CHAPTER 4

HUMAN RIGHTS IN INDIA: A BACKGROUND
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Human rights are those minimal rights by virtue of which one enjoys maximum natural rights against the state. In India people believed that the philosophy behind origin of the concept of human right is not western but it is an accepted principle of Indian culture from time immemorial. It seems to have modern face but human rights are as old as human civilization.

A. Human Rights in Ancient India: The concept of human rights is not alien to the Indian political thinkers and philosophers. They have expressed concern to secure human rights and fundamental freedoms for all human beings, everywhere since the very early time of Vedic age. The sources of early human rights laws of the India (Bharat-varsha) are found in Shruts, Smritis and Commentaries. It is clear from the Rig Veda – Mandala 5, Sukta 60, Mantra 5 and Atharvaveda – samjuana sukta.

4 Supra note 2 p. 37.
Ajyestaso akhanistas ete
Sam Bhratro va vridhuhu sawbhagya
Samini Prapa sama vaha ann abhagaha
Same yoktre sama vaha yunajmi
Araha habhimina Abhiataha

The concept of Vedas ‘Vashudhave Kutumbakam’ which means the whole world is like a family. Special protection had been given to the women, “Yatra narayestu pujyante ramante tatra Devta, Yatra naastu pujyante tatra sarva afla kriya”

About 5000 years ago, the ancient philosophers and thinkers expounded a theory of high moral law embodying certain values of universal validity, like Dharma (Righteousness) Artha (wealth), Kama (drive) Moksha (Salvation), with a view to establish harmonious social order. The concept of Dharma at that period was more comprehensive than the modern concept of human rights because latter dealt with duties of every person, and the performance of duties by every person was the way to ensure

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5 ‘No one is superior (ajyestaso) or inferior (akianishtashak). All are brethren (bhrataraha). All should strive for the interest of all and all should progress collectively (sawbhagyananam va varidhulu) Rig-Veda, 5th Mandal, 60th Sukta, 5th Mantra).
6 ‘All have equal rights in article of food and water the yoke of the chariot of life is placed equally on the shoulders of all should live together with harmony supporting one another like the spokes of wheels of chariot connecting its rim and the hub’.
7 Ayam nijah parovetvi garna laaghuchetsam .Udar charitanam tu vasudhaiv kutumbakam
8 Where women are respected, God lives there ,where they are neglected, every thing becomes null and void.
enjoyments of rights of everyone.\textsuperscript{10} In whole eighteen Purana, Vyas had said two things ‘doing good to another is right and causing injury to another is wrong’.\textsuperscript{11} The epic Mahabharata described the civil liberty of individuals in a political state. During this period moral law was well established in the society. King controlled the society and used to show compassion towards the good ones.\textsuperscript{12}

In the ancient India treatise ‘Arthshashtra’ was written by Kautilya in 326 – 291 B.C. It dealt with principles of law and government and duties of King towards his subjects. It says:

“In the happiness of his subject lies the king happiness, in their welfare his welfare, whatever pleases the king himself the king shall consider as good. The king shall ever be active and discharge his duties.”\textsuperscript{13}

The Arthshastitra of Kautilya not only affirmed the civil and political rights but also added economic rights.\textsuperscript{14} According to Kautilya law is a royal command enforced by sanction.\textsuperscript{15}

\textsuperscript{10} Nidhi Gupta “Human Rights in India” \textit{Indian Socio Legal Journal} Vol. XXVIII 2001 p. 99
\textsuperscript{12} Supra note 3 p.30. See also Brajed Prasad Roy, \textit{Political Ideas and Institutions in Mahabharata},1975, Calcutta, Punit Pustak, p. 231.
B. Human Rights in Post Vedic Period: After Vedic period the rise of Buddhist and Jainism took place. This period was a revolution against the right of privileged classes. In Buddhist period people were equal in all fields of their life. Life was more human and liberal. It repudiated caste distinction. Regard for human dignity was the basic social message of Buddhism. Every person was enjoyed upon to treat others just as he or she had a love and attachment for himself or herself:

*Yath ahan tatha ete, yatha ete tatha ahan
Attanan upman Katur na hamarya ghetaye.*

Influence by the teaching of Buddha, Great Ashoka worked extensively for the protection of human rights. His chief concern was happiness of his subjects. Torture and inhumane treatment for prisoners were prohibited in this period. Vishakh Dutta in his *Mudra- Rakshas* has depicted Chandragupta as deity coming right from heaven to save his countrymen. Hiuentheng said that the administration in Chandragupta II (Vikramaditya) was quiet good. There was no force labour. Crime was rare and king personally supervised the administration. Harshvardhana, the last Hindu emperor never forgot that the aim of the Government was the welfare of the governed. After Harshvardhana whole India was split up and the philosophy of human rights lost.

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17 Supra note 2 p.38,
18 Supra note 15 p. 245
C. Human Rights and Islamic Era: In the medieval period the philosophy of human rights was changed. The war took the place of philosophical and ideal speculations. Muslim rulers were discriminating against Hindu. The prophet has affirmed the need for the solidarity of the human society to forestall injustice and act according to equality and fairness. There was one law for the Muslims and another for Hindu. They were called *Kafir*. The principle of equity did not have any place. Mohammed Ghazanvi attacked on India and destroyed the religion and life of the Indian people.

During the Mughal Empire a new era begin in the field of human rights. Akbar was one of the Mughal Empires who started the policy of reconciliation and tolerance.²⁰ His son Jahangir also adopted this system. Akbar always had faith in all religion. He followed the path of universal tolerance and peace with all. But during the period of Aurangzeb it was fall of human rights revolution. In the *Bhakti* movement the Great Saints Kabirdas, Tulsidas, Guru Nanak and Meera taught the lesson to respect the human rights of others.

D. Human Rights in British India: The transition period from the Islamic era to British India has resulted in a prodigious change in the Indian history. With the advent of British rule in India a new era started, which created ripples in the political and legal sphere leading to imposition of British political and legal culture in India. The British Government in India had not only

²⁰ Supra note 3, p. 33.
deprived the Indian people of their freedom but had based itself on the exploitation of India in every aspect.\textsuperscript{21} Origin of the idea of human rights in India took place as reaction against British rule. In the beginning most of the Indian organizations were fighting for securing some civil liberties including civil and politics rights of the people.\textsuperscript{22} The East India Company debarred Indians from high offices and economic and political rights.\textsuperscript{23} Lokmanya Bal Gangadhar Tilak, Subhash Chandra Bose, Mahatma Gandhi were the eye opener of Indians that their human rights are being spoiled by English people. Tilak advocated that “Freedom is birth right of Indians and they will have to fight”.\textsuperscript{24} By this effort the Charter Act, 1813 came into force to promote the interest and happiness of the native inhabitants in India.\textsuperscript{25} This was the first Act where there was no discrimination appeared against any person by reason of religion, caste and place of birth. The next Act was Government of India Act, 1833. By which on November 1858 a proclamation was made by Queen Victoria containing principle of state policy.\textsuperscript{26} The first demand for the fundamental rights found place in the Constitution of India Bill, 1895. In pursuance of it the Government of India Act, 1915, guaranteed equality of opportunity in the public

\textsuperscript{21} Supra note 2, p. 41
\textsuperscript{22} ibid
\textsuperscript{23} Supra note 3, p. 34
\textsuperscript{24} ibid
\textsuperscript{25} ibid
\textsuperscript{26} “All shall enjoy the equal and impartial admittance to public officers and assignment to duties of which any subject by his education ability and integrity was qualified to discharge”.
services regardless of race or religion.\textsuperscript{27} The Madras Congress of Indian National Congress, 1927 demanded incorporation of a Declaration of fundamental rights. Accordingly a committee under the chairmanship of Motilal Nehru was appointed which submitted its report in 1928. This committee declared that the first concern of the people of India was to secure fundamental rights.\textsuperscript{28} In 1950 the Constitution of India came into force, which incorporated 10 of the 19 rights enumerated in Motilal Nehru Committee Report, 1928.\textsuperscript{29}

E. Human Rights in Post Independence India:

(a). Human Rights and the Constitution of India: The commencement of the Constitution of India on January 26, 1950, was the watershed in the history of the development of human rights in India. The Preamble\textsuperscript{30} which shows the object of the Constitution provides the basic human rights to the people of India. The Indian Constitution provides certain rights for individual in Part III of the Constitution of India. The word fundamental means that these rights are inherent in all human beings and are basic and essential for the individual. These rights are aimed for protecting

\textsuperscript{27} Supra note 3, p. 35
\textsuperscript{28} ibid
\textsuperscript{29} ibid
\textsuperscript{30} The Preamble of the Constitution of India says, “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 thoughts, expression belief faith and worship equality of status and opportunity and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the nation. In our Constitutional Assembly this 26\textsuperscript{th} Day of November, 1949 do hereby adopt, enact, give to ourselves this Constitution.”
the dignity of individuals and create condition in which every human being can develop his personality to the fullest extent\textsuperscript{31}. These fundamental rights are civil and political rights.

Article 15\textsuperscript{32} of the Constitution of India provides about equality before the law and prohibition of the discrimination on the ground of religion race caste and sex. It also provides opportunity in matters of public employment. This Article does not prohibit the state from making provisions for the benefit of the women, schedule caste, schedule tribes and backward classes and children.\textsuperscript{33} Similarly, Article 17 of the Constitution of India ends untouchability.\textsuperscript{34}


\textsuperscript{32} Article 15 (1) of the Constitution of India, provides “The State shall not discriminate against any citizen on the grounds only of the religion race place of birth or any of them”.

Article 15 (2) says, “No citizen shall on the grounds only of religion race caste sex, place of birth or any of them be subject to any disability liability restriction or condition with regard to”;

(a) access to shops, restaurants hotel and places of public entertainment,
(b) use of walls tanks bathing ghats maintained wholly are partly out of state funds.

\textsuperscript{33} Article 15 (3) of the Constitution of India provides “Nothing in this article shall prevent the state from making any special provision for the women and children”. According to Article 15 (4) “Nothing in this article or in clause (2) of the article 29 shall prevent the state from making any special provision for the advancement of any socially and educationally backward class of citizens or for the schedule caste and schedule tribes”.

\textsuperscript{34} Article 17 of the Constitution of India provides “Untouchability is abolished and its practice in any form is forbidden. The enactment of any disability arising out of untouchability shall be an offence punishable in accordance with the law”.
Article 16 also provides opportunity to public services and authorizes the states to make provisions for the schedule caste, schedule tribes and other backward classes.\textsuperscript{35}

Apart from the above the Constitution of India protects certain rights such as, right to freedom of speech and expression,\textsuperscript{36} rights to peaceful assembly,\textsuperscript{37} right to freedom of association or unions\textsuperscript{38} and right to move freely.\textsuperscript{39} There are two fundamental human rights under the Constitution of India which have acquired the status of non-derogatable human rights. They are contained in the Article 20\textsuperscript{40} and 21\textsuperscript{41} respectively. The Constitution of India under Article 20 prohibits \textit{ex-post facto} law and provides

\textsuperscript{35} Article 16 (1) provides “There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state”.

Article 16 (4) provides “Nothing in this article shall prevent the state from making the reservation of appointment or post in favor of any backward class of citizens which in opinion of the state is not equally representing in the state”.

\textsuperscript{36} Article 19 (1) (a) of the Constitution of India, see also Article 19 (1) (2) of the Covenant on Civil and Political Rights, 1966.

\textsuperscript{37} Article 19 (1) of the Constitution of India, see also Article 21 of the Covenant on Civil and Political Rights, 1966.

\textsuperscript{38} Article 19 (c) of the Constitution of India

\textsuperscript{39} Article 19 (d) of the Constitution of India.

\textsuperscript{40} Article 20 (1) of the Constitution of India, stipulates, “No one shall be convicted of any offence except for violation of law in force at the time of commission of the act charged as an offence, nor be subjected to penalty greater which might have been indicted under the law in force at the time of the commission of the offence”.

Article 20 (2) provides that, “No person shall be prosecuted and punished for the same offence more than one”

Article 20 (3) provides “No person accused of any offence shall be compelled to be witness against himself.”

\textsuperscript{41} Article 21 of the Constitution of India provides, “No one shall be deprived of his life or personal liberty except according to procedure established by law.”

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protection against double jeopardy and self-incrimination. Article 21 provides right to life and personal liberty to the persons which cannot be taken by anyone, except procedure established by law. By the liberal interpretation of these fundamental rights judiciary has evolved various other rights such as, right of prisoners to be treated with humanity, right to provide free legal aid, legal assistance, right to compensation, etc.

In addition to above mentioned figures, Article 21(A)\(^\text{42}\) of the Constitution of India also provides free and compulsory education to all children of the age of 6 to 14 years. Apart from this, rights are also available to the person arrested or detained. Such a person who is arrested for any offence under an ordinary law shall have (a) the right to be informed “as soon as may be” of ground of arrest, (b) right to consult and to be presented by lawyer of his own choice, (c) the right to be produced before the magistrate within 24 hours, (d) the freedom from detention beyond said period except by the order of magistrate.\(^\text{43}\)

Economic Social and Cultural rights of human being are being contained in the Covenant on Economic Social and Cultural Rights are broadly incorporated in the Directive Principle of State Policy under the Constitution of India. Part III (Fundamental Rights) of the Constitution of India guarantees rights to the

\(^{42}\) Article 21 A of the Constitution of India, provides “The State provides free and compulsory education to all children of the age of six to fourteen years in such a manner as the state may, by law determines.”

\(^{43}\) Article 22of the Constitution of India. See also Universal Declaration of Human Rights, Article 9; and International Covenant on Civil and Political Rights, Article 14 (1) for international perspective.
individuals and are enforceable by law, while part IV (Directive Principles of State Policy) gives directions to the state to provide economic and social rights to its people in specified matters. The economic, social and cultural rights which are incorporated in Directive Principle of State Policy are equal pay equal work,\(^{44}\) safe and humane condition of work,\(^{45}\) maternity relief\(^{46}\) right to work,\(^{47}\) opportunities to children,\(^{48}\) compulsory education to children,\(^{49}\) living wages,\(^{50}\) condition of work,\(^{51}\) adequate standard of living,\(^{52}\) right of child to education.\(^{53}\)

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\(^{44}\) Article 39 (d) provides “The state shall in particular direct its policy towards securing that there is equal work for both men and women”. See also Article 7(a) (1) of Covenant on Civil and Political Right for international perspective.

\(^{45}\) Article 42 of the Constitution of India, provides “The State shall make the provision for securing just and humane condition of work and maternity relief.” See also 7 (b) of Covenant on Civil and Political Right 1966 for international perspective.

\(^{46}\) ibid, see also 10(2) of Covenant on Civil and Political Rights 1966.

\(^{47}\) Article 41 of the Constitution of India, provides, “The state shall, within the limits of its economic capacity and development make effective provisions for securing the right to work, right to education and to public assistance in case of unemployment old ages, sickness and disablement and in other cases of undeserved want”. See also 6(1) of Covenant on Civil and Political Rights, 1966, for international perspective.

\(^{48}\) Article 39 (f) of the Constitution of India, provides that the state shall in particular direct its policy towards securing the children that children are given opportunity and facilitate to develop in a healthy manner and in condition of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. See also Article 10 (3) of the Covenant on Civil and Political Rights, 1966 for international approach.

\(^{49}\) Article 45 of the Constitution of India provides, “The state shall endeavor to provide early childhood care and education for all children until they complete the age of six years” see also Article 13 (2) (a) of the Covenant on Civil and Political Rights, 1966 for international approach.

\(^{50}\) Article 43 of the Constitution of India provides, “The state shall endeavor to secure by suitable legislation for economic organization or in any other way to all workers agricultural, industrial or otherwise work a living wages.
Apart from the above provisions there are two more articles in the Directive Principle of State policy, these are Article 48 A and 51. Article 48 A\(^{54}\) is inserted by the 42\(^{nd}\) Amendment Act, 1976. It enjoys the state to protect and improve the environment and safeguards for the forest and wild life. Though before this amendment there was provision that the state shall regard the raising of the level of nutrition and standard of living of its people and the improvement of public health as among its primary duties and, in particular the state shall endeavor to bring about prohibition of the consumption except for medical purposes of intoxicating drinks and of drugs which are injurious to health.\(^{55}\) The Constitution of India lays down clearly the basis on which foreign policy should be framed and respected. Article 51 of the

\(\text{condition of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and in particular the state shall endeavor to promote cottage industries on an individual co-operative basis in rural areas}^{\text{a}}\). see also Article 7 (a) (i) of Covenant on Economic Social and Economic Social and Cultural Rights, 1966.

\(^{51}\) Supra note 45. See also 7(d) of Covenant on Economic Social and Cultural Rights, 1966.

\(^{52}\) Article 47 of the Constitution of India provides, “The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary and in particular the state shall endeavor to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and drugs which are injurious to health.” see also Article 11 of the Convention on Economic, Social and Cultural Rights, 1966 for international approach.

\(^{53}\) Article 21 (A) of the Constitution of India provides “the state shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the state may determine”.

\(^{54}\) Article 48 A of the Constitution of India provides, “The State shall endeavor to protect and improve the environment and to safeguard the forest and the wild life of the country”.

\(^{55}\) Article 47 of the Constitution of India.
Constitution of India highlights this principle. Under a strategic plan of action for the implementation of the Directive Principle of State policy the Indian Parliament has enacted several laws for preventing environmental pollution and to preserve ecological balance.

Besides the above provisions the fundamental duties enshrined in Article 51-A, are in consonance with Article 29 (1) of the Universal Declaration of Human Rights, 1948 which says, "everyone has duties to the community in which alone the free and full development of his personality is possible". The fundamental duties of citizen which is mentioned in 51- A includes (a) renunciation of practices derogatory to the dignity of women, (b) protection and improvement of the natural environment including forests lakes river and wildlife and to have compassion for living

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56 Article 51 of the Constitution of India, provides, "State shall endeavor to:
(a) Promote international peace and security.
(b) Maintain just and honorable relation between nations.
(c) Foster respect for international treaty obligations in the dealing of organized peoples with one another and
(d) Encourage settlement of international dispute by arbitration".

3. AIR (Prevention and Control of Pollution) Act, 1981.
9. Environment (Protection) Act, 1986. etc


59 Article 51 A (e) of the Constitution of India.
creatures,\(^{60}\) (c) development of scientific temper humanism and spirit of inquiry and reform.\(^{61}\) It is the duty of every parent or guardian to provide opportunities for education to his child or as the case may be ward between the age of six and fourteen years.\(^{62}\)

Apart from the above the National Commission to Review the working of the Constitution, 2002 recommended the addition of new article i.e., article 30 D \(^{63}\) in Part III of the Constitution containing certain fundamental rights.\(^{64}\)

(b). **The Protection of Human Rights Act, 1993:** The new law called Protection of Human Rights Act, 1993 was enacted in 1993. It provides for the better protection of human rights. It extends to whole of India including Jammu and Kashmir. The National Human Rights Commission (NHRC) the State Human Rights Commissions (SHRCs) are constituted through this Act.\(^{65}\) The preamble also provides for the construction of Human Rights Courts. The purpose of the constitution of National and State Human Rights Commissions and Human Rights Courts were to protect human rights of the persons in better way.

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\(^{60}\) Article 51 A (g) of the Constitution of India.

\(^{61}\) Article 51 A (h) of the Constitution of India.

\(^{62}\) Article 51 A (k) of the Constitution of India.

\(^{63}\) Article 30 D, Every person shall have the rights,(a) to safe drinking water,(b) to an environment that is not harmful to one's health or well being and (c) to have the environment protected for the benefit of present and future generation so as to:

(i) to prevent pollution and ecological degradation;

(ii) to promote conservation; and

(iii) to secure ecology, sustainable development use of natural sources while promoting justifiable economic and social development.

\(^{64}\) Supra note 58 p. 27.

(i) **National Human Rights Commission**: The National Human Rights Commission shall have eight members who will be headed by the former Chief Justice of India. The other members will be a sitting or retired judge of the Supreme Court, a serving or retired judge of the High Court two prominent persons having knowledge and practical experience of human rights and the chairperson of the National Commission for minorities. The schedule caste, the schedule tribe and women.\(^{66}\) The Chairperson and members will be appointed by the President on the recommendation of six members committee headed by prime Minister.\(^{67}\) The chairperson and members will hold the office for 5 years or up to the age of 70 years, whichever is earlier. The Central Government shall make available to the Commission an officer of the rank of secretary to the Government of India, shall be the Secretary of the Commission. Police staff as necessary can be evolved for its proper function.\(^{68}\) The Head quarter of the Commission will be in New Delhi and with the permission of the Central Government it may be established at any other place in India.\(^{69}\) Section 12 of the Act empowers the Commission to function smoothly.\(^{70}\)

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\(^{66}\) Section 3 of the Protection of Human Rights Act, 1993.

\(^{67}\) Section 4 provides that other members of the Committee shall be the speaker of the House of People, Minister in charge of ministry of home affairs in the Government of India, leader of the opposition in the House of the people, leader of the opposition in the council of states and the Deputy Chairman of the Council of States.

\(^{68}\) Section 11 of the Protection of Human Rights Act, 1993.

\(^{69}\) Section 3 of the Protection of Human Rights Act, 1993.

\(^{70}\) Commission shall perform following functions;

(a) inquire *suo moto* or on petition presented to it by victim or any person on his behalf in the complaint of:

(i) Violation of human rights or abatement thereof or
Commission at the time of inquiry shall have the power of civil Court.\textsuperscript{71} The Commission after inquiry recommends appropriate government to take action against the person concerned. Where inquiry discloses violation of human rights it may recommend for grant of necessary interim relief to the victims or their families.\textsuperscript{72} However, armed forces including army, navy, air force and Para military forces are exempted from the purview of the Commission. But while dealing with the violation of human rights by armed forces, it may either\textit{suo moto} or on receipt of petition, seeks a report from the Central Government.\textsuperscript{73} The Commission shall publish its report, recommendation and action taken by the government on such recommendation.\textsuperscript{74} The time has come and the members of the armed forces and its paramilitary forces should

\begin{itemize}
  \item[(ii)] Negligence in prevention of such violation by public servant.
  \item[(b)] Intervene in any proceeding involving any allegation of violation of human rights opening before a Court with the approval of such Court.
  \item[(c)] Visit under intimation of the state government, any jail or any other institution under the control of state government where persons are detained and make recommendation thereon.
  \item[(d)] Review the safeguards provided by/under the Constitution or any law time being in force for protection of human rights and recommended measures for their effective implementation.
  \item[(f)] Study treaties and other international instruments as human right and make recommendation for their effective implementation.
  \item[(g)] Undertake and promote research in the field of human right.
  \item[(h)] Spread human rights literacy.
  \item[(i)] Encourage the efforts of non governmental organization and institutions working in the field of human rights.
\end{itemize}

\textsuperscript{71} Any other functions necessary for the promotion of human rights.
\textsuperscript{72} Section 13 of The Protection of Human Rights Act, 1993.
\textsuperscript{73} Section 18(1) and 18(3) of the Protection of Human Rights Act, 1993, see also H.O Aggarwal \textit{Human Rights} 2005, Allahabad, Central Law Publication p. 266-267.
\textsuperscript{74} ibid
come in the purview of the NHRC, because no one is above the law,\textsuperscript{75} and a lot of cases are being noticed regarding violation of human right by armed forces, mostly from North-East and Jammu and Kashmir. Section 2(d)and(f) the Protection of human Rights Act, 1993 respectively enjoins upon the National Human Right commission to review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommended measures for their effective implementation and to study treaties and other international instruments on human rights and make recommendations for their effective implementation\textsuperscript{76}. Since then NHRC has been playing its role in the context of review of laws, implementation of treaties and other international instruments of human rights. It has been impressing upon the Government of India as well as upon various state governments for taking measures in this regard\textsuperscript{77}. In case of Child Marriage (Restraint) Act, 1929, the NHRC took the view that this Act should be recast so as to provide for higher penalty for the violation of the provisions of the Act. The NHRC recommended that all the marriages should be registered whether religious or civil\textsuperscript{78}. NHRC stressed that if at the time of marriage one party or both are minors the marriage needs


\textsuperscript{77} ibid.

\textsuperscript{78} ibid.
to be made voidable at the instance minor. 79 Similarly in the case of Armed Force (Special Powers) Act, 1958, the Commission expressed that the power of Act were too vast and sweepy and did pose a grave threat to the fundamental rights and liberty of the citizenry of the areas covered by this Act. Some of its sections were so arbitrary and excessive as to empower the Armed Force even to take away the life of a citizen by firing upon him on the mere ground that he was acting in contravention of any law or order for the time being in force in the disturbed area or carrying things capable of being used as weapon 80. NHRC gave its recommendation to the Supreme Court regarding this. Apart from this NHRC has also proposed amendment to the Protection of Human Rights Act, 1993, in order to remove what it considers to be ambiguous and impediments concerning its competence and autonomy 81. The NHRC accordingly requested Mr. Justice A.S. Almadi, Former Chief Justice of India, to head a high level advisory committee consisting of human rights activists and legal experts to study the Act and suggest amendments 82.

(ii) State Human Rights Commission: The Act also provides for setting up of the State Human Rights Commission in the each State, consisting of a chairperson who has been a Chief Justice of High Court and members who is or has been Judge of High Court, one member who is or has been District Judge in that state and two

79 ibid.
80 Section 4 and 5 of The Armed Forces (Special Powers) Act, 1958.
81 Supra note 76, p. 109.
82 ibid.
members to be appointed from amongst person having knowledge of the practical experience in matter relating to human rights.\textsuperscript{83} State Commission is empowered to perform all those functions, which have been entrusted to the National Human Rights Commission.\textsuperscript{84} It is also mentioned that National Human Rights Commission will not inquire any matters which are pending before the State Human Rights Commission.\textsuperscript{85} National Human Rights Commission has recommended in 1998-1999 that the State Human Rights Commission should be established rapidly in those states where it does not exist.\textsuperscript{86}

(iii) \textbf{Human Rights Courts}: Apart from the above provisions chapter VI of the Protection of Human Rights Act, 1993 makes provisions for creating Human Rights Court in each district. The Act provides that the State Government may set Human Rights Courts with the concurrence of the Chief Justice of the High Court by notification specifying for each district a Court of Session to be the Human Rights Court.\textsuperscript{87} For each Human Rights Court a specific Public Prosecutor will be appointed to conduct the case.\textsuperscript{88} The Madras High Court under Article 227 of the Constitution constituted a special bench to formulate the rules and procedure for the functioning of Human Rights Courts set up in accordance with the provisions of the Protection of Human Rights Act, 1993 in all

\textsuperscript{83} Section 21 of The Protection of Human Rights Act, 1993.
\textsuperscript{84} Section 29 of The Protection of Human Rights Act, 1993.
\textsuperscript{85} Section 36 (1) of the Protection of Human Rights Act, 1993
\textsuperscript{86} Supra note 75 p.275
\textsuperscript{87} Section 30 of The Protection of Human Rights Act, 1993.
\textsuperscript{88} Section 31 of the Act
districts of Tamilnadu. The High Court of Madras has also requested the Commission to place its views before it on various aspects. The commission placed its views and suggestions.\textsuperscript{89}

For enhancing the promotion and protection of human rights in the country the National Human Right Commission set up an advisory committee headed by the former Chief Justice of India, A.M. Ahmadi. Seven members committee recommended that financial autonomy should be given to the Commission. Each Commission (NHRC, SHRCs) must have at least one woman member. The Commission also recommended that paramilitary forces should come in the ambit of NHRC.\textsuperscript{90}


National Commission for Women Act, 1990 came into force on 31\textsuperscript{st} January 1992. The National Commission for Women is

\textsuperscript{89} Report of the National Human Rights Commission, 1997-98, p. 116 in Supra note 75p. 277. (Criminal Revision Case NO 868/96)

\textsuperscript{90} Supra note 72 p. 278.
constituted under this Act. The Central Government of India in 1971 set up a Committee on the Status of Women which submitted its recommendation in 1974. In this recommendation different area for the women were discussed. The Commission performs the function to improve the status of women by the recommendation for the effective implementation of those safeguards improving the conditions of women by the Union or State.\footnote{Section 2 (b) of the National Commission for Women Act, 1990}

The Central Government enacted Maternity Benefit Act, 1961 to regulate the employment of women after and before the child birth as is provided in Article 25 (2) of the Universal Declaration of Human Rights, 1948.\footnote{Article 25(2) of the Universal Declaration of Human Rights, 1948 says 'motherhood and childhood are entitled to special care and assistance. All children whether born in or out of wedlock, shall enjoy the same social protection'.} Section 4 of the Maternity Benefit Act, 1961, prohibits employment work by women under certain circumstances\footnote{Section 4 of the Act provides that: (1) No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her miscarriage or medical termination of her pregnancy. (2) No woman shall work in any establishment during the six weeks immediately following the day of her delivery or miscarriage or medical termination of her pregnancy. (3) No pregnant woman shall on a request being made by her in this behalf be required by her employer to do during the period as specified in section 4 (4), any work which is of an arduous nature or which involves long hours of standing or which in any way is likely to interfere with her pregnancy or the normal development of the fetus or is likely to cause her miscarriage or otherwise adversely affect her health. (4) The period referred above shall be:}. Under the provision of this section a pregnant woman has been given protection in order to protect her
health as well as to avoid any interference which may be detrimental to the sound development of unborn child.\footnote{V.G. Goswami "Labour and Industrial Law" in Mamta Rao \textit{Law Relating to Women and Children}, 2005, Lucknow, Eastern Book Company, pp 370, 371.}

Section 5 of Equal Remuneration Act, 1976\footnote{Section 5 of the Equal Remuneration Act, 1976, says, "no employer shall while making recruitment for the same work or of similar nature make any discrimination against any woman unless employment of woman prohibited or restricted by law." See also Article 23 of the Universal Declaration of Human Rights, 1948.}, provides that if women and men are doing equal work there should be no discrimination among them. Apart from this Act there are the Acts dealing with the welfare of women.\footnote{Section 19(1), 22, 27, 48 of The Factories Act, 1948. See also Section 42 of The Mines Act, 1952, The Bidi and Cigar Workers (Condition of Employment) Act, 1966.}

In the context of the welfare of children, The Child Labour (Prohibition and Regulation) Act, 1986, came into existence. This Act was aimed at identifying more hazardous process and industries with a view to banning child labour in the industries and regulating conditions for children in non-hazardous occupations. The main object of the Act is to ban the employment of children in specific occupation and processes, to regulate the conditions of works of children when they are not prohibited from working.\footnote{Mamta Rao, \textit{Law Relating to Women and Children}, 2005, Lucknow, Eastern Book Company, pp.425, 426.}

Section 3 of the Act\footnote{Section 3 of the Act provides, "No child shall be employed in Part A or Part B type of industry."} prohibits the employment of children in some areas. Section 7 deals with the period of work of children. They should not be sent to work for more than six hours. Section
13 deals with health and safety of children. This Act provides that a child up to fourteen years of age will be treated as child.

Factories Act, 1948, prohibits employment of young children\textsuperscript{99}. Mine Act, 1952, also provides same prohibition\textsuperscript{100}. The Juvenile Justice (Care and Protection of Children) Act, 2000, was enacted for special care and protection of children. The preamble of the Act states that the Constitution of India has in several provisions including clause (3) of the Article 15, Article 39(e) and (f), Article 45, 47 imposed on the State a primary responsibility of ensuring that all needs of the children are met and their basic human rights should fully protected\textsuperscript{101}. A child in need of care and protection means a child who is found without any home or settled place of abode and without means of subsistence, or who is neglected by his parents or guardian or does not have parents and no one is willing to take care of him, or who is likely to be abused grossly, tortured, or exploited, or who is found vulnerable\textsuperscript{102}. The Act provides that State Government may constitute Welfare Committees in relation to need and care of children who are in need\textsuperscript{103}. The Act prohibits Juvenile Justice Board from making

\textsuperscript{99} Section 67 of the Act provides “No child who has not completed his fourteen years shall be required or allowed to work in any factory.”
\textsuperscript{100} Section 40 of The Mines Act,1952 provides, “No person below the age of 18 years shall be allowed to work in any mine or part thereof.”
\textsuperscript{101} Supra note 90 at 445.
\textsuperscript{102} Section 2(d) of The Juvenile Justice (Care and Protection) Act, 2000.
\textsuperscript{103} Section 29 of The Juvenile Justice (Care and Protection of Children) Act, 2000.
orders against juvenile who is found guilty of an offence. The following orders cannot be made by the Board\textsuperscript{104}.

(a) An order awarding death sentence.
(b) An order awarding sentence of life imprisonment.
(c) An order of imprisonment in default of payment of fine.
(d) An order for imprisonment in default of furnishing security.

The Indian Penal Code, 1860, Civil Procedure Code, 1973 and personal laws makes some provisions for the protection of human rights. Section 54 of the Indian Penal Code provides that if a person is sentenced for life imprisonment, his sentence may be commuted by appropriate Government. This provision is similar to the provision of the Article 3 of the United Nation Declaration of Human Rights, 1948. Section 370 of the Code makes punishable the act of any person who buys or disposes of any person as slave\textsuperscript{105}. The Code of Criminal Procedure, 1973 also provides protection against arbitrary arrest, detention or exile. Section 49\textsuperscript{106}, 50\textsuperscript{107}, 50 A\textsuperscript{108}, 56\textsuperscript{109}, 57\textsuperscript{110} of the Code provide regarding the

\textsuperscript{104} Section 16 of The Juvenile Justice (Care and Protection of Children) Act, 2000.

\textsuperscript{105} Section 370 of Indian Penal Code: 'Whoever imports, exports, removes, buys, sells, traffic or deals in slave or accepts, receives or detains against his will any person as slave shall be punished with imprisonment or either description for a term which may extend to seven years shall also be liable to fine. See also Section 4, 5 of Universal Declaration of Human Rights 1948, for International perspective.

\textsuperscript{106} Section 49 of Criminal Procedure Code provides: 'The person arrested shall not be subjected to more restrain than is necessary to prevent his escape'.

\textsuperscript{107} Section 50 of the Criminal Procedure Code provides: '(1) Every police officer arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds of such arrest, (ii) Where a police officer arrests without warrant
protection of arrestees. Not only these section but some other sections of Criminal Procedure Code, 1973 like section 300, 303, 304 provides protection to the human rights of persons. Section 300(1) provides protection from double jeopardy. Section 303 of Criminal Procedure Code, 1973 provides about the facility of pleader, while section 304 of Criminal Procedure Code, 1973 provides about free legal aid.

any person other than a person accused of non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail.'

Section 50 A of Cr.P.C. provides that the person arrested must be informed to his friends or relatives.

Section 56 of Cr.P.C. provides, ‘A police officer making an arrest without warrant shall without unnecessary delay and subject to the provisions herein contained as to bail take or sent the person arrested before a Magistrate having jurisdiction in the case or the officer in charge of police station.

Section 57 of Cr.P.C. provides, ‘No police officer shall detain in custody a person arrested without warrant for longer period than under all the circumstances of the case is reasonable and such period shall, not in the absence of special order of Magistrate under section 167 exceeds twenty four hours exclusive of times necessary for the journey from the place of arrest to the Magistrate Court.’ See also U.N. Declaration of Human Rights, Article 9; International Covenant on Civil and Political Rights, Article 6 (i) and 9.

Section 300 (i) Cr.P.C., 1973, provides, ‘A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not to be liable to be tried again for the same offence nor on the same fact for any other offence for which a different charge from the one made against him for which he might have been convicted.’

Section 303 of Cr.P.C., 1973, provides, ‘Any person accused of any offence before a Criminal Court or against whom proceedings are instituted under this Code may of right be defended by pleader of his choice.’

Section 304 (1) - ‘Where in a trial before the Court of Session, the accused is not represented by a pleader and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader of his defence at the expense of the State’

(2) – The High Court may with the approval of the State Government make rule for:

(a) the mode of selecting pleader for defence under sub-section (1).

(b) the facilities to be allowed to such pleader by the Courts.

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Apart from the foregoing provisions the personal laws also provides protection to the women and children. Hindu Marriage Act, 1955, prohibits child marriage\textsuperscript{114}. Betrothal of young girls before puberty\textsuperscript{115} is also prohibited in Muslim Laws. Women are ensured to get equal rights with men in Civil Laws and in particular to acquire, administer, enjoy, dispose of and inherit property.\textsuperscript{116} Recently Hindu Succession (Amendment) Act, 2005, took place. Before this amendment only the male members of Hindu Undivided Family would have been the member of co-parcenary. After this amendment daughters have also been included in co-parcenary.\textsuperscript{117}

Besides above, The Immoral Traffic (Prevention) Act, 1956, was enacted in pursuance of the International Convention for the Suppression of Traffic in Person and of the Exploitation of the Prostitution of Others, signed at New York on 9\textsuperscript{th} May, 1950. But it was felt that the Act has not been effective enough to deal with the problem of immoral traffic in all dimensions. A lot of suggestions were coming from different groups of the society to make penal provisions more stringent and provisions for the rehabilitation of

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  \item (c) the fees payable to such pleaders by the Government, and generally, for carrying out the purpose of sub-section (1).
  \item See also Universal Declaration of Human Rights, 1948, Article 10; and International Covenant on Civil and Political Rights, Article 14 (1).
  \item \textsuperscript{114} Section 5 of Hindu Marriage Act, 1955./ Child Marriage Restraint Act, 1929.
  \item \textsuperscript{115} Dissolution of Muslim Marriage Act, 1939.
  \item \textsuperscript{116} Hindu Succession Act, 1956, Section 14.
  \item \textsuperscript{117} Hindu Succession (Amendment) Act, 2005, Section 6 of the Act is amended and daughters are included in the co-parcenary. See also Universal Declaration of Human Rights, Article 17; and Declaration on Elimination of Discrimination Against Women, Article 6 (1) (a).
\end{itemize}
\end{footnotesize}
victims. It covers both male and female. It makes the activities of prostitution punishable. The Act provides about the punishment who keeps brothel or provide premises.\textsuperscript{118} Similarly Section 4 makes punishable who earns money by prostitution.\textsuperscript{119} Recently Administration Reform Commission gave his report in 2007 and recommended 33% female member should be admitted during the time of recruitment in police forces so that they can consider human rights of women in proper way. The Suppression of Immoral Trafficking in Women and Girls Act, 1956, (SITA), was enacted in pursuance of Trafficking Convention which India signed in 1953. In 1986 SITA was drastically amended and remained as Immoral Traffic Prevention Act, 1986. It is a special legislation dealing with trafficking. The law provides powers to the authorities concerned in respect of rescue and rehabilitation of victims and supervisors, stringent action against exploiters including closure of brothels, surveillance and internments as well as aggravated punishment when the offence are committed on children.\textsuperscript{120} However, one of the primary problems of the Act is that it makes prostitution as the only form of trafficking. Keeping in mind the new trend in commercial sexual trade, the Act is to incorporate larger aspects in it instead of being confined to brothels. The Act provides for the constitution of Special Courts and summary trials but it does not prescribe procedures. In view of powerful network

\textsuperscript{118} Section 3 of the Immoral Traffic (Prevention) Act, 1956.
\textsuperscript{119} Ibid, See also Article 23 of the Constitution of India.
of trafficking it should provide for victim protection and rehabilitation. Another Act which came in to force after strong demand of women to prevent the commission of Sati is the Commission of Sati Prevention Act, 1987.

In 1990 National Commission for Women Act was enacted by the Parliament which established National Commission for Women. The Commission had wide power to ensure to steady and due development of women. The Commission has been empowered to investigate and examine all matters relating to safeguard provided for women under the Constitution and other laws; to review the existing provisions of the Constitution and other laws affecting women and to amendments so as to suggest remedial measures to any lacunae or shortcomings in such legislations and to take up the cases of violations of constitutional provisions and other laws with appropriate authorities.\textsuperscript{121}

Another Act came into force for protecting the women from domestic violence. This Act is called The Protection of Women from Domestic Violence Act; 2005. The Act protects women from the violence which is committed inside the wall. An amendment took place in Indian Evidence Act, 1872, that is in any case of sexual offences if the female says that she did not give consent for intercourse then the Court shall presume that the consent of female was absent and burden of proof will lie on the male to rebut the fact.\textsuperscript{122}

\textsuperscript{121} Supra note 75 p.108
\textsuperscript{122} Section 114 A of the \textit{Indian Evidence Act, 1872}, inserted by the Criminal Law (Amendment) Act, 1983.
Though there is provision for prohibition of untouchability in the Constitution of India\textsuperscript{123}. Other than that the Constitution of India provides about the National Commission for Scheduled Castes and Scheduled Tribes\textsuperscript{124} to protect and promote them. It is the duty of the Commission to investigate the matters relating to the safeguards provided for the Scheduled Tribes, Scheduled Castes under this Commission or under any other law for the time being in force or any order of the Government and to evaluate the working of such safeguards\textsuperscript{125}. Further to protect Schedule Castes and Schedule Tribes and to curb atrocities upon them, in the year 1989, S.C & S.T. Prevention of Atrocities Act, was passed. For safe implementation of this Act, rules were enforced in the year 1995\textsuperscript{126}.

After the commencement of the Constitution, first time Protection of Civil Rights Act, 1955 was enforced, to protect the civil rights of weaker and so called untouchable section. This Act preserves punishment for the preaching and practice of untouchable. Not only this but if any person compels any one to do some act on the ground of untouchability, such as sweeping, scavenging, he shall be punished with 6 months imprisonment and fine not less than Rs.100.\textsuperscript{127} Apart from this The National Commission for Backward Classes Act, came into force in 1993 to

\textsuperscript{123} Article 18 of the Constitution of India.
\textsuperscript{124} Article 338 of the Constitution of India.
\textsuperscript{126} Ibid.
\textsuperscript{127} Section 7 A of the Protection of Civil Rights Act, 1955.
protect the interest of socially and educationally backward people. In 2005 The Commission for the Protection of Child Rights Act, 2005 came in to force. This Act provides for the constitution of National and State Commission for the protection of child in every state and Union Territories. The Commission has power to examine and review the legal safeguards provided by or under any law for the protection of child right and recommended measures for their effective implementation. In 2006 The Prohibition of Child Marriage Act, 2006 came in to force. It repealed The Child Marriage Restraint Act 1929. It also declared child marriage voidable. From the above discussion it is clear that there were provisions regarding human rights from the time immemorial.