CHAPTER FIVE

DEVELOPMENT OF THE HUMAN RIGHTS MOVEMENT

IN THE POST-COLONIAL INDIA

5.1 Introductory

India’s independence represented for its people the start of an epoch that was imbued with a
new vision.\(^1\) India secured its independence from the British rule on 15 August 1947 and got
the opportunity to frame its own Constitution.\(^2\) The Indian national leaders set out to build a
secular society and a secular state, undaunted by the partition of India and the ensuing riots.\(^3\)

The main focus of this chapter is to trace the development of human rights movement in the
post-colonial India and to see how it got consolidated later on after the infamous emergency
(1975). In present times human rights are often perceived as important tools to fight for
human dignity and emancipation, and numerous NGOs and social movements use human
rights in their campaigns regarding various social and political struggles.\(^4\) Keeping this in

\(^1\) Bipan Chandra et.al. (2002), p. 1.
\(^2\) On 14 August 1947, at the stroke of midnight, India emerged independent after two centuries of British
colonial rule. The British had first set rule in India as traders in 1600. In that year Queen Elizabeth I
had granted a charter to the East India Company granting it a full monopoly on British trade with
India. Taking advantage of the prevailing disunity amongst the Indian rulers, the East India Company
and later Her Majesty’s government assumed full control over India by the second half of the
nineteenth century. The British domination continued up to the close of the Second World War. In the
aftermath of the war and with the disintegration of the British empire, independence for India became
imminent. For further details, see: M.V. Pylee (1977): *Constitutional Government of India*, New
Delhi: Asia Publishing House, pp. 47-139.
\(^3\) Bipan Chandra et.al. (2002), p. 2.
\(^4\) For further details, see: Sally Engle Marry (1998): “Global Human Rights and Local Social Movements in a
view, the researcher has endeavoured to discuss the role played by various NGOs (Non Governmental Organizations) in ensuring human rights to the people and the analysis of working of the National Human Rights Institutions have also been taken up in detail in this chapter. The researcher has also tried to focus on the various other social movements in India like the feminist movement, the movement for environmental protection and sustainable development, the *dalit* movement etc., that have contributed to a great extent to the increasing reliance on human rights concepts in India. At the end, the process of liberalization and globalization has been discussed in detail to see their impact on the human rights movement and to check whether it has promoted or demoted the concept of human rights as such.

There is no denying the fact that promulgation of the Constitution was definitely a watershed in the history of the development of concern for human rights in India. The process of the evolution of the Constitution began many decades before 26 January 1950 and has continued unabated since then. Its origin lies deeply embedded in the struggle for independence from Britain and in the movements for responsible and constitutional government in the princely states. More than passing resolutions on the need for, or framing proposals for the constitutional reform, the heart of the national movement’s contribution lay in its concrete political practice. This popularized amongst the people, the need for parliamentary democracy, republicanism, civil liberties, social and economic justice, which were amongst the essential principles of the Constitution.6

Moral vision, political skill, legal acumen: these were all brought together in the framing of the Indian Constitution. This was a coming together of what Granville Austin has rightly called the ‘national’ and ‘social’ revolutions respectively. The national revolution focused on democracy and liberty - which the experience of the colonial rule had denied to all Indians - whereas the social revolution focused on emancipation and equality which tradition and scripture had withheld from women and low castes.7

6 Bipan Chandra et.al. (2002), p. 32.
Moreover, the Universal Declaration of Human Rights was also adopted by the United Nations General Assembly on 10 December 1948, just an year before the adoption of the Constitution of India. Perhaps no other document has so much inspired the oppressed people all over the world other than the UDHR. Similarly the framers of the Indian Constitution were also inspired by it. The provisions of the Part III (Fundamental Rights) and of the Part IV (Directive Principles of State Policy) bear a close resemblance to the UDHR. The Preamble, the Fundamental Rights and the Directive Principles of State Policy altogether provided the basic human rights to the people of India.

It may be appropriate to mention here that the Indian Constitution aimed at creating conditions for the building of an egalitarian society in which individual freedoms were secure. It did not visualize abandonment of one ideal for the preservation of the other principle. At the same time, the relationship between individual liberty and social change was rightly envisaged as dynamic.

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9 We, the PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens – JUSTICE, social economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation; IN OUR CONSTITUENT ASSEMBLY this twenty sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

10 It is interesting to note that many rights enshrined in the International Covenant on Economic, Social and Cultural Rights find mention as Directive Principles in Part IV of the Indian Constitution.


12 Bipan Chandra et.al. (2002), p. 46.
Although the people of India were putting forward the demand for a bill of rights before the colonial masters since the last days of the nineteenth century, they could not however realize it until the making of their own Constitution. Aware of the human rights developments in the West and of India’s special needs and conditions from the very beginning, their conception of human rights was two pronged: non-interference by the state in some matters concerning the individual as well as positive action by the state in some matters for ensuring the realization of these rights for everyone, especially for those who were either neglected or were deliberately denied their participation in the society and its resources.

Therefore, the Constitution of India guaranteed both kinds of rights that were later presented in the two covenants in the international arena, that is the civil and political rights as well as the social, economic and the cultural rights. The relationship between these two sets of rights was one of the issues that preoccupied the Constituent Assembly. In the discussion on the right to due process of law in particular, the members of the Constituent Assembly expressed concern over limiting the state's power to enact social reforms. Nevertheless, the experience of repression by the colonial state was fresh and the liberal forces succeeded in making only the Fundamental Rights justifiable; the Directive Principles remained guidelines for legislation that could not be enforced. The foundation norm governing the concept of human rights is that of the respect for human personality and its absolute worth regardless of color, race, sex and other considerations.

Thus the Constitution laid the basis for reduction of social disparity by putting an end to any discrimination on the ground of religion, caste or sex. Redeeming the national movement’s major pledge to the depressed sections of the society, it provided reservations for the

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13 Since, “Due Process”, applied to life and individual liberty, renders preventive detention or detention without trial unconstitutional, it was decided not to extend its safeguard to life and liberty as well. Therefore the Draft Constitution that was placed before the Constituent Assembly contained no due process clause. Article 15 of the Draft Constitution which corresponds to Article 21 in the Constitution simply read: “No Person shall be deprived of his life or personal liberty except according to procedure established by law”. The phrase “procedure established by law”, was borrowed from Article XXXI of the Japanese Constitution. For more details, see: Granville Austin (1966), pp. 86-87, pp. 101-104.


Scheduled Castes and the Scheduled Tribes in educational institutions, employment and in the legislatures. Soon after 1947, a number of social reforms and welfare laws were passed. Landlordism was abolished and there was some redistribution of land. Various states passed legislations abolishing the Zamindari System which, under the British, had bestowed effective rights of ownership to the absentee landlords. After the end of the Zamindari System, the state vested rights of ownership in their tenants who came from the intermediate castes.\textsuperscript{16} A law was passed making untouchability an offence.\textsuperscript{17} The communal riots and bloody carnage that followed partition encouraged the framers to add two drastic provisions to safeguard their nascent republic’s unity and integrity. The first allowed for preventive detention without trial, even during peace time; the second for the suspension of certain fundamental rights during an emergency.\textsuperscript{18}

The inadequacies at various levels in the implementation of the provisions related to human rights in spite of much promising Constitution of India, gave impetus to the human rights movement in India which has its roots in 1930 when the first human rights group in the country - the Civil Liberties Union was formed, about which I have discussed in detail in the previous chapter. However, the human rights movement in the post-independence period is generally divided into two phases: The Pre-Emergency Phase and the Post-Emergency Phase.

### 5.2 Human Rights Movement in the Pre-Emergency Period

Immediately after independence, the restoration of the self-rule, adoption of democracy and faith in the Indian Constitution provided a hope of enlargement and development of civil liberties. However later on, with the Congress party coming in power after the national liberation, the civil and democratic rights were reduced exclusively to their legal and

\textsuperscript{17} Bipan Chandra et. al. (2002), p. 87.
\textsuperscript{18} See Indian Constitution, for preventive detention without trial see article 22 Clause 4-7; for emergency see article 352-360. Also see: Vijayashri Sripati, “Human Rights in India: Fifty Years After Independence.” In: Journal of International Law and Polity, Vol. 26, No. 1 (1997-98), pp. 93-136.
constitutional significance and lost their political moorings within the post-colonial democratic structure.19

The Civil Liberties Committee was founded in West Bengal in 1948 to protest against the state repression on the communists.20 Human Rights movement faced a constant dilemma on the issue of violence practiced by the strugglers and the activists on the one hand, and the violence of the state on the other. In 1948 the Civil Liberties Committee of West Bengal which protested against the repression of the state on the Communist activists, faced the question of its stand on the violence practiced by the mass movement.21

Nilanjan Dutta22 has observed that most of the communist activists whose rights were under attack, were accused of practicing violence, and the liberals who joined the Civil Liberties Committee, had to answer the government’s charge that they were condoning violence. On this issue, the Civil Liberties Committee leaders took a stand that was in fact an extension of the ideal that the primary task of the movement was to oppose the authoritarian tendencies of the state. In defending the communists, they presumed that the state violence was more harmful to civil society than the violence against the state practiced by the revolutionaries.23

In the first decade and half of the independent India, such inherent contradictions within the polity were glossed over by the euphoria of ‘nation building’, an agenda generally endorsed by political parties, the middle class and the elite civil society. However, when contradictions within the Indian polity and state came into wide open in the 1960s, the oppressive character of the Indian state began to be challenged by the student movements and ultra left formations like the Naxalite movement. The university which was the field of action for students and teachers, was also linked to the wider political movements in which the ‘margins’ of the

nation-state had not impinged on our consciousness in the way it had on many students and teachers who became involved in the Naxalite movement.\textsuperscript{24}

As a matter of fact the major civil liberties movement began with the brutal attack by the state on the naxalites. The movement raised the issue of ‘democratic rights’ of the oppressed sections of the society for justice and equality. While documenting the struggle, Sitharamam Kakarala argues, “Democratic rights are needed by those who have to struggle for justice while the fundamental rights are adequate for the privileged . . . . The struggle for democratic rights in essence is the struggle to assert the rights already guaranteed formally but not ensured in practice. Denial of the democratic rights takes the form of an attack on the right to assert rights already guaranteed”.\textsuperscript{25}

The movement of the 1970s was located in a luminal zone between Indira Gandhi’s coming to power and the shift from the Nehruvian era gradually becoming evident in terms of the possibilities of the emergence of an authoritarian state on the one hand, and the continued expectations from the welfare state that was responsive to the popular demand of the polity and its marginalized on the other. More than opposition to the state and the constitutional framework, it was the everyday misuse of the institutions and violation of procedures that formed the context for the beginning of the post independence human rights movement in India.

A resurgence of the civil liberties movement began only in the 1970s of the last century on a new and more or less independent plane. With the formation of the Association for the Protection of Democratic Rights (APDR) in West Bengal in 1972, there began the present and undoubtedly new and higher phase of the movement. Thus a new chapter in the process of evolution and development of the human rights movement in India was inaugurated. The movement acquired, more or less, an independent theoretical and organisational foundation leading to a continuous existence and a set of ongoing activities. In Andhra too, Andhra Pradesh Civil Liberties Committee (APCLC) was formed in 1974. Gradually this movement,

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\item \textsuperscript{25} Ghanshyam Shah (2007), p. 245. Also see Sitharamam Kakarala (1994), pp. 91-95, at p. 93.
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no doubt, became a permanent feature of Indian society, spreading to Delhi, Maharashtra, Assam, Punjab, Kashmir, Chhattisgarh, Tamil Nadu, etc. APDR was formed in West Bengal at a time of the most heinous attack on democratic rights, when state terrorism appeared in its most barbarous form through mass killings, murder in police and judicial custody, fake encounters and atrocious and continuous attacks on mass movements of labouring people. Naturally the main demands at that time centred on putting an end to all those inhuman, illegal and undemocratic acts of the state, release of all political prisoners and the repeal of the black acts like MISA (Maintenance of Internal Security Act).²⁶

If we look at India’s political development since independence we find that it is characterised by growing political, economic and social conflicts leading to violent eruptions in some regions accompanied with a weakening of the position of the individual. The application of the preventive detention and other related security legislation were one of the major features during this process and moreover several times India witnessed the proclamation of the constitution’s emergency provisions. The first legislation, in this respect, was the “Preventive Detention Act” which was enacted already on 26 February 1950. Successive laws regulating preventive detention were passed thereafter. Due to armed confrontation with China in 1962 and Pakistan in 1965, India experienced the first proclamation of emergency from 26th October 1962 to 10th January 1968. On December 12, 1971, external emergency was again proclaimed after the outbreak of an internal conflict in East-Pakistan which involved the Indian forces and eventually resulted in the foundation of the independent State of Bangladesh.²⁷ The actual pretext of emergency proclamation was an “external aggression” but, in all cases, the emergency provisions were maintained even beyond the cessation of hostilities.²⁸

In an All India Conference convened in Delhi during 13-14 April 1974, a non party organization called ‘Citizens for Democracy’ was formed with the objective of ensuring the ‘independence’ and ‘autonomy’ for democratic and constitutional functioning, of various institutions such as the Judiciary, Press, Radio, Television, Bureaucracy, Office of the President, the Election Commission, the Planning Commission, among others. This experiment to build a pressure group for a more effective and responsive functioning of the state institutions was abruptly cut short with the imposition of the emergency in the country on 25 June 1975 under Article 352 of the Constitution on the ground that the ‘security and integrity of India was in grave peril due to internal disturbance’.  

The Emergency imposed by Indira Gandhi on 25 June 1975 brought new widespread impetus to the Civil Rights Movement. She suspended fundamental rights claiming that they were used by the privileged stratum to prevent her from carrying out programmes in the interests of the ‘majority’. The government imposed strict censorship on the press and stifled all protest and opposition to the government. Arrests continued throughout the period of the emergency though most of the arrested were released after a few days or months. In all more than 100,000 were arrested during a period of nineteen months. This resulted in major human rights violations.

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Denial of civil liberties began to be felt by the common people as it began to impact their daily lives in the form of harassment and corruption by the petty officials. Delay in lifting the emergency began to generate the fear that the authoritarian structure of the rule might be made permanent or continue for a long time. The intelligentsia and the middle classes in particular viewed the 42nd (Forty Second) Amendment to the Indian Constitution passed in September 1976, as an effort to subvert democracy by changing the very basic structure of the Constitution.\textsuperscript{33} The liberal intelligentsia was shocked by the realization of the “built in authoritarian proclivities within the political system, and the pitfalls endemic in any assumption of the durability of the democratic process, as here to fore.”

The most obvious lesson of the Emergency was that political and civil rights required an active defense by the citizens. Equally important, however, was the experience during that time, that the major victims of the authoritarian state were the socially marginal and powerless: the homeless squatters forcibly evicted from Delhi’s Turkmen Gate and the "untouchables" and Muslims pressured or forced into vasectomies during the sterilization campaign. The second lesson was borne out even further by the PUCL’s subsequent experience in documenting human rights violations in the 1980s.\textsuperscript{34}

When the Indian State began to suppress such expressions of political dissent and mini-rebellions, the violation of human rights by the state began to command attention. It was during this period, when both militancy and state repression were at their peak that a number of civil rights groups were formed to articulate the interest of the oppressed and the most marginalized sections in the Indian society.\textsuperscript{35} This shaped the intellectual and political milieu that led to the origin of the civil and democratic rights movement in its present shape’.\textsuperscript{36}

5.3 Human Rights Movement in the Post-Emergency Period

The national emergency of 1975-77 perhaps appeared to be a blessing in disguise for the people of India who could realize for the first time after independence the importance of

\textsuperscript{33} Aditya Mukherjee (2002), p. 258.


\textsuperscript{35} Niranjan Sahoo (2007), pp. 181-203, at p. 189.

democracy and the necessity of civil and political liberties. As a matter of fact the human rights movement in the post-colonial India in its present shape owes its origin primarily to “the political milieu of the national emergency.” The movement is yet to gain adequate numerical strength in many spheres. Nevertheless, the quantitative shortcoming is somewhat compensated by the quality and dedication of its activist cadre, consisting of students, teachers, jurists, social scientists, technocrats, etc.\(^{37}\)

By nearly 1980s, the protective and defensive endeavors had started, the Civil Liberties Movement also adopted ameliorative measures manifested in public interest litigation. Another trend appeared in the Civil Liberties Movement that affected its dimension in the eighties, was in the context of terrorist violence in Punjab and in the North-East. On the one hand the atrocities committed by the militants on masses and on the other hand the phenomena of State terrorism in the form of police tortures and exercising of Preventive Draconian Laws like the **National Security Act, 1980**; the **Essential Services Maintenance Act, 1981**; the **Terrorist and Disruptive Activities Act, 1985** etc.etc. worstly affected the civil liberties. As such various domestic human rights groups started condemning the government.\(^{38}\)

The civil liberties group that was the first to emerge was the Association for the Protection of Democratic Rights (APDR) in 1972. A little later in 1974, another such group emerged in the State of Andhra Pradesh under the banner of Andhra Pradesh Civil Liberties Committee (APCLC) to crusade for the cause of the oppressed classes. Later on, the emergence of the non-governmental organizations like the People’s Union for Civil Liberties, the People’s Union for Democratic Rights during the Emergency was a landmark in the history of the Civil Liberties Movement. The work of these early civil liberties groups was, however, limited to documentation of the violation of rights and campaigning against it to the extent possible.\(^{39}\)

However, the PUCL mobilized itself not only against the draconian provisions but also for positive social rights such as the right to education, to achieve equality of status for all

individual and social groups as citizens. It also took initiative to restore the autonomy of the institutions such as the judiciary by protesting against the curtailment of the jurisdiction of the courts which is considered to be the pre condition for the presence of the rule of law, necessary to curtail the arbitrary use of power and democratic transgressions. Similarly it emphasized the autonomy of the civil society institutions, such as the media and the educational institutions, by protesting against the censorship of the press, in order to have informed political participation, to put in place an accountable and responsive state. Many human rights issues like condition of the Chakma refugees, plight of the downtrodden, plight of the bonded labourers, kidnappings and abductions in Kashmir and a host of other problems and situation like white collar crimes speaks volumes about the violation of human rights time and again highlighted by PUCL.

A section of activists felt that the usage of the term ‘civil liberties’ by the PUCL restricts to the codified safeguards. The more radical activists used the term “democratic rights” as a critique to the term “civil liberties”. It implied the freedom to claim even non-codified rights, or, in other words the rights which citizens were not endowed with under the existing legal system.

This was a phase for the revival of the Association for the Protection of Democratic rights (APDR) in West Bengal, which later split with the formation of Association for the establishment of the Democratic Rights (AEDR) on the issue that there were no democratic rights to ‘protect’ in India. This radical perspective also marked the revival of Organisation for the Protection of Democratic Rights (OPDR) and the Association for Democratic Rights

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40 Ajay Gudavarthy (2009), pp. 256-57.

in Punjab (AEDR), (the) Committee for Protection of Democratic Rights in Bombay (CPDR) and formation of the Manav Adhikar Sangharsh Samiti (MASS) in Assam.

In Andhra Pradesh, the Andhra Pradesh Civil and Democratic Rights Association (APCDR) was the first organization that came into existence and later split into Andhra Pradesh Civil Liberties Committee (APCLC) and the OPDR broadly representing two different factions of the communist party of India that is Marxist-Leninist, both working within the new 'democratic rights' framework. It may be interesting to point out here that most of these organizations began working in close proximity with different radical militant struggles in their states such as the armed naxalite movement and the militant nationality struggles.43

Later on, the Kashmir crisis and emergency in its valley played a crucial role in raising its momentum. Barbaric hostilities committed by the terrorists destroyed number of lives. At the same time the counter response by the state using Para-military forces and police forces for confronting terrorist attack also made people’s life miserable. It is in this context of Kashmir imbroglio that human rights groups have contributed in creating an international attention to this issue.44 The response of the Indian government towards the poor record of the human rights was not encouraging. Later on due to much global pressure and manipulation, the Indian state responded in a much more positive manner and has taken the cognizance of the allegation of violation of human rights by security forces and terrorist groups.45

Human rights organizations gradually began to extend their scope to protect the rights of the activists of these movements and their political concerns as well. Various types of discriminations came to articulate themselves in the democratic rights language. They have also played an important role in providing various kinds of support during specific crisis

situations such as communal riots as witnessed against the Sikhs in 1984 and also the victims of the Bhopal Gas Tragedy. They not only provided relief and rehabilitation but also helped independent organizations with their experience and ability to produce and disseminate literature. The PUDR in 1984 investigated and published a booklet with the title “Who are the guilty?” on the anti Sikh riots in 1984 and directly named some of the culprits belonging to the ruling Congress Party. Some felt that with its publication, the ‘groups fighting for civil liberties and democratic rights acquired a national legitimacy’. It was a fact that no other organization dared to reveal the names of some of the most notorious history sheeters so openly.

Besides, there were also large number of single issue organizations that dealt with the specific questions related to the rights of women, children and others. Since the emergency when human rights became much more of a public concern, the government has often attempted to undermine such organizations’ legitimacy and effectiveness by attacking and dismissing them as ‘front organizations’ for antinational forces, terrorists or secessionists.

It would indeed be an injustice to ignore the role played by them in the consolidation of human rights movement. These NGOs, because of their grass root contacts, have effectively identified human rights violations, articulated them and helped the victims in seeking redress. Given the rapport they establish with the public at large, the NGOs have done a great work for the investigation of the serious cases. The high level of expertise of the individual NGOs

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in specific areas of human rights has been of great source of help in curbing human rights violations.\textsuperscript{50} Besides the PUCL, the South Asian Human Rights Documentation Centre (SAHRDC), is one such NGO which has consistently been engaged in producing human rights literature. So, we can say that they have made a definite contribution in widening the base of democratic consciousness in the country.

Later on the World Conference held in Vienna in Austria in 1993 had also recognized the significant role that NGOs could play in the promotion and protection of human rights\textsuperscript{51} and it is because of the dedicated efforts of these NGOs that the Supreme Court of India today has become a new hope for regenerating new morals and legal values by punishing and exposing those who violate human rights.\textsuperscript{52}

### 5.3.1 Social Movements and Human Rights in the Post-Colonial India

The 1980s was also a phase for the emergence of various other social movements - women, \textit{dalit}, minority, and environmental, apart from the naxalite and the nationality struggles, which had great impact on the human rights discourse. The social movements constructs claim for human rights as a part of their challenge to status quo. Their role in the historical development of human rights has been of great significance. They are chiefly concerned with defending or changing at least some aspects of the society and rely on mass mobilization or the threat of it as their main political sanction.\textsuperscript{53}

#### 5.3.1.1 Women’s Movements and Human Rights

The emergence of the women movement in the early 1980s gave a new dimension to the human rights discourse in India. The emergence of a number of women’s groups, such as the

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\textsuperscript{53} Neil Stammers (1999), pp. 980-1008, at p. 984.
Self-Employed Women’s Association (SEWA), Manushi, Joint Women’s Forum and host of other women’s organizations raised new consciousness and public debate on the issue of women’s status, domestic violence, dowry, rape, custodial violence, trafficking and the invisible labour of women in the household. Though initially it began as an urban movement, over a period of time, the women’s movement spread across the country and has shaped new campaigns on participation and rights. It was partly because of the pressure of this movement that the 73rd and 74th constitutional amendment introduced local self-government institutions.

In 1978, there was a major conference of the ‘social-feminists’ in Bombay, which also focused on the growing violation of women’s rights. After years of lobbying with the politicians, these feminists were able to bring about a change in the law that would principally benefit their less fortunate, rural based sisters. This was an amendment to the Hindu Succession Act of 1956, which, for the first time brought agricultural land under its purview, allowing women the same inheritance rights as that of men. Another amendment brought female heirs on par with males with regard to Hindu joint families where sons, previously had claim to a greater share than daughters. The economist Bina Agarwal,

54 In 1979 a small group of women in New Delhi began to publish Manushi, A Journal about women and society in Hindi and English. This has now become India’s premier feminist journal treating specifically women’s issues such as sexual harassment; violence against women and in the political and social control; History and literature on about and by women and social/political and economic issues such as communalism and public health policy. For further details see: Gail Omvedt (1993): Reinventing Revolution, New York: M.E. Sharpe, Armonk; and A.R Desai (1985): “Women’s Movement in India: An Assessment.” In: Economic and Political Weekly, Vol. 20, No. 23, pp. 72-76.


whose own work on gender and agriculture had been of a critical influence, said of these changes that “symbolically, this has been a major step in making Hindu women equal in the eyes of the law in every way”.

Indian women at the end of the twentieth century would argue that they still have a long way to go to attain gender justice. The issues of the movement and the unsolved problems must not be allowed to negate the victories of the past. It is important to temper the interpretation of the present with the appreciation of the enormous sacrifices Indian women have made to bring about change. Undoubtedly women’s education and political action have altered India’s political and social landscape. Women have moved from being object of legislation to initiators. So we see that a general beginning has begun and it cannot be permanently suppressed.\(^58\) There is now a complicated mix of women playing public roles—leftist women, moderates, conservatives, right wing women all appropriating the trappings of feminism but without commitment to a vision of gender justice and human rights voiced by the authors of *Toward Equality*\(^59\). The outcome remains to be seen.

### 5.3.1.2 Environmental Protection and Human Rights

Similarly peoples’ movement for environmental protection and various other human rights causes led by the enlightened and dedicated individuals like Medha Patekar, Baba Amte, Sundarlal Bahuguna and B.D. Sharma, have added new dimensions to the human rights movement in India. There are instances when such movements forced the otherwise indifferent and inactive civil bureaucracy to act for public interest. The *Chipko* movement became an ecology movement in 1977 when environmental action of the *Chipko* was strengthened by public interest science captured in the slogan: “What do the forests bear? Soil water and pure air”

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Created by the women of Henwal Valley in the Advani forest. They caricatured the partisan forestry science in the slogan, “What do the forests bear? Resin, Timber and profits”

The forests in India are the critical resource for the subsistence of the rural people throughout the country. As these forests have been increasingly felled for the commerce and industry, Indian villagers have sought to protect their livelihood through the Gandhian method of Satyagraha or non-violent resistance. The villagers hug the trees, saving them by interposing their bodies between them and the contractor’s axe.  

The Narmada Bachao Andolam (Save Narmada Movement), the Fish workers struggle and the Dalit Human Rights campaigns also brought the issue of people’s rights and rights of the marginalized communities into the mainstream political discourse of India.

However, the most popular movement in the environmental history of India is the Movement Against the Narmada River Valley Project. This movement centered on the issue of human rights. As a matter of fact, some of the main leaders of the movement like Medha Patkar were working towards the rehabilitation programmes for those displaced by the dam. Due to improper implementation of the rehabilitation programme by the state, these human rights activists have become the articulators of the anti-dam protests. Their demands include complete stopping of the dam, resettlement and rehabilitation benefits to the oustees. These demands were supported by the environmentalists who opposed construction of large dams for the ecological reasons.

Although Patkar was unsuccessful in stopping this particular dam, this movement drew wide public attention to the government’s disgraceful record in resettling the millions displaced by the development projects and the most important aspect of this movement was the international support received by it. As a matter of fact the main reason behind the world bank’s withdrawal of funding to the project was the international pressure which was something unprecedented in the environmental history of India. Moreover, the success lies in convincing the government to stop the project with people’s support, which is most unlikely

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in the present socio economic conditions in India.\textsuperscript{61} In general these environmental movements are often grouped under peasant or tribal movements and also under new\textsuperscript{62} social movements. Some even title them as middle class or elitist movements. The reason being that the ecological aspects are linked with the problems associated with the peasants and tribals whose survival is attached to the status of the natural resources. The problems of tribals as well as the non tribal poor are often articulated by the urban middle class and the elite. Environmental movements in India are, therefore, not necessarily for a ‘green’ or ‘clean’ earth or for saving mankind’s heritage and endangered species as in the West, but are for the very survival of the local poor.\textsuperscript{63}

Besides, groups like the Mazdoor Kisan Shakti Sangathan (MKSS) launched campaigns against under payment of wages and lack of transparency in the state. It successfully launched the right to information campaign to bring transparency and accountability amongst various public authorities.

5.3.1.3 The Dalit Movement and Human Rights

The word \textit{Dalit} was coined in the post colonial India by the disciples of B.R. Ambedkar. Since then, the word \textit{dalit} has become the vernacular terminology for the oppressed classes.\textsuperscript{64} The \textit{Dalit} movements are predominantly anti untouchability movements. These movements are predominantly launched for maintaining or increasing reservations in the political offices, government jobs and welfare programmes. Ghanshyam Shah classifies them into: (a) The Reformative Movements; and (b) The Alternative Movements. The former tries to reform the caste system to solve the problem of untouchability and the latter attempts to create an alternative socio cultural structure by conversion to some other religion or by acquiring

\begin{thebibliography}{9}
\bibitem{62} These movements were described as ‘new’ because they took up issues neglected by the old; class based social movements of peasants and workers. For more details, see: Ramchandra Guha (2007), p. 543.
\end{thebibliography}
education, economic status or political power. Both types of movements use political means to attain their objectives.\textsuperscript{65}

In the post colonial period, the Dalit movement have kept caste oppression in public view. Moving beyond untouchability which persists in virulent forms, the movement has had to contend with increasing violence against dalits even as dalits refuse to suffer in silence, or as they move beyond the roles allotted to them in traditional caste hierarchy. The scourge of manual scavenging has been brought in to policy and the law campaigns; there have been efforts to break through public obduracy in acknowledging that untouchability exists.\textsuperscript{66} The dalits of Maharashtra launched the Dalit Panthers Movement in 1970s. The main participants of the contemporary Dalit Movement in Gujrat, Karnataka, Maharashtra, Uttar Pradesh, came from the urban educated middle class. The Panthers condemn and discard the dominant culture and attempt to build an alternative socio cultural identity for the oppressed classes. They organized demonstrations against the injustices to the Scheduled Castes. However, most of their activities were limited to propagating their ideas by publishing the original literature such as poems, stories, plays which are used as a means of protest against the hindu intellectual tradition, the hindu religion and the hindu ethics.\textsuperscript{67} Moreover these groups have also tried to internationalise this discrimination of caste by influencing the agenda of the World Conference against Racism.

Assertion of dalit identity has become a central issue of the Dalit Movement. Their struggles have brought dalits on the agenda of the mainstream politics. In academic circles, they have forced a section of intellectuals to critically review not only the Indian tradition and culture but also the paradigms of modernity and Marxism. In the 1990s, with the increased political participation in the elections and somewhat political success of the Bahujan Samaj party in Uttar Pradesh, some scholars consider their mobilization as a ‘new political movement’ of the dalits.\textsuperscript{68} Also, there has been a marked shift from the domain of reforms to that of rights. Dalit movement within the country seems to have successfully joined the bandwagon of


\textsuperscript{68} ibid., p. 122.
human rights movement. One finds a qualitatively distinct type of militancy and assertiveness characterizing a *dalit* movement.⁶⁹

5.3.2 Judicial Activism and the Human Rights Movement

Judiciary in every country has an obligation and a constitutional role to protect human rights of citizens. Under the Constitution of India, this function is assigned to the superior judiciary - High Courts and the Supreme Court. The Supreme Court of India is perhaps one of the most active courts when it comes to the matter of protection of human rights. It has a great reputation of independence and credibility.⁷⁰

The Indian judiciary had earned a dubious distinction for its role in supporting the suspension of right to life during the national emergency and it did not take much time to realize the colossal impact of such a mistake. The judiciary badly wanted to do a rapid image makeover. It was the same period in which the country saw a rapid growth of civil society organizations and the activist individuals fighting for the cause of civil liberties in various spheres, mainly issues relating to emergency. The court saw this as an opportune movement to change its negative image. The first thing it did was by liberally interpreting the fundamental rights and re-conceptualizing the basic rules of judicial process with a view to make it more accessible and participatory. First, such opportunity came during the Menaka Gandhi’s case involving the issue of fundamental rights (right to personal liberty and right to freedom) where her passport was impounded and she challenged the validity on the ground that such an action violated her ‘personal liberty’. It also brought in the concept of procedural ‘due process’ under the words ‘procedure as established by law’, an import from the American experience.

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In short, the court went beyond the textual construction of the words of the constitution and interpreted them liberally in the context of changing situations.71

It is no wonder that the Supreme Court of India has dealt with not only the rights guaranteed under the Indian Constitution but specifically also with the rights enshrined under the Declaration of Human Rights. The change of the attitude of the Supreme Court from A.K. Gopalan72 to Maneka Gandhi73 has led to many victories for the common man. Article 21 is one Article in the Constitution which has been so transformed by the Supreme Court. It now encompasses almost all conceivable human rights within its ambit. On a plain reading, it is a directive to the state to refrain from infringing human rights and the right to life or personal liberty of a person. The courts have taken a very liberal view and have transformed the negative injunction to a positive mandate to do all things which will make life worth living. The Supreme Court of India in its various judgments has emphasized the importance of the Universal Declaration of Human Rights.74

These decisions are the landmark decisions which show the extreme importance in which Supreme Court of India holds the Universal Declaration of Human Rights. It may be appropriate to point out that the development of human rights has extended into new horizons, for example, the scope of human rights has been extended to the right to environment, right to education, right to pure drinking water, right to good roads, vehicular pollution and female foeticide, to the new socio-economic rights and other rights which are necessary for the enjoyment of human rights.75

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72 AIR 1950 SC 27.
73 AIR 1978 SC 97.
Thus, we see that our courts have played a positive role in incorporating and enforcing human rights available at international level into the Indian law through judicial construction. The Supreme Court of India in particular through judicial interpretation has widened the horizon of human rights in India. The Courts have acted as guardians and sentinels of democracy, freedom and individual liberty.\textsuperscript{76} The court’s legitimacy will depend to a large extent on its ability to offer support to the social movement struggles which are primarily focused on the realization of economic and social rights at a time of economic liberalization and globalization.\textsuperscript{77}

### 5.3.2.1 Public Interest Litigation and the Human Rights Movement

Development of the judicial process of Public Interest Litigation is due to the seeming failure of the other branches to effectively discharge their functions in certain spheres of public concern. Since the issues raised in the PIL pertains to the enforcement of fundamental rights, whenever the issue has a legal component, the Supreme Court has stepped in under Article 32 to fill in the vacuum.\textsuperscript{78} By literally interpreting various problems of the Constitution with an intention to make the court accessible to the common man, the court relaxed the judicial procedures to encourage public participation in the judicial process as a means of control over the other organs of the government. To ensure this, the court created a new system of jurisprudence called Public Interest Litigation (PIL) by relaxing the standing in which it allowed a third party to propagate the cause of others in the court. PIL has definitely given a boost to the enforcement of human rights in India.\textsuperscript{79}

It may be appropriate to mention here that Public interest litigation was nurtured and defined by two eminent jurists - Justice V.R. Krishna Iyer and Justice P.N. Bhagwati. Justice Iyer made a strong basis for liberalizing the nature and scope of judicial system to provide the average citizen access to justice without any hindrance. To achieve this, he advocated for a


simple, non-technical inexpensive, flexible and realistic procedure. He stressed on a fundamental judicial reform.

Justice P.N. Bhagwati took the thread from where Justice Krishna Iyer had left and expanded the scope and functions of public interest litigation in several of his judgments. In *S.P. Gupta v. Union of India*, he made it clear that the traditional adversarial system of justice had failed to deliver justice to the helpless as they could not legally represent their cases and produce relevant evidence before the court. He made it very explicit when he said that “any member of the public acting bona fide and having sufficient interest in instituting an action for redressal of public wrong or public injury could move the court. The court will not insist on strict procedures when such a person moves a petition on behalf of another or a class of persons who have suffered legal wrong and they themselves cannot approach the court by reason of poverty, helplessness or social backwardness.”

In other words, the court changed the old concept of *locus standi* by allowing people who had a stake, direct or indirect, in the outcome of a suit, to be represented in the judicial proceedings. In several similar cases, the Supreme Court broadened the *locus standi* and its application as a mass jurisprudence.80

Apart from liberalizing the *locus standi*, the court went ahead and allowed public participation in the judicial process even as it recognized the group rights to participate in the legal proceedings. In doing this, the court granted workers, residents and general public, the right to appeal the courts against the violation of their collective rights. Further, the court moved beyond the traditional procedures when it treated the letters as writ petitions justifying this on the ground of increasing people’s access to judicial process especially for the purpose of providing easy access to justice to the weaker sections of the society. In similar fashion, the court also took up the issues of non-implementation of its directions by monitoring the implementation of its directions, setting up commissions, expert committees to gather valid information. It made further innovation in public interest cases by granting interim relief to the victims, specifying the amount of compensation and supervising the process of their

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implementation. In short, the court broadened the contours of judicial power by enlarging the scope of PIL.\textsuperscript{81}

The courts’ recognition of rights of third parties by relaxing the \textit{locus standi} encouraged several groups, such as NGOs, public spirited individuals, lawyers and citizen forums to file litigations in the courts for the cause of underprivileged sections. Thousands of litigations were filed on number of issues - human rights violations, women rights, bonded labour, environmental pollution and so on. The court in particular broadened the relevance of human rights provisions by liberally interpreting the fundamental rights. The liberal rule of access from which public interest litigation emanated, enabled the court to reach the victims of injustice. The court went into allegations of killings of innocent people or suspected accused through false encounters, death of people in police custody, cases of blinding of prisoners by the police. Through PIL, court’s intervention was sought against inhuman working conditions in stone queries, for controlling occupational health hazards and diseases of workmen working in asbestos industry. The Supreme Court entertained petition against the sexual exploitation of the children in flesh trade and asked the Central Bureau of Investigation to inquire into that. Under the traditional paradigm, a court would not have gone into how the inmates were being treated in a mental hospital or it might not have asked the CBI to inquire into the allegation of exploitation of children in flesh trade. There was a subtle shift from neutralist adversarial judicial role to inquisitorial, affirmative judicial role. As a result of this shift, the court now allowed the groups to have the \textit{locus standi} in the judicial proceedings that had no stake in the strict sense. The court recognized the rights of workers and residents to represent the cases in the public interest by abolishing all procedural restrictions.

The PIL lawyers have demonstrated in India and abroad that the common man can raise voice, impress and when need be, even contest against wrongful political and executive actions thereby enabling the inept destitute to take a step towards guaranteeing them that now public agencies will be serving them in the way the law makers intended them to serve.\textsuperscript{82}


The concept of PIL, which has been fostered by judicial activism, has become increasingly important in setting up valuable and respectful records, especially in the arena of human rights and legal treatment for the “unrepresented” and the “under-represented”. Justice Bhagwati emphasized the importance of public interest litigation in the case of *Bandhua Mukti Morchha v Union of India*:

Public Interest litigation is not in the nature of adversary litigation but it is a challenge and an opportunity to the government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community.  

In the case of *People’s Union for Democratic Rights v Union of India*, it was pointed out by Justice Bhagwati that there was misconception in the mind of some lawyers, journalists and the people in public life that public interest was an unnecessary cluttering up of the files of the court that added to the already staggering arrears of cases pending in the court for years. In the judge’s opinion those who were decrying public interest litigation did not realize that “it is only the moneyed who have so far had the golden key to lock the doors of the justice” and that for the first time, the portals of the court were being thrown open to the poor and the downtrodden, the ignorant and the illiterate and their cases were coming before the courts through public interest litigation.

The Supreme Court in the case of *Janata Dal v. H.S Chowdhary* summarized the scope of public interest litigation. The horizon of this type of litigation has been widely extended and the public interest litigation constitutes a new chapter in the justice delivery system. Indeed, it has acquired a significant degree of importance in the modern legal jurisprudence which is practiced by the courts in many parts of the world and is based on the principle “liberty and justice for all”.

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84 *People’s Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473, at p. 1476.
87 Joan Church et.al. (2007), p. 131.
5.3.3 Media and the Human Rights Movement

Now a day’s violation of human rights has become a global phenomenon. Every day media covers and reports violations of human rights with in the country as well as outside the country. It appears that the violations of human rights are becoming part and parcel of our life. Media is known as the watchdog of the society. It has a vital role to play in the protection of human rights and has been playing this role throughout in every corner of the world. It is the responsibility of the media that it should bring the cases of the violation of Human Rights to the notice of the government and also to public at large. However, at the time of doing so the media must take in to account that the way it reports the matter must have no adverse affect on the societal harmony and at the same time, the reporting must also be objective. In country like India where maintenance of communal harmony is of vital importance, the press must take all possible precautions while reporting any matter, particularly those relating to disputes between different communities, so that it does not lead to any conflict between different communities and one act of violence does not lead to another act of violence. The freedom of press is derived from people’s right to know, implied from the freedom of speech and expression [Article 19(1)(a)]. The accountability of public men can be enforced by a vigilant and objective media. The media is, therefore, a powerful tool of good governance.88 Television News channels which constitute the mainstream media, have played the role of observers, reporters and even analyzers of news. However, the latest role of ‘activist’ taken by the media has created a new dimension to coverage of social and human rights issues. The media has started taking upon it individual cases and mobilizing mass public campaigns. With such support from the public, the media goes a step ahead to pass pre-judicial verdicts in certain cases. The recent example being of the murder of Jessica Lal, Priyadarshni Matoo rape and murder case, and the Nithish Katara murder issue which was taken up by NDTV, IBN-CNN through SMS and media orchestrated candle light campaign.89

The media while making any report regarding a matter involving Human Rights violation must keep in mind that the subject of their criticism, be the Government or some individual,

is presumed to be innocent till it is proved before the court that such a violation has really taken place. The media should not present anyone like a convict unless the accusation made against him is proved. An accused cannot be treated like a convict. Article 11 of the Declaration of Human Rights also states that everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.\textsuperscript{90}

Media coverage of human rights, if done effectively, would not only help to remove narrow mindedness but also enhance cultural relativity and promote social harmony. For this media has to be a powerful instrument to create awareness and to build pressure for positive action.\textsuperscript{91}

5.3.4 Role of Human Rights Institutions in Protecting and Promoting Human Rights

The establishment of these National Human Rights institutions can be dated back to 1990s. The international community had constantly moved for the establishment of national infrastructures for the protection and promotion of human rights, for bodies which would be constant watch dogs for matters related to human rights. This was apparent at the Vienna World Conference on Human Rights in 1993. Later in December 1993, the UN General Assembly endorsed the principles relating to the status and functioning of the national institutions for the protection and promotion of human rights famously known as the Paris Principles. The Paris Principles are the benchmarks which clearly lay down the procedures for the establishment and functioning of national human rights institutions.\textsuperscript{92}

\textsuperscript{90} Khwaja A. Muntaqim (2007), p. 305.


Official human rights institutions such as the National Human Rights Commission, the National Commission for Women, the National Commission for Scheduled Caste, the National Commission for Scheduled Tribes, the National Commission for Minorities, despite their limited power and authority, have been playing catalyst role not only in creating people’s awareness of human rights but also in generating administrative concern for human rights in the contemporary India. There is no denying the fact that today the human rights movement in our country has got fillip due to the concern and response of these institutions for protection and promotion of human rights of individuals and groups.\(^93\)

However notwithstanding the fact that these institutions have done a creditable work, K.G Kannabiran,\(^94\) an eminent civil rights activist, have argued that these commissions have seldom been successful in promoting and protecting human rights. For example, the cases of disappearance in Assam, killings by army and paramilitary forces in Kashmir, Manipur, West Bengal and Chhattisgarh, farmer suicides in Maharashtra and Andhra Pradesh, land acquisitions and mining in Orissa and Jharkhand, draughts in Rajasthan, atrocities against dalits and tribals, crime against women or the Batla house encounter in New Delhi, all that the commissions have done is to seek a report from the government of India or the respective state government concerned. In some cases they have carried out investigations and issued recommendations but those are seldom abided by. He has raised a question that merely with recommendatory powers, what else can be expected from these institutions. During various meetings held from time to time, one group of the civil society condemned their functioning and asked for their closure for reasons of huge investment while other group proposed a strengthening and streamlining of these institutions.\(^95\)

However, the fact that there is a need for these human rights commissions cannot be denied as they are quasi judicial bodies with powers enshrined through the Constitution of India. They act as an accessible justice mechanism, an alternative to court proceedings which in India are very lengthy, time-consuming and unimaginably expensive.

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\(^95\) Harsh Dobhal and Mathew Jacob (eds.)(2012), p. 3.

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The President of India promulgated the Protection of Human rights Ordinance, 1993 under Article 123 of the Constitution of India on 28 September 1993 to provide for the constitution of a National Human Rights Commission,96 State Human Rights Commission in States,97 and Human Rights Courts,98 for better protection of human rights and for matters connected therewith or incidental thereto. To replace this ordinance the Protection of Human Rights Bill, 1993 was passed by both the houses of the Parliament, received the accent of the president on 8 January 1994 and became the Protection of Human Rights Act, 1993. The Protection of Human Rights Act, 1993 also states that the constitution of these institutions is for the ‘better’ protection of human rights and for matters connected therewith or incidental thereto. In addition, a number of legislations have been enacted which seek to create an institutional framework for the protection of the rights of women, minorities, scheduled castes, scheduled tribes and backward classes.99

Till date twenty one SHRCs100 and an NHRC has been created. The National Human Rights Commission has, since its establishment in 1993 under the Protection of Human Rights Act, came to play a pivotal role in the enforcement of the fundamental rights enshrined in our Constitution and sensitizing the State as well as other agencies to the importance of human rights. It has, in fact, set a hallmark in the Indian civil liberties movement. With its formation, the civil liberties movement in India got an exception that the Commission would ameliorate human rights situation. In its initial activities, the Commission has visited the number of troubled regions and few parts of the country, i.e., Assam, Meghalaya, Punjab, Jammu and Kashmir, Andhra Pradesh, Bihar, Madhya Pradesh, etc., just to familiarize itself with the situation prevailing over there.101

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96 Section 3 of the Protection of Human Rights Act, 1993.
97 Section 21 of the Protection of Human Rights Act, 1993. This specifies the establishment of Human Rights Court in each district. In some states they have been notified but are not yet working while in others they are yet to be notified and not much information is available in the public domain about their functioning. These human rights courts mostly exist just on paper, as revealed by number of civil society groups during Independent People’s Tribunal Process.
100 The states of Harayana, Uttrakhand, Mizoram, Meghalaya, Nagaland, Tripura and Arunachal Pradesh still do not have SHRCs.
The important mission which it has taken is in relation to human rights awareness. It has emphasized inducting Human Rights curriculum in schools and at the University level. Section 12(h) of the *Protection of Human Rights Act, 1993* sets before the commission the responsibility to “spread human rights literacy amongst various sections of the society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means.” This undertaking requires no less than the creation of a culture of human rights across the entire country and amongst all its people. The earnest efforts have been made by NHRC to motivate Central and State Governments to prescribe human rights education at school, college and university level and also to devise a module for the teachers.\(^{102}\)

Despite of everything these commissions have not been able to achieve desirable results and the human rights situation has continued to deteriorate. Most of the violations reported to these commissions are committed by country’s law enforcement agencies and security forces. The commissions suffer from number of handicaps, such as lack of autonomy, politically made appointments, inadequate resources and no independent investigative mechanism, thus making them incapable of effectively addressing violations.\(^{103}\) In most of the complaints of the grave human rights violations, in which state parties are perpetrators, matters are closed by simply recommending petty compensations. The commissions’ silence on the issue of armed killings and torture in various states, arbitrary arrests, sedition laws etc. are clear examples of the same. While the NHRC did brilliant work to take *suo moto* action in the Gujrat carnage and conducted the investigation, its silence in the court was evident of government pressure. So we see that the idea of the Paris Principles, for an independent autonomous commission, has been defeated in the past two decades.\(^{104}\)

### 5.3.5 Globalisation and Human Rights

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\(^{104}\) *ibid.*, p. 16.
In the early 1990s, India was transitioning itself into the global market through newly adopted policies of liberalization, privatization and globalization. At the same time India was under enormous international pressure concerning its human rights record. In a neo liberal framework it was of utmost importance for India to be accepted as a potential market and partner, and to have the adequate infrastructure that promotes and protects human rights. Historically speaking, from the point of view of imperialism its most severe crisis burst out towards the end of 1920s, ultimately resulting in the Second World War. After a brief respite as a consequence of massive reconstruction following the unprecedented devastation of the war, the crisis again came to the fore in the 1970s. Since then the capitalist world has been continuously ridden with crisis, leading to the next most severe crisis in 2008.

The ferocity of this continuous period of crisis forced the imperialists to give greater attention to plundering the third world’s natural resources. The process of globalisation has been projected by many as nothing but the programmatic manifestation of this more acute phase of imperialist plunder based on the hydra-headed doctrine of neo-liberalism. The Indian ruling classes began to traverse this path of globalisation since 1991.

Once we accept that for the people of the third world, the right to live is the most important and decisive human right to realise and secure, it also becomes evident that in the twenty first century, the most disastrous obstacle to the realisation of that right is colonialism or

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106 Harsh Dobhal and Mathew Jacob (eds.)(2012), p. 2.

domination of imperialists of different hues and colours, and their aggression and exploitation, control and domination over the third world. This again basically encourages and perpetuates racial discrimination, fundamentalism and communalism as well as almost all the backward norms and practices of pre-capitalist society, whichever becomes helpful to the continuation of that domination. Economically too, due to the exploitation and manipulation of imperialism and their stooges, the living conditions in these countries for most of the people are becoming more and more precarious. It has been tremendously accentuated in the last few decades with the emergence of the economics of globalisation, based on neo-liberal economic doctrine. Some consequences of this deprivation of human rights are social and political unrest and even violence and counter violence.

It also leads to an increasing resort to suppression and to chaos. Paradoxically, the expenditure on suppressing protest and violence may be equal to or even exceeds the ought to be expenditure on implementing economic, social and cultural human rights for all the peoples of the world. What matters more is the loss of human lives and the loss of constructive contributions which all the deprived could have offered to the economic, social, scientific and cultural advancement of humanity if they were granted their basic human rights. Racism, prejudices, and discrimination are negatively associated with justice and implementation of human rights.108

Consequently in developing countries like India, the calorie intake of the poor has declined. The Trade Related Aspects of the Intellectual Property Rights Agreement of the World Trade Organisation prevents countries from producing low cost generic drugs, robbing poor patients of their right to health. The privatisation of health and hospital services also makes the poor suffer as services become more oriented towards those who can pay. The right to education has also been adversely affected by the privatisation policies and the turning of education into a profit-generating enterprise in developing countries.109 Besides, in Punjab, reports suggest an average small farmer is in deep debt, (ranging between Rs 6 lakh to Rs 75 lakh) partly because of the shrinking support of the government to the agriculture and partly due to the

use of imported seeds and pesticides. In many villages to bring the problem into focus and attract attention of the government the farmers have put themselves and their land on sale.\textsuperscript{110}

\textbf{5.3.5.1 Globalisation and the Government of India}

The Government of India has framed major economic policies in 1991 to attract global corporate world to India. Since 1991, there have been discussions on not only constitutionality of such policies but also its consequences. It is to be believed that the policy of liberalization was a much needed one, but, it seems that the government could not ensure that realization of human rights, especially of the poor people, is to remain a cardinal factor at the time of law making or decision making process. For instance, the government could not satisfactorily control the course of foreign investment and made some bad policy decisions in terms of investment prioritization.\textsuperscript{111} Like people in villages, have access to soft drinks but not to the clean drinking water, food, etc. Also, it seems that the amendments proposed by the government in laws related to foreign investment, trade union and contract labour beard a negative impact on human rights, especially of labourers and women workers.

On the other hand, government also took some initiatives as well to protect human rights from being violated by framing some policies like, corporate social responsibility to protect environment, social security scheme for unorganized sector, minimum environment norms for large scale urban projects and various other schemes as well. In all, it is submitted that all the wings of the State have done enough for their responsibility for protection and safeguarding of human rights against the global economic pace. However still, there is lot of gap that is to be filled up in absolute realization of human rights. The State, at times, has shown its greed for economic prosperity by contending that it will automatically lead to the realization of human rights at all levels, but in this course they have been caught in the trap of global corporate giants. Therefore, India has to rethink about its economic policies in order to safeguard human rights from the negative impacts of globalization.


Thus we see that the proclamation of independence in 1947 was followed by legitimate upswing in the people’s aspirations and expectations towards the betterment of their condition. The new Constitution of India enumerated the most detailed and exhaustive list of rights and duties for the State. However, the major challenge emerged in implementing and enriching such provisions. To give real meaning and content to political freedoms and to build a new social order which could ensure freedom from poverty and hunger, from exploitation and discrimination, the State was expected to do much more than mere proclamation of such rights. However, they were not easy to achieve. Although the Indian State under Jawahar Lal Nehru took many proactive steps and followed welfare state model, the police and bureaucracy remained largely colonial in their approach and sought to exert control and power over citizens. The casteist, feudal and communal characteristics of the Indian polity, coupled with a colonial bureaucracy, weighed against and dampened the spirit of freedom, rights and affirmative action enshrined in the Constitution. Unfortunately, no struggle against the hierarchical caste system followed, so that on one hand caste discrimination and oppression continued, on the other, casteism or the use of caste solidarity for the electoral and other purposes began to grow. The single most important power that affects the human rights of the people is their state and its institutions, especially its legal and law enforcement agencies. It is, also true, that for many others the structures and processes of global economy and global politics are equally important. Some scholars have argued that the state and the NGOs provide the best hope for the human rights in the coming years. We have seen that human rights NGOs have increased greatly in number in recent years. However there have been instances where NGOs have been accused of being partisan, although this is far outweighed by their overwhelming contribution to generating awareness about and alleviating human rights violations across the globe. At the same time the Parliament of India has taken a bold step by enacting the Protection of Human Rights Act, 1993 for better protection of human rights. The National Human Rights Commission has done a commendable work despite certain shortcomings and enabled to a great extent the Indian masses to lead a life full dignity, equality and freedom as enshrined in our Constitution. We have seen that India has no dearth of laws in the field of human rights. However these rights have not reached the common man. India’s adoption of Liberalization in 1991 marked a shift in its economic policy from one that was State-centric tone that was market-oriented. While curtailing of state control in the economic sphere has in no way led to the reduction in state
inflicted human rights violations, the impact of the same in the human rights movement has been manifold and at multiple levels.

It is highly ironic that the human rights groups often have to work in collaboration with and depend for the finances on organizations and agencies which themselves are often violators of human rights. Gradual withdrawal of the state from the economic sphere has not only led to the abandoning of its commitments towards promotion of social welfare but has also reduced its ability to push corporate institutions towards acting in a socially responsible manner. With increasing onus being placed on civil society whether in the form of administrative and political decentralization or development initiatives in the form of self-help groups and stakeholder organizations, it becomes imperative that the human rights movement make use of these initiatives to empower the people and mobilize them to achieve broader human rights causes.