowed by the impact of the cold war, which was overwhelmingly adverse for human rights. The communist states were
gross violators of human rights, and the Western powers, led by the USA, supported regimes around the world that committed grave human-rights violations. Ironically, the instability of the cold-war 'balance of power' created an opening for human-rights progress. In the early 1970s the communist bloc sought agreements with the West on security and economic matters. The West demanded human-rights guarantees in return. In 1973 the Conference on Security and Co-operation in Europe (CSCE) was convened, later to become the Organization for Security and Co-operation in Europe (OSCE). This led to the Helsinki Final Act of 1975, in which the communist states accepted a range of human-rights commitments. In the following years, Helsinki-based human-rights NGOs were established in the USSR, but were severely persecuted. In 1977 the human-rights group Charter 77 was set up in Czechoslovakia. The short-term, practical effects of these events appeared slight, but they increased the intensity of international debates about human rights, and such groups played a role in the dismantling of the Communist system in Eastern Europe. The admission to the UN of a large number of poor, non-Western states introduced a new emphasis on economic rights into international debate. In 1974 a number of texts concerning the so-called New International Economic Order were approved. These texts sought to draw attention away from human-rights violations in individual states to the structural causes of human-rights violations in global economic inequality. This third-world approach to human rights led to a controversial conceptual development: the so-called third generation of human rights. According to this new thinking, civil and political rights were the first generation of 'liberty' rights; economic and social rights were the second generation of 'equality' rights; and there was now a need for a third generation of 'solidarity'
rights. These were the rights to development, peace, a healthy environment and self-determination. In 1986 the General Assembly adopted a Declaration on the Right to Development. In the 1980s and early 1990s the theme of 'cultural relativism' became more salient in UN debates about human rights. In 1984 the Islamic Republic of Iran proposed that certain concepts in the Universal Declaration should be revised, and announced that Iran would not recognize the validity of any international principles that were contrary to Islam. In the run-up to the UN World Conference on Human Rights that was held in Vienna in 1993 there was much talk of a conflict between 'Asian values' and human rights.

After The Cold War

Although the end of the cold war brought some immediate human-rights improvements, such as the establishment of civil and political rights in former communist societies, the new world order produced complex human-rights patterns. Both the General Assembly and the Human Rights Commission became more active. The UN goals of peace-keeping and human-rights protection became increasingly combined. In Haiti and Liberia, the UN became involved in monitoring respect for human rights as part of political settlements. In Namibia and Cambodia, the UN had a more comprehensive role in protecting human rights in the context of overall political reorganization. The establishment of international criminal tribunals for the former Yugoslavia and following the genocide in Rwanda were further innovations by the UN, which also agreed to set up a general international criminal tribunal. It remains to be seen whether this combination of law and politics is successful, or whether, as some critics fear, the law may undermine the chances of
political settlement. The UN also acts to mitigate the effects of human-rights violations through the High Commissioner for Refugees (UNHCR). Although UNHCR does extremely valuable work, it acts typically after gross human-rights violations have taken place. The Vienna conference of 1993 reaffirmed the universality, indivisibility and interdependence of human rights. It also emphasized the special vulnerability of certain groups - such as women, children, minorities, indigenous populations, handicapped persons, migrant workers and refugees - and opened the way for the appointment of a High Commissioner for Human Rights. At the beginning of the twenty-first century, there is concern that globalization is a threat to human rights. Concern for globalization has shifted the human-rights agenda somewhat in favour of economic and social rights, and has raised questions about the human-rights obligations of non-state actors, such as multinational corporations. Ironically, after the apparent victory of capitalism over communism, anti-capitalist protest has once again become part of international politics. Another human-rights problem associated with globalization is that of the increasing numbers of asylum-seekers and the reluctance of the governments into whose jurisdiction they flee to respect their rights in full.
Conclusion:

The concept of human rights is as old as the human civilization itself. It is wrong notion that the concept of human rights is of western origin. Mary Aon Glendon pointed out that the Universal Declaration of Human Rights did not drop all of sudden from heaven rather it happened to be a milestone on a path which humanity had already been traveling from centuries to centuries. According to Indian thinkers, human rights have been an accepted principle of India's rich legacy of historical tradition, religion and culture. Vedas, Bible and Quran are full of texts which have human rights orientation. Magna Carta is often cited as one of the early document upholding human rights, however, this has been contradicted. French Revolution in 1789 was an epochal event. It is true that the struggle for recognition of some basic rights of individuals against political, social, economic and cultural oppression, injustice and inequalities have been integral part of the history of all human societies. The Magna Carta, American Declaration of Independence, Declaration of Rights of Man and Citizens and Declaration of Rights of Working and Exploited People influenced the principles of human rights and liberties. The present day human rights movement is the result of the experiences of the World War-II. During the war shocking crimes were committed against the humanity as there was a total suppression of fundamental human rights.

The Declaration of United Nations confirmed the principles of Atlantic Charter when it proclaimed that the freedom of human rights in all countries was to be one of the results which were desired to be obtained from the victory. The concept of human rights has become one of the most potent in contemporary politics. Since the General Assembly of the
United Nations proclaimed its Universal Declaration of Human Rights. The period from the French Revolution to the IInd World was happened to be the dark age of the concept of human rights. The United Nations organization was setup to establish a new world order in accordance with the principles upon which the war have been fought. The Universal Declaration was intended to prevent a repetition of atrocities of the kind that the Nazis had committed. Before the IInd World War there was almost no international law of human rights. The declaration is also the source of an international movement, and of numerous national movements, of political activists who struggled against oppression, injustice and exploitation.

The Universal Declaration is a manifesto, and not a philosophical treaties or a social policy for the world. This document should be judged by evaluating and clarifying its underline principles. At the beginning of the 21st century, there is concern that globalization is a threat to the human rights. Concern for globalization has shifted the human rights agenda in favour of economic and social rights. This approach has raised questions about the human rights obligations of non state-actors, such as multi-national corporations. It is noteworthy that after the apparent victory of capitalism over communalism, anti-capitalist protest has once again become part of international politics. Thus the concept of human right reflects growing phenomena upholding the philosophy of evolutionary process.

There are many declarations of human rights, but when examine closely all in totality, common elements are available there. This gives impetus contributing to the knowledge on human rights theory.
REFERENCES


4. Study Material "Human Rights and India" Block 1: Human Rights India's Heritage, IGNOU, New Delhi, p. 5.


6. Ibid. p. 2.


8. Ibid. p. 175.

9. Ibid. p. 199.


12. Mrs. Mary Robinson of Ireland was appointed the High Commissioner after the resignation of Jose Ayala Lasso on March 15, 1997. Mrs. Robinson assumed the office on September 15, 1997.


17. Supra note 14 at pp. 25-6.
   Supra note 16 at pp. 2-4.

18. Supra note 16 at pp. 283, 294-6, 300-2.

19. Supra note 10 at pp. 151, 166-209.


21. Supra note 16 at p. 33.

22. Ibid. 20.


26. Supra note 23 at pp. 9, 53-4.


29. Supra note 23 at pp. 78-82


31. Id. at pp. 307-9.
United Nation's Mechanism for the Protection of Human Rights

The human rights machinery may be perceived in narrow and broad sense. First, this notion embraces organs and procedures dealing explicitly and directly with human rights in the framework of the United Nations. This category includes:

1. Intergovernmental organs established on the basis of the Charter of the United Nations. The General Assembly, the Security Council, The Economic and social Council, and the Commission on Human rights. The Commission on the Status of women and the Commission on Crime Prevention and Criminal Justice also address human rights issues within their respective mandates;

2. Bodies established by human rights treaties;

3. Reporting communications and investigating procedures established by policy making organs and treaty based bodies;

4. The parts of the United Nations secretariat responsible for human rights activities, especially the United Nations High Commissioner for Human Rights. The Division for the Advancement of Women and the Centre for International Crime Prevention have also human rights responsibilities. The office of the High commissioner for Human Rights and the Division for the Advancement of Women adopt joint work plans.
In the broad sense, the notion human rights machinery also includes those organs and procedures which have been established within the United Nations specialized agencies and programmes and deal, inter alia, with human rights or with specific aspects of human rights. Such organs and procedures exist in the framework of the international labour organization, UNESCO, the United Nations High Commissioner for Refugees, UNICEF, the United Nations Development Programme, and the United Nations Congresses on the Prevention of Crime and Treatment of Offenders.

Policy Making Bodies:

The General Assembly

While the General Assembly has an overall competence to deal with all the matters covered by the charter of the United Nations human rights issues are subject primarily to debate in its Third Committee (Social Humanitarian and Cultural Committee). The auxiliary bodies of the General Assembly frequently deal with human rights thus contributing to development in this area. Matters considered by the General Assembly may be categorized in the following groups:

1. Substantive human rights, issues;
2. 'Human rights situations' (this notion is used by the United Nations bodies to refer to situations of alleged human rights violations on a large scale);
3. Draft conventions or declarations, and
4. Organizational matters.

The resolutions of the General Assembly reflect not only the
assessments of this body but also most frequently include recommendations for further action by the international community as a whole, and specifically by governments, components of the United Nations system, and non-governmental organizations and the wider civil society.

The Security Council

Article 24 of the Charter of the United Nations confers on the Security Council the primary responsibility for the maintenance of international peace and security. Human rights issues were usually referred to as humanitarian problems. The situation gradually changed in the 1990s. The human rights abuses have been recognized as one of the root causes of contemporary armed conflicts and at the same time, the protection of human rights as one of essential elements of peace-making and peace-building. Today, Security Council decisions frequently address human rights issues in the context of peace and security. Peace accords supported by the Security Council contain references to human rights. It has become a rule that the Security Council, when establishing a peace operation includes a human rights component in it. Reports of the Secretary General to the Security Council contain human rights related analysis and recommendations. The Security Council has also requested reports of the Office of the High Commissioner of human rights when human rights violations posed a threat to peace and security.

The Economic and Social Council (ECOSOC)

Pursuant to Article 62, para 2, of the Charter of the United Nations, the promotion and protection of human rights are among the main areas of the mandate of ECOSOC. In this framework, ECOSOC makes
recommendations for the purpose of promoting respect for and observance of human rights and fundamental freedoms for all: prepares draft conventions to be submitted to the General Assembly and convenes international conferences on subjects within its competence. ECOSOC is also the main United Nations coordinating organ in the economic and social field. Under Article 68 of the Charter of the United Nations, ECOSOC has set up commissions in the economic and social fields. Two of them have been established to deal with matters falling in the area of human rights—namely, The Commission on Human Rights and the Commission on the Status of Women. In addition to these two bodies, other functional commissions of the ECOSOC are also relevant to the human rights area in particular Commission on Crime Prevention and Criminal Justice, Commission on Sustainable Development and Commission for Social Development. The office of the High Commissioner for Human Rights is developing cooperation with ECOSOC regional economic commissions. ECOSOC made an important contribution to the development of procedures for dealing with human rights matters in the Commission on Human Rights and the Commission on the Status of Women. For instance, subsequent ECOSOC resolutions have marked the history of the communications procedures, which provide the framework for how the commission on Human Rights deals with alleged human rights violations.

The Commission on Human Rights

The commission on Human Rights was created in 1946 with the initial task of preparing the draft of the International Bill of Rights. Its profile has developed to one of a fully intergovernmental body which gives the commission an important standing in international relations, although it
also has its political costs. The Commission submits proposals, recommendations and reports to ECOSOC, to coordinate United Nations activities in the field of human rights.\textsuperscript{5} Looking at the Commission's legacy, one can see the merit of the observation made by the High Commissioner for Human rights that: "the Commission on Human Rights has been the central architect of the work of the United Nations in the field of human rights".\textsuperscript{6} The work of the Commission is basically framed by the Rules of Procedure of the Functional Commissions of the Economic and social Council.\textsuperscript{7} During the 1990s the Commission on Human Rights made considerable efforts to reform its organization and methods of work. The world conference on Human Rights forcibly stressed the need for a continuing adaptation of the United Nations human rights machinery to the current and future needs.\textsuperscript{8} The commission holds its annual six-week long sessions between mid-March and the end of April.\textsuperscript{9} They are attended by governmental delegations of up to 50 members. From its very establishment, the Commission on Human Rights has been the main United Nations body drafting international human rights standards and related procedural norms. Whether it is a draft human rights treaty or a draft declaration, the product of the Commission is forwarded through ECOSOC to the General Assembly for final adoption. In the opinion of the Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights, standard-setting will continue to be one of the central functions of the Commission on Human Rights. Making the standard-setting process more effective and, in particular, shorter would be a major contribution to the promotion and protection of human rights and to the position of the Commission in general.
**Country Situations:**

If a human rights situation in a country is on the Commission's agenda, or a member or group of members is expected to propose that the Commission take action on a country situation, the delegation of the country concerned may, in fact, take one of the following positions:

1. Join the consultations and subsequently agree or disagree with the negotiated position of the Commission;

2. refuse to participate in the consultation process which does not exclude its public statements;

3. object to the consideration of the human rights situation in its country through a formal 'no action motion', which must be voted immediately.

It is widely said that the debates on country situations are highly politicized, but it is nevertheless the Commission's responsibility to react impartially to serious human rights violations.

**The Commission's system:**

In carrying out its mandate, the Commission benefits from the input by its bodies and procedures that have now developed into quite a sophisticated system. ECOSOC empowered the Commission on Human Rights to establish two Sub-Commissions: the Sub-Commission on Freedom of Information and of the Press and the Sub-Commission on the Prevention of Discrimination and Protection of Minorities. The Commission on Human Rights may also establish working groups which meet intersessionally. The objective of such working groups is to
draft human rights treaties or declarations concerning human rights standards, to analyze substantive issues or deal with organizational matters. At present, the following working groups support the Commission: the Working Group on the Right to Development; the Working Group on Guidelines on Structural Adjustment Programmes and on Economic, Social and Cultural Rights; the Working Group on a draft United Nations Declaration on the Rights of Indigenous Peoples; and the Working Group on Situations established under item 9(b) to examine human rights situations referred to the Commission by the Working Group on Communications. The working groups drafting human rights instruments usually meet once a year for two weeks. An essential tool of the Commission on Human Rights constitutes its special mechanisms established to monitor the implementation of specific human rights standards. They include, among others, two Working Groups: on Arbitrary Detention and on Enforced, or Involuntary, Disappearances. The effective functioning of the Commission is a legitimate concern for all of its participants, and more importantly for all those who rely on it. The Commission has provided the institutional framework for drafting most of the human rights treaties and international declarations developing human rights standards, including the Universal Declaration of Human Rights and the International Covenants on Human Rights. The Commission has elaborated major strategies and procedures for the promotion and protection of human rights. Debates in the Commission have contributed to the broadening of the United Nations agenda concerning human rights. Finally, it has been the Commission that has responded to major human rights violations in different regions of the world and has provided a platform for victims and their advocates to address the
international community. Many representatives of international and regional organizations, and a remarkable number of actively participating non-governmental organizations, also give evidence of the role played by this organ. The reform of the Commission in the follow-up to the World Conference on Human Rights session proves that the Commission can mobilize its potential to reflect on its own work. The Commission on Human Rights is a vital part of the Organization, with a glorious history. People all over the world look to it for protection of their rights and for help to win for themselves the better standards of life in larger freedom referred to in the Preamble to the Charter. I strongly urge Member States to keep in mind the true purpose of the Commission, and to seek ways of making it more effective. They must realize that, if they allow elections and debates to the dictated by political considerations, or by block positions, rather than by genuine efforts to strengthen human rights throughout the world, the credibility and usefulness of the Commission will inevitably be eroded.

The Sub-Commission on the Promotion and Protection of Human Rights

This Sub-Commission, formerly known as the Sub-Commission on Prevention of Discrimination and Protection of Minorities, was created in 1947 as a relatively small body of 12 members who were to undertake studies, particularly in the light of the Universal Declaration of Human Rights, and to make recommendations to the Commission on Human Rights concerning the prevention of discrimination of any kind relating to human rights and fundamental freedoms and the protection of racial, national, religious and linguistic minorities. It was also
expected to perform other functions entrusted to it by ECOSOC and the Commission on Human Rights. The Sub-Commission now has 26 members who have the same number of alternates and who are elected for a period of four years based on the principle of an equitable geographical representation. At present, seven experts come from Africa, five from Asia, five from Latin America and the Caribbean, three from Eastern Europe and six from Western European and other states. The legacy of the Sub-Commission is widely respected. It includes numerous drafts, studies, and proposals submitted to the Commission on Human Rights for further action. The findings and ideas elaborated by the Sub-Commission have frequently stimulated not only the Commission to take action, but also other parts of the United Nations human rights programme. The Sub-Commission's contribution to the drafting of all the most important human rights standards is unquestionable. Finally it has developed into an important component of the international monitoring of the implementation of human rights, especially within the '1503 procedure'.

The Commission on the Status of Women

The Commission on the Status of Women was established in 1946 with the status as the other functional commissions of ECOSOC. The initial number of 15 members has been gradually increased to 45. Commission members are elected for a term of four years and represent member states. The Commission's composition is based on the principle of equitable geographical distribution. The Commission's mandate includes the preparation of recommendations and reports to ECOSOC on the promotion of women's rights in the political, economic, civil, social and educational fields. In 1987, ECOSOC decided to specify
further this mandate by including the promotion of the objectives of equality, development and peace, the monitoring of the implementation of measures aimed at the advancement of women, and the evaluation of the progress made at the international, regional and domestic levels in this regard. Consideration of confidential and non-confidential communications concerning violations of the status of women also constitutes a part of the Commission's mandate. The Commission is the main forum within the United Nations system, which elaborates and implements programmes concerning the human rights and equal status of women. Its sessions are attended not only by governments, but also by representatives of United Nations agencies and programmes, regional organizations and non-governmental organizations. The Commission adopts its own resolutions and drafts to be considered by ECOSOC. It is also a catalyst for the coordination of efforts made by various organizations to develop the protection of women and facilitate their advancement.

United Nations High Commissioner for Human Rights

During the preparatory process to the World Conference on Human Rights between 1991 and 1993, in the convenient political climate of the end of the Cold War, Amnesty International re-introduced the idea of a High Commissioner for Human Rights. However, it soon turned out that doubts and fears accompanying the concept of the new institution from the moment it was first proposed in 1948 had not disappeared, and the debate appeared again to be highly controversial. Nevertheless the World Conference managed to recommend to the General Assembly that, when examining the report of the Conference at its 48th session, it begin, as a matter of priority, consideration of the question of the
establishment of a High Commissioner for Human Rights for the promotion and protection of all human rights.\textsuperscript{22} In early October 1993, the Third Committee of the General Assembly established an open-ended working Group to discuss the ways and methods of implementation of the Vienna Declaration and Programme of Action. The General Assembly created the post of the High Commissioner for Human Rights on 20 December 1993, by resolution 48/141.\textsuperscript{23} The seat of the High Commissioner is located in Geneva. By giving consensus support to the creation of this new institution, the international community has empowered it with a strong moral and political legitimation. The High Commissioner is appointed by the United Nations Secretary General, subject to approval by the General Assembly. The High Commissioner is expected to be a person of high moral standing and personal integrity and shall possess expertise, including in the field of human rights, and the general knowledge and understanding of diverse cultures necessary for impartial, objective, non-selective and effective performance of the duties.\textsuperscript{24} The term of office is four years and the incumbent may be re-appointed once only. In accordance with resolution 48/141, the High Commissioner shall function within the framework of the Charter of the United Nations, the Universal Declaration of Human Rights, other international instruments of human rights and international law, including the obligations, within this framework, to respect the sovereignty, territorial integrity and domestic jurisdiction of states to promote the universal respect for and observance of all human rights, in recognizing that, in the framework of the purposes and, principles of the Charter, the promotion and protection of all human rights is a legitimate concern of the international community. The High Commissioner's close association with the main
United Nation organs relevant to human rights is also reflected in the competence to make recommendations to the competent bodies of the United Nations system in the field of human rights with a view to improving the promotion and protection of all human rights. Resolution 48/141 provides for the High Commissioner's specific responsibilities which may be categorized as follows:

- **Promotion and protection of human rights:**
  - Promoting and protecting the effective enjoyment by all of all civil, cultural, economic, political and social rights,
  - Promoting protecting the realization of the right to development;
  - Enhancing international cooperation for the promotion and protection of all human rights;
  - Providing advisory services and technical and financial assistance with a view to supporting actions and programmes in the field of human rights;

- **Reaction to situations challenging human rights:**
  - Playing an active role in removing the current obstacles and in meeting the challenges to the full realization of all human rights and in preventing the continuation of human rights violations throughout the world;
  - Engaging in a dialogue with all governments with a view to securing respect for all human rights;
Co-ordination and adaptation to the existing needs of the United Nations system of human rights protection.

- Co-coordinating activities for the promotion and protection of human rights throughout the United Nations system;
- Co-coordinating relevant United Nations education and public information programmes in the field of human rights;
- Strengthening the United Nations machinery in the field of human rights with a view to improving its efficiency and effectiveness;

Treaty Monitoring Bodies

The implementation of the six core human rights treaties is monitored by special bodies established for that purpose. These are:

- The Committee on Economic, Social and Cultural Rights (CESCR) for the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR);
- The Human Rights Committee (HRC) for the 1966 International Covenant on Civil and Political Rights (ICCPR);
- The Committee on the Elimination of All Forms of Racial Discrimination (CERD) for the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);
- The Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) for the 1979 International Convention;
- The Elimination of All Forms of Discrimination against Women (ICEDAW); the Committee against Torture (CAT) for the 1984
The International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (ICAT); the Committee on the Rights of the Child (CRC) for the 1989 International Convention on the Rights of the Child (ICRC).

Since 1945 the United Nation has done a lot of ‘standard-setting’, institution-building and human rights promotion. The capacity of the United Nation to implement its own standards is still modest, however. The concept of state sovereignty and the realities of international power politics still make the implementation of human rights standards uneven, and generally weak. It is difficult to evaluate the success of United Nation human rights project. Its achievements have clearly been limited, but it may be that the combined effect of United Nation agencies, Government policies and NGOs have improved the human-rights situations in many countries. The United Nation carried out a human-rights revolution in world politics. The United Nation human-right system is a ‘regime’: that is, a set of norms and institutions that is accepted by state as binding. The United Nation human-right regime is based on the Universal Declaration of Human Rights. In reality the concept of state sovereignty remains strong, and implementation of human-rights standards is uneven and some times disastrously ineffective. The international human-rights regime is political, not philosophical. It responds pragmatically to circumstances, and consequently operates inconstantly. The United Nation is a club of states, represented by governmental leaders, and not withstanding their conflicts of interest and ideology, they have a common interest in mutual accommodation. While the legal institutions of the United Nation may be more impartial, they are procedurally restricted and diplomatically cautions.
Conclusion:

The protection of human rights embraces organs and procedures dealing with human rights within the framework of the United Nations. The Charter of the United Nations, the General Assembly, the Security council, the Economic and Social Council and the Commission on Human Rights, The Commission on Crime Prevention and Criminal Justice and the Commission on the Status of Women address human rights issues, the Commission on Human Rights was created in 1946 with the initial task of preparing the draft of the international Bill of Rights. The commission on Human Rights has been the central architect of the work of the United Nations in the field of human rights. It is healthy aspect that government policies and NGOs have improved the human rights situation in many members countries. Conclusively speaking, the United Nations human right regime is based on the Universal Declaration of Human Rights. It is true that international human rights regime is political and not philosophical. The United Nation is a club of states. It represents governments and their leaders despite their conflicts of interest and ideology. They have only one common interest that is mutual accommodation.
REFERENCES

1. Exceptions in favour of an exclusive competence of the Security Council are mentioned in Article 12 of the Charter.


3. ECOSOC is composed of 54 member states of the United nations, elected by the General Assembly in accordance with the principle of regional balance see Article 61 of the Charter and General Assembly resolution 2847 (XXVI) of 20 December 1971. Observer stars, United Nations specialized agencies and programmes and non-governmental organizations may participate in the work of ECOSOC without a right to vote. ECOSOC holds one regular session a year (special sessions may also be convened).

4. ECOSOC resolution 5(1).

5. ECOSOC resolution 9(II) 1646 and 1979/36.


8. Vienna declaration and Programme of Action, Article II, para.17.

9. Initially lasting for three weeks, the regular sessions have been extended to six weeks.

10. See 1503 procedure in the section, Procedures related to Human Rights violations.


12. 250 non-governmental organizations were accredited at the 57th session and 247 at the 58th session. They produced 192 and 205 official documents respectively.

13. Report of the Secretary General: Strengthening of the United Nations: an agenda for further change, UN doc. A/57/387, para. 46. Discussing this issue in her aforementioned statement to the 58th session of the Commission, the High commissioner quoted one of the principal drafters of the Universal Declaration of Human Rights, Rene Cassin, who stated: Finally, I would draw the Working parties, attention to the advisability of gradually increasing the means of implementation by urging the importance of preventive measures which depend largely on the collaboration of states with the United Nations and the vigilance of public opinion, and means of redress, or even punishment, of the violations committed. The topicality of these words is indeed self-
evident when one looks at the work of the commission and the challenges it faces today.

14. Resolution of the Commission on Human Rights adopted at its 5th session is elected every two years.

15. Subsequent re-elections are possible. Half of the members and alternates are elected every two years.

16. ECOSOC resolution 11 (II).

17. ECOSOC resolution 1989/45.

18. ECOSOC resolution 1987/22.

19. ECOSOC resolution 1983/27. See also the section on reporting in the International Labour Organization and UNESCO in this book.

20. The Commission is presented in a detailed manner elsewhere in this volume. Since it plays a central role in the promotion and protection of the human rights of women, it is necessary to make the comments above.

21. See, Amnesty International, World Conference on Human Rights. Facing Up to the Failures: Protection of Human Rights by the United Nations, 1992, AI Index: FOR 41/16/92. During the four decades since the first formal submission of a proposal, negotiations were sometimes quite advanced, in particular in the 1970s, but not enough to make the final breakthrough.


24. UN doc. 48/141, para 2 (a).

25. Para. 4 (b) of resolution 48/141.

26. Para. 4 of resolution 48/141.
I. HUMAN RIGHTS WITHIN THE FRAMEWORK OF INDIAN CONSTITUTION

The Constitution gives a practical shape to this vision by safeguarding values through its chapters on Fundamental Rights and the Directive Principles of State Policy. The entire human rights jurisprudence of India is founded on these two chapters. That jurisprudence has also been deeply influenced, through constitutional interpretation, by the international human rights norms first set out by the United Nations in the Universal Declaration of Human Rights in 1948. That was, of course, a remarkable document drafted at a remarkable moment in human history. It was followed by the framing, in 1966, of two covenants—the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. There have also been a growing number of international instruments aimed at the protection of human rights regionally, such as the European Convention on Human Rights (1950), the American Convention on Human Rights (1969) and the African Charter on Human Rights and People's Rights (1981). In addition, recent decades have seen the promulgation of a plethora of thematic human rights and humanitarian law documents, such as the International Labour Conventions, the Four Geneva Conventions, the Convention on the Elimination of Discrimination against Women, the Convention on the Rights of the Child, the Genocide Convention and the Convention relating to the Status of Refugees. The United Nations has also set up
several mechanisms, including a Commission on Human Rights, to give practical effect to many of these instruments. It is in this context of continuing international concern for human rights, that the Indian Judiciary has examined the contents of fundamental rights laid down in Part III of the Constitution, and the Directive Principles of State Policy laid down in Part IV, to promote jurisprudence based on human rights for the people of the sub-continent. The fundamental rights have been made justifiable, with the right to move the court for the enforcement of these rights itself being made a fundamental right. These two parts lay down the basic constitutional values and the ultimate social goals of the nation. Although the Directive Principles of State Policy are largely exhortative, spelling out the ultimate social goals which should be achieved through the economic and political processes, the courts have interpreted the provisions guaranteeing fundamental rights in the light of the norms laid down in those Principles, and thus attempted to give a concrete shape to the vision of our founding fathers. In much the same way, the courts have interpreted these rights harmoniously with the norms laid down in international human rights instrument.

Equality Jurisprudence

The first and foremost right which has been made justiciable under Part III of the Constitution of India is the right to equality before the law and the equal protection of laws within the territory of India. For a society which was for several centuries hierarchical and rigidly structured, with a preordained place in the social pyramid for every group (whether based on caste, religion, vocation or sex), equality is a relatively new value. It entails a complete rethinking of traditional or feudal values. Entailing also a restructuring of society on egalitarian principles, the
constitutional draftsmen and the people of India, made a conscious
decision to establish such an egalitarian social order. H M Seervai, a
great constitutional scholar, has described liberty and equality as words
of passion and power. It is, therefore, not surprising that a very
substantial portion of litigation coming before the courts relies upon the
right to equality in one form or another. The doctrine of equality is one
of the most difficult doctrines to apply to real life situations. The courts
have constantly struggled to put it to devise suitable tests to see when
the equality clause is violated. The fact remains that no two human-
beings are equal in all respects. People have unequal abilities, unequal
qualifications and unequal mental equipment. The courts have therefore
evolved some principles on the basis of which the requirements of
equality and non-discrimination can be tested. These principles, first laid
down in 1958 in Dalmia's case, are as follows:

1. Discrimination, whether under substantive law or procedural law,
would be unconstitutional.

2. It is permissible to classify individuals into different groups on
the basis of certain criteria which are relevant to the set of facts
requiring differentiation. Members who are similarly situated in
the given set of facts must be treated similarly. However, one can
have legislation which makes a distinction between members
belonging to different, i.e. non-homogenous, classes.

3. Permissible classification for this purpose must be based on two
criteria:
I. It must be founded on 'intelligible differentia' which distinguish persons or things that are grouped together from others who are left out of the group; and

II. Such differentia must have a rational nexus with the object sought to be achieved by the statute in question.

To give an obvious example, all mentally handicapped people can be classified as one group, if legislation is proposed giving them certain special rights or protection, such as, where special facilities are to be provided for the blind in an examination. But such classification is not always, easy to formulate or implement. For example, in Air India v. Nergesh Meerza and others,\(^4\) where different conditions of service were prescribed for air-hostesses and for their male counterparts, it was argued that there was no discrimination and no violation of the equality clause because the air-hostesses had been classified as one group on the basis of their gender, which was a relevant basis for differentiation. This was sex-based classification and not discrimination on the ground of sex, a contention which was upheld by the Supreme Court; even though it is difficult to discern any dividing line between sex-based adverse differentiation and discrimination on the grounds of sex. The court did, however, strike down some of the service conditions of the air-hostesses on the grounds that they were unreasonable. In the case of Miss C. B. Muthamma v. Union of India and others,\(^5\) discriminatory service conditions in the foreign service, requiring female employees to obtain government permission before marriage and denying a married woman the right to be employed, were struck down as discriminatory. The protective arm of the Supreme Court has been extended to working women by laying down guidelines to prevent sexual harassment as in
the case of *Vishaka v. State of Rajasthan and others*. In *Apparel Export Promotion Council v. A.K. Chopra*, the court considered sexual harassment as a violation of the fundamental right to gender equality, and the right to life and liberty. In *E.P. Royappa v. State of Tamil Nadu and others*, the Supreme Court looked upon Article 14 as a guarantee against arbitrary action—equality being antithetical to arbitrariness. Since then, Article 14 has been invoked in a wide range of cases, as it negates arbitrary action. These include cases relating to service matters; cases challenging executive action; cases dealing with grant of contracts by the government; cases with rules of admission to educational institutions, with imposition of tax and with exemptions from taxation. The categories are never closed. A number of cases in the recent past have been fought on the doctrine of equal pay for equal work. The courts have had the difficult task of ascertaining what is to be considered as equal work. Even the same work, when done by people who are qualified differently, may be qualitatively different. A diploma holder who does engineering work will not be able, for example, to bring to his work the same knowledge as a degree holder. The courts have, therefore, upheld difference in pay based on educational qualifications. In the case of women employees, the doctrine of equal pay for equal work has given rise to some tricky situations. Often women employees in a corporation do work which is substantially similar, but not identical, to that done by their male counterparts. On the grounds of this slight difference, they are frequently given lesser pay. A typical example concerns agriculture, where men do the work of ploughing while the women do the work of planting seeds. Although their hours of work are the same, the men who are hired for the work are paid a higher wage than the women on the ground that the women do
different work. The courts will have to decide to what extent the jobs are similar and whether the lower pay is justified by less work or less strenuous work, or whether it is discriminatory. It is not always an easy question to decide.\textsuperscript{10}

**DISCRETIONARY POWERS**

Discretionary powers have often come up for scrutiny before the courts and some recent cases have attracted much public attention. The exercise of this power has been tested on the basic principle of whether it amounts to an untrammeled power to choose between all available options or whether it is a power which should be exercised on the basis of certain relevant factors. A number of executive decisions relating to awarding of contracts, allotment of houses and so on, have been challenged under Article 14. Articles 15, 16 and 17 of the Constitution, spell out some specific aspects of the right to equality. Article 15(1) provides that the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. However, there are two exceptions to this provision-first, that it will not prevent the state from making any special provisions for women and children. Second, that it will not prevent the state from making any special provisions for the advancement of socially or educationally backward classes of citizens or for the scheduled castes and scheduled tribes.\textsuperscript{11}

Article 16 provides for equality of opportunity for all citizens in matters relating to employment under the state. It provides that no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, or residence, be ineligible for, or be discriminated against, in respect of any employment or office under the state. Once again, there are certain
exceptions. For example, there can be reservation of posts in favour of such backward classes of citizens that are, in the opinion of the state, not adequately represented in the public sector. By an amendment of Article 16, it has now been provided that reservations can be made even in matters of promotion, where in the opinion of the state, the scheduled castes or tribes are not adequately represented in the service in question. Article 17 provides for the abolition of untouchability. Articles 15 and 16 have a direct nexus with the customs and traditions and social norms prevailing in the country. The provision, under Article 15(2), for example, of non-discrimination in the use of wells, tanks, bathing ghats etc are intended to combat the customary practice of excluding persons belonging to scheduled castes from using such facilities. The same is true of access to shops, public restaurants and hotels. It is necessary to remember that equality is a relatively new virtue, which most traditions and customs have tended to ignore. The patriarchal family set-up also gave males predominant authority over all the family members. Traditionally, Indian women have tended to occupy an inferior standing in society. They have traditionally been denied the benefits of formal education and freedom of choice. There is, by and large, still a marked gender bias within the family and within society. The constitutional values which are now propounded are, therefore, somewhat different from, and in many ways antagonistic to, the traditional thinking and customs still practiced in society.

The difficulties in establishing an egalitarian society should not be underestimated. Some comfort can be drawn and lessons learnt from the history of other nations that have faced similar problems. Even the American Declaration of Independence made no mention of equality whether it was equality-between the whites and the slaves, or between
men and women. Undoubtedly, the Declaration of Independence was a remarkable document for the year 1776 and it has rightly inspired Constitution-makers all over the world including in India. But it needs to be remembered that it took a Civil War and the 14th Amendment before the words 'nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws' came to be incorporated in the United States Constitution. The ideal of equality does not always find easy acceptance, especially in a country which has traditionally had a hierarchy of castes and has treated different groups of people differently. That is why Article 15 carves out exceptions to protect women and children and to provide special measures for the scheduled castes, scheduled tribes and the socially backward classes. But what is the permissible extent of such special provisions? The question has repeatedly arisen in the context of reservation of seats in educational institutions and under Article 16 reservation of jobs and promotions. Article 335 of the Constitution expressly provides that the claim of scheduled castes and scheduled tribes should be considered consistently with the maintenance of efficiency of administration while making appointments to the public services, but reservations under Article 15 do not ordinarily come within the ambit of Article 335. The Supreme Court has, from M.R. Balaji and others v. The State of Mysore and others\textsuperscript{13} to Indira Sawhney v. Union of India and others\textsuperscript{14} and, more recently, in Dr. Preeti Srivastava and others v. The State of Madhya Pradesh and others\textsuperscript{15}—held that reservations under Article 15 must be reasonable and cannot override national interests. Generally, reservations beyond 50 per cent have been held as arbitrary and unreasonable and as contrary to
overriding national interests, as have reservations at the highest educational levels or for a single post at the top.

MINORITY RIGHTS

There is one more complication which arises in promoting equality. India is a nation of diverse minorities whose culture and traditions need to be protected. Articles 29 and 30, which deal with cultural and educational rights, guarantee to minorities having a distinct language, script or culture of their own, the right to conserve the same. Article 30 provides that all minorities, whether based-on religion or language, shall have the right to establish and administer educational institutions of their choice. These rights can, at times, clash with the equality clause. In fact, most countries which have traditions and culture dating back to older times face this problem: how does one create an egalitarian and modern society and also preserve what is valuable in one’s culture? The task of deciding what constitutes the essence of culture and tradition is not an enviable one. What is it that is valuable, which gives the country its cultural identity and its social integrity? Which gives its minorities their distinctive culture and their distinctive character? What is it that should be protected and can be changed in consonance with other constitutional values? These are the major issues facing India today. The challenge is to ensure that the minorities preserve their cultural identity and at the same time be part of the mainstream of national life; that discriminatory laws and harmful customs and practices are not shielded in the guise of 'culture' or 'tradition'. It is unfortunate that in the rhetoric of emotions, rational debate on this issue has become almost impossible. India also faces a major problem concerning its socially and educationally backward classes of citizens. The United States was faced with a similar
There are, obviously, two different ways in which a socially discriminated backward group can be helped, so that it can participate on a footing of equality with others. One is the path of reservation. Those who are not in a position to compete with the more advanced sections of society on account of social discrimination are assured of employment and education through reservations so that the future generations within that group may overcome the handicap which the present generation has inherited. This policy has the obvious advantage of rendering direct help to the backward people in the areas where they need help. It also, unfortunately, has some disadvantages. Reliance on support for too long tends to make the backward classes dependent on such support. There is no motivation for self-help. Thus, this policy can, in the long run, prove self-defeating. One may end up, not with a proper integration of the former backward groups into the mainstream, but with a greater divide separating the backward classes from the rest of the society. This pitfall must be avoided. The other path—which was chosen by the United States—is the path of affirmative action; where although no specific reservations are made for the backward classes, a conscious attempt is made to give them preference in employment or education opportunities. This policy is more difficult to monitor. The ultimate goal of both policies is to ensure that the handicaps under which the backward classes suffer are removed, so that they are able to participate in the life of the nation without any undue or special disadvantages, and on the same footing as others. This is a major challenge facing policymakers under the equality clause—a challenge which they are expected to meet through the political processes established under the Constitution. It would, however, be naive to presume that the political
process will lead to integration. Unless properly controlled, the political process is more likely to lead to disintegration and accentuation of differences.

HUMAN RIGHTS JURISPRUDENCE

Apart from the 'equality' jurisprudence, an important focus of the Supreme Court of India has been on human rights jurisprudence centered around Article 21. This article provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Personal, liberty under Article 21 has been construed as covering a wide array of rights that go to constitute a life lived in freedom and with dignity. In the case Bandhua Mukti Morcha v. Union of India and others, the court ordered the release of bonded labour. Bhagwati, J said:

'The right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly Clauses (e) and (f) of Article 39 and Articles 41 and 42 and at least, therefore, it must include the protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity. These are the minimum requirements which must exist in order to enable a person to live with human dignity....'

In Francis Coralie Mullin v. Administrator, Union Territory of Delhi and others, life and personal liberty were held to cover not just bare existence but a life with dignity. The right to receive medical help in police custody was upheld in the case of Supreme Court Legal Aid Committee v. State of Bihar and others. The expanding concepts of
life and liberty have embraced some unusual rights, including: the right to receive instant medical aid in case of injury;\(^1\) the right to receive free education up to the age of 14;\(^2\) or the right of the workers in the asbestos industry to receive healthcare.\(^3\) Of course, there are obvious dangers in crying to cover too much under Article 21. This article gives an enforceable and justiciable right, a right which the administration can be compelled to honour or whose violation can be stopped by a court's order. Therefore, it is essential that the right which is protected is capable of being protected by a judicial order. Otherwise, a mere pronouncement by the court on a right which is not readily justiciable or enforceable, will result in trivialization of the court's pronouncement. It may even promote the habit of ignoring judicial orders. This may sound a little orthodox, but the judiciary essentially performs a vital but practical task of monitoring the functioning of the Constitution and the legal machinery. The court has made some very moving and monumental pronouncements, but it is essentially an enforcer of people's rights; and this role should not be diluted in the process of pursuing other broader goals.

The requirement of 'procedure established by law' under Article 21, has also been transformed by judicial interpretation. In *A.K. Gopalan v. State of Madras*,\(^2^2\) the court upheld the detention without trial of Mr. Gopalan, a communist, holding that 'procedure established by law' meant law as enacted by Parliament or the State Legislature. The court declined to examine the righteousness of the procedure and whether it accorded with the principles of natural justice. But three decades later, in *Smt. Maneka Gandhi v. Union of India and others*,\(^2^3\) the court rejected this interpretation and held that the procedure which can deprive a person of his life or liberty under Article 21 must be a right, just and a fair procedure, and not an arbitrary or
oppressive procedure. The teleological meaning given to the word 'procedure' in Article 21 has thus converted the procedure into due process which can stand the test of fairness and reasonableness. As a result, many procedures prescribed by statutes have been tested on the touchstone of Article 21. For example, in Kartar Singh v. State of Punjab, the court examined the validity of several sections of the Terrorists and Disruptive Activities (Prevention) Act in the light of Article 21. At times, the procedural clause has been given a more substantive meaning. For example, in Madhav Hayawadanrao Hoskot v. State of Maharashtra, free legal service to the poor was held to be an essential element of a reasonable, just and a fair procedure. The court, in fact, followed the footsteps of Gideon v. Wainright the celebrated United States decision of the Warren Court. In Khatri v. the State of Bihar, free legal aid was held necessary not merely at the trial, but also before the examining Magistrate; and at the time of remand. The right to a speedy trial was spelt out from Article 21 in Hussainara Khatoon v. the State of Bihar and in the State of Maharashtra v. Ravi Kant Patti the handcuffing and parading of under trial prisoners was held to violate Article 21. In Francis, Articles 14 and 21 were used to spell out the right of a detenu to consult a lawyer of his choice. In Kharak Singh v. the State of UP, Article 21 was held as prohibiting any form of physical mutilation or deliberate inflicting or pain or suffering.

The human rights jurisprudence of the court covers enforcement of the fundamental freedoms guaranteed by Articles 19 to 30 of the Constitution. These freedoms guarantee to the people a way of life free from repression and unreasonable restraints, a right to lead one's life according to one's choice and consistent with the rights of others. The right of minorities under Article 30 to establish and administer
educational institutions of their choice has received a wide interpretation to cover not just the conservation of language, script or culture of the minorities but also the right to create institutions of their choice whether religious or secular.32 The court has also held that the administrative autonomy of a minority institution cannot be taken away. A minority has the right not just to establish, but also to administer, educational institutions of its choice.33 The various aspects of human rights are deeply ingrained in the Constitution of India. However, it is to the credit of the Supreme Court of India that it has adopted an activist approach in matters of protecting and enforcing human rights norms and over the years it evolved several judicial techniques such as 'public interest litigation' to effectuate remedial justice. India is a party to the major International Human Rights Instruments, viz., Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, International Convention of the Elimination of All Forms of Racial Discrimination, etc. The Supreme Court has in innumerable cases relied upon the Articles of International Conventions to reach its judgments. Today, human rights jurisprudence in India has a constitutional status and sweep, thanks to Article 21 so that this Magna Carta may well toll the knell of human bondage beyond civilized limits. In our era of human rights, the Indian judiciary through creative interpretation has evolved the protection of human dignity rights.

II.  UNIVERSAL DECLARATION OF HUMAN RIGHTS AND THE CONSTITUTION OF INDIA

India has played the most significant role in the promotion of the cause of Human Rights. With the attainment of Independence, a declaration of
rights, the most elaborate in the world, was incorporated in the new Constitution. India has made the most sincere efforts for the protection and promotion of human rights the world over and is the greatest champion of Human rights in the Third World. India has not only incorporated an elaborate Bill of Rights in her Constitution but also efforts have been made to translate these into reality. India has incorporated the most elaborate Declaration of Human Rights, 1948 in its Constitution, the spirit of providing for human rights pervaded the minds of the founding fathers of the Indian Constitution as much as it did the minds of the makers of UDHR, 1948. In other words, the framing of the Constitution of India had started about two years before the Universal Declaration of Human Rights was adopted. However, every Article of the Universal Declaration is reflected in the Indian Constitution, which was adopted by India's Constituent Assembly on 26th November 1949, incorporated in the laws of the country. The Indian Constitution bears the impact of the Universal Declaration of Human Rights and the Supreme Court of India has recognized this. While referring to the Fundamental Rights contained in Part III of the Constitution, Sikri, Chief Justice of the Supreme Court in Kesavananda Bharati v. State of Kerala observed:

*I am unable to hold these provisions how that right 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”*

The Supreme Court has also recognized the interpretative value of the Universal Declaration of Human Rights in case of Kishore Chand v. State of H.P. The Universal Declaration of Human Rights does not define the term "Human rights," It refers to them as "the equal and
inalienable right 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 the 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. The following chart is given below to indicate the human rights which have been incorporated in the Indian Constitution and Law:

<table>
<thead>
<tr>
<th>Universal Declaration of Human Rights</th>
<th>Constitution of India</th>
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<tbody>
<tr>
<td>Article No.</td>
<td>Declaration of Human Rights</td>
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<tr>
<td>1.</td>
<td>All men are born free and are equal in dignity and in their rights.</td>
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<td>2.</td>
<td>No Discrimination on the ground of race, colour, sex, language, religion, birth.</td>
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<td>3.</td>
<td>Right to life</td>
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<td>4.</td>
<td>No slavery</td>
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<td>5.</td>
<td>No torture, cruelty,</td>
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<td>inhuman or Degrading treatment.</td>
<td>S. Patil (1991) 2 SCC 373. Handcuffing and parading of under trial prisoner was held violative of rights under Article 21. 3 SCC 161 and (1991) 4 SCC 177. Right to live with human dignity held to be enshrined in Article 21. <em>Maneka Gandhi v. Union of India</em> (1978) 1 SCC 248. The expression &quot;personal liberty&quot; under Art. 21 is a phrase of wide amplitude and cover a variety of rights which go to constitute personal liberty of man including right to safety of his person.</td>
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<td>6.</td>
<td>Right to recognition everywhere as a person before the law.</td>
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<td>7.</td>
<td>Equality before law</td>
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<td>8.</td>
<td>Right to Effective remedy</td>
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<td>1. The rights to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by part III of the Constitution is guaranteed. 2. Supreme Court shall issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.</td>
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<td>226 Notwithstanding anything in Article 32, every High Court shall have power, throughout the</td>
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<td>territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government within those territories directions orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quowarranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.</td>
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<td>9.</td>
<td>Arbitrary arrest and detention</td>
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<td>10.</td>
<td>Public hearing and fair trial</td>
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<td>11. Presumption of innocence and Criminal Law until prove guilty in public trial. No retrospective declaration of offence nor retrospective objective of higher sentence by retrospective amendments</td>
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<td>19. (d). To move freely throughout the territory of India, (e). To reside and settle in any part of the territory of India.</td>
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<td>20. (1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.</td>
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<td>12. Privacy, family, home correspondence, reputation, protection of law against interference or of force.</td>
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<td>13. (i) Freedom of Movement and Residence</td>
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<td>14. Rights to Religion</td>
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<td>15. (i) Right to Nationality</td>
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<tr>
<td>Article</td>
<td>Section</td>
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<td>(ii)</td>
<td>Change of Nationality.</td>
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<td>9</td>
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<td>10</td>
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<tr>
<td>16.</td>
<td>Marriage and Family</td>
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<td>17.</td>
<td>Property</td>
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<td>18.</td>
<td>Freedom of thought and conscience</td>
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<td>19.</td>
<td>Freedom of information and expression</td>
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<td>20.</td>
<td>Peaceful assembly and association</td>
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<td>No.</td>
<td>Article</td>
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<tr>
<td>21.</td>
<td>(i) Democracy</td>
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<td>22.</td>
<td>(i) Right to work</td>
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<td>(ii) Right to equal pay</td>
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<td>(iii) Remuneration keeping human dignity</td>
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<td>(iv) Right to from and join unions</td>
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<td>23.</td>
<td>Rights to rest, reasonable working hours</td>
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<td>24.</td>
<td>(i) Standard of living adequate for health and well-being.</td>
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<td>(ii) Motherhood and children</td>
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<td>25.</td>
<td>Right to education</td>
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<td>26.</td>
<td>(i) Free participation in</td>
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<td>27.</td>
<td>Social and international order</td>
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<td>(ii) Protection of moral material interest</td>
<td>That State shall endeavour to (a) promote international peace and security; (b) maintain just and honourable relations between nations; (c) foster respect for international law and treaty obligations in the dealings of organized people with one another; and (d) encourage settlement of international disputes by arbitration.</td>
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<th>28.</th>
<th>Duties</th>
<th>51A</th>
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<td>It shall be duty of every citizen of India-(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem: (b) to cherish and follow noble ideas which inspired our national struggle for freedom; (c) to uphold and protect the sovereignty, unity and integrity of India; (d) to defend the country and render national service when called open to do so; (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, Linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women; (f) to value and preserve the rich heritage of our composite culture: (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to</td>
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The above chart shows that many of the civil and political rights enshrined in the Universal Declaration of Human Rights also find mention in Part III of the Constitution as fundamental rights. However, there are certain rights which are contained in the Universal Declaration but have not been expressly mentioned in the Constitution. These rights are: (i) Right to be not subjected to torture, or to cruel, inhuman treatment or punishment (Article 5); (ii) Right to recognition everywhere as a person before the law (Article 6); (iii) Right to full equality to a fair and public hearing by an independent and impartial tribunal (Article 10); (iv) Right to be presumed innocent until found guilty according to law in a public trial [Article 11 (i)]; (v) Right to privacy (Article 12); (vi) Right to leave any country, including his own, and to return to his country [Article 13 (2)]; (vii) Right to nationality [Article 15 (1)]; (viii) Right to marry and found a family [Article 16 (1)]; (ix) Right to take part in the government of one’s country [Article 21 (1)]. The most of the economic, social and cultural rights proclaimed in the Universal Declaration of Human Rights have been incorporated in Part IV of the Indian Constitution. However, the Constitution of India is
conspicuous by absence of express mention of certain rights proclaimed in the Universal Declaration such as right to special care and assistance to mothers and children and some social protection for all children, whether born in or out of wedlock [Article 25 (2)]; Parents' right to choose the kind of education for their children [Article 26 (3)]; Right of everyone to freely participate in the cultural life of the community to enjoy arts and to share in scientific advancement and its benefits [Article 27 (1)]; and right of everyone to the protection of the morale and material interests resulting from any scientific, literary or artistic production of which he is the author [Article 27 (2)]. As we have seen earlier in the case of fundamental rights, so also in respect of the above rights absence of express mention does not mean that these rights have not been incorporated in Indian Constitution. As a matter of fact, the above rights are either subsumed in the existing rights or are part thereof or have been expressed in a little different wording and having a little different scope. For example, Article 39 (f) charges the State to direct its policy towards securing "that children are given opportunities and facility to develop in a healthy manner and in conditions of freedom and dignities and that childhood and youth are protected against exploitation and against moral and material abandonment. Similarly, Article 42 makes "provision for just and humane conditions of work and maternity relief. Article 47 provides for the "Duty of the State to raise the level of nutrition and standard of living and to improve public health". So far as human rights concerning economic, social and cultural aspects are concerned, the fact remains that Directive Principle of State Policy contained in Part IV of the Constitution are definitely much more exhaustive than the Universal Declaration. There are a number of principles and rights contained in Part IV of the Constitution which do
not find mention in the Universal Declaration. Such rights and principles are; The ownership and control of the material resources of the community to be so distributed as best to subserve the common good [Article 39 (b)]; Operation of economic system not to result in the concentration of wealth and means of production to the common detriment [Article 39 (c)]; Equal Justice and free legal aid [Article 39-A]; Organization of village panchayats (Article 40); Participation of workers in management industries (Article 43-A); Uniform Civil Code (Article 44); Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections (Article 46), Protection, improvement and safeguarding of forests (Article 48-A) etc. As the human rights provisions of the U.N. Charter and the Universal Declaration were influenced by the historical background especially the large scale violations of human rights and atrocities perpetrated during the Second World War, so also the concept of human rights in the form of Fundamental Rights and Directive Principles were influenced by the historical background and the conditions that prevailed in the sub-continent of India before the adoption of the Constitution. Yet another feature of the Universal Declaration which deserves mention here is the emphasis on everyone's duties to the community in which alone the free and full development is possible. This provision is contained in Article 29 (1) of the Universal Declaration and is a welcome feature because liberty is a social contract if a person wants to enjoy his rights in the community he will have to respect the rights of others. Indian Constitution when adopted in 1949, and came into force in 1950 was conspicuous by absence of any mention of duties. This was a great lacuna which was sought to be rectified later on. The Constitution (Forty-second Amendment) Act, 1976 which came
into effect on 3-1-1977 inserted a new Part viz. Part IV-A entitled "Fundamental Duties" comprising of only one Article viz. Article 51-A. Because of the belated insertion and the position given to it under the Constitution, so far it has failed to make the desired effect. Nevertheless, the Fundamental Duties mentioned in clauses (a) to (j) of Article 51-A are more varied and exhaustive than the one mentioned in the Universal Declaration of Human Rights.

III. PUBLIC INTEREST LITIGATION (PIL)

The development of public interest litigation as a method of enforcing human rights has lent new relevance to the Indian Supreme Court's functioning in the sphere of human rights. Public interest litigation has been fashioned by the Indian courts in the context of the violation of the human rights of those people who are unable, for various reasons, to move the courts for a redressal of their wrongs. Such groups can be the poor, economically disadvantaged, or those socially disadvantaged or handicapped including women, who are unable to move the court or who cannot afford the cost of legal services. Often these groups do not know how to set the system of justice in motion. The courts have been moved by others—whether they are social workers, journalists, law teachers or social welfare organizations, for the benefit of such disadvantaged groups. Public interest litigation was thus permitted to secure the release of bonded labourers, for the welfare of inmates of special institutions like mental asylums; for securing the rights of undertrials and other prisoners; and even of destitute children, and so on. Procedural requirements have also been relaxed when required. One of the first cases of public interest litigation, Hussainara Khatoon and others v. Home Secretary, State of Bihar\textsuperscript{36} Arrose out of two articles
published in a newspaper highlighting the plight of undertrial prisoners languishing in various jails in the State of Bihar for long periods for no reason other than their inability to furnish the money demanded for release on bail. This led a Supreme Court lawyer to knock at the doors of the court through a petition for habeas corpus. The court promptly ordered the release of over 40,000 undertrials on personal bonds or, in some cases, no bonds at all. Such public interest litigation has been permitted on behalf of slum dwellers in Olga Tellis and others v. Bombay Municipal Corporation and others a case filed at the instance of a journalist, construction workers in Peoples Union for Democratic Rights v. Union of India and others inmates of state-run protective home for girls, in Dr. Upendra Baxi and others v. State of U.P. and others. It has even been permitted at the instance of a prisoner who complained through a post card to the Supreme Court of ill-treatment meted out to another prisoner. In consequence, the courts are receiving a large number of letters from people who have grievances of one sort or another. All the High Courts and the Supreme Court now, have public grievance cells which examine these letters to see whether judicial intervention is required in any of the cases. There is no doubt that a lot of work has been generated before the overcrowded courts on account of the opening up of this new avenue of judicial redress. Like all such innovations, public interest litigation has advantages and disadvantages. A lot of care and caution have to be exercised in entertaining petitions and in ensuring that the facility is not misused for ulterior ends. Even so, public Interest litigation has seemed to suddenly make the courts relevant to the life of ordinary people. It has enabled some genuine grievances to be redressed through a legal process rather than in an extra-judicial manner. Public interest litigation has now been
extended to oversee proper investigation of crimes, especially corruption cases against the executive, to monitor the proper functioning of political institutions and for the protection of the environment. The latter, in particular, forms a major part of such litigation. This kind of litigation has also forced the courts to devise new kinds of relief. For example, in cases relating to the stopping of harmful practices which violate human rights such as bonded labour, child labour or the sale of young girls for prostitution, the courts have had to resort to giving detailed administrative directions. Quite often these have to be given on an on-going basis to ensure that the orders are complied with by the administration. Sometimes, the court appoints a monitoring committee or nominates an organization to supervise the implementation of its directions. Of course, the task is easier when the administration cooperates. That is why at times, the whole process is described as non-adversary jurisdiction. Sometimes, new fact-finding mechanisms have been devised. Obviously, there are possibilities of misuse of the procedure. The courts have, therefore, to be vigilant so that persons motivated by extraneous considerations do not abuse the process of the court. But public interest litigation remains, if properly used, a very effective way of securing the human rights of socially disadvantaged and economically handicapped persons.

Public interest litigation is a strategic arm of the legal aid movement intending to bring justice within the reach of the poor masses. It is different than the traditional litigation which is essentially of an adversary character involving a dispute between two litigation parties, i.e., one making a claim or seeking relief against the other and that other opposing such claim or resisting such relief. It is brought before the court not for the purpose of enforcing the right of one individual
against another as happens in the case of ordinary litigation, but is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large number of people who are poor, ignorant or in a socially or economically disadvantage position should not go unnoticed or un-redressed. Public interest litigation thus secures distributive justice to the poor, illiterate and the weaker segments of the society. Those who cannot move the courts of their own, an action is initiated on their behalf by a public spirited individual or group of individuals. The strict rule of *locus standi*, i.e. a person aggrieved only can initiate the action is relaxed in the case of public interest litigation. It has become though recently an important instrument of distributive justice to the majority of Indian population who are poor and ignorant of their rights, and thus unable to have recourse to the courts of law for the redressal of the wrongs perpetrated upon them. These days the developing jurisprudence of social and economic right encapsulates freedom from indigency, ignorance and discrimination as well as the right to healthy environment, to social security and to protection from financial, commercial, corporate or even governmental oppressions and frauds. The conferment of these rights on individuals and groups and imposition of public duties on the state and other public authorities for taking positive action often generates situations of conflict where a single human action can be beneficial or prejudicial to large group of people. This makes the traditional scheme of litigation, which is merely a two party affair, entirely inadequate to modern needs. Thus, emerges the jurisprudence of public interest litigation whose aim is to remedy the wrongs committed towards the public at large or a determinate section of the public by the state or any of its surrogate or agencies. The only way out to redress and prevent the
breach of public duties is through public interest litigation. It will constitute a sufficient check on the misuse and abuse of power by public bodies and authorities. It is a matter of common knowledge that failure to perform a public duty often promotes disrespect for the rule of law and leads to corruption and inefficiency. The new social and collective rights and diffuse interests created for the benefit of the deprived sections of humanity will thus become meaningless and ineffectual. In such circumstances, it would be better, if any member of the public should have the right to maintain an action for the redressal of a public wrong or public injury. The risk of legal action against the state or a public authority by any citizen, it is submitted, will induce the state or its surrogate agency to act with greater responsibility and care, thereby improving the administration of justice. Therefore, it is absolutely essential that the rule of law must save the people from lawless street and bring them before courts of law. Public interest litigation secures an access to justice and upholds the rule of law. In the Judge's case, the petitioners were mostly practicing advocates; they challenged the validity of a circular issued by the Law Minister dealing with transfers of High Court Judges including the grant of short term extensions alleging that these were directly subversive of judicial independence which was a basic feature of the Indian Constitution. Petitioners also contended that in upholding the independence of judiciary not merely the sitting judges, but also lawyers practicing in various High Courts in the country were keenly interested because in the task of administration of justice the role of lawyers and judges were complementary to each other and practicing lawyers as a class were an integral component of justice machinery and thus were vitally interested in the maintenance of
a fearless and independent judiciary to ensure a fair and fearless justice to the litigants. Accepting the plea, Bhagwati, J. remarked:

The petitioners have a vital interest in the independence of the judiciary and if an unconstitutional or illegal action is taken by the State or any public authority which has the effect of impairing the independence of judiciary, the petitioners would certainly be interested challenging the constitutionality or legality of such action.47

The learned judge further observed;

The circular letter, on the averments made in the writ petition, did not cause any specific legal injury to an individual or to a determinate class or group of individuals, but it caused public injury by prejudicially affecting the independence of the judiciary. The petitioners being lawyers had sufficient interest to challenge the constitutionality of the circular letter and they were, therefore, entitled to file the writ petition as public interest litigation.48

In Fertilizer Corporation Kamgar Union,49 the question before the court for consideration was whether the workers working in a government company could challenge the sale of certain old machinery by the management through a writ petition filed under Article 32. The court dismissed the petition on two grounds, first, it was doubtful if any of the fundamental rights of the workmen was infringed by the impugned sale so as to justify a petition under Article 32. Secondly, the court did not find the sale to be unjust, unfair or malafide. On the maintainability of the writ petition, however, the court made certain observations, which has a bearing on the aspect of workers locus standi, i.e., interest in filing the petition. Chandrachud, C.J, speaking on behalf of himself, Fazal Ali and A.D. Koshal, J.J. observed:
Maintainability of a writ petition which is correlated to the existence and violation of a fundamental right is not always to be confused with the locus to bring a proceeding under Article 32. These two matters often mingle and coalesce with the result that it becomes difficult to consider them in water-tight compartments. The question whether a person has the locus to file a proceeding depends mostly and often on whether he possesses a legal right and that right is violated.\textsuperscript{50}

The Chief Justice further observed:

But, in an appropriate case, it may become necessary in the changing awareness of legal rights and social obligations to take a broader view of the question of locus to initiate a proceeding, be it under Article 226 or under Article 32 of the Constitution. If public property is dissipated, it would require a strong argument to convince the Court that representative segment of the public or at least a section of the public which directly interested and affected would have no right to complain of the infraction of public duties and obligations. Public enterprises are owned by the people and those who run them are accountable to the people. The accountability of the public sector to the Parliament is ineffective because the Parliamentary control of public enterprises is "diffuse and haphazard." We are not too sure if we would have refused relief to the workers if we had found that the sale was unjust, unfair or malafide.\textsuperscript{51}

Justice V.R. Krishna Iyer was more emphatic in laying down the exact norms of sufficient interest criterion. The learned judge remarked:

If a citizen is no more than a wayfarer or officious intervener without any interest or concern beyond that belongs to any one of the 660 million people of this country, the door of the court will not be ajar for him. But he belongs to an organisation which has special interest in the subject-matter, if he has some concern deeper than that of a busybody, he cannot be told off at
the gates although whether the issue raised by him is justifiable may still remain to be considered.32

A worker clearly has an interest in the industry, if he brings an action regarding an alleged wrongdoing by the board of management he will have standing to do so under Article 226. Article 43A of the Constitution confers, in principle partnership status to workers in industry. He cannot be kept away on technical considerations if he seeks to remedy wrongs committed in the management of public sector. In addition to sufficient interest theory, this judgment also affirmed that for invoking the jurisdiction of the Supreme Court, it is not necessary to show the breach of a fundamental right. Breach of a legal right will be sufficient to initiate the public interest proceedings. What is sufficient interest to give standing to a member of the public would have to be determined by the court in each individual case. No hard and fast rule can be laid down in this regard. The matter is to be left to the discretion of the court. The reason is that in a modern complex society which is seeking to bring transformation of its social and economic structure and trying to distribute justice by creating a new category of social, collective, diffuse rights and interests and imposing new categories of public duties on the state and other authorities infinite number of situations are bound to arise which cannot be imprisoned in a procrustean formula. The judge who has the correct social perspective and possesses a constitutional wavelength will be able to decide, whether a member of the public moving the court in a particular case has sufficient interest to initiate the action,53 Schwartz and Wade has rightly noted:

Restrictive rules about standing are in general inimical to a healthy system of administrative law. If a plaintiff
with a good case is turned away, merely because he is not sufficiently affected personally, that means that some government agency is left free to violate the law, and that is contrary to the public interest. Litigants are unlikely to expend their time and money unless they have some real interest at stake. In the rare cases where they wish to sue merely out of public spirit why should they be discouraged.\[54\]

In *People's Union for Democratic Rights v. Union of India*,\[55\] one of the questions involved was whether it was necessary to show a breach of a fundamental right before invoking the jurisdiction of the Supreme Court under public interest litigation. The court answered the question in the negative, but observed what is a breach of fundamental right must be looked at from a broader perspective. Let us see what the court meant by the term broader perspective and for this it is necessary to look into the facts in brief. For the construction of Asiad Games complex, the Union of India, Delhi Development Authority and Delhi Administration entrusted the construction work to several contractors. The contractors engaged the contract labour through *Jamadars*, who brought the labour from different parts of the country to the construction site. The People's Union for Democratic Rights alleged that the norms laid down in the Minimum Wages Act, 1948; The Equal Remuneration Act, 1976; Employment of Children Act, 1938, as well as Article 24 of the Constitution were not observed by construction authorities towards the workers. The violation of Contract Labour (Regulation and Abolition) Act, 1970 and Inter-State Migrant Workers (Regulation of Employment and Conditions of Service) Act, 1979 was also alleged. The Union of India and other authorities in their reply affidavit denied the violation of any of the aforesaid laws. However, the Union of India did admit that *Jamadars* were probably making some deductions out of the wages paid
to the workers. As to the employment of children below the age of 14, Union of India and other authorities asserted that the Employment of Children Act, 1938 was not applicable to the construction workers. Court expressed its disgust over the fact that though India was a party to Convention No. 59 adopted by I.L.O., the Union and the state governments had not extended the Act to the construction work which was a hazardous occupation. However, the court relied on Article 24 which prohibits the employment of children below the age of 14 years in any factory or mine or in any other hazardous employment and held the employment of children below 14 to be violative of Article 24. As to the violation of the provisions of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, the Union of India asserted that since the Rules under the Act were not finalized, the Act was not enforceable in Delhi. The court observed that though the Rules had not been finalized, nonetheless, those provisions of the Act whose enforcement did not require framing of the Rules were certainly enforceable. Regarding the violation of Equal Remuneration Act, 1976, the court observed that it was in effect and substance a complaint of breach of equality clause of Article 14. Similarly, for the non-observance of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and Inter-State Migrant Workers (Regulation of Employment and Conditions of Service) Act, 1979, the court observed that it was in effect and substance a complain relating to violation of Article 21. Article 21 guarantees the right to life and personal liberty, it is now well established that right to life is not confined merely to physical existence, but includes within its ambit the right to live with human dignity, and the state would not deprive anyone of this right because no procedure by which such deprivation might be
effected could ever be regarded as just, reasonable and fair, since this statute is nothing but the recognition of this aspect of the fundamental right to life, any violation of any of the provisions of the Act is in effect a violation of this fundamental right. Upholding the breach of Minimum Wages Act, 1948, the court observed that the statute was nothing but an effort to implement the fundamental right contained in Article 23(1) which prohibits traffic in human beings, beggar and other forms of forced labour, Bhagwati, J., held that the payment of wages less than the minimum wage was a violative of Article 23(1) and amounted to forced labour. This case amply demonstrates that whenever there is a violation of social legislation, a petition can be filed in the Supreme Court for its enforcement. The strict rule that relief under Article 32 is available only if there is breach of a fundamental right does not apply in case of public interest litigation. In the words of Professor Diwan: "a public interest petition will lie in the Supreme Court whenever there is a breach of any social legislation, since social legislations are passed to ensure fundamental rights for the weaker sections of society the rights which are usually denied to them a writ petition will also like whenever there is a breach of any law which is passed in pursuance of any Directive principle of state policy since the Directive Principles are as much fundamental part of the Constitution as are the Fundamental Rights.

IV. HUMAN RIGHTS AND NATIONAL HUMAN RIGHTS COMMISSION

The attempt to protect, through judicial decisions, the basic human rights, the fundamental rights as well as the Directive Principles of State Policy (reflecting social, economic and cultural rights) leads us to the fundamental question, should a separate and independent National
Human Rights Commission be established or not? If established, would it not undermine the judicial process through which the rights have got full protection? In favour of National Human Rights Commission Justice T.K. Thommen observed that the National Commission on Human Rights is, in many respects, intended to be an ombudsman to oversee the enforcement of laws and effective protection of human rights. It is the primary responsibility of the legislature to address itself to be enactment of effective laws; it is the responsibility of the executive to implement laws promptly and justly; it is the function of an independent judiciary to administer justice, according to law. The power of the proposed commission are intended to be so wide as to oversee the functioning of the organs of the state, not with a view to interfering with their constitutionally assigned functions, but to highlighting before them the passing problems endangering human rights in order that the Commission, which the people of this country have given into themselves to safeguard a true democratic system of administration, becomes a meaningful instrument of justice and equity and an invigorating force of carry the nation forward. The people of this country, rich or poor, literate or illiterate, forward or backward, demand justice being done to them without fear or favour. The commission is not a court. Its function is to be the watchdog of human rights. Its procedure is not expected to be adversarial or accusatorial. It must not allow itself to be bogged down by procedural formalities. With a view to strengthen the process of the protection of human rights in India, the Government of India decided to set up at national level an autonomous National Human Rights system. On 14th May 1993 the Protection of Human Rights Bill was introduced. But on 29th September 1993, the President of India, under Article 123 of the Constitution promulgated an
ordinance for setting up a National Human Rights Commission to inquire into the complaints of violations of human rights against the public servants in every part of the country. The Union Parliament promptly passed it. This paved the way for the setting of a National Human Rights Commission. It is a fully autonomous body; its autonomy derived out of the method of appointment of the members, their fixity of tenure, and statutory guarantees thereto, the status they have been accorded; the manner in which the staff responsible to the commission would be appointed and would conduct themselves; as also the autonomy it enjoys in terms of its financial powers. Accordingly the NHRC started its functioning with its first chair person justice Ranga Nath Mishra on 12th October 1993. NHRC is a fully independent body and based on two important pillars namely autonomy and transparency. It has been vested with the powers of quasi-judicial in nature. Fact-finding is the core of human rights activity which has been effectively used by this investigatory body. The status of the Commission is not confined with its status only rather it has its constitutional validity under the Commission of Inquiry Act 1952. The status of the commission is also defined in International Law particularly in Paris Principle of 1991 and many international workshops on National institutions for the Promotion and Protection of Human Rights. There was widespread feeling among the general public and the intelligentsia in particular, that with a democratic Constitution granting Fundamental Rights enforceable by the courts and provision for periodical elections on universal adult franchise, there was no need for an institutional mechanism for monitoring and safeguarding human rights. By setting up the Commission like NHRC, India has fulfilled not only the objectives as enumerated in the Preamble of the Constitution of India
but also the provisions of Article 51 as mentioned in the Part-IV of the Constitution. The basic approach of the Commission, namely its determination to come to grips as early as possible, with gravest areas of human rights violation has encouraged people to protect their human rights through the Commission. Immediately after the Commission was set up, it issued directives to all state governments to ensure that incidents of custodial deaths or rape must be reported to the Commission within 24 hours by the District Magistrate/ Superintendent of Police, failing which the Commission would presume that there was an attempt to suppress the incidents. Following these instructions a number of reports have been received from different states in respect of deaths which have occurred in police or judicial custody. These reports are studied by the Commission and action recommended against officers found, prima facie, guilty. One very significant development in this connection has been a higher level of awareness among officials along with reports of the commission on incidents of custodial deaths. Nevertheless, 15 years after it was established, the NHRC has received popular recognition as indispensable institution of governance due to its sincere and spontaneous efforts to maintain the standards of integrity, efficiency and probity and to ensure accountability and transparency in its functioning. Consequently, it now enjoys great moral authority and the responses to its recommendations by the concerned agencies of central and state governments are overwhelming. By and large, the commission's recommendations for the grant of immediate interim relief to the victims or the members of their families have been adhered to by the concerned governments or authorities, although this is not always so in case of its recommendations for departmental or criminal actions. The National Human Rights Commission prepares and submits annual report
to the Central Government about the position of human rights in the country. From the past years reports it is clear that it has been successfully working from the date of its inception. The NHRC has already received more than four lakhs complaints from various parts of the country. These complaints covered almost all the aspects of the violations of human rights including excesses by armed forces and police, custodial deaths and rape, torture child labour and bonded labour, disappearances, dowry deaths and indignity to women, the rights of the disadvantaged sections of society especially of SCs and STs, conditions relating to jails, violence in areas of insurgency and terrorism, spherical problems of minority communities and environmental issue affecting the right to life and dignity and reasonable health. The commission either dismissed or disposed of complaints according the provisions as prescribed by the law and the Protection of Human Rights Act. During the years 1993-2010 (seventeen years), the NHRC has made great progress in effectively enforcing human rights. It has made many accomplishments and made many significant recommendations for changes in the laws as well as the Protection of Human Rights Act, 1993. Here some cases are mentioned as examples to know how, NHRC has been handling the cases since its inception.

Alleged amputation of male organ of Shri Jugtaram in police custody in Barmer, Rajasthan

On the basis of a press report that appeared in a newspaper dated 10 February 1994 and captioned "cops cutoff man's penis", the Commission took cognizance of the incident suo motu and called for a report from the Government of Rajasthan. The State Government sent a preliminary report stating that one A.S.I, and one constable had been arrested in
connection with the incident. Simultaneously, they along with one sub-
Inspector and two other constables had been placed under suspension. It
was further indicated that investigation of the matter had been taken
over by CBI on 19 February 1994 and that, for better medical care, the
victim had been sent to SMS Hospital, Jaipur where he was undergoing
medical treatment in a plastic surgery ward. On perusing the report, the
Commission on 15 March 1994 directed CBI to complete the
investigation within 3 months and submit its report to the Commission
soon thereafter. The Commission also directed CBI to keep it informed
of the progress of the matter from time to time. The investigation has
since been completed and a charge sheet has been submitted.

A college Lecture becomes a victim of police Brutality: Kerala (Case
166/11/98-99)

The Commission took *suo-motu* cognizance of an instance of police
brutality, published in the Hindustan Times on 3 September 1998, under
the heading police brutality again in Kerala. The report stated that a
college lecture was beaten mercilessly by the police as he had dared to
question the fare demanded by the drive of an auto rickshaw he had
taken while visiting Kozhikode. The Commission issued notices to the
Chief Secretary and DGP, Government of Kerala. According to the
report submitted by the Commissioner of Police, the deeds of the
concerned police officials were confirmed. On the basis of this factual
confirmation, the government had suspended the culprits (2 sub-
inspectors, 1 ASI, 1 Head Constable, 3 police constables) and an enquiry
was ordered against them.

Compensation for illegal detention - complaint from Shri Ranbir
Yadav: Uttar Pradesh

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The Commission took cognizance of a telegraphic complaint received from Shri Inderjit Yadav alleging that his brother Shri Rambir Yadav was forcibly taken away by the police on 23 April 1996 from their milk dairy located at Lal Kuan, District Ghaziabad and illegally detained until 27 April 1996, purportedly for questioning him in regard to the murder of a Captain Rajpal. In pursuance of the Commission's directions, the Investigation Division called for a report from SSP Ghaziabad. The report stated that Rambir Yadav was called to the Police Station on 27 April 1996, in connection with a case and allowed to go the same day. When the police version was communicated to the complainant, he contradicted it and reiterated the allegation, saying that his brother was picked upon 23 April and released on 27 April 1996 after obtaining his signature on a blank paper. Under these circumstances, the Commission directed its Investigation Division to undertake a spot inquiry. On the basis of the report of its Investigation Division the Commission was convinced that this was a case of illegal detention and was a compensatable case. As such, the Commission recommended payment of compensation of Rs. 10,000/- to the victim and also directed Inspector General of Police, Meerut to inquire into the matter for fixing the responsibility of officers for the illegal detention. IGP, Meerut inquired into the matter and departmental action has been taken against the two guilty police officials; liberty was sought from the Commission to recover the amount of the compensation from the guilty police officials.

Killing of four persons in a fake encounter by police, U.P. (Case no. 12235/24/98-99)
Shri Panna Lal Yadav, a resident of Village Daulatiya, District Varanasi, Uttar Pradesh, first by means of a telegram dated 19 October 1998 then through a longer complaint, alleged that his son Om Prakash and three others had been killed by the police in a fake encounter on 17 October 1998. The Commission found the police version unconvincing and therefore, ordered its own Investigation wing to look into the matter. The Commission has since been informed by the Government of Uttar Pradesh that the State CID has finalized its enquiry and has sought the State Government approval for the prosecution of 34 police officials involved in the case. In addition, department action is also being taken against 42 police personnel found guilty of various acts of commission and omission in the matter.

Alleged rape in custody by an Assistant Sub-Inspector of Delhi police

In July 1994, pursuant to its circular of 14 December 1993, the Commission received a report from the Dy. Commissioner of Police, South District, New Delhi, in regard to a custodial rape by an ASI of the Delhi Police force. The Commission, on perusal of the report from the Government of NCTD, and also the report of the PUDR, directed the Government of NCTD to explain as to why the woman was detained at the police station for the night, how it was that there was no supporting entry for her detention at the police station for investigation, particularly at night. The Commission took serious objection to the persistence of such practices, notwithstanding the decision of the Supreme Court given some 15 years ago in the case of Nandini Satpathi v. State of Orissa.

Sexual Exploitation of Woman: Rajasthan (Case No. 685/20/97-98)
The Commission received an anonymous complaint alleging that a 24 years old woman had been forcibly detained and was being sexually abused by certain persons at Jaipur for the last 2-3 years. According to the complaint, the woman had a young child and was in a pitiable condition and the culprits were planning to force her into prostitution. The Commission took cognizance of the anonymous complaint. Not satisfied with the report, the Commission deputed its investigation team for an on-the-spot inquiry. The Commission considered the report of its investigation team and noted that the law had been set in motion. Further taking note of the travails of the Victimized woman as well as the trauma that she has undergone, the commission recommended that the Government of Rajasthan accord her appropriate assistance, inter alia by providing her suitable employment.

Rape of a Minor Dalit Girl by Protectors of Law- Uttar Pradesh
Case No. 9133/24/98-99

Shir Chandradhas Maurya, a member of Samta Sainik Dal and resident of District Bulandshahr, Uttar Pradesh in a complaint to the commission alleged the kidnapping, rape and suicide of a 15 year old dalit girl ABC (name withheld to protect identity). As the complaint related to a grave violation of human rights of a dalit girls, the commission took cognizance of this matter on a priority basis and issued notice to SSP Bulandshahr calling for a report. Upon perusing the report, the Commission held that SHO Dibai and In-charge, Fire Station, Dibai has not conducted themselves in a manner befitting their office and responsibilities and that they had not only shown a lack of sensitivity in a matter of grave importance, namely the protection of a dalit girl subjected to sexual assault, but had been thoroughly negligent in not
taking cognizance of the complaint lodged by ABC. On a consideration of all the facts and circumstances of the case, the commission recommended to the Government of Uttar Pradesh that:

While initiating disciplinary proceedings for major penalty against the concerned SHO and Fire Station Officer, they may be placed under suspension with immediate effect; it entrust the investigation of the case to the State CID in order to ascertain further the role of these two officers, as also that of another Constable, who was alleged to have aided and abetted in the kidnapping and rape of ABC.

Pursuant to the Commission's recommendations, the State Government started a disciplinary inquiry and an inquiry by the state CID. The compensation was also sanctioned.

Education of Children of Sex Workers: Delhi Case No. 16754/96-97/NHRC

The Commission was of the considered view that the breach was inconsequential. Having regard to the circumstances, the commission held that MCD, being a local authority and an arm of the State, had a duty to implement the programmes of education and health care of the children of sex workers.

Death of workers in silicon factories of Madhya Pradesh case No. 7894/96-97/NHRC

Having regard to the provisions of the Indian Constitution as well as to the International Human Rights instruments with regard to the right to life. The Commission gave the following directions to the state for compliance in future:
1. To ensure the establishing of BHEL machinery in the factories to prevent dust pollution and to ensure that pollution free air is provided to workers.

2. Periodic inspection on a monthly basis, by the Labour Department and reports made to the State Human Rights Commission for monitoring.

3. Widows and Children of deceased workers to be taken care of by the factory owner by providing assistance.

4. To ensure that child labour is prevented by the following methods.

5. Establishing schools at the cost of factory owners, with assistance from the State for the education of workers children.

6. The provision of periodic payments for their education and insurance coverage at the cost of factory owners.

7. The position of mid-day meals and clothing to dependent children or children of deceased workers.

**Killing of 7 Dalits by Upper Castes: Karnataka (Case No. 628/10/99-2000).**

The Commission received complaints from a number of organizations concerning the killing of 7 Dalits in Karnataka on 11 March 2000 by persons belonging to the upper castes. They requested a probe by the Commission and called for the granting of compensation to the victims. The Commission, in its proceedings dated 19 December 2000 held that the failure of the Government of Karnataka to protect Dalits was, in this
instance, beyond doubt. It therefore issued a show causes notice to the Government asking as to why immediate interim relief u/s 18 (3) of the Act be not awarded to the next-of-kin of the deceased.

**NHRC’s Initiative Results in the Release of Bonded Labourers: Haryana (Case No.513/7/98-99).**

The commission received a complaint from Prof. Sheoraj Singh, General Secretary of the Bonded Labour Liberation Front, Delhi alleging that 20 persons including men, women and children were being kept as bonded labourers in a stone quarry in Gurgaon, Haryana. According to the complaint, though the Sub Divisional Magistrate of the area had visited the site and admitted that minimum wages were not being paid to the labourers, he had refused to issue release certificates to them. The Commission expressed its appreciation of the role of the officers who were involved in the release of the bonded labourers and the subsequent effort to rehabilitate them.

**Killing of 29 bus passengers in peren Sub-Division: Nagaland.**

The Commission felt that ex-gratia payment of Rs. 10,000/- sanctioned to each of the families of the deceased was not adequate, and recommended to the State Government that it enhance the quantum of ex-gratia relief from 10,000/- to Rs. 50,000/- to the families of the 29 persons killed in the incident and make the payment accordingly. The State Government of Nagaland intimated that the amounts of ex-gratia payments of Rs. 50,000/- each to the next to kin of 28 victims have since been made on 1.4.1998.

The Commission took *suo motu* cognizance of a newspaper report in *The Times of India* dated 22 March 2000 in respect of the killing of 35 persons of the Sikh community in Anantnag District, Jammu & Kashmir by militants. A subsequent report submitted by the Director General of Police, Jammu & Kashmir indicated that a case had been registered in respect of the killing of the 35 Sikhs and that investigation was in progress. The report further indicated that, of the twenty accused persons identified in connection with the killing of 35 Sikhs, 6 were killed in subsequent encounters; 2 were further detained under the Public Safety Act and 12 were absconding. A chargesheet had been filed in the case on 13 November 2000. The report stated that three Pakistan nationals belonging to Lashkar-e-Toiba had confessed their involvement in the killings. The State Government had made adequate security arrangements for the protection of villagers residing in vulnerable areas and provided an ex-gratia payment of Rs. 1 lakh to the next of kin of the deceased and Rs. 75,000 to those permanently disabled. The Commission had directed the State Government to furnish a report on the action taken on the findings and recommendations of the Justice Shri S.R. Pandian Commission, as well as to furnish a progress in respect of the case before CJM Anantnag in respect of the killings of 5 persons on 5 March 2000, allegedly in a fake encounter.
Killing of 15 villagers by naxalities in Chhattisgarh

After observing the contents of the news report, the Commission said that if the contents are true, there is a serious issue of violation of human rights.

Police firing on students in Meghalaya

The Meghalaya Government has informed the Commission that an amount of Rs. 5 lakh each had been paid as a special assistance to the family of those killed in police firing in Tura and Williamnagar districts of the State on 30 September 2005. After going through the report of the State Government, the Commission held that in view of the appropriate action taken by the state Government with respect to the ex-gratia compensation, no further intervention is called for.

The asks Chief Secretary, Delhi Government for Factual report on 55 Child Labours.

The Commission has asked to the Chief Secretary, Delhi Government for a factual report on 55 Child labours who were rescued from embroidery units in South Delhi. The Commission, after observing the contents of the report, said if found true it raises the issue of bonded Child Labour, which is worst affront to human dignity and constitutes an offence under the Bonded Labour Act. Taking note that the children were lodged at the Ashraya Kendra in the capital, the Commission further said that the matter could not be stopped at mere lodging the rescued children in the Kendra. The Commission said that the news reports should be sent to Chief Secretary, Delhi Government, Commissioner Police, Delhi, Labour Secretary, Delhi Government, for
factual report in four weeks. It also asked the Delhi Government to inform the Commission the rescued children.

**NHRC orders compensation to the next of kin of 45 more persons in the Punjab Mass Cremation Case.**

The national Human Rights Commission has directed the Punjab Government to pay Compensation to the next of kin of 45 more persons who died in police custody in its anti-terror drive during 1984-1994. Accordingly the Commission has directed the State of Punjab to pay compensation of Rs. 2.5 Lakhs each to the next of kin of 45 deceased, with this, the Commission was so far provided compensation to 194 people.

**NHRC calls for report from UP Government regarding Meerut Fire Tragedy**

Taking *suo moto* cognizance of reports in the print and electronic media of the fire tragedy in Victoria Park in Meerut, Utter Pradesh on 10 April 2006, the National Human Rights Commission (NHRC) has called for a report from the Chief Secretary and DGP, Uttar Pradesh.

**NHRC recommends post-quake measures to Centre and State Government.**

The NHRC made a series of recommendations to the Home Ministry, Government of India and the Jammu and Kashmir government on post-quake measures. The recommendations are based on a report by its three-member team, which had toured the quake-affected areas of the J&K including Tangdhar and other parts of J&K has been devastated following an earthquake on the morning of October 2005. Some of the
key recommendations made by the NHRC to the Governments at the Centre and the State of J&K are:

- Ensure equitable distribution of relief in kind.

- Consider having centralized collection and distribution centers at various places in the affected areas where relief material could be received from NGOs, civil society and other private agencies.

- Take steps to ensure that building material for repairing damaged property or restoring destroyed is available at the affected places.

- Where tents are not available, temporary shelter with all essential amenities be provided to the local population.

- Consider feasibility of construction houses in the affected areas with pre-fabricated building material.

- Prepare computerized list of orphaned children, widows and young girls.

- Prepare computerized list of dead and missing person to enable relief to next of kin.

**NHRC takes suo motu cognisance of students' death in police firing in Meghalaya**

The Commission has taken suo motu cognizance on the basis of a media report of the killing of students in police firing in Meghalaya on 30 September 2005. The news report published in a national daily on 1 October 2005 reported that at least 11 students were killed and nearly 90 wounded when police opened fire to quell thousands of students
protestors who had taken to the streets in Tura and William Nagar districts of Meghalaya. The Chief Secretary, Maghalaya has been asked to give his comments.

Other measures taken by NHRC to Prevent Human Rights Violation, NHRC Chairperson Calls on State machinery to be sensitive to human rights issues

Dr. Justice A.S Anand, chairperson, National Human Rights Commission (NHRC) has expressed concern of NHRC to the chief Secretaries and Directors General of Police towards human rights sensitivity. Speaking at the meeting of the Chief Secretaries and Directors General of Police held in New Delhi on 17 March 2006, he stressed that unless they show sensitivity, this sentiment can not be expected to percolate to the lower levels. Pointing out to the diminishing level of sensitivity shown by some of the state machinery and the absence of promptness in addressing human rights concerns, Justice Anand stressed that sensitivity towards human rights issues is important. He stated that the purpose of holding this meeting is not to find faults but to appreciate and understand each other's point of view. In his address Justice Anand highlighted that the Commission has been receiving complaints of cases of alleged human rights violations. The number of complaints has steadily increased over the years ever since its inception. The Commission is consistently attempting to develop a culture of human rights in the Country, the NHRC strongly advocates that enjoy civil and political rights, economic, social, cultural rights cannot be put on the backburner, he said. He requested the- Chief Secretaries and Directors General of police to give proper importance to Economic, Social, Cultural Rights. On the conditions of jails, Justice Y.
Bhaskar Rao, Member, NHRC highlighted the need for State Governments to be factually correct in their reports to the Commission. He also observed that there was a need for filing of charge sheets in time as per the judgment of the Supreme Court in the Sheela Barse case. The case of a ninety-year-old under trial languishing in a jail in Chhattisgarh, underscored the need for urgent attention to the problems in jails. Shri PC. Sharma, Member, NHRC mentioned the need for proper planning to ensure that additional facilities, which are provided for the inmates, are not at the cost of increased congestion. Shri R.S Kalha, Member, NHRC in his remarks outlined the changes taking place globally and its impact on the domestic situation of a country. He cautioned all administrators on the need to reckon with international safeguards that are available and being increasingly invoked by citizens in their quest for justice.

Protest on Proposed reservation in higher education

The National Human Rights Commission has recommended to the Government that it should get examined the issue of reservation thoroughly. Reacting to the media reports that showed some of the students and doctors on hunger strike being removed for medical care during the agitation, the Commission said that the Government should ensure that fairness and justice is not denied to any section or class of the society. Describing the reservation issue as a complex one, the Commission felt that Government should also ensure a balance and orderly development of all sections and classes of society while implementing its policy.

The ongoing case studies reveal the achievement of NHRC since its inception. It has proved that it is a unique statutory body and has performed its duties according to the norms fixed by the Protection of
Human Rights Act. By disposing the different cases of human rights violation of divergent nature, it has compelled the cynics to think otherwise and change their attitude towards the NHRC which they had developed initially. In some cases the NHRC has taken a bold stand to defend human rights and created havoc among the agencies where human rights violation is rampant. It is seen that within the seventeen years of its existence, it has proved its excellence where it has got cooperation. Hence it can be concluded that no organization like National Human Rights Commission can flourish in the environment of human rights violation if it does not get a congenial atmosphere of co-operation and awareness.

Conclusion:

The entire human rights jurisprudence of India is based on two parts of the Constitution of India i.e. Fundamental Rights and Directive Principles of State Policy. The international human rights norms propounded by the United Nations in the Universal Declaration of Human Rights also constitute basis for human rights within the framework of Indian Constitution. The two covenants— The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights also extended material on human rights in Indian context. Many international instruments emerged to protect human rights, such as European Convention on Human Rights, the American Convention on Human Rights and the African charter on Human Rights and Peoples’ Rights. Besides these the United Nations has also set up several mechanisms including a Commission on Human Rights to give practical effect to many of these instruments. The Indian judiciary especially through
Apex Court examined the contents of Fundamental Rights and Directive Principles of State Policy to promote human rights jurisprudence. On the issue of equality, non-discrimination, prevention of sexual harassment, right to gender equality, right to life and liberty and on the doctrine of equal pay for equal work, the judiciary has exhausted its best possible efforts for serving the cause of human rights.

To establish egalitarian society, to afford the policy of reservation to the extent of 50%, to ensure educational and cultural rights to minorities having a distinct language, script, culture of their own, the right to establish and administer the educational institutions of their choice by the minorities, the Indian judiciary played constructive role. A few landmark judicial pronouncements—M.R. Balaji and others v. State of Mysore & Others, Indira Sawhney v. Union of India and other and Dr. Preeti Srivastava & Others v. the State of M.P. & Others—are noteworthy to the effect. The challenge is to ensure that the minorities preserve their cultural identity and at the same time they are the part of the mainstream of national life. Nonetheless, it is bigger challenge that discriminatory laws and harmful customs and practices are not to be shielded in the guise of culture. India is also facing a major problem with regard to its socially and educationally backward classes. The United States face a similar problem in dealing with slaves who were free after the IIInd world war in given situation, those who were not in position to compete with more advanced sections on account of social discrimination, were assured of education and employment through reservation. Personal liberty under Article 21 of the Constitution of India has been construed covering a wide array of rights that go to constitute of life live in freedom with dignity.
The apex judiciary in post-independent India has adopted an activist approach in matters of protecting and enforcing human rights norms and over the years it has evolved several judicial techniques such as public interest litigation to effectuate remedial justice. Today human rights jurisprudence has a constitutional status. In present era of human rights, the judiciary through its role and interpretation has evolved the protection of human dignity.

The civilian and political rights as enshrined in the Universal Declaration of Human Rights find due place in part III of the Constitution of India. The most of the economic, social and cultural rights proclaim in the Universal Declaration of Human Rights have been incorporated in part IV of the Constitution. The Fundamental Duties enumerated under Article 51-A of the Constitution of India are more varied and exhaustive as compare to the Universal Declaration of Human Rights. The evolution of public interest litigation is recognized as method of enforcing the human rights. It is a strategic arm of the legal aid movement to bring justice within the reach of poor masses. It ensures distributive justice to the poor, illiterate and weaker segments of the society.

The establishment of National Human Rights Commission is intended to be an Ombudsman to oversee the enforcement of laws and effective protection of human rights. The Commission is not court. Its function is to be the watch dog of human rights.
REFERENCES


6. Supra note 1.


10. The European Courts, for example, have evolved the concept of 'value of work' for this purpose a concept which will, it is hoped, be adopted by the Indian courts in due course.

11. These are castes and tribes constitutionally notified as deserving of preferential treatment on the grounds that they have historically, been victims of institutionalized oppression.


15. JT 1999 (5) SC 498.


22. A.I.R. 1950 SC 27.

30. Supra note 17.
35. 1991 ISCI, 68, 76.
43. The term locus standi denotes legal capacity to institute proceedings, this doctrine is having its roots in private law litigation. In a typical case of private law litigation, following right injury pattern emerges; (1) The action is brought to vindicate private rights which are personal or proprietary, (2) The action is brought by the person in whom the right resides; and (3) Some injury is caused to the person or property of the plaintiff who brings the action. Injury to a legal right is the cause of action, that is to say the motive force, which urges the plaintiff to activate the legal process.
44. It is only after 34 years of the Republic, the Supreme Court of India has at long last become the Supreme Court for Indians. See Dr. Upendra Baxi, "Taking Rights Seriously: Social Action Litigation in the Supreme Court of India", The Review International Commission of Jurists No. 29, p. 37 (December 1982); or a detailed description of public interest litigation, see generally "How the Supreme Court Enforces Citizens Rights"


47. *Id.* at 195.


53. Supra note 46 at 192.


55. AIR 1982 SC 1473.


57. Paras Diwan, “Public Interest Litigation: An Arm of Legal Aid to Poor” (Unpublished).

