STATUS OF HUMAN RIGHTS EDUCATION IN INDIA
Chapter VII

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Human rights have to do with the all round development of the human person in harmony with that of his fellow beings in the totality of the relations in a society. The concept of human rights is necessarily evolving in nature, apace with the evolution of human civilization in the context of a changing social, political, economic and cultural milieu. It is, therefore, a daunting task for anyone to assess the state of implementation of human rights in a society. The arrogance of sitting in judgment over the human rights performance of the society apart, it is a function often tainted by a preferred perception and prioritisation of human rights inter se and an eclectic identification and impressionistic evaluation of human rights situations. The exercise usually ends up in a faultfinding judgment, without taking into account the intrinsic correlationship of the development of the individual with the development of the society, and without addressing the question of social and economic costs of conditioning the correlationship between the individual and societal development.¹

In this chapter an attempt is made to present a general overview of the human rights situation in India. It recognizes that there are different ways of perceiving human rights, identifying

and analyzing human rights issues. Hence the following conceptual perspective on human rights implementation, in the Indian situation is portrayed. The investigator realizes that the study will highlight the status of human rights education and the need for overcoming the limitations and shortcomings.

Human rights of the individual are "those conditions of social life without which no man can seek, in general, to be himself at his best". Representative democracy, although not the perfect from of governance of the people, is still the best form available in that it ensures the right of the people to participate in governing themselves. Such a government is expected to be best suited to promote the realization of human rights of its peoples. Operational problems of a working democracy are evidently problems directly relevant to realisation of human rights. These operational problems encompass not only how well the representative democracy is practiced, but also preservation of territorial integrity and political independence of a country, and promotion of social and economic welfare of the people, the greatest happiness of the greatest number in the society, often even at the teeth of several constraints. These problems prove quite formidable. The tenor, intensity and contextual context of these problems may vary with each national society. All this necessarily inhibits realization of human rights in a society.

Given the diversity of political, social, economic and above all historical ethos and genius of nations, beyond a minimum
threshold of human rights, countries today differ in their perception of identity and scope of many human rights, of priority of realisation of some of them over the others.

Further, the very concept of realisation of human rights is largely relative to time and space. Since they represent human values that are by definition evolving in nature, they cannot momentarily be "frozen" for purposes of their "realization". Human rights are essentially evolving ideals to be constantly striven to achieve. The process of their realization lies in this struggle, and there will always exist a gap between the ideal and what has been achieved.

To compound these conceptual 'imponderables' of human rights, there are at least three principal paradoxes engendered by the ongoing tension between governmental power and promotion of human rights. First, human rights are mostly usually conceived and claimed against the State power, with a view to inhibiting abuse of State power. Yet demands for enhancement of human rights, in respect of many values such as well-being and skill, are difficult to achieve. Without enlargement of governmental power it may tend to promote some, rather than all of the human rights simultaneously, depending of course on the preferred goal values of the group or class of people who, for the time being, holds the reins of government. Third, rights are by definition correlative to duties. They must be exercised in reasonable regard for the rights of others, and the interests of the community and these
roles throw up considerable opportunities for abuse of power on the one hand, and claim to prioritisation of rights on the other.\textsuperscript{2}

The dilemma of human rights is very clear. On the one hand, the enforcement of human rights is the primary responsibility of the State. On the other, claims of rights violations are usually raised against the State. Yet the task of enhancement of human rights tends to augment State power. As noted already, rights are correlative to duties—duties to one’s fellow-beings, duties to the society at large. Some of these duties are deeply ingrained in the philosophical texts in India and are being regarded as very important. The Constitution too, through an amendment has incorporated Part IV specifying some duties of the people towards the State.

One of the least noticed provisions of the Universal Declaration of Human rights, 1948, is article 29 which declares as follows:

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purpose and principles of the United Nations.

This provision primarily underscores the need to balance the claims of individual right with those of social good, and with

\textsuperscript{2} ibid p 91
due regard for the rights of others. Most situation of human rights violations results from the often deliberate flouting of this commandment of the declaration, by individuals and groups. While the State must bear the ultimate responsibility for failure to take measures to prevent such situations from developing, the individual and group responsibility cannot be ruled out, *a la* the Nuremberg principles. The phenomenon of terrorism highlights precisely this issue. Mindless terrorists in pursuit of real or fancied grievances 'of course' against the government of the day often perpetrate most heinous violation. They highlight the fact that in many cases human right are violated by the terrorist individuals or groups themselves, whatever be the contribution of the government towards the root 'causes' of such terrorism. Their actions, therefore, cannot claim immunity from responsibility, however lofty their 'causes' might be.\(^3\)

The unique problem of terrorism is that it begets terrorism. It also provokes resort to deterrent and punitive demonstration or raw (disproportionate) force, on the part of the State, including promulgation of draconian legislative measures to facilitate such State conduct.

Yet, the problems of rights implementation are best tackled at the national level. They originate there. They are shaped by the prevalent national context. The principle of self-determination underscores the right of a nation to decide on the modalities of

\(^3\) The Hindustan Times (New Delhi) 18\(^{th}\) January, 1991
rights realisation, in terms of its own perceptions, preferences and priorities. Every democratic society, pursuant to their principle, provides for legitimate institutions to contain abuse of State power and promote human rights. Amnesty International's annual reports of human rights violations in most countries of the world, including prominent democracies, are disconcerting indeed. It is more disconcerting that States are reluctant to evolve remedial institutions.

Since the days of the Indus valley civilization down to this day, the Indian culture has been the product of synthesis of diverse cultures and religions that came into contact with the enormous Indian sub-continent over time. Max Muller notes "an unbroken continuity between the most modern and the most ancient phases of Hindu thought extending over more than three thousand years."

The Indian culture perceives the individual, the society and the universe as an organic whole. Everyone is a child of God, and all fellow-beings are related to one another, belonging to a universal family. Religious prayers would ask of God to make all peoples of the world happy. An ancient text runs thus: "I seek no kingdom, nor Heaven nor rebirth, but I wish that all living being be spared of the manifold pains and distresses". The same

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4 Jahawarlal Nehru, "The Discovery of India", New Delhi, 1946, pp 72-76
5 A Sanskrit verse recited by Dr S. Radhakrishnan in his presidential address in Nepal, cited in Nagendra Singh, India and international law, New Delhi 1969
6 Recited by Nagendra Singh, Enforcement of Human Rights, 1986 p 2
7 S Radhakrishnan, (trans) The Bhagavad Gita (Bombay) 1971, p 334 chapter xii verse 13
cultural ethos rang in when Mahatma Gandhi said: “I do not want to think in terms of the whole world. My patriotism includes the good of mankind in general. Therefore, my service to India includes the services of humanity.”

“In fact, the Buddhist doctrine of non-violence in deed and thought”, says Nagendra Singh, “is a humanitarian doctrine par excellence, dating back to the third century B.C.” Jainism too contained similar doctrines. According to the Gita, “he who has no ill will to any being, who is friendly and compassionate, free from egoism and self-sense, even minded in pain and pleasure and patient” is dear to God. It also says that the divinity in humans is represented by the qualities of “non-violence, truth, freedom from anger, renunciation aversion to fault-finding, compassion to living beings, freedom from covetousness, gentleness, modesty and steadiness”, qualities that a good human being ought to have.

In Nagendra Singh’s view, “The individual in ancient India existed as a citizen of the State and in that capacity he had both rights and obligations”. These rights and duties have largely been expressed in terms of duties (dharma)—duties to oneself, to one’s family, to other fellowmen, to the society and the world at

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8 supra n 4 p 420
9 Nagendra Singh, op cit p 37
10 supra n 7
11 Nagendra Singh, op cit p 37
One of the chapters in the Gita is dedicated to *Karma yoga*, that is, the Yoga of works, which "expounds the necessity for the performance of work [duty: that which ought to be done] without any selfish attachment to results, with a view to securing the welfare of the world, with the realisation that agency belongs to the modes of *Prakriti* (Nature) or to God himself".\(^{13}\) If interindividual and social relations are expressed in terms of a comprehensive web of duties, rights cease to be privileges to be specifically claimed, but a condition that would promote human, and hence social welfare. Hence Kautilya prescribed not powers, but "duties of a king". One of the king's duties was: "when in court he shall never cause his petitioner to wait at the door". One of the ground rules for the king was:

"In the happiness of his subjects lies his happiness; in their welfare, his welfare; whatever pleases himself he shall not consider as good, but whatever please his subjects he shall consider as good."\(^{14}\) "Harmlessness, truthfulness, purity, freedom from spite, abstinence from cruelty, and forgiveness are duties common to all".\(^{15}\)

While the ancient texts tend to emphasize the principle of equality between individuals, there is no doubt that there was always a gap between the ideal and the ground reality. Humans in

\(^{13}\) S Radhakrishnan op cit p 150
\(^{14}\) S. Radhakrishnan (trans) Kautilya's *Arthasastra*, 5th ed, 1956
\(^{15}\) ibid p 7
any society have never been equal *inter se* and there have always been dominant groups-classes seeking to monopolize social and material benefits unto themselves and deprive others from access to them. Stratification is the bane of all societies. In India, for instance, the caste system arose from the principle of division of labour as a method of social organisation. The caste system encompassed the *brahmins* (the priestly or teacher class), the *kshatriyas* (the ruling class, the nobles), the *vaisyas* (the merchant class, the tradesmen, the agriculturalists) and the *sudras* (the unskilled, "lowly" workers). As the Gita says, "The fourfold order was created by me according to the division of quality and work".16 Radhakrishnan points out, "the emphasis is on *guna* (aptitude) and *karma* (function) and not *jati* (birth). The *varna* or the order to which we belong is independent of sex, birth or breeding. A caste determined by temperament and vocation is not a caste determined by birth and heredity. According to the Mahabharata the whole world was originally of one class but later it became divided into four divisions on account of the specific duties".17

However over a period of time, those castes, which could gain power and wealth such as Brahmins and Kshatriyas, exploited the society and its institutions.

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16 The Gita Chapter IV Verse 13
17 S Radhakrishnan reciting from the "Mahabharata" p 13
The historical response came from Buddhism and Jainism both of which emphasized on the principles of equality, non-violence and denial of materialistic pleasures. The religious reforms like Sankara then took upon themselves the task of purification of the Indian society, through a process of synthesis of new thoughts. Subsequently, the advent of Muslim rulers from the north brought with them the teaching of Islam. This historical process of synthesis, aided by enlightened reformers, and great kings like Ashoka and Akbar, now forms the foundation of the amazing phenomenon called the Indian Culture. On it stands the co-existence of and mutual respect for diverse religious and philosophical beliefs and sub-cultures.\textsuperscript{18}

While the dubious credit for the unification of India must largely go to the British rule, the British achieved it with the systematic destruction of the traditional social, political and economic institutions, and exploitation of the social and religious weaknesses of the Indian masses in furtherance of the cause of British imperialism.\textsuperscript{19} The British stood to gain by sharpening the caste and religious differences in the society in pursuit of their divide and rule policy. In the Indian cultural history the British colonial era shall remain the Indian equivalent of the "Dark Ages".

The renaissance came about, thanks chiefly to the rise of nationalism and religious and social reformers. The leaders of Indian nationalism have, however, been a new breed of men and

\begin{footnotes}
\item[18] Supra n 4 p 682
\item[19] ibid, p 284
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women of vision synthesizing the traditional cultural values with newly imbibed ideas of the American and the French revolutions. Mahatma Gandhi, the foremost among them, wrote in his new paper, the Harijan on 5 May 1946:

At the risk of repetition, I must say that the Independence of my dream means Ramarajya, that is the kingdom of God on earth....

In concrete terms, then, the independence should be political, economic and moral. "Political" necessarily means the removal of the control of the British Army in every shape and form. "Economic" means entire freedom from British capitalists and capital as also their Indian counterpart. In other words, the humblest must feel equal to the tallest. This can take place only by capital or capitalists sharing their skill and capital with the lowliest and the least. "Moral" means freedom from armed defence forces. My conception of Ramarajya excludes replacement of the British Army by a national army of occupation.20

Arguing in favour of a "republic of every village in India", Gandhiji wrote in another article in The Harijan on 28 July 1946:

"Independence must mean that of the people of India, not of those who are today ruling over them. The rulers should depend on the will of those who are under their heels. Thus they have to be servants of the people ready to do their will."21

"Independence must begin at the bottom", with every village with full powers to decide its affairs. And, "ultimately, it is the individual who is the unit". "Such a society is necessarily cultured in which every man or woman knows that he or she wants and, what is more,

20 Reproduced in The Hindu (New Delhi) 6th May, 1966; Interpreting Gandhiji, S.Radhakrishnan
21 Reproduced in The Hindu (Delhi) That Age, 29 July, 1966
knows that no one should want anything that others cannot have with equal labour". 22

Gandhiji's test of freedom has always been what benefit it would accrue to the poorest in the land. "Whatever can be useful to starving millions is beautiful to my mind. Let us give today first the vital things of life and all the graces and ornaments of life will follow". His ambition, he said, was "to wipe every tear from every eye". 23

Addressing the nation on the threshold of independence, Jawaharlal Nehru declared in the same vein:

"We shall look to the common and forgotten man in India and seek to bring him relief and raise his standard of living. We shall continue our fight against the curse of untouchability and other forms of enforced inequality, and shall especially try to help those who are economically or otherwise backward. Today millions lack food and clothing and houses, and many are on the verge of starvation." 24

Thus the leaders of India's independence struggle had already set a clear "Indian" human rights agenda for action even as the nation emerging independent.

The constitutional and Institutional Framework of Human Rights

The Constitution of the Republic of India, which came into force on 26 January 1950, is one of the most elaborate fundamental laws ever adopted. The Preamble to the Constitution

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22 ibid
23 supra n 4 pp 363-4
24 Broadcast on national radio by the Prime minister of the Interim government of India, 7th September 1946, reproduced in The Hindu (Chennai) 9th September, 1946
pledges to secure to all the citizens of India justice-social, economic and political, liberty of thought, expression belief, faith and worship. Equality of status and of opportunity and fraternity assuring the dignity of the individual and the unity and integrity of the nation judicially enforceable fundamental rights and rights not so enforceable.

The Fundamental Rights

The judicially enforceable fundamental rights, which encompass all seminal civil and political rights and some of the rights of minorities, are enshrined in part III of the Constitution (Article 12 to 35). These include the rights to equality, the right to freedom, the right against exploitation, the right to freedom of religion, cultural and educational rights, and the right to constitutional remedies.

The rights of any section of citizens or a minority to promote its distinct language, script or culture, to have access to state-funded educational institutions (Article 29), and to establish and maintain educational institutions of its choice (Article 30) are also guaranteed.

The right to constitutional remedies is essentially the right to move the Supreme Court of India and the High Courts for the above rights (Article 32). The Supreme Court is vested with wide constitutional powers in this regard. They include the power to
issue directions, orders or writs for enforcement of the
fundamental rights (Article 32(2)). Furthermore, by virtue of
Article 141, the law declared by the Supreme Court is considered
to be binding on all courts in India.

The Directive Principles of State Policy

Judicially non-enforceable rights in part IV of the
Constitution are chiefly those of economic and social character.
However, as Article 37 makes it clear, their judicial non-enforceability does not weaken the duty of the State to apply
them in making laws, since they are "nevertheless fundamental in
the governance of the country". Additionally, the innovative jurisprudence of the Supreme Court has now read into Article 21
(the right to life and personal liberty) many of these principles
and made them enforceable.25

The duties of the State to encompass securing of social,
economic and political rights, striving to minimize and eliminate
all inequalities (Article 38), securing for "the citizens, men and
women equally" the right to an adequate means of livelihood
(Article 39(a)), securing equal pay equal work for both men and
women (Article 39(d)), preventing of abuse of labour, including
child labour (Article 39(e)), ensuring of child development (Article
39(f)) ensuring of equal justice and free legal aid (Article 39-A),

provision of the right to work, education and public assistance in case of unemployment, old age sickness and disability (article 41), provision of humane conditions of work (Article 42), living wage and a decent standard of life (Article 43) securing of participation of workers in the management of industries (Article 43-A), provision of free and compulsory education for all children under fourteen years (Article 45), which has now been made fundamental right, promotion of educational and economic interests of weaker sections of the people and their protection from injustice and all forms of exploitation (Article 46), raising of the standard of living, improving the level of nutrition and public health and prohibition of intoxicating drinks and of drugs (Article 47), protection of monuments and things of artistic or historical importance (Article 49), separation of judiciary from executive (Article 50) and promotion of international peace and security (Article 51).

Fundamental Duties

Part IV-A of the Constitution embodies twelve fundamental duties of every Indian citizen (Article 51-A). There are the duties to respect the Constitution and institutions, to live by the noble ideals of the freedom struggle, to protect the sovereignty and integrity of India, to defend the country, to promote communal harmony, to renounce practices derogatory of the dignity of women, to preserve the cultural heritage, to protect and improve
the natural environment, to have compassion for leaving creatures, to develop the scientific temper, to safeguard the public property and abjure violence, and to strive towards excellence in all spheres of individual and collective activity.

It would appear that parts III, IV and IV-A of the Constitution heavily depend upon the judiciary for their interpretation and application. The various ‘reasonable restrictions’ clause in part III, Article 21, and seldom-used part IV-A have given the judiciary ample scope for judicial review of administrative and legislative action. Indeed, Article 21 has allowed it to act as a catalyst in prodding the State to implement the directive principles in so far as they directly bear upon “life and personality liberty”.

Political rights

India is the largest representative democracy in the world, based on universal adult suffrage, with every Indian of at least eighteen years of age vested with a right to vote. The right to vote, the right to contest elections, and the conduct of elections are all governed by the Constitution (Part XV) as well as special laws like the Representation of the People Act, 1951.

In order to monitor implementation of the objectives for the welfare of the weaker sections of the nation, the central government has appointed a National Commission for Minorities,
a National Commission for Schedule Castes and Schedule Tribes
and a National Commission for Women. The appointment of a
National Commission for Backward Classes is now on the anvil.
The National Human Rights Commission (NHRC) came into being
in 1993 by virtue of the Protection of Human Rights Act. In these
years of its existence, NHRC has become an agency to reckon
with, and has carved out a place for itself in the mosaic of Indian
national institutions for implementation of human rights. The
freedom of the Press is monitored chiefly by the Press Council of
India 1979.

The latest legislation pertaining to the Rights to Information
was notified on the 15th June 2005. All of these provisions have a
significant impact on the human rights of the people. However
many people are ignorant of them. In this regard the role of
education is considered very vital. Without the people being
educated they cannot assert their rights nor can they exercise
their franchise in a free and fair manner.

It has to be pointed out that the human rights enumerated in
the various multilateral treaties to which India is a party, and also
found in the Constitution of India and laws have not been defined
in identical terms in the latter, nor are all the rights mentioned in
the treaties specifically recognized in the Constitution and the
laws in extenso. However, the innovative jurisprudence of the
Indian judiciary has greatly contributed to humanizing the Indian
law with the emerging international norms, and application of
these norms, taking into account the special conditions obtaining in India. It would seem, therefore that the guarantee of life and personal liberty in Article 21 of the Constitution is adequately all-pervasive of all human rights, both present and evolving.

Implementation of Human Rights

There are a number of difficulties in accurately assessing the implementation of human rights. First, given the fact that human rights are evolving ideals, which the human society cherishes, no nation in the world can claim to have lived up to these ideals. As the many reports on human rights performance the world over reveal, most Governments have skeletons in their cupboards. This is bound to be so long the State is entrusted with the ultimate responsibility of rights implementation, for the State remains a persistent violator of human rights. Second, Nations differ in the level of rights performance achieved, and often the level of rights performance is relatable to the economic development achieved. The right to development has thus been recognized to be central to implementation of all human rights. Third, the politics of human rights, both domestic and international, often casts a veil of exaggeration, if not mendacity, on issue and situations of human rights violations. Fourth, partly for the same reason, wild allegations of rights violations must be distinguished from those supported by verifiable proof.
Fifth, often the problems of criminal law overlap those of human rights violations. Criminal law related human rights violations are found in all countries, regardless of the level of economic welfare they have achieved. Sixth, where situations relate to terrorism and threats to territorial integrity of a nation actively aided from across the borders, it is at times difficult to sit in judgement as to the proportionality of use of force by the State against groups and individuals – indeed even the "normal" criminal law cases of private defense throw up such difficult situations in a different context. However, this needs to be distinguished from the condemnable use of raw force by State instrumentalities. Finally, there appears to be general agreement – as reflected in Article 4(2) of the International Covenant on Civil and Political Rights that there are certain rights, based on rights to life and personal liberty, which represent the irreducible minima to be guaranteed by the State system at all times.

Additionally, the experience of period of internal emergency during 1975 to 1977 has been a special feature in the modern Indian political and constitutional history, even if of a dubious nature. Its contribution to the triggering of human rights awareness through the whole country has been extremely significant.

It is against these considerations that the investigator has launched upon a tentative overview of the human rights situations in India, in terms of broad categorisations of these rights.
The Right to Development

Article 28 of the Universal Declaration of Human Rights, 1948 recognizes that "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized". Closely following this, Article 38 of the Constitution of India requires the State to "Strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life". This indeed is the ultimate objective of the whole Part IV of the Constitution. The right to development has now come to be recognized as an inalienable human right... in which all human rights and fundamental freedoms can be fully realized. It is also recognized that "The human person is the central subject of development...". 26

The right to development in India is grossly impeded by the stupendous nature of the developmental problems, which India faces. At the root of these problems are poverty, illiteracy and overpopulation, which form a vicious circle each, contributing to the other. While the British could be blamed for the conditions in which the country found itself in 1947, the succeeding governments have not done enough for the eradication of poverty and illiteracy and reverse the process of population explosion. At independence India’s population was around 360 million, it is now

26 Declaration on the Right to Development; UN General Assembly Resolution 1986
billion plus. In 1970 some 16% of the population was below the poverty line, had risen to 37% of the current population. These problems have a multiplier effect on all other social and economic problems.

In 1992, the top 20% of the population accounted for more than two-fifths of the total consumption expenditure, while the bottom 20% had a share of a mere 8.5% of the total consumption. The top 10% spent eight times as much as the bottom 10%. There are parts of India, such as tribal belts of the districts of Kalahandi and Bolangir in the State of Orissa, exposed to "the scourge of poverty, malnutrition and even starvation" attributed to repeated crop failures, inhuman exploitation of the tribals and politicization of human calamities, with the administration "woefully unequal to the task". Evidently, the poverty eradication programmes started with a new zeal since the seventies have failed to mitigate, let alone foreclose, such human tragedies.

The chief ministers' Conferred identified "Seven basic minimum services", namely safe drinking water, primary health service, Universal primary education, public housing assistance to the shelter less poor, better nutrition for children, road linkage with all villages and habitations and public distribution system for the poor. The prime minister of India once admitted that over 400 million Indians are illiterate, despite the fact that the first fifty

27 Planning Commission of India, 1993-94
29 The Hindustan Times, 27 November, 1996
years of expansion of educational facilities have credited India with one of the largest educational infrastructure in the world.

The International Labour Organization had a decade back, in its World Employment report for 1996-97, cautioned against economic liberalization on all fronts at one go as it would lead to sharp increases in unemployment, under-employment and poverty. While economic reforms are essential, they should be pursued in a phrased manner, accompanied by programmes that strengthen productive capacity of the poor, development of rural infrastructure, credit schemes and improved access to education and health services.

India has registered a discernible level of development for the past five decades on many fronts. It has also mastered some of the most modern technologies such as those of communication, space and nuclear energy. However the magnitude of the problems engendered by poverty, illiteracy and population explosion has apparently dwarfed these achievements and demands greater and more sustained efforts. In the meantime, the Indian society will continue to be bedeviled by the maladies of inequality and exploitation, unless committed non-government ones equally complements the government efforts.

The Right to life and personal liberty

A number of situations involving violation of the right to life and personal liberty at the instance of State agencies such as the
security and police forces, are being reported in the media by non-governmental organizations and the National and State Human Rights Commissions. They relate not only to areas where there exist serious threats to internal security such as terrorism and insurgency, but also other areas as part of the law and order problems. A standing fact-finding committee of the Legislative Council of Bihar (the first ever legislative committee appointed to investigate human rights violations in any State in India) is reported to have observed that human rights violations were common in the State and the "main targets have been the depressed and exploited classes, the dalits, women and children. The police and bureaucracy is [sic: are] responsible for most crimes and most violations are result of untempered police attitudes towards the common man". 30

Instances of custodial violence – violence by the police to human person during custody, such as torture, inhuman or degrading treatment, rape and killing- have been reported in the national media. They include violence against prisoners. A number of such instances have eventually reached the National Human Rights Commission, the High Courts and the Supreme Court.

Terrorism in India has principally been spawned by politics, but often advantaged of by unfriendly neighbours across the border. As the current Chief of the Indian Border Security Force,

a Paramilitary force, rightly points out: "Politically violent movements are born due to discontentment which find the available political process inadequate to give relief and so seek redress through violent means. The root causes are political." Mindless acts of political expediency by political parties, besides economic and other causes, have contributed to terrorism in Punjab, and Jammu and Kashmir.

The Indian army and para-military have been pressed into service to meet the challenges of terrorism and insurgency, as the police force is not adequately equipped to meet such threats to civil life. The paramilitary forces include the Border Security Force (BSF), the Central Reserve Force (CRPF), the Indo-Tibetan Border Police (ITBP), the Rapid Action Force (RAF), the Central Industrial Security Force (CISF), the National Security Guard (NSG), and the Special Protection Groups (SPG). While there are allegations of rights violations by army and para military forces some of which have been proved by the National Human Rights Commission and the Indian Judiciary, the army claims that its human rights record has generally been "exemplary". Lieutenant-general V.P. Malik, than Vice-Chief of Army Staff is reported to have asserted in Nagaland recently "The Army is not on the defensive on the human rights score. Each and every case of alleged rights violation is thoroughly investigated and anyone found guilty is punished."

31 Amnesty International Report 1995
As the Director General of BSF candidly admits, during the initial years of deployment "over reactions and enthusiasm overshadowed prudence. We have learned our lesson and the four year baptism by fire has seasoned the men and they have now learned to stop and think before firing".

There is now a 'politics' of human rights violations in terrorism and insurgency infected areas. The demonstration and the counter-demonstration that took place in front of the UN Information center, New Delhi, on the Human Rights Day 1996 highlight this. A group under the banner of all parties Hurriyat Conference Conference (APHC), a motley of factions, which fared rather badly in the then legislative elections —in Jammu and Kashmir, demanded UN intervention against State terrorism in their State. On the other side was a group of Kashmiri migrants displaced by terrorism, who claimed violations of their human rights by the militant groups funded and supported by Pakistan's Inter-Service Intelligence and who alleged APHC as "a tool of Pakistan's design to dismember India". There were other groups as well to protest against militants in Jammu and Kashmir. Against this setting, the Indian government has done well in allowing outside agencies like the ICRC to monitor the human rights situation in Kashmir.

Apart from police reforms, a number of areas of criminal justice have been identified by the Judiciary, the National Human Rights Commission and the Law Commission of India for reforms.
and to make the system of administration of criminal justice humane. The recent public outcry against some of the human rights violations by the security force resulted in the repeal of the Terrorist and Disruptive Activities (Prevention) Act 1985-1991 (TADA), whereby the police and other security forces committed abuse of powers, and both the Supreme Court and the National Human Rights Commission came down heavily on such abuses. There is also mounting criticism against the Armed Forces (Assam and Manipur) Special Powers Act, 1958, the National Security Act, 1980 and the Public Safety Act, 1978, which has lent themselves to be abused by the Security forces.

In terms of the actual working of the Indian criminal justice system with its delays, cumbersomeness and costliness, there exists a strong view that the system is "indifferent and perhaps a little hostile to the poor and the weak, such as women, children, physically, economically and mentally handicapped groups, prisoners and the like. It may be because even after four and half [now five and half] decades of independence no serious efforts have been made to redraft penal norms, radicalize punitive processes, humanize prison houses and to make anti social and anti national elements... incapable of escaping the legal coils". On the other hand, whatever legislation has "taken place to ameliorate the conditions of downtrodden masses" does not seem
to have achieved its purpose.\textsuperscript{32} What is more important, however, is that the human rights culture should percolate through all segments of the criminal justice system.

Rights of Women

Two principal facets of rights of women in India are highlighted here, namely the problem of equality with men, and trafficking and other undesirable practices and atrocities against women. Underlying these are the age-old attitudes and customs of an ancient male dominated society. While violations of women's right are not unknown to other societies, including the developed ones, what aggravate them in the context of the Indian society are poverty, illiteracy and some of the rationally and morally untenable social customs.

The right to equality in the context of women has many aspects - equal pay for equal work, equality of opportunity, equality before law, political equality, equality of status and so on. A number of laws exist in the statute book, such as the Equal Remuneration Act 1976, the Maternity Benefit Act 1961 and the Hindu Succession Act 1956. However, implementation of these laws has left much to be desired.

Giving the gifts and payment of money by the bride’s family to the bridegroom’s family on the occasion of marriage in many

parts of India has over time turned out to be a social evil called dowry. The bridegroom's parents have become greedier and exploit this custom to the disadvantage of the bride and her hapless parents. At times this leads to either suicide or outright killing of the bride. The Dowry Prohibition Act 1961 and amendment to the Indian Penal code relating to the offence of abetment of suicide have not been able to eliminate this social evil. According to one estimate dowry related deaths have increased from 1942 in 1987 to 5157 in 1991.

Another social evil prevalent mostly in some parts of Rajasthan is, the sati that is the requirement that the wife should self immolate at the funeral pyre of her late husband.

Parliament has enacted the Indecent Representation of Women (Prohibition) Act 1986 to expand the law of obscenity contained in the Indian Penal Code, 1860 and to counter a growing tendency of indecent representation of or references to women in publications such as advertisements, which are derogatory of human. However, the implementation of this Act has not been effective.

Despite the suppression of Immoral Traffic in Women and Girls Act, 1956, poverty has pushed a number of women into one of the oldest metropolitan cities like Delhi. In a workshop on "growing incidence of violence against women in Delhi" organized by the Delhi Commission for Women, a Minister of the Delhi
Government admitted that the situation could be halted and reserved only by “changing the attitude and mentality of men”.

Indeed, the actual incidence of violence against women could be greater, as the number of unreported cases may be equally alarming. The Law Commission of India has made a number of proposals for changes in the Criminal Law for the special protection of women.

Parliament is currently considering a law to reserve 33 percent of the seats in Lok Sabha (the lower house of Parliament) and the State legislative assemblies. There appears to be a near consensus on the law. This follows the 73rd Constitution (Amendment) Act 1996, which reserved 30 percent of seats in councils at village, block and district levels.

In order to address the problems of implementation of women’s right, Parliament enacted the National Commission of Women Act, 1990. While the Act empowers the Commission to investigate, examine and review all matters relating to the safeguards provided for women under the Constitution and other relevant laws, the Commission feels that its powers are not equal to its tasks, and that it should have power to prosecute and summarily decide on cases of violation of gender justice. Also, there should be commissions for women at State and District level as well. Given the traditional male dominations in the Indian society the Commission has a most unenviable task. Though a good number of States have constituted them some are yet to follow suit.
Freedom From bonded and Forced Labour

Despite the constitutional interdiction, poverty and illiteracy continue to be the breeding grounds for exploitation of humans keeping them often in perpetual bondage. The Bonded Labour (Abolition) Act adopted in 1976 has been an attempt to implement Article 23 of the Constitution. However, the indigent circumstances keep placing people in bondage and their exploiters reaping profiles from their cheap or free labour. The humane Indian Supreme Court described the wretched.

The Supreme Court's decisions in the *Bandhu Mukti Morcha* case injected a fresh momentum in efforts to eradicate forced labour. It led to a 1985 amendment to the Act of 1976 to broaden the application of the law. It also led to further court judgments declaring that labour on payment of unreasonably low wages amounts to forced labour prohibited under the law.33

Pledging one's labour or the labour of one's children for little or no wages in repayment of a debt has been the bane of India's problem of rural indebtedness. Clearly, no effective answer to it is in sight except long-term economic development. In the meantime, there will continue to be reports of forced or bonded labour.

Rights of The child

India became a party in 1992 to the International Convention on the Rights of the Child, 1989, following a popular

33 *Bandhu Mukti Morcha* Vs. Union of India, All India Report 1984
demand. There is no doubt that all human rights (save perhaps the political rights) must apply to the child, as they are essential for the development of the human person.

While the rights of the child call for a comprehensive treatment, the investigator shall confine to two aspects in the context of the Indian society, which have lately highlighted the need for urgent affirmative action. They are the incidence under the criminal justice system, and the practice of child labour.

Violence against Children

Trafficking in children is prohibited under the Suppression of Immortal Traffic in Women and Girls Act, 1956 (Strengthened by an amendment of 1986). Yet the Act is not well implemented.

The National Crime Records Bureau’s report on "Crime in India" has reported a rise in crime against children. The incidents of child rape rose by 17.5 per cent and kidnapping by 78.1 percent in 1994 over the previous year. More than 25 percent of rape victims have been children. While 3393 cases of child rape were reported in 1993, it increased to 3986 in 1994. Kidnappings rose from 485 in 1993 to 864 in 1994.

Parliament enacted the Juvenile Justice Act, 1986 principally for "the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles. The Act improves on and replaces the Children Act, 1960 and other
various State enactments on the subject. It creates the following new offences: cruelty to juveniles, employment of juveniles for begging, giving a juvenile intoxicating liquor or narcotic drug or psychotropic substance, and exploitation of juvenile employees. It provides for juvenile homes for neglected children and special homes and observation homes for delinquent juveniles. However, the lack of resources the number of such juvenile homes so far established has been limited. Even some of those few, which exist, are not properly run. After the brutal murder of an inmate by another in Delhi observation home, the Delhi Government, for the first time in history, gave the charge of managing the home to an NGO, the Prayas along with the governmental social workers.

The Human Right Watch, an NGO, has on the basis of an study of street children (boys) concludes that "Indian Street children are routinely detained illegally, beaten and tortured and sometimes killed by police". With the probative value, the representative character and the quantum of the evidence considered by the NGO, such a wholesale condemnation of the Indian Police force needs a dispassionate review, the fact remains that the Indian Nation has not been able to protect its children from abuses.

The National Crime Records Bureau's data indicates that juvenile delinquency continues to show a declining trend. In 1994 Records Bureau's data indicates that juvenile delinquency continues to show a declining trend. In 1994 it recorded a 17.2
percent drop over 1993. A total of 5962 cases were registered against juvenile in 1994, and 38.4 per cent of juvenile in custody were awaiting trial. A disturbing trend, however, has been the introduction of juveniles to serious crimes.

Child Labour

Child labour has lately become an issue with some of the western countries tending towards banning of import of goods from the third world if they are made with child labour. This indeed, is a human rights façade, for the ulterior political commercial motive for protection of domestic products. While exploitative child labour is an evil, it cannot be uprooted overnight, as it is deeply entrenched in the problems of poverty, illiteracy and over population.

It is report that the Human Rights Watch has submitted a report to the European Parliament entitled "Small Hands of Slavery" contending that India, among others, keeps at least 15 million children in conditions of slavery, and urged the European Parliament to call upon the World Bank to introduce a new children's rights conditionality as part of the terms of its aid. According to the Indian Government, while there are about 20 million working children of which 90 percent are engaged in agricultural and allied employment, a majority of them are not "workers" receiving wages, but are working in hazardous
occupations, which number about 2 million. The work of artisans and cottage industry workers is essentially within the family and involves in-house training for the trade, which the children take on customarily at a very early age.

The UNICEF's 1992 report explodes the myth that "Child labour only happens in the poor world", by pointing to the tendency on the part of the developed world to excuse child work for "Pocket money" even if paid at far lower level than for the equivalent work by an adult, and also fact that there is child labour in the developed world as well. However, the practice of child labour is more widespread in the developing world.

There is no reliable data on the exact number of children being exploited at work. In India the estimates range from 20 million to 100 million. Children are engaged in a variety of industries or vocations – making of matches and fireworks, carpet making, glass bangle making, brass wares, plastic and rope weaving, salt extraction, incense stick production, diamond cutting and polishing, biscuit making, steel rolling, and chips recycling, domestic work, prostitution, construction industry, etc. This painful reality exists despite the Employment of Children Act, 1938 (Amended 1985), the Child Labour (Prohibition and Regulation) Act, 1986 (Which prohibits employment of children in hazardous occupations and regulates it in others), and other laws like the Factories Act, 1948. Indeed, Child labour exists more in

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unorganized sector than in organized that makes its detection
difficult, although some of the NGOs seem to be doing extremely
effective work in this regard.

Although the Prime Minister of India in his Independence
Day address to the Nation a decade back on 15 August 1994,
pledged elimination of child labour from all hazardous industries
by the year 2000, the government's hands are now being forced
by a revolutionary Supreme Court judgement of 10 December
1996. The Court in this case appointed a three-member
committee headed by the president of Supreme Court Bar
Association. The Committee identified nine major industries in
which child labour is prevalent- match and fireworks in Tamil
Nadu, Diamond polishing in Gujarat, Precious stone polishing in
Rajasthan, Glass Industry and brass ware industry in the Utter
Pradesh (UP), Handmade Carpet industry in UP, Lock making in
UP and slate industries and suggested the setting up of a corpus
fund ("Child labour rehabilitations-cum-welfare fund") with a
contribution of Rs.25, 000.00 by each employer for each child
employed in the hazardous industry as well as with a penalty sum
of Rs.20,000.00 as compensation for the violation of the law. It
asked the State (both the Union and the States) to ensure that an
adult member of each working child's family got a job in place of
the child, or, if this was not possible, Rs.5000 be paid into the
fund for each child and from this an appropriate sum be paid to
the child's family per month for the education of the child. The
Court reminded the government of its constitutional duty to provide free and compulsory education for all children up to the age of 14. It may be clear that the alternative adult employment and the monthly payments in lieu thereof would cease, if the child were not sent for education. The government was been given a period of one year to implement these decision. One hopes that the Supreme Court's initiative will operate as the much awaited shot in the arm, since not much has been achieved even after a decade.

It would appear that there is also scope for private initiative. The media referred to the story of a Swiss businessman dealing in Indian textiles and carpets who plan to invest in a school to educate children released from child labour from the nearby carpet industry and compensate their families for the loss of their earnings. The money spent, according to him, is nothing compared to the millions of dollars, which companies spend for market access and the profit margin.

The right of the girl child has received a special emphasis the world over. A government sponsored research project, based on a study of 13,200 girls, their mothers and households drawn from selected rural and urban areas came up with its report in 1995. The study covered the profile of households, migration, occupation, economic status, assistance from government programmes, housing, family structure, education, gender expectation of the unborn child, parental attitudes, education,
health, child labour, etc. It concluded “the single aspect which is most resistant to change is the mindset of parents in different social milieus.” The parental mindset is dictated by the social moorings and economic realities of life. Hence, the need for changing social attitudes through a process of social mobilization. There is also a need for concerted administrative, legal and social action to eliminate inequality of the girl child, female foeticides and female infanticides.\textsuperscript{35}

Rights of the Schedule Caste and Schedule Tribes

As seen already, for historical, and socially wrong reasons, the Indian society perpetrated a system of exploitation and dehumanisation of some of the socially and economically most backward classes. These classes, as identified in a schedule to the Constitution are known as the Scheduled Caste and Schedule Tribes. Most of them are below the poverty line. The legal and political system provides for a range of measures of affirmative discrimination in their favour, such as reservation of seats in legislatures, reservation of jobs, reservation of seats in educational institutions, special scholarships, etc. yet much of their lot is yet to cross the Rubicon of inequality, and still subjected to indignities, humiliation and harassment by some of the members of more advanced classes in society. The rationality behind the Scheduled Caste and the Scheduled Tribes

“Prevention of Atrocities” Act, 1989 has been to stem the atrocities against them and to strengthen the constitutional interdiction.

The long-term answer to the economic backwardness of these classes appears to lie in spread of education, not necessarily in reservations or measures of affirmative action. The reservation or reverse affirmative discrimination has a knack of benefiting more advanced segments of these classes, and in the process, other less fortunate ones remain left in the lurch. Problems of tribals cannot be solved within the framework of reservation alone.

The recent Indian politics has thrown up another issue – Protection of other backward classes (OBCs). It is true that the Indian society is highly segmented and that there are backward classes other than the Schedule Caste and Scheduled Tribes, which need special attention. However, the approach to meet the problem of bringing social justice to these sections of people adopted by the government appears to be two pronged: one, creation of a system of reservation, and two, determination of OBC is based on caste rather than economic criteria. Both tend to be populist measures aimed at “Vote – grabbing through causing social religions”. There is much truth in the statement: “Today neither backwardness is a social stigma nor a handicap. It is the politicians chattered vehicle to power and pelf”.

Minority Rights

The term Minority has not received adequate definition in the Indian context, although it is clear that the Indian context is different from the European. Article 30 of the Constitution speaks of "All minorities whether based on religion or language". While it does not deny the existence of minorities identified on criteria other than religion or language, the current political vocabulary accepts only religious and linguistic minorities.

The founding fathers of the Constitution were indeed keener to ensure the protection of religious minorities as part of the transition of India into independence. The partition of India into two countries resulted from the false apprehensions that the majority community would not ensure the rights of a minority community. Yet India has had a tradition of tolerance and social synthesis of diverse religions, a tradition lately marred by the rise of groups and political parties advocating religious fanaticism. The politics of religion has to do with these more than anything else. Happily, the religious fanaticism is confined to small groups and the Indian electorate has time and again endorsed secularism and forced many of these groups even to moderate on their politics.

The National Commission for Minorities Act was enacted in 1992 aimed at protection of religious minorities such as Muslims, Sikhs, Buddhist and Parsis. While the legislation and the Commission need strengthening, much more can be done by the
Commission than what it has been able to achieve so far. Spread of secular education will go a long way in providing a firm foundation for development of minorities in India. There is enough law to protect various religions, or to prevent misuse of religious institutions for purposes other than religious.

The Rights of the Disabled

The rights of the disabled came to be formally recognized in India only recently, although they are readily read into Article 21 of the Constitution. According to one estimate, there are about sixty million disabled persons in the country belonging to various categories of disability. These categories include the blind, the deaf, the dumb, physically handicapped, the mentally retarded and the mentally ill. In the context of the Indian society, the disabled suffer from social stigma of various degrees, and these more than other factors, stands in the way of their claims to equality and social justice.

Thanks to the pressure exerted by the NGO's, Parliament adopted the persons with Disabilities (Equal Opportunities, Protection of Rights and full Participation) Act in 1995. It seeks to provide both preventive and promotional aspects of rehabilitation and development of the disabled through measures like special education, employment, vocational training, affirmative reservation for jobs, research and manpower development,
creation of barrier free environment, social security support, a special insurance scheme and establishment of homes for severely handicapped persons. It envisaged a coordinating committee at the central level as well as in each state under the chairmanship of the Minister for Welfare, to empower and develop a national policy for the disabled. It advised the government on measures and programmes to be taken including a free and special education upto the age of 18, vocational training, reservation for jobs, availability of special aids and appliances to the disabled etc. In many of these areas the State appears to be doing quite a bit, as claimed by it.

However, the NGOs feel that there is considerable tardiness on the part of the government in the implementation of the law. While there is reservation of seats in the universities, no such provision exists for the school level education yet. Therefore the legislation remains merely on paper, despite it's coming into force on seventh February 1996.

Regardless of any legislation, the Indian society has done precious little for a "barrier-free environment" for the handicapped. The public buildings, public transport system, public places all unfortunately remind one of these.

Similarly, the Mental Health Act 1993, which replaced the archaic Lunancy Act, 1912, has not come into force in all States, despite the requirement that it be implemented by first April 1993. A number of judgments of the Supreme Court had revealed the
shabby management of some of the 37 mental hospitals in the country.

It is, however, gratifying to note that the social awareness about the need for the protection of the rights of the disabled and also the awareness on the part of the disabled themselves of their rights have been gradually growing.

Catalysis of Rights Implementation

The ultimate responsibility for implementation of human rights falls on the State and its legislative and executive machinery. The State has the unenviable, yet complex, duty to protect and promote individual and group rights as well as to umpire the conflicting claims to rights against the overall requirements of the development of the society.

The Indian polity has over time, and particularly in the post-Emergency era, thrown up, four principal catalysts of human rights implementation, which have evolved new, often effective, strategies to catalyze rights implementation. They are the judiciary, the National Human Rights Commission, the NGO’s and the communication/information media.

The Judiciary

One of the three organs of government, the judiciary has become a vanguard of human rights in India. It performs these
functions mainly by less formal interpretation and assumption of its jurisdiction, and more importantly by innovative interpretation and application of the human rights provisions of the Constitution. The Supreme Court of India has in fact declared that it has a special responsibility "to enlarge the range and meaning of the fundamental rights and to advance the human rights jurisprudence."

The major contributions of judiciary to the human rights jurisprudence have been two fold: one, the substantive expansion of the concept of human right under Article 21 of the Constitution, and the other, the procedural innovation of public interest litigation.

Many of the Article 21 cases that came before the High Courts and the Supreme Court often revealed, "a shocking state of affairs and betrays complete lack of concern for human values." The Hussainara Khatoon case raised the question of some 18000 under trial prisoners in Bihar jails. The Khatri case raised the case of police brutality in which 80 suspected criminals were brutally blinded during police investigation, and the Supreme Court condemned the act as "a barbaric act and a crime against mankind". The court expressed its ire at the indifferent attitude of the lower judiciary itself. In the Sheela Barse's case, the court was confronted with the custodial violence against women and it laid down certain guidelines against torture and ill treatment of women in police custody and jails.
All this – in no sense a comprehensive treatment of the human rights jurisprudence of the Indian judiciary – indicates clearly that the Indian judiciary has a long way to retrieve its lost prestige during the national emergency and now emerged as what Chief Justice Patanjali Sastri visualized, as a sentinel on the "qui vive".

Public interest Litigation

Public Interest litigation – an expansion of class action under the common law – is a procedural innovation, which the Indian judiciary has by now fairly perfected on the basis of a concept borrowed from the United States. Ordinarily, the rule of *locus standi* dictates that he who approaches the court must prove his legal standing vis-à-vis the claim he seeks to vindicate, usually in terms of a legal right or a legal obligation violated by the defendant/respondent causing thereby some injury or damage to him for which law provides a remedy. On the other hand, the public interest litigation is based on the principle that "we cannot write off the weaker victims of injustices; the courts door when they knock shall open..." "How can a bonded labourer working in a stone query ever know of moving the Supreme Court?" asks Justice Krishna Iyer, a redoubtable public interest activist judge of the Supreme Court of the seventies. He explains that public interest litigation chiefly in the realm of public law assists “all people concerned with governmental lawlessness, negligence of the administration, environmental pollution, public health,
consumer protection, social exploitation, etc, being served by the professional like lawyers and public interest lobbies working for "reform of decision making processes in government and outside, affecting the public at large". Again, "Public interest law offers new challenges and opportunities for the committed lawyers and social groups to serve the unequal segments of society better. This sensitive development is a part of democracy of the disabled and the movement to vindicate social justice through 'Professions for the People'. Judge with a vision have a new universe to behold, a mansion of people's justice to built"

As the legal procedure became de-formalized, the court evolved new devices to assist it in dealing with public interest litigation, such as special, fact-finding commission, scheme remedies and post-decisional monitoring. A nation wide legal aid scheme came to be established at the initiatives of the Supreme Court.

Way back in 1982 the Supreme Court has promised itself to examine a range of relevant issues concerning the public interest litigation procedure. While examination of these issues may be useful in that it should streamline the public interest litigation law and practice with a view to discouraging abuses, the public interest litigation is here to stay. As Justice Krishna Iyer remarks, "Too late to back PIL, but always welcome to reaffirm, and refine, eliminate the entropy and abuse of the processes". Quite possibly the burden of a backlog of cases awaiting adjudication is what
worries the Court. But, "This is never a reason when 'We the people of India' demand social justice", reminds Justice Iyer.

Nor should the judiciary bite more than it can chew. Justice Sujata Manohar strikes a note of caution in the context of Article 21, embody a judicially enforceable right. "Therefore, it should essentially be a right capable of being protected by a judicial order. A right not capable of such enforcement, if spelled out from Article 21... may result in trivialization of court's pronouncements and may encourage the habit of ignoring them... Every human right may not be capable of judicial enforcement". This appears to point to the limits of judicial activism.

The National Human Rights Commission

India enacted the Protection of the Human Rights Act in 1993 more in response to considerable international pressure than the domestic pressure, chiefly to ward off the criticisms it encountered on human rights violations in the terrorism or insurgency affected areas. Be that as it may, this was a piece of beneficent legislation in that it established a new national human rights institution, namely the National Human Rights Commission (NHRC).

NHRC's functions are extremely broad, pursuant to section 12 of the Act – to inquire, either suo motu or on a petition, into human rights violations, intervene in court proceedings, visit jails
or other places of custody, review human rights safeguards and make recommendations, review factors, including terrorism, inhibiting the enjoyment of human rights, study international instruments on human rights, undertake and promote research, spread human rights literacy and awareness of safeguards among the masses, encourage NGO, and institutions working in the field of human rights, and perform any other functions that NHRC may deem necessary for promotion of human rights.

The orientation and training of police personnel remained a high priority of the Commission. Inter-active session and capsule courses were organized, eminent personalities, legal luminaries and reputed NGOs being invited to participate in them. The feedback received by the Commission indicates that the material prepared and disseminated by it is being incorporated in to both the basic and the refresher courses in police training institutions the Commission is convinced that such training is essential. It increases the capacity of the police of react to situations of stress and provocation with greater respect for the rights of those involved, and it also improves, in the long run, the image of the police as a people friendly force.

Since the Commission was established a major and reciprocal effort has been made between it and the armed forces to exchange views on human rights matters, including the training of personnel of all ranks. These contracts, conducted at the highest level, have had a definite impact on the conduct of armed paramilitary forces and to the adoption of training curricula and modules designed to increase sincerity to
human rights factors even in situation of great stress and ambiguity. As early as 1998, the Commission prepared a training syllabus for the paramilitary forces, after due consultation with them. This was incorporated in the training curriculum of the central police organization. However that material needed to the revised and improved

NHRC has so far given priority to civil liberties - custodial deaths, state violence against civilians, torture and other cruel, inhuman or degrading treatment, custodial rape, disappearance from custody, atrocities against vulnerable sections of the society such as women, children and the disabled (including dowry deaths, bonded and child labour), and promotion of human rights education and training. Indeed in its very first year of existence, NHRC proposed to the government that its role be restricted, by defining "human rights" under section 2(1)(d) to mean "the rights relating to life, liberty, equality and dignity of the individual....".

So far the 9 states including West Bengal, Himachal Pradesh, Maharashtra, Punjab, Manipur, Madhya Pradesh and Assam have established State Human Rights Commissions. The State of Jammu and Kashmir has announced its decision to set up a Commission in that State.

While the Commission has noted that the Government of India has finally developed Human Rights Education Plan in the context of the UN Decade on Human Rights Education; observed
that no initiative has yet been taken by the Government to develop a National Action Plan for Human Rights. The Commission stated that while National Institutions and the non-governmental organization can help to such a Plan, it is the state that must assume the primary responsibility to do so. According to it, in a country such as India, with a federal structure, there is a need to involve the State is such an integrated plan can be formulated for the country as a whole. The Commission is of the view that the process by which the Plan is prepared will also be of great importance, as there is need to involve a board spectrum of civil society in the effort.

The Governments of India set up a coordinating committee under the chairmanship of Union Home secretary to prepare such a Plan in consultation with the other concerned Ministries/departments, to monitor its implementation and report to the United Nations on the progress made toward the realization of the goals set out for this Decade.

Regrettably, it was only in the course of the year 2002 in the seventh years of the Decade, that the Commission received a copy of Action Plan prepared by the Government of India. It observed that even though most of the UN Decade for Human Rights Education has already passed, the responsibility to persevere with a coherent programme for human rights education remains. The Commission therefore hoped that the Government of India will give this subject the importance that it deserves.
All of the work of the Commission since its earliest days has in a sense aimed at aerating a “culture of the human rights” in the country. However, the Commission has specifically taken a number of steps to further human rights education. These steps have interalia included:

- Working with the ministry of human resource development, the national council for educational and research training (NCERT) and the national council for teacher education (NCTE) to prepare materials for education at all levels of schooling,
- Working with the University Grants Commission (UGC) for development of courses at the University level,
- Endowing a chair for human right at the national law school of India University in Bangalore,
- Encouraging courses of human rights in the training institutes for public servants, the police, Para- military forces and army,
- Producing a handbook for judicial officer,
- Interacting with diverse groups ranging from medical practitioners to Rotarians and the leadership of political parties, urging them to keep human rights issues on their respective agenda,
- Encouraging and supporting the effort of non-governmental organizations, as their role is of central importance to the better protection of human rights in the country.

In sum, however, NHRC is doing valuable work in the field of human rights implementation, its main contribution being its role in the spread of human rights awareness and education, particularly among the security forces of the State.
Non-Governmental Organizations

There are number of NGO's, both national as well as international, performing useful work in the monitoring and implementation of human rights. Indeed, there are NGO's with political or other motives and those wedded to selfless service. At times, it is difficult to discern one category from the other.

Among the foreign or international NGO's, the Amnesty International (AI), the Human Rights Watch/Asia (HRWA) and the International Commission of Jurists (ICJ) are prominent in the field of civil and political rights. Amnesty International and International Commission of Jurist were highly rated in India for their reports on human rights violations in India during the emergency (1975-77).

There are a number of Indian NGO's which perform useful work in various fields of human rights – social welfare, old age care, health and community medicine, assistance to depressed classes, women's welfare, child welfare, rehabilitation of bonded labour, rehabilitation of people uprooted by economic development projects, welfare of the disabled, consumer rights and so on. The Chief Problem with these NGO's is that there is a lack of co-ordination of their activities in terms of their fields of activity, territorial areas, and target groups of their activities.

The school of International Studies, Jawaharlal Nehru University, New Delhi, launched the Human Rights Teaching and
Research Programme (HUR1TER) in 1982, and with a modest grant form the University Grants Commission set up a Center for Documentation and Information in 1983.

By and large, NGO's have arrived on the Indian human rights scene and are playing an important role not only in monitoring human rights violations, but also equally in rehabilitation of victims and promotion of implementation –of rights and rights education.

The Media

The information media is an important arm of any modern democratic policy through which the people exercise their freedom of information. The freedom of information, the democratic right to know, is crucial in making all other human rights effective and providing an important safeguard for enjoyment of all those rights. The "Fourth Estate" plays a crucial role in a large democracy like India. India has about 1500 newspapers.

Under the Constitution of India, the freedom of information is implicitly covered by Article 19 (freedom of thought and expression, freedom of trade) and Article 21 of the constitution.

Disposing off a case of contempt of court against the editors of two newspapers recently, the Supreme Court remarked:
It is the duty of true and responsible journalists to inform the people with accurate and impartial presentation of news and views after dispassionate evaluation received to be published as a news item.

Since the 1970's the Indian media has played an extremely important role in sensitizing people with information about governance, development, science and technology, foreign relations and so on. However, lately it has also come in for criticism, as highlighted by the above Supreme Court decision. There is a decline in journalistic credibility, as noted by the Chairman of the Press Council of India himself in a seminar. Due to the media preoccupation with the trivia, with personality cult senior journalists feel that the media shies away from important "people's issue such as a tribal issues, issues of human rights education, it is losing social content and becoming a consumer product. While the media is "a vital beverage to keep the rulers in check", it has failed to educate people to assert their claim to right to information, say another senior journalists.

Taking the totality of impact of the media for the past two decades, despite the above pitfalls, one must recognise that the contribution of the media in revealing and highlighting human rights causes has been most impressive. A colonial law relating to official secrecy, the official secrets Act. 1923, remains an impediment in the effective exercise of the freedom of
information. The effective working of the Rights to Information Act 2005 may to some extent reverse the situation.

In fact all the above four catalysts of human rights have before them a broad field to be covered, with some adequate coordination, something that is not attempted effectively so far.

Conclusion

The chapter is an attempt to overview the status of human rights in India, in terms of what is essentially an Indian academic perspective, and of the crucial problems of development. While the non-derogable rights to life and personal liberty must be protected at all costs, India, the largest democracy in the world and one of the most ancient cradles of human civilization, finds itself economically backward and beset with problems of poverty, literacy and population explosion. One tends to be over critical of human rights violations in a developing society. Political will and private initiatives apart, improvement of conditions of life up to a point where rights violations are brought down to a “manageable level”, is a function of harnessing and application of enormous resources. Until such a point is reached, let the genius of the Indian people evolve institutions and modalities of their own to find answers to what are basically Indian problems. A non-Indian remedy, even if successful elsewhere, may not necessarily be effective in the Indian context, unless the issues of resources and
their management are resolved and social roots of rights violations are addressed adequately.

Human needs are complex and varied and they are at the base of the development of the individual as a member of the society. Promotion of human rights is a function of co-relationships of realisation of human needs within a holistic perspective and the development of the individual is essentially one borne out of and natured in the socio-culture genius of a people. While elements of ideological contributions from other societies may be adapted and accepted, their selection and process of adaptation must be harmonious with that genius.

As ancient society, India has had a head start in the ideological evolution of its own brand of the development of the individual, both materialistic and spiritual, and of the development of the society, the emphasis being on the mutuality and complementarily of duties rather than rights. It also came to evolve a composite culture of synthesis and tolerance, thanks mainly to great rulers like Ashoka and Akbar, through centuries of coexistence of diverse races, religions and custom, some indigenous and some immigrant, yet many of the core values of this great culture came to be seriously distorted by social evils perpetrated by some of the dominant sections of the society (despite the efforts of some special religious reforms) and by the British Colonial rule. The roots of much of the present day human rights maladies are traceable to these still lingering social evils.
and the debilitating effects of the British colonial rule. Fifty-eight years of independence are perhaps not enough for a society, such as the Indian, to recover from the shock and turmoil of those 'dark ages'.

At independence, the founding fathers of the new Indian political system endeavoured to establish the basic human right norms and democratic institutions to implement them. It is, however, clear from the experience of the past decades that the torch-bearer of these norms and institutions, and the Indian society as a whole, have not succeeded in full measure in translating them into a social culture of human rights.

While attitudinal problems have contributed greatly to the gaps in implementation of human rights, poverty remains the single most important source of most human rights deprivations in India. The right to development is denied to some 40 percent of the population. The trinity of poverty, illiteracy and overpopulation, augmented by distorted social attitudes, has engendered deprivations of the rights of women, the freedom from forced labour, the rights of the child, the rights of the other vulnerable and disadvantaged sections of the society, and the rights of minorities.

The Indian society seems to trigger institutions of its own into actions in response to the challenge. The growing importance of the Indian judiciary, NHRC, NGO's and the media of monitoring and promoting rights implementation demonstrate this.
Status of human rights education in India

Article 46 of the constitution states that it shall be the duty of the government to promote with special care the educational and economic interests of the weaker sections of the society, particularly the scheduled castes and the scheduled tribes. It further states that the government shall protect these communities from social injustice and all forms of exploitation. Periodically schemes have been formulated excessively for these communities and monitoring mechanism had been established to follow up on the implementation of specific plans such as the special component plan and the Tribal such-plan. Also it was noted that vocational and non-formal education was necessary for the tribal population. Proposals were made to include literacy schemes as a component of the tribal development programmes. As a result there was a marked increase in courses of higher and technical education. The State governments for the improvement of backward communities of various regions, including free, have formulated similar schemes and compulsory education, adult education programmes free board and lodging and other educational facilities, at per with the students belonging to Schedule Caste and Tribes.

The present position

It is estimated that there are 213 million people in India who live below the poverty line. The reason for remaining below the poverty line can
be contributed to lack of education, which leads to the lack of awareness, lack of ability to assimilate information even if one has access to it. There is a cause effect relationship that poor people stay poor because they cannot get enough of basic education, good health care and good nutrition etc. rather than they cannot afford those because they are poor. They constitute the bulk of illiterate people of the country. There are inequalities of income distribution in both urban and rural societies. The children who do not enter any school and those who dropout of the school mainly for economic reasons belongs to “below the poverty line families.”

There are at lest a million street children and 18 million child labour in India. Instead of being provided with basic education, good health care etc. they are sent out to street or a work place to supplement the meager income of their families. About half of the children of India aged between 5-14 both do not go to school. A couple of years after being enrolled, about 63% children at the primary level and 78% at middle school level drop out of the school of every 100 children who enroll in class one, just 49.2 percent reach class fifth in the age group of 11 to 14 only 25 children out of every 100 complete class eight.

Literacy programmes to educate the people on human right in the latter part of the twentieth century have been carried on by various agencies. Among these agencies the role of the distance education institution, Indian Gandhi national Open University, correspondence course institutes, television and all India radio is significant. Though the Open University, system and audio and video programmes, the distance education institutions established in Britain, Canada, India, Australia, China, South east Asia and other
countries of legal education and impart knowledge on the rights of the people. All those who are deprived of elementary education at the proper age are provided with fundamental education about people and matters of the world, their fundamental rights and obligation to society and their problems and potential so as help them fight their ignorance and liberate themselves from numerous prejudices based and caste, gender, religion and language. Further, this education would give them the freedom to explore and investigate, and accept truth even when it goes against earlier notions and beliefs.

The primary schools managed by State governments and Centre suffers from neglect. About 40 percent of the six lakh or more primary schools in the country do not have secure buildings. About 8 percent of them are located in rural areas, classes are held in open air without any basic apparatus. There are 4.31 lakh schools in rural areas but of them 62 percent lack provision of drinking water and 20 percent without lavatories.

The Constitution and Supreme Court can lay down education as fundamental rights but right is meaningful if the recipients are anxious to exercise the right. Education in most of our schools is so unattractive that most children who enter the school are driven away from it. Right to education also means the right to comprehend what is taught in school but this is not so as first generation of leaner did not find schooling an enjoyable experience, as studies have revealed.

It has been often enough that poverty keeps most children away out of school. When interviewed for a local survey most of the dropout children say they leave school mainly because schooling is boring and irrelevant. The
teachers are very harsh, they beat them so the children end up not going to school at all. Teachers also refuse to re-enrol dropouts who belong to the working class, saying they are smelling and dirty.

Nutrition, family background, housing conditions also plays a major role in success at school. Someone has rightly said that education begins at home and on the quality of physical and social environment in which the children live.

The lower middle class parents complains that these school teachers are not seriously interested in teaching the children of the poor says one parent “We know learning is a good thing, we want to educate our children but we are illiterate and can't teach them ourselves and the teachers do not teach either. Some times a whole session passes without lessons getting corrected. So our children fail or drop out or parents are forced to withdraw them to send out to work.”

None the less it has to be admitted that, India had taken an active part in the drafting of the Universal Declaration on Human Rights. Dr. Hansa Mehta, a Gandhian social worker, who had led the Indian delegation, had made important contribution in the drafting of the Declaration, specially by highlighting the need for reflecting gender equality. India is a signatory to the six core human rights Conventions and is fully committed to the rights proclaimed in the Universal Declaration. India has advocated a holistic and integrated approach that gives equal emphasis to all human rights, based on their inter-dependence, inter-relatedness, indivisibility and universality, and

reinforces the inter-relationship between democracy, development, human rights and international cooperation for development.

The rights of vulnerable groups have received special attention in India ever since independence and the Constitution itself contains extensive provisions for the promotion and protection of the rights of minorities, including certain special group of people unique to Indian society known as the Scheduled Castes and Scheduled Tribes. These measures have been further strengthened through a recent amendment to the Constitution granting the Scheduled Tribes local self-government and a high degree of autonomy in the management of their day-to-day affairs, control over natural resources, and other development activities in the areas where they live.

In India there exist a wide diversity between the education of boys and girls at all stages and all sectors of education. Further development of education between the advanced classes and the backward classes is not free from this kind of disparity.

Reference may be made of the Education Commission of 1964-66 which recommended to increase in the number and amount of scholarships and other forms of student aid, reduction of procedural and other delays. The National Education Policy 1986 revised in 1992 emphasized the removal of disparities and provided educational opportunities to all by attending to the specific needs of those who have been derived equality till then.

The priorities in the University Grant Commission's IXth Plan on human rights included:

a) Improvement in the quality of undergraduate education and specially Colleges in backward, hilly, desert, island areas and Colleges serving women, reserved categories, minorities and disabled.

b) Access for groups under-represented or not represented in higher education especially in certain disciplines, keeping in mind
effective/optional employability where there is greater demand and higher returns.
c) Establishment of scholarships and loan facilities in individual institutions as well as also establishing an Educational Development Bank of India for loans to students.
d) Subsidies for women, minorities, reserved categories and
e) Promotion Adult Continuing Education and Extension Education.  

There have been many intellectual activities like seminars, workshops, studies etc. on human rights education. There is wide awareness of the need of this education. The National Human Rights Commission has taken the initiative to promote teaching of human rights in various levels of education and national institutions, such as University Grant Commission has become quite generous in making funds available for the purpose.  

The UGC has made attempts to enrich education curriculum of human rights education in Colleges and Universities on the basis of contemporary societal and economic situations. Its IXth plan Approach to promotion of human rights education in Universities and Colleges identifies present development model as one of the major violators of human rights in India.  

The National Council of Educational Research and Training (NCERT) claims that the textbooks prepared by it on different subjects have touched human rights. The NCERT guidelines have enlarged the scope of human rights education. It states that all subjects should be taught in such a manner as to faster the spirit of scientific humanism.

In presence of the guidelines the NCERT textbooks have been written to provide “a critical understanding of Indian society through the ages, with some focus on the position of women, the inequalities created by the caste system and various barbarous practices which arose during various periods

37 R.M. Pal & S. Chakraborty, Human Rights Education in India, Indian Statistical Institute, 2000, New Delhi
38 Ibid; p.148.
and of attempts by reformers to bring about a more human social order." For example, a major objective of the civics syllabus is to promote a well-informed and intelligent citizenship, governed by values of democracy, secularism, socialism and national integration.\textsuperscript{40}

To meet the need and requirement of the society and in order to enhance the quality and standards of education, updating and restructuring of the curriculum must continue as a perpetual process. Accordingly, the University Grant Commission constituted the Curriculum Development Committees.

The Commission has been of the view that the development of a national plan for human rights can crystallise programmes and policies that are human right-friendly across the entire range of government activity issues having a bearing on human rights in the work of a variety of ministries and departments, and it can re-orient attitudes and priorities across the spectrum of government endeavour. It can further add legitimacy and strength to the voice of those who advocate good and humane governance as essential to the well being of a country. The Commission has therefore been urging that such a National plan be formulated.

The whole issue of human rights education was being debated and was proposed by the National Human Rights Commission (NHRC) that it is to be incorporated in the syllabus as a separate subject in schools and Universities.

Education of child labour is one of the most important priorities of the government of India, which has announced that the right to free and

\textsuperscript{40}Ibid; pp. 181-182.
compulsory primary education shall be made a fundamental right and has
pledged to eradicate child labour in all occupation and industries. The
National Human Rights Commission and many non-governmental
organizations have stated to play an increasing role for the eradication of
child-labour.

The Government has set up a National Commission for the
Scheduled Caste and Scheduled Tribes, and a National
Commission for Minorities, to promote and protect the rights of
these vulnerable groups. Further, a National Minorities
Development and Financial Corporation promotes economic and
development activities for minorities.

The UGC model curriculum has been produced to take care
of the lacuna, defects and shortcomings in the existing Curricula
in certain universities, to develop a new model curriculum aiming
to produce the one which is compatible in tune with recent
development in the subject, to introduce innovative concepts, to
provide a multi disciplinary profile and to allow a flexible cafeteria
like approach including initiating new papers to cater for frontier
development in the concerned subject.

Today all knowledge is interdisciplinary. This has been duly
considered. Flexible and interactive models have been presented for the
universities to extend them further as they would like. Each institution may
have to work out certain uniform structures for courses at the same level, so
that effective interaction between subjects and faculties is possible. The
tendency across the country is now to move from the annual to the semester
system, and from award of marks to award of credits. There is perceptible growing interest in modular framing as well.

The recommendations while taking all these features into account have also made provisions for institutions that may not be in a position to undertake radical structural reform immediately. In any country, especially one as large and varied as India, academic institution must be allowed enough autonomy and freedom of action to frame courses according to specific needs. The recommendations of the Curriculum Development Committees are meant to reinforce this. The purpose of our exercise has been to provide a broad common framework for exchange, mobility and free dialogue across the entire Indian academic community. These recommendations are made in a spirit of openness and continuous improvement.