

HUMAN RIGHTS AND INDIAN CONSTITUTION

DISSERTATION

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I have been assigned a burning and sensational topic of present day world, the human rights and Indian constitution has been now enshrined in almost all the constitution of the world, International Human Rights Commission. National human rights commission and honourable supreme court of India continues all over the world.

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LIST OF ABBREVIATION

ABBREVIATION'S	FULL FORM
A.I.R.	: ALL INDIA REPORTER
A.I.	: AMNESTY INTERNATIONAL
A.E.O.	: ASSISTANT EDUCATIONAL OFFICER
A.L.R.	: AMERICAN LAW REVIEW
B.C.I.	: BAR COUNCIL OF INDIA
B.C.R.	: BAR COUNCIL REVIEW
C.R.C.	: COMMITTEE ON THE RIGHTS OF THE CHILD
C.A.D	: CONSTITUENT ASSEMBLY DEBATS
C.J.	: CHIEF JUSTICE
D.P.	: DIRECTIVE PRINCIPLES
F.R.	: FUNDAMENTAL RIGHTS
G.A.	: GENERAL ASSEMBLY
H.C.	: HIGH COURT
H.R.C	: HUMAN RIGHTS COMMISSION
H.R.P	: HUMAN RIGHTS PETITION
H.R.M.P.	: HUMAN RIGHTS MICELLANEOUS PETITION
I.P.C.	: INDIAN PENAL COURT
I.C.H.R.	: INTERNATIONAL COVENTENTS OF HUMAN RIGHTS
I.J.I.L.	: INDIAN JOURNAL OF INTERNATONAL LAW
I.L.R.	: INDIAN LAW REPORTER
P.I.L.	: PUBLIC INTEREST LITIGATION

P.U.C.L.	:	PEOPLES UNION FOR CIVIL LIBERTIES
P.W.D.	:	PUBLIC WORKS DEPARTMENT
R.A.W.	:	RESEARCH AND ANALYSIS WING
S.C.	:	SUPREME COURT
S.C.C.	:	SUPREME COURT CASES
S.C.J.	:	SUPREME COURT JOURNAL
S.G.P.	:	SUPRITENDENT GOVERNMENT PRESS
U.D.H.R.	:	UNIVERSAL DECLARATION OF HUMAN RIGHTS
U.N.	:	UNITED NATIONS
U.N.H.R.C.	:	UNITED NATIONS HUMAN RIGHTS COMMISSION
UNESCO	:	UNITED NATIONS, EDUCATIONAL SCIENTIFIC AND CULTURAL ORGANIZATION

TABLE OF CONTENT

CHAPTER 1: HUMAN RIGHTS

1. INTERODUCTION
- 1.1 HUMAN RIGHTS
- 1.2 HUMAN RIGHTS IN INDIA
- 1.3 ORIGIN AND DEVELOPMENT
- 1.4 ANCIENT HINDU LAW OF HUMAN RIGHTS
- 1.5 HUMAN RIGHTS IN THE ISLAMIC ERA
- 1.6 HUMAN RIGHTS IN BRITISH INDIA
- 1.7 LITERATURE REVIEW
- 1.8 RESEARCH PROBLEM
- 1.9 HYPOTHESIS
- 1.10 RESEARCH METHODOLOGY

CHAPTER 2: CONSTITUTION OF INDIA

2. Indian Constitution

CHAPTER 3: HUMAN RIGHTS AND INDIAN CONSTITUTION

- 3 INDIA AND THE UNIVERSAL DECLARATION
- 3.1 DECLARATION ON THE RIGHT TO PROTECT HUMAN RIGHTS
- 3.2 HUMAN RIGHT UNDER THE CONSTITUTION OF INDIA
- 3.3 FUNDAMENTAL RIGHTS AND HUMAN RIGHTS
- 3.4 SPECIFIED FUNDAMENTAL RIGHTS
- 3.5 DECLARATION OF A COMAPARATIVE STUDY OF FUNDAMENTAL RIGHTS AND UNIVERSAL HUMAN RIGHTS

CHAPTER 4: ESTABLISHMENT OF HUMAN RIGHTS IN INDIA AND ADOPTION OF THE IN INTERNATIONAL COVENANTS

4. ENUMERATION OF POLITICAL AND CIVIL FUNDAMENTAL RIGHTS UNDER THE CONSTITUTION OF INDIA
- 4.1 UNENUMERATED INDIVIDUTAL RIGHT OR NATURAL RIGHTS UNDER WRITTEN CONSTITUTION
- 4.2 CONVENTION ON CIVIL AND POLITICAL RIGHTS

4.3 SIMILARITIES BETWEEN CONVENANT ON THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS

4.4 OTHER FUNDAMENTAL RIGHTS

CHAPTER 5: THE CONSTITUTIONAL AND INSTITUTIONAL FRAMEWORK OF HUMAN RIGHTS IN INDIA

5. DIRECTIVE PRINCIPLES OF STATE POLICY AND HUMAN RIGHTS

5.1 FUNDAMENTAL DUTIES AND HUMAN RIGHTS

5.2 POLITICAL RIGHTS AND HUMAN RIGHTS

5.3 INSTITUTIONAL FRAMEWORK AND HUMAN RIGHTS

5.4 JUDICIARY HUMAN RIGHTS

5.5 PUBLIC INTEREST LITIGATION AND HUMAN RIGHTS

5.6 MEDIA AND HUMAN RIGHTS

5.7 INTERNATIONAL AND NATIONAL NORMATIVE FRAMEWORK RELATING TO HUMAN RIGHTS BEST PRACTICES

6. CHAPTER : Conclusion

7. CHAPTER : Suggestion

8. CHAPTER : Bibliography

CHAPTER 1

HUMAN RIGHTS

1. INTRODUCTION :

Human Rights are those minimal rights which every individual must have against the State or other public authority by virtue of his being a 'member of the human family', irrespective of any other consideration. The concept of human rights is as old as the ancient doctrine of 'natural rights' founded on natural law, the expression 'human rights' is of recent origin, emerging from (post-Second World War) international Charters and Conventions. It would, therefore, be logical to start with the concept of natural rights, which eventually led to the formulation of 'human rights. In the beginning, the right of man as a legal or moral concept appeared in the form of natural rights. The natural rights were derived from the nature of man for these are inherent in the nature of man and form part of his intrinsic nature. It means there exist in the nature of universe certain objective moral principles which can be perceived by the man by the application of his reason and self determination. There are so many theories round the corner about the nature, meaning and concept of natural rights, which ultimately culminated into the idea that an individual has right upon society or against society which the society must recognize as human rights. This concept of human rights can be termed as updated version of the traditional 18th Century concept of the right of man. The expression human right is of recent origin emerging after the end of the Second World War. The outcome of the Second World War had given rise to the serious concern towards humanity because humanity suffered lot in this era, and as a consequence tremendous developments have been made in the field of human rights.

Universal Declaration of Human Rights (UDHR) was adopted by the United Nations General Assembly in 1948 and subsequently large number of international human right instruments and covenants came into existence.

(1) The U. N. Charter, 1945.

(2) Universal Declaration of Human Rights, 1948.

(3) International Covenants of 1966 *i.e.* Civil and Political Rights and Economic, Social and Cultural Rights.

(4) European convention for protection of Human Rights, 1953.

Since the days of the Indus Valley Civilization, Indian culture has been the product of a synthesis of diverse cultures and religions that came into contact with the enormous Indian sub continent over a very long stretch of time. As Jawaharlal Nehru writes, there is "an unbroken continuity between the modern and the most ancient phases of Hindu thought extending over- three thousand years." The rights of man have been the concern of all civilizations from time immemorial. "The concept of the rights of man and other fundamental rights was not unknown to the people of earlier periods." The Babylonian Laws and the Assyrian laws in the Middle East, the "Dharma" of the Vedic period in India and the jurisprudence of Confucius in China, have championed human rights through history of human civilization. The Indian concept 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 and belong to a universal family. In this context, Mahatma Gandhi remarks, "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."

1.1 EVOLUTION OF HUMAN RIGHTS:

The preamble of the Universal Declaration of Human Rights States:—

"...It is essential if man is not to be compelled to have recourse, as a last resort to rebellion against tyranny and oppression, that human rights should be protected by the rule of law."

The primitive societies had probably no conception of human rights even after inception of human civilization the idea of human rights in the form of some basic natural rights, goes to the founder of the natural law theory. The natural law theory promoted the idea that man is endowed by birth with certain inalienable rights of which right to life, liberty and property are paramount. As Dr. Paras Diwan has pointed out however, soon it was realised that human rights were practically privileges of the rich and the powerful and that the poor man human rights remained only ornamental pieces in the form of a few articles in some written constitution. When poverty deprives a person of a decent human existence all the human rights are rendered meaningless and insignificant. The movement for securing human rights, however, continued and gained strength after the Second World War. The General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights soon after the formation of the United Nations in December, 1948. There after two international covenants, one on Economic, Social and Cultural Rights and the other on Civil and Political Rights were adopted by the Central Assembly on December 16, 1976.

1.2 HUMAN RIGHTS IN INDIA:

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, who is free from egoism sense and who is even-minded in pain and pleasure and patient" is dear to God. It also says that divinity in humans is represented by the virtues of non-violence, truth, freedom from anger, renunciation, aversion to fault-finding, compassion to living being;, freedom from covetousness, gentleness, modesty and steadiness -the qualities that a good human being ought to have.⁵ The historical account of ancient Bharat proves beyond doubt that human rights were as much manifest in the ancient Hindu and Islamic civilizations as in the European Christian civilizations. Ashoka, the prophet Mohammed and it cannot be excluded from the technology of human rights.

Our country was one of the original signatories to the International Covenant on Civil and Political Rights and therefore the framers of Indian Constitution were influenced by the concept of human right and recognised as well as guaranteed most of the human rights which were subsequently embodied in the International Covenant 1966. The Preamble of the Indian Constitution reflects the inspiring ideals with the specific mention of "dignity of the individual".

1.3 ANCIENT HINDU LAW OF HUMAN RIGHTS:

Scholars who have spent long time in lucubration on the Hindu "Dharmasastras" and the "Arthasastras" and other legal treatises of the past have discovered an amazing system, which, inter alia, regulates the duties of Kings, judges, subjects and judicial as well as legal procedures. The central concept is Dharmna, the functional focus of which is social order. The message is "Dharma" as the supreme value, which binds kings and citizens, men and women. Human rights gain meaning only when there is an independent judiciary to enforce rights. Here, the Dharmasastras are clear and categorical.'

The independence of the judiciary was one of the outstanding features of the Hindu judicial system. Even during the days of Hindumonarchy, the administration of justice always remained separate from the executive. It was, as a rule, independent both in form and spirit. It was the Hindu judicial system that first realized and recognized the importance of the separation of judiciary from the executive and gave this fundamental principle a practical shape and form. The case of Ananthapindika v. Jeta reported in the Vinaya-pitaka,' is a shining illustration of this principle. They submitted their cases before the law court and the court decided against the Prince. The Prince accepted the decision as a matter of course and as binding on him. The evolution of the principle of separation of the judiciary from the executive was largely the result of the Hindu conception of law as binding on the sovereign. Law in Hindu jurisprudence was above the sovereign. It was the "Dharma." The laws were then not regarded so much as a product of supreme Parliaments and Legislatures as at present. Certain laws were regarded as above all human

authority. Such, for instance, were the natural laws, which no Parliament, however.

Emperor Ashoka protected and secured the most precious of human rights, particularly the right to equality, fraternity, liberty and happiness. Ashoka successfully established a welfare State and made provisions for securing basic freedom and a private citizen

1.4 HUMAN RIGHTS IN THE ISLAMIC ERA :

The downfall of the Rajput administration gave rise to the advent of Muslim rule in India. It was under Muizz-ud-Din that the first Muslim Empire was founded in India. The Muslim invasion of India created a new situation wherein the Muslim rulers or Sultans followed a policy of discrimination against the Hindus. So the significance of Muslim rule in India was counter-productive to harmony, justice and equality. M.K.Nawaz is objective enough to qualify his conclusion with the observation that 'Islamic law' at least in its traditional interpretation, considers certain human beings as more equal than others." There was one law for the Muslims (the faithful) and another for the Hindus (the kafirs or the infidels) and as a result the principle of equality was not given much importance.

The Muslim conquerors like Mahmud Ghaznavi and others made frontal attacks on ancient Hindu way of life and religion. With the Mughal rulers, especially with Akbar a new era began in the Mughal history of India in the field of human rights as a result of his policy of 'Universal Reconciliation and Tolerance.' The European travellers who visited Ashoka's empire highly appreciated his zealous regard for rights and justice. His justice-loving tradition was followed by his son Jehangir

too. The trend initiated by Akbar came to be reversed by Aurangzeb, though the Marathas and the Sikhs opposed and fought the fanaticism of Aurangzeb.

1.5 HUMAN RIGHTS IN BRITISH INDIA :

The modern version of human rights jurisprudence may be said to have taken birth in India at the time of the British rule. When the British ruled India, resistance to foreign rule manifested itself in the form of demand for fundamental freedoms and the civil and political rights of the people, Indians were humiliated and discriminated against by the Britishers.

The freedom movement and the harsh repressive measures of the British rulers encouraged the fight for civil liberties and fundamental freedoms. Under the British rule, human rights and democracy were suspect and socialism was an anathema. In the Indian cultural history, the British colonial period remains the Indian equivalent of the 'Dark Ages'. Lord Macaulay rejected the ancient Indian legal political system as 'dotages of brahminical superstition', and condemned ancient legal heritage and its inner core as an 'immense apparatus of cruel absurdities.'" Lord Wellesley condemned the Indians as vulgar, ignorant, rude and stupid and Lord Cornwallis described as an axiom that every native of Hindustan is corrupt. The English East India Company debarred Indians from high offices and deprived them of their political, social and economic rights. The impression created in the Indian minds was that their sacred inalienable human rights and vital interests had been ignored, denied, and trampled upon for the sake of England and the English rulers.

Mahatma Gandhi organised the people of India under his leadership and launched his non-violent struggle to achieve self government and fundamental rights for themselves. Lokmanya Tilak advocated that "freedom was the birth right of Indians for which they will have to fight." It was because of the stiff opposition from the people of India that the Charter Act of 1813 was enacted to promote the interest and happiness of the native inhabitants of India. Similarly, the Government of India Act, 1833 was passed to allow the Indians to enjoy some political rights. The proclamation of Queen Victoria on 11 November 1858 contained some principles of state policy, which were similar to fundamental rights in nature. The concrete demand for fundamental rights came logically in the wake of the nationalist movement, which coincided with the birth of the Indian National Congress in 1885. The Constitution of India Bill 1895 known as the "Home Rule Document" prepared by the Indian National Congress paved the way for a constitution guaranteeing everyone of the citizens the basic human rights like freedom of expression, inviolability of one's own house, right to property and equality before law.²⁰ The Government of India Act 1915, in pursuance of the demands for fundamental rights, guaranteed equality of opportunity in public services. A series of resolutions adopted by the National Congress between 1917 and 1919 repeated the demand for civil rights and equality of status with the English.

1.6 MOTI LAL NEHRU COMMITTEE:

In 1925 the Indian National Congress finalized the draft of Common Wealth of India 6 11 adopting a 'Declaration of Rights.' The Madras Session of the Congress held in the year 1927 – demanded incorporation of a 'Declaraton of Fundamental Rights' in any future constitutional framework. A c:omniittee under Moti lal Nehru was appointed by the National Congress to study the fundamental rights. It is interesting to note that the Constitution 2f the Republic of India, enacted in 1950, incorporated ten of the nineteen rights enumerated in the Moti lal Nehru Committee Report, 1928.

The rights emphasis by the Moti lal Nehru Committee where:

- a) Personal liberty, inviolability of dwelling place and property
- b) Freedom of consciene, and of profession and practice of religion
- c) Expression of opinion and the rlight to assemble peaceably without arms and to form associations
- d) Free elementary education
- e) Equality for all before the law and rights
- f) Right to the wrot tha lease Corpus
- g) Protection from punishment under ex-post facto laws
- h) Non-discrimination against any person on grounds of religion, caste or creed in the matter of public employment
- i) Equality of right in the matter of access to and use of public roads, wells etc.
- j) Freedom of combination and association for the maintenance and implementation of labour and economic factors
- k) Right to keep and bear arms
- l) Equality of rights to man and women

The Simon Commission, appointed by the British Government in 1927, however, totally rejected the demands voiced by the Nehru Committee reports. In 1930 the Congress Working Committee gave the clarion call for the attainment of 'Purna Swaraj.' The Karachi Session of the Congress in 1931 adopted a detailed programme of fundamental rights. The Government of India Act, 1935 was passed without any bill of rights much to the disappointment of the Indian leaders. It was the 'Nehru Committee' of 1945 that subsequently stressed the need for a written code of fundamental rights and the Constituent Assembly raised a forceful demand for the inclusion of human rights in the Constitution.

1.7 RESEARCH PROBLEM:

The Human Rights And Indian Constitution Is A Very Broad And A Wide Topic. The Basic Problem While Doing A Research Or An Analysis A Person Will Face Is The Lack Of Awareness Of Human Rights In People. They Do Not Know What Right They Possess As Being Human And The Rights Which They Possess From Their Inheritance Of Birth. This Topic Is Very Difficult For A Very Who Analyses This Topic And Collects The Data From The Proper Platform.

1.8 LITERATURE REVIEW :

In This Section An Attempt Is Made To Review The Available Literature On Human Rights With A View Examining The Different Stand Points And Views Adopted By Various Experties. In A Comprehensive Analyses Of The Literature Relating To The Topic Is Neither Essential Nor Requisite. In This Only The Relevant Contributions Are Breifly Presented.

They Are As Follows:

1. Dr. S.K. Kapoor In His Book Human Rights Under International Law And Indian Law(2001) Explains The Origin, Growth And Development Of Human Rights. The Universal Declaration Of Human Rights And Regional Protection Of Human Rights From A Historical Prospective. It Also Deals With The Indian Human Rights Protection Act 1993, Protection Of Human Ights Under The Indian Law And The Role Of The National Human Rights Commission. His Work Is A Vblend Of Stimulating Scholarship Ans Sparkling Style.
2. S.N. Sharma In Personal Liberty Under Indian Constitution(1990) Provides An Impirical And Analytical Study Of The Social Perseption Of The Context And Extent Of Personal Liberty In The Light Of Recent Judicial Policy Of Liberal Interpretation. It Also Seeks To Correlate The Personal Liberty Dicionsions And Maintenance Of Law And Order.
3. P.L. Mehta And Neena Llarma In Their Book Human Rights Under The Indian Constitution, The Philosiphy And Judicial Jerrymandering(1

999) Focus Attention On The Origin And Development Of Human Rights Jurisprudence Since Prevedic Times With Special Emphasis On Its Vicissitudes During Different Periods. The Book Also Discusses The Various Constitutional Provisions Meant To Provide Human Rights To The People Of India.

4. D.D Basu, A Legal Luminary In His Book Commentery On The Constitution Of India In Ten Volume(1965) Gives A Systematic Exegesis Of All The Provisions Of The Indian Constitution Including Chapter Iii That Deals With Fundamental Rights. Besides,He Gives A Comparative Analysis Of The Constitutional Framework Of The Contemporery Political Systems.
5. Dr. H.O. Agrawal In His Work Human Rights(2004) Critically Examines The Universal Declaration Of Kumar Rights And Various Regional Covenants On Human Rights. He Deals Comprehensively With The Interrelation Between The Provisions Contained In Our Constitution And The Provisions Of The Two International Covenants. The Learned Auther Makes A Highly Commendable Analysis 17 Of The Dicismon Of The Supreme Court Subject Wise.

6. Constitutional Government In India(1977) By M.V. Pylee Discusses The Main Factors Responsible For The Incorporation Of Fundamental Rights In The Indian Constitution Starting From The Constituent Assembly Debates. It Also Refers To Various Judgement Of Indian Courts.

7. John Humphreys Book Entitled No Distant Millenium: The International Law Of Human Rights(1989) Deals With The Principle Organ Of The U.N. And Human Rights. This Book Seeks To Broaden The Scope Of Current Thinking On Human Rights.

8. Nagendra Singh In His Book Enforcement Of Human Rights(1986) Lists The Ways And Means For The Enforcement Of Human Rights. It Provides 14 An Insight Into The Problems Invovled In The Enforcement Of Human Rights In India.

1.9 RESEARCH METHODOLOGY:

The Methodology Followed In This Study Is Not Uni-Dimensional.It Is Rather A Blend Of The Historical, Theoretical And Practical Aspects Of Human Rights.A Historical Approach Has Been Follwed For The Study Of The Origin And Development Of Human Rights In The World Scenario As Well As In India.In Analysing The Judicial Behaviour Of The Supreme Court And The State High Courts As Well As The Role And The Function Of The Nation And State Human Rights Commission The Methodology Adopted Is Analytical.

1.10 HYPOTHESIS:

The Major Hypothesis Guiding This Investigation Are:

1. In Modern Times Human Rights Are Regarded As The Most Important Tribes.
2. The United Nations Provide A Good Background For The Developments Of Human Rights.
3. Human Rights Are Found In The Acient Indian Thoughts.
4. The Indian Constitution Itself Contains Ample Provisions For The Protection Of Human Rights.
5. The Protection Of Human Rights Act 1993 And The Constitution Of National Human Rights Commission Encourage Protection Of Human Rights ,N.H.R.C.Is A Weak Body That Suffer From Inherent Weakness.
6. The Judiciary In India Has Expanded The Scope Of Article 21 Of The Constitution-“No Person Shall Be Deprived Of His Life Or Person Liberty Except According To The Procedure Established By Law.”
7. The Supreme Court Is The Most Important Protector Of Human Rights In India.

CHAPTER 2

THE INDIAN CONSTITUTION

2. CONSTITUTION :

The Constitution of the Republic of India which came into force on 26th January 1950 with 395 articles and 8 Schedules, is one of the most elaborate fundamental laws ever adopted. The Preamble to the Constitution declares India to be a Sovereign, Socialist, Secular and Democratic Republic. The term 'democratic' denotes that the Government gets its authority from the will of the people. It gives a feeling that they all are equal "irrespective of their race, religion, language, sex and culture." The Preamble to the Constitution declares 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 to all its citizens. The impact of the Universal Declaration of Human Rights on drafting part III of the Constitution is apparent. India has acceded to the Universal Declaration of Human Rights as well as to the subsequent International Covenants of Economic, Social and Cultural rights and Civil & Political Rights adopted by the Central Assembly of the United Nations.

Fundamental Rights enshrined in Part III of the Constitution have emerged from the doctrine of natural rights. Fundamental Rights are the modern name for what have been traditionally known as Natural Rights. The Natural Rights transformed into fundamental rights operate as

a constitutional limitation or a restriction on the powers of the organs set up by the Constitution or the State action. Judicial Review, Justiciability or Enforcement became an inseparable concomitant of fundamental rights. As no right of freedom can be absolute, limitations have been imposed to each fundamental right in the interest of securing social justice. Enforcement of fundamental rights can even be suspended or prevented in emergency.

Human Rights, intrinsic to all humans as members of humanity, are the modern and secular version of the natural rights. All humans, being born equal are equally entitled to the Human Rights without any distinction of birth, sex, race, status, religion, language or nationality. Standing above the ideologies of the capitalism or communism, Human Rights reflect the concern for democracy, development and peace. The national awakening and social reform movements were for the equality, democracy and social progress. During the freedom movement, the people of India fought against colonial rule for their rights and liberties. Freedom fighter Lokmanya Bal Gangadhar Tilak proclaimed, "Swaraj is my birthright and I shall have it." Throughout the freedom struggle, the demand for fundamental rights was always in the forefront.

The Indian National Congress at its Madras session in December 1927, resolved to draft a "Swaraj Constitution for India, on the basis of the Declaration of Rights" and in 1928, an All Parties Conference of representatives from Indian political parties proposed constitutional reforms for India. Demanding dominion status and elections under universal suffrage, they called for guarantees of rights deemed fundamental, representation for religious and ethnic minorities and limitations on government powers.

CHAPTER 3

HUMAN RIGHTS AND INDIAN CONSTITUTION

3. INDIA AND THE UNIVERSAL DECLARATION :

India was a signatory to the Universal Declaration of Human Rights. A number of fundamental rights guaranteed to the individuals in Part III of the Indian Constitution are similar to the provisions of the Universal Declaration of Human Rights.

Table 3.1

Civil and Political Rights in the Universal Declaration of Human Rights and in the Indian Constitution

No.	Name of Rights	Universal Declaration	Indian Constitution
1.	Equality before law	Article 7	Article 14
2.	Prohibition of discrimination	Article 7	Article 15(1)
3.	Equality of opportunity	Article 21(2)	Article 16(1)
4.	Freedom of speech and expression	Article 19	Article 19(1) (a)
5.	Freedom of peaceful assembly	Article 20(1)	Article 19(1) (b)
6.	Right to form associations or unions	Article 23(4)	Article 19(1) (c)
7.	Freedom of movement within the border	Article 13 (1)	Article 19(1) (d)
8.	Protection in respect of conviction for offences	Article 11(2)	Article 20 (1)
9.	Protection of life and personal liberty	Article 3	Article 21
10.	Protection of slavery and forced labour	Article 4	Article 23
11.	Freedom of conscience and religion	Article 18	Article 25(1)
12.	Remedy for enforcement of rights	Article 8	Article 32
13.	Right against arbitrary arrest and detention	Article 9	Article 22
14.	Right to social security	Article 22	Article 29(1)

The Table Below Shows That Most Of The Economic, Social And Cultural Rights Proclaimed In The Universal Declaration Of Human Rights Have Been Incorporated In Part IV Of The Indian Constitution

Table 3.2

Economic, Social and Cultural Rights in the Universal Declaration of Human Rights and in the Indian Constitution

No.	Universal Declaration of Rights	Article in the Universal Declaration	Article in the Indian Constitution
1.	Right to work, to just and favourable conditions of work	Article 23 (1)	Article 41
2.	Right to equal pay for equal work	Article 23(2)	Article 39 (d)
3.	Right to education	Article 26(1)	Articles 21(A), 41, 45 & 51A(k)
4.	Right to just and favourable remuneration	Article 23(3)	Article 43
5.	Right to rest and leisure	Article 24	Article 43
6.	Right of everyone to a standard of living adequate for him and his family	Article 25(1)	Article 39(a) & Article 47
7.	Right to a proper social order	Article 28	Article 38

In Keshvanand Bharti V. State Of Union ,The Supreme Court Observed, "The Universal Declaration Of Human Rights May Not Be A Legally Binding Instrument Bu': It Shows How India Understood The Nature Of Human Rights At The Time The Constitution Was Adopted." In The Case Of Jolly George Varghese V. Bank Of India. The Point Involved Was Whether A Right Incorporated In The Covenant On Civil And Political Rights, Which Is Not Recognised In it Indian Constitution, Shall Be Available To the Individuals In India. Justice Krishna Lawyer Reiterated Dualism And Asserted That The Positive Commitment Of The State Parties Ignites Legislative Action at home but does not automatically make the Covenant an enforceable part of the 'Corpus Juris' in India. Thus, although the Supreme Court has stated that the Universal Declaration cannot create a binding set of rules and that even international treaties may at best inform judicial institutions and inspire legislative action. Constitutional interpretation in India has been strongly influenced by the Declaration. In the judgement given in; the Chairman, Railway Board and others v. Mrs. Chandra as, the Supreme Court observed that the Declaration has the international recognition as the Moral Code of Conduct having been adopted by the General Assembly of the United Nations. The applicability of the Universal Declaration of Human Rights and principles thereof may have to be read, if need be, into the domestic jurisprudence. In a number of cases the Declaration has been referred to in the decisions of the Supreme Court and State High Courts. India ratified the International Covenant on Civil and Political Rights and the International Covenant the Economic, Social and Cultural Rights on March 27, 1979. The Optional Protocol to the International Covenant on Civil and Political Rights, 1989, however, was not ratified by India.

3.1 HUMAN RIGHTS IN INDIAN CONSTITUTION :

The Constitution Of Independent India Came Into Force On 26th January. The Impact Of The Universal Declaration Of Human Rights On Drafting Part III Of The Constitution Is Apparent. India Has Acceded To The Universal Declaration Of Human Rights As Well As To The Subsequent International Covenants Of Economic, Social And Cultural Rights And Civil & Political Rights Adopted By The Central assembly Of The United Nations. Fundamental Rights Enshrined In Part III Of The Constitution Have Emerged From The Doctrine Of Natural Rights. Fundamental Rights Are The Modern Name For What Have Been Traditionally Know As Natural Rights. The Natural Rights Transformed Into Fundamental Rights Operate As A Constitutional Limitation Or A Restriction On The Powers Of The Organs Set Up By The Constitution Or The State Action. Judicial Review, Justiciability Or Enforcement Became An Inseparable Concomitant Of Fundamental Rights. As No Right Of Freedom Can Be Absolute, Limitations Have Been Imposed To Each Fundamental Right In The Interest Of Securing Social Justice. Enforcement Of Fundamental Rights Can Even Be Suspended Or Prevented In Emergency. Directive Principles Enshrined In Part IV Of The Constitution

3.2 RIGHT TO LIFE AND PERSONAL LIBERTY :

Art. 21 Of Our Constitution Guarantees Right To Life And Personal Liberty.

The Article Runs As Follows:-

"No Person Shall Be Deprived Of His Life Or Personal Liberty Except According To Procedure Established By Law."

The First Draft To The Constituent Assembly Of This Article Appeared In The Following Shape :

"No Person Shall Be Deprived Of His Life Or Personal Liberty Without Due Process Of Law, Nor Shall Any Person Be Denied Equality Before Law Within The Territories Of The Federation."

The Drafting Committee Headed By Dr. B. R. Ambedkar, However, Substituted The Words "Except According To Procedure Established By Law" Since The Former Is More Specific.

Human Rights, Intrinsic To All Humans As Members Of Humanity, Are The Modern And Secular Version Of The Natural Rights. All Humans, Being Born Equal Are Equally Entitled To The Human Rights Without Any Distinction Of Birth, Sex, Race, Status, Religion, Language Or Nationality. Standing Above The Ideologies Of The Capitalism Or Communism, Human Rights Reflect The Concern For Democracy, Development And Peace.

The National Awakening And Social Reform Movements Were For The Equality, Democracy And Social Progress. During The Freedom Movement, The People Of India Fought Against Colonial Rule For Their Rights And Liberties. Freedom Fighter Lokmanya Bal Gangadhar Tilak Proclaimed, "Swaraj Is My Birthright And I Shall Have It." Throughout The Freedom Struggle, The Demand For Fundamental Rights Was Always In The Forefront.

The Indian National Congress At Its Madras Session In December 1927, Resolved To Draft A "Swaraj Constitution For India, On The Basis Of The Declaration Of Rights" And In 1928, An All Parties Conference Of Representatives From Indian Political Parties Proposed Constitutional Reforms For India. Demanding Dominion Status And Elections Under

Universal Suffrage, They Called For Guarantees Of Rights Deemed Fundamental, Representation For Religious And Ethnic Minorities And Limitations On Government Powers.

In Pursuance, The Motilal Nehru Committee, In Its Report In August 1928, Set Out 19 Fundamental Rights And Reiterated That “Our First Case Should Be To Have Our Fundamental Rights Guaranteed In A Manner Which Will Not Permit Their Withdrawal Under Any Circumstance.” In 1931, The Indian National Congress, At Its Karachi Session, Adopted Resolutions Defining, As Well As Committing Itself To The Defence Of Fundamental Civil Rights, Including Socio-Economic Rights Such As Minimum Wage, The Abolition Of Untouchability And Serfdom. Committing Themselves To Socialism In 1936, The Leaders Of The Congress Party Took Examples From The Soviet Constitution, That Recognize The Fundamental Duties Of Citizens As A Means Of Collective, Patriotic Responsibility.

The Cabinet Mission Plan Conceded The Demand For The Constituent Assembly As Well As The Need For A Written Guarantee Of Fundamental Rights In The Constitution Of India. The Objective Resolution Moved By Jawaharlal Nehru Was Adopted By The Constituent Assembly On January 22, 1947. It Was Solemnly Pledged To Draw Up A Constitution For India’s Future Governance And It “Shall Be Guaranteed And Secured To All The People Of India, Justice – Social, Economic And Political, Equality Of Status, Of Opportunity And Before The Law, Freedom Of Thought, Expression, Belief, Faith, Worship, Vocation, Association And Action, Subject To Law And Public Morality”. Two Days After Adopting The Objective Resolution, The Constituent Assembly Elected An Advisory Committee Consisting Of 54 Members With Sardar Vallabhbhai Patel As Its Chairman. The Advisory

Committee In Turn With The Help Of Its Five Sub Committees Recommended For The Division Of Rights Into Justiceable And Non-Justiceable, That Is, The Rights Enforceable By Appropriate Legal Process And The Rights Not Enforceable Through Courts Nevertheless To Be Fundamental In The Governance Adoption Of The Universal Declaration Of Human Rights By The United Nations On December 10, 1948 Gave A Global Thrust To The Human Rights. Rane Cassin, The Distinguished French Jurist Who Drafted United Nations Declaration Of Human Rights (UDHR) Was Awarded The Nobel Peace Prize In 1968 For His Works On Human Rights. The United Nations Declaration Of Human Rights, The Two Covenants – The International Covenant On Civil And Political Rights (ICCPR) And The International Covenant On Economic, Social And Cultural Rights(ICESCR) And The Optional Protocols Taken Together Are Known As The International Bill Of Rights. All Of Them Have Been Ratified By India Of The Nation.

Also As A Founder Member Of The United Nations Organizations, India Is A Party To The Universal Declaration Of Human Rights, 1948. Coming Close On The Heels Of The Universal Declaration Of Human Rights, The Bill Of Rights Was Enunciated In The Constitution Of India, 1950 By The Founding Fathers, With The Contemporary Development, Humanitarian Temper And Constitutional Practices. Among The Constitutional Provisions, The Chapter On Fundamental Rights Has A Vital Significance, Especially In View Of The Problems Of Minorities In India. The Preambular Assurance Of The Dignity Of The Individuals More Eloquently Proclaimed By The Extensive Ideas Of Economic And Social Justice, Which In Fact, Happens To Be The Cardinal Principles Underlying The Universal Declaration Of Human Rights Is Sought To Be Implemented Through The Various Provisions Of Part III-

Fundamental Rights And Part IV-Directive Principles Of State Policy Of The Constitution Of India.

By The Time The Constituent Assembly Adopted These Recommendations And Drafted The Constitution Of India,1950, The Universal Declaration Of Human Rights,1948, Had Already Been Adopted With The Hope That Ultimately All Member States Will Adopt These Rights In Their Constitutions. Besides Being Influenced By The UDHR, The Development Process Of Constitutional Rights In India Was Also Inspired By Historical Documents Such As England's Bill Of Rights, The United States Bill Of Rights And France's Declaration Of The Rights Of Man. The Fundamental Rights And Directive Principles Were Included In The Final Draft Of The Constitution Promulgated On 26 November 1949, While The Fundamental Duties Were Later Added To The Constitution. The Ten Fundamental Duties—Given In Article 51-A Of The Constitution—Can Be Classified As Duties Towards Self, Duties Concerning The Environment, Duties Towards The State And Duties Towards The Nation. The 11th Fundamental Duty, Which States That Every Citizen “Who Is A Parent Or Guardian, To Provide Opportunities For Education To His Child Or, As The Case May Be, Ward Between The Age Of Six And Fourteen Years” Was Added In 2002 By Amending The Constitution. The Citizens Are Morally Obligated By The Constitution To Perform These Duties That Are Non-Justiceable. These Obligations Extend Not Only To The Citizens, But Also To The State. There Is Also Reference To Such Duties In International Instruments Such As The Universal Declaration Of Human Rights And International Covenant On Civil And Political Rights.

Consequently, The Constitution Of India, 1950 Set Out A Most Elaborate Declaration Of Human Rights. These Rights Were Broadly Divided Into Two Compartments (I) Political And Civil Rights, And (Ii) Social And Economic

Rights, That Were Contained In Chapter III Enumerating The Fundamental Rights And Chapter IV Dealing With The Directive Principles Of State Policy Respectively. The Former Are Justiceable While The Latter Are Non-Justiceable. Insertion Of A New Chapter IVA On Fundamental Duties, Having Corresponding Relations With The Fundamental Rights Through The 42nd Constitution Amendment Act, 1976, Was An Addition To The Non-Justiciable Slot.

There Are Some More Constitutional Rights Scattered Under Articles Or Are Inferred From The Constitutional Limitations On The Government Powers. For Instance, Article 265 Lays Down That “No Tax Shall Be Levied Or Collected Except By Authority Of Law”, Which Implies That, A Person Has A Right Not To Be Taxed Except Under A Law. Similarly, Article 300A Guarantees That A Person Has A Right Not To Be Deprived Of His Property Or Except Under A Law And Article 326 Bestows Upon The Citizens The Right To Vote.

Directive Principles Of State Policy Aim To Establish Social And Economic Democracy Through A Welfare State, Which Shall Strive To Promote The Welfare Of The People And Such Social Conditions Under Which The Citizens Can Lead A Good Life. The Principles Have Been Inspired By The Directive Principles Of The Ireland Constitution And By The Principles Of Gandhism; And Relate To Social Justice, Economic Welfare, Foreign Policy, And Legal And Administrative Matters. The Idea Of “Directive Principles Of State Policy” Can Be Traced To The Declaration Of The Rights Of Man Proclaimed By Revolutionary France, The Declaration Of Independence By The American Colonies And The United Nations Universal Declaration Of Human Rights. Like Fundamental Rights, The Dpsps Has The Tendency To Evolve Its Growth. For Instance, Provision For Free And Compulsory

Education For Children And Protection And Improvement Of Environment And Safeguarding Of Forests And Wild Life Were Added At Later Stage.

The Article 21-A States That The State Shall Provide Free And Compulsory Education To All Children Of The Age Of Six To Fourteen Years.

One Major Problem Has Been That Unlike Civil And Political Rights, Economic, Social And Cultural Rights Are Widely Viewed As Aspirational Moral Goals, Which Are Not Legally Binding. There Is No Flaw In Human Rights Practice To Declare Rights With The Aim Of Establishing Standards Even If They Are Not Immediately Achieved.

The Obligation For Enforcing The Human Rights Contained In Various International Instruments Vests Primarily With National Governments. Under Article 2 Of The International Covenant On Economic, Social And Cultural Rights, States Are Legally Bound To Take Steps To 'Achieve Progress To The Maximum Of Their Available Resources, The Full Realisation Of The Rights Contained In The Covenant.

The Problem Is That Most Non-Socialist States Have Mirrored Within Their Own Constitutions And Laws, This Assumed Dichotomy Between Civil And Political Rights, Which Are Legal And Justiciable, Enforceable By Courts, And Economic, Social And Cultural Rights, Which Are Moral Rights, Not Enforceable By Courts. In India, Most Civil And Political Rights Are Contained In The Fundamental Rights Of The Constitution, Whereas The Majority Of Economic, Social And Cultural Rights Are Contained In A Separate Chapter, Called The Directive Principles Of State Policy. Citizens Can Petition Courts For The Enforcement Of The Former, But Not The

Latter. Even Economic, Social And Cultural Rights Not Contained In The Indian Constitution, But Subsequently Legislated Like The Equal Opportunities Have No Penal Clauses, Therefore, Effectively They Remain Pious Statements Of Intent, But In Practice Afford A Disabled Person, Whose Rights Are Flouted, No Real Remedy.

However, In India As In Many Other Countries, Some Economic, Social And Cultural Rights Are Contained Both In The Law And The Constitution, Enforceable Through Legal Remedies. These Include Legislation For Minimum Wages, The Rights Of Workers, The Cultural And Educational Rights Of Minorities, And Restraints On Bonded And Child Labour.

A Broad Distinction Is Often Made Between Rights That Are 'Justiciable', Capable Of Being Invoked In Courts Of Law And Enforced By Judges, And Those That Are Not. It Is Argued That Many Economic, Social And Cultural Rights, Such As The Rights To Food, Housing, Health, Education And Social Security, Are By Their Very Character, Not Justiciable Rights. They Are No Doubt Legally Binding, In That, They Create Obligations On States. However, They Are Not Legal With Regard To Their Applicability.

It Is Frequently Argued Also That Courts Cannot Intervene To Enforce These Rights Because States Are Legally Bound To Discharge These Obligations Progressively Based On The Availability Of Resources. It Is Suggested That Civil And Political Rights Require Mainly Abstentions By State Authorities, Involving No Costs, Whereas Economic, Social And Cultural Rights Require Positive Action By The State, Involving Significant Expenditure.

This Distinction Is Overdrawn. Several Civil And Political Rights Also Do Require Expenditures, Such As For Legal Aid, Regulators And Ombudsmen. On The Other Hand, There Are Economic, Social And Cultural Rights That Only Require The State To Abstain From Encroachment On People's Rights, Such As From The Compulsory Acquisition Of The Land Of Indigenous Communities Or The Eviction Of Urban Squatters. Several Laws Against Discrimination Against Women, Children, Socially Disadvantaged Groups And Minorities, Involving Primarily Economic, Social And Cultural Rights, Would Also Not Involve More Significant Public Expenditure As Compared To Civil And Political Rights.

However, In The End, It Must Still Be Admitted That Some Of The Most Vital Economic, Social And Cultural Rights Do Involve Substantial Public Expenditure, Such As The Rights To Food, Housing, Education, Social Security, Work And Health Care.

It Is Not That Most National Governments Have No Absolute Resources For Public Expenditure. What Is Contested Is The Priorities For This Public Expenditure. The Analysis Of Budgets Of Most Countries Would Reveal Overwhelmingly Large Allocation To Military Expenditure, The Salaries And Other Expenses Of Public Officials, The Police And Urban Infrastructure. Allocation To Advance The Economic, Social And Cultural Rights Is Typically Low, And Even This Is Inefficiently Managed And Typically Involves Major Expenditures On Salaries Of Generalist Administrators. Therefore, The "Progressive" Achievement Of These Rights Is Even More Tardy.

These Trends Are Further Aggravated By The Ascendancy Of Neo-Liberal Policies Of Structural Adjustment, Promoted By The IMF And World Bank, Which Have Resulted In A Continuous Dilution Of The Welfare Obligations Of The State, And A Retreat Of The State Itself From Its Erstwhile Paramount Obligations To Secure Economic, Social And Cultural Rights And Development For All Its Citizens, To Facilitating Globalised Market-Led Economic Growth.

In These Circumstances, The Imperative Has Never Been Greater, For Human Rights Activists To Press For The Inclusion Of Economic, Social And Cultural Rights In National Constitutions And Laws, As Legal Rights That Are Fully Justiciable, On Par With Civil And Political Rights. Since These Rights Seek To Safeguard The Rights To Survival With Dignity, Development And Well-Being Of Large Masses Of Powerless-Disenfranchised, Oppressed Women, Men, Girls And Boys In Countries Across The World, Justiciable Social, Economic And Cultural Rights Will Help Strengthen Their Voices And Struggles For A More Just And Humane Social Order.

3.3 FUNDAMENTAL RIGHTS AND HUMAN RIGHTS :

The Judicially Rights Which Encompass All Seminal Civil And Political Rights And Some Of The Rights Of Minorities Are Enshrined In Part III Of The Constitution (Articles 12 To 35). These Include. The Right To Equality, The Right To Freedom, The Right Against Exploitation, The Right To Freedom Of Religion, the Educational Rights And The Right To Constitutional Remedies. Fundamental Rights Differ From Ordinary Rights In The Sense That The Former Are Inviolable. No Law, Ordinance, Custom, Usage, Or Administrative Order Can Abridge Or Take Them Away. Any Law, Which Is Violative Of Any Of The Fundamental Right, Is Void. In *ADM Jabalpur V. Shukla*, Justice Beg Observed "The Object Making Certain General Aspects Of Rights Fundamental Is To Guarantee Them Against Illegal Invasion Of These Rights By Executive, Legislatve, Or Judicial Organ Of The State." Earlier, Chief Justice Subba Rao In ***Golak Nath V. State Of Punjab*** Had Rightly Observed, "Fundamental Rights Are The Modern Name For What Have Been Traditionally Known As Natural Rights," The Supreme Court C)F India Recognises These Fundamental Rights As 'Natural Rights' Or 'Human Rights'. While Referring To The Fundamental Rights Contained In Part III Of The Constitution, Sikri The Then Chief Justice Of The Supreme Court, In ***Kshavananda Bharati V. State Of Keral***

,"Observed, "I Am Unable To Hold These Provisions To Show That Rights Are Not Natural Or Inalienable Rights. As A Matter Of Fact India Was A Party To The Universal Declaration of Rights And That Declaration Describes Some Fundamental Rights Inalienable." The Chief Justice Patanjali shastri In State Of West Subodh Gopal To Fundamental Rights As Those Great And Basic Rights, Which Are Recognised And Guaranteed As The Natu-A1 Rights Inherent In The Status Of A Citizen Of A Free Country. Article 14 Of The Indian Constitution Proclaims The General Right Of All Persons To Equality Before The Law, While Article 15 Prohibits The State From Discriminating Against early Citizen On Grounds Of Religion, Race, Caste, Sex Or Place Of Birth, And Proiibits Any Restriction On Any Citizen's Access To Any Public Place, Including Wells And Tanks. Equality Of Opportunity For All Citizens In Matters Of Pubic Employment Is Guaranteed Under Article 16. Article 17 Abolishes into ability and Makes Its Practice An Offence Punishable Under Law. Both Articles 15 And 16 Enable The State To Make Special Provisions For The Advancement Of Socially And Educationally Backward Classes, For Such Castes And Tribes As Recognized In The Constitution (Known As The Scheduled Castes And Scheduled Tribes) Require Very Special Treatment For Their Advancement. Article 18 Abolishes All Non Military Or Non-Academic Titles. The Right To Freedom Guaranteed To All Citizens Under Article 19 Encompasses The

Encompasses The Right To Freedom Of Speech And Expression, The Right To Assemble Peaceably Without Arms, The Right To Form Associations Or Unions, The Right To Move Freely Throughout The Territory Of India, The Right Of Residence, And The Right To Practise Any Profession, Or To Carry On Any Occupation, Trade Or Business. The Protection Of A Person In Respect Of Conviction Of Offences Under Article 20 Includes Protection Against Ex Post Facto Criminal Laws, The Principle Of Convict And The Right Against Self-Incrimination. Article 21, the Core Of All Fundamental Rights Provisions In The Indian Constitution, Ordains: "No Person Shall Be Deprived Of His Life Or Personal Liberty Except According To Procedure Established By Law."

Article 21A Was Added To The Constitution By The Eighty Six Constitutional Amendment Act 2002. Article 21A Proclaims "The State Shall Provide Free And Compulsory Education T3 All Children Of The Age Of Six To Fourteen Years In Such Manner As The State May, By Law, Determine." The Rights Of A Person, Arrested And Detained By The State Authorities, Are Provided In Article 22. These Include The, Right To Be Informed Of The Grounds Of Arrest, The Right To Legal Advice And The Right To Be Produced Before A Magistrate Within 24 Hours Of Arrest (Except Where One Is Arrested Under A Prevent detention Law). The Right Against

Exploitation Includes Prohibition Of Trafficking In Human Beings And Forced Labour (Article 23), And Prohibition Of Employment Of Children Below 14 Years Of Age "To Work In Any Factory Or Mine Or In Any Other Hazardous Employment." Subject To Public Order And Morality, All Persons Are Equally Entitled To Freedom Of Conscience And The Right To Profess, Practise And Propagate Religion (Article 25). Every Religious Denomination Or Section Also Has The Right To Establish And Maintain Religious Institutions And Manage Their Religious Affairs (Article 26). No One May Be Compelled To Pay Any Religious Taxes (Article 27). The Wholly State-Funded Educational Institutions Are Barred From Imparting Religious Instructions (Article 28).

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 Constitution Article 32 Is Essentially The Right To Move The Supreme Court Of India For Enforcement Of The Above Rights (Article 32). The Supreme Court Is Vested With Wide Constitutional Powers In This Regard. They Include The Power Issue Directions, Orders Or Writs For The Enforcement Of The Fundamental Rights (Article 32(2)). State (I.E. Provincial) High

Courts Too Have Identical Powers (Article 226). As Laws Inconsistent With Or In Derogation Of The Rights Conferred By Part III Of The Constitution Are Void (Article 13), The Courts Have The Power To Adjudge The Constitutional Validity Of All Laws. Furthermore, By Virtue Of Article 141, The Law Declared By The Supreme Court Shall Be Binding On All Courts In India. Fundamental Rights Guaranteed Under The Indian Constitution May Be Divided, For The Sake Of Convenience, Into Two Categories Viz., Specified fundamental Rights And Other Fundamental Rights (Rights Not Specifically Enumerated).

3.4 **SPECIFIED FUNDAMENTAL RIGHTS**

Many Rights Enshrined In The Covenant On Civil And Political Rights Have Been Recognised Specially In The Indian Constitution As 'Fundamental Rights.' They May Be Referred To As "Specified" Fundamental Rights Because They Are Mentioned In The Constitution By Name.

Table 3.3**Different Articles of the International Covenant on Civil and Political Rights and the Indian Constitution**

No.	Fundamental Rights	Covenant on Civil and Political Rights	Indian Constitution
1.	Forced labour	Article 8(3)	Article 23
2.	Equality before law	Article 14(1)	Article 14
3.	Prohibition of discrimination	Article 26	Article 15
4.	Equality of opportunity to public service	Article 25(C)	Article 16(1)
5.	Freedom of speech and expression	Article 19(1) & (2)	Article 19(1) (a)
6.	Right for peaceful assembly	Article 21	Article 19(1) (b)
7.	Right to freedom of association	Article 22(1)	Article 19(1) (c)
8.	Right to move freely within the territory of a State	Article 12(1)	Article 19(1) (d) & (e)
9.	Protection in respect of conviction of offences	Article 15(1)	Article 20(1)
10.	Protection from prosecution and punishment	Article 14(7)	Article 20(2)
11.	Not to be compelled to testify against himself	Article 14(3)(g)	Article 20(3)
12.	Right to life and liberty	Article 6(1) & 9(1)	Article 21
13.	Right to child education	Article 26(1)	Article 21(A)
14.	Protection against arrest and detention	Article 9(2)(3) & (4)	Article 22
15.	Freedom of conscience and religion	Article 18(1)	Article 25

3.4.2 Fundamental Rights for Citizens only

The Indian Constitution has classified fundamental rights into two categories: 1) Fundamental rights which are available to citizens only; 2) Fundamental rights available to all persons residing within the territory

3.5 DECLARATION OF A COMPARATIVE STUDY OF FUNDAMENTAL RIGHTS AND UNIVERSAL HUMAN RIGHTS:

Fundamental Rights In Indian Constitution Universal Declaration Of Human Rights Art. 14 : The State Shall Not Deny To Any Person Equality Before The Law Or The Equal Protection Of The Laws Within The Territory Of India.

Art. 7 : All Are Equal Before The Law And Are Entitled Without Any Discrimination In Violation Of This Declaration And Against Any Incitement To Such Discrimination Equality And Protection Of Law All Are Equal Before The Law And Are Entitled Without Any Discrimination To Equal Protection Of The Law. All Are Entitled To Equal Protection Against Any Discrimination In Violation Of This Declaration And Against Any Incitement To Such Discrimination

Art.15 (1) : The State Shall Not Discriminate Against Any Citizen On The Grounds Only Of Religion, Race, Caste, Sex, Place Of Birth, Or Any Of Them.

Art. 2- Para (I) : Everyone Is Entitled To All The Rights And Freedoms Set Forth In This Declaration, Without Distinction Of Any Kind, Such As Race, Colour, Sex, Language, Religion, Political, Or Other Opinion, National Or Social Origin, Property, Birth Or Other Status.

Article 7- Sentence 2 :

(Equality Before Law)-All Are Entitled To Equal Protection Against Any Discrimination In Violation Of This Declaration And Against Any Incitement To Such Discrimination.

Art.16 (1) : There Shall Be Equality Of Opportunity For All Citizens In The Matters Relating To Employment Or Appointment To Any Office Under The State.

Art. 21 (2) : Everyone Has A Right To Equal Access To Public Service In His Country. Right To Work Everyone Has The Right To Work. To Free Choice Of Employment. To Just And Favourable Conditions Of Work And To Protection Against Unemployment

Art. 19 (1) : All Citizens Have The

(A) Right To Freedom Of Speech And Expression.

Art. 19 : Everyone Has The Right To Freedom Of Opinion And Expression

(B) Right To Assemble Peacefully And Without Arms.

(C) Right To Form Unions And Associations.

(D) Right To Move Freely Throughout The Territory Of India.

(E) Right To Reside And Settle In Any Part Of The Territory Of India

Art. 20 (1): Everyone Has The Right To Freedom Of Peaceful Assembly And Association.

Art. 23 (4) : Everyone Has The Right To Form And To Join Trade Unions For The Protection Of His Rights.

Art. 13 (1): Everyone Has The Right To Freedom Of Movement And Residence Within The Borders Of Each State. Right To Expression Everyone

Has The Right To Freedom Of Opinion And Expression; This Right Includes Freedom To Hold Opinion Without Interference And To Seek Receive And Impart Information And Ideas Through Any Media Regardless Of Frontiers (Art 19)

Art.20 (1) : No Person Shall Be Convicted Of Any Offence Except For A Violation Of Law In Force At The Time Of Commission Of The

Art.11 (2) : No One Shall Be Held Guilty Of Any Penal Offence On Account Of Any Act Or Commi- Ssion Which Did Not Constitute A Penal ACT CHARGED AS AN OFFENCE, NOR BE SUBJECTED TO A PENALTY GREATER THAN THAT WHICH MIGHT HAVE BEEN INFLICTED UNDER THE LAW IN FORCE AT THE TIME OF THE COMMISSION OF THE OFFENCE. OFFENCE, UNDER NATIONAL OR INTERNATIONAL LAW, AT THE TIME WHEN IT WAS COMMITTED. NOR SHALL A HEAVIER PENALTY BE IMPOSED THAN THE ONE THAT WAS APPLICABLE AT THE TIME THE PENAL OFFENCE WAS COMMITTED.

ART.21 : NO PERSON SHALL BE DEPRIVED OF HIS LIFE OR PERSONAL LIBERTY EXCEPT ACCORDING TO PROCEDURE ESTABLISHED BY LAW.

ART. 3 : EVERYONE HAS THE RIGHT TO LIFE, LIBERTY AND SECURITY OF PERSON.

ART. 9 : NO ONE SHALL BE SUBJECTED TO ARBITRARY ARREST, DETENTION OR EXILE. RIGHT TO LIFE EVERYONE HAS THE RIGHT TO LIFE, LIBERTY AND SECURITY OF PERSON (ART. 03)

ART. 23 (1) :

TRAFFIC IN HUMAN BEING AND 'BEGAR' AND OTHER SIMILAR FORMS OF FORCED LABOR ARE PROHIBITED AND ANY CONTRAVENTION OF THIS PROVISION SHALL BE AN OFFENCE PUNISHABLE IN ACCORDANCE WITH LAW.

ART. 4: NO ONE SHALL BE HELD IN SLAVERY OR SERVITUDE AND THE SLAVE TRADE SHALL BE PROHIBITED IN ALL FORMS.

The Impact Of The Universal Declaration Of Human Rights On The Drafting And Development Of The Constitution Of India Is Seen And Felt Throughout. Though The Framers Of THE Constitution Would Have Been Influenced By The British Legal Heritage And American Constitutional Traditions, The Impact Of The United Nations Declaration Of Human Rights Had Also Been There Due To Its Contemporaneous Character. "What American And Other Highly Developed Democratic Countries Have Achieved Through Judicial Decisions And Pragmatism, It Has Been Crystallized, Embodied And Improved Upon By The Indian Constitution," Said K. Subba Rao.

The Role Of The Supreme Court Of India Is Indeed Commendable In Protecting, Enforcing And Expanding The Scope Of Human Rights Through Its Various Judicial Pronouncements. The Supreme Court Of India In The Judgment Of Keshvananda Bharti V. State Of Kerala Case Has Further Put An Umbrella Protection To The Human Rights Elements That The Parliament, In Exercise Of The Power To Amend The Constitution, Cannot Destroy Or Alter Its Basic Structure. The Evocative Preamble Is The Summary Passport To The Indian Constitution And It Has Its Own Dignity

Of Identity And Integrity That Can Not Be Made To Lose In The Process Of Amendment. The Fundamental Rights Are The Very Heart Of Our Constitution. Taking Them Away, Would Deprive The Constitution Not Only Of Its Identity But Of Its Life Itself. Parliament, When It Claims The Right To Amend The Constitutional Law, Cannot Set Itself Up As The Official Liquidator Of The Constitution.

While Adjudicating The Cases Of Various Nature Including Pils And In The Course Of Judicial Review, The Supreme Court Has Found Article 21 As Most Fruitful. According To The Supreme Court, The Right To Life And Liberty Includes Right To Human Dignity, Especially To Women, Right To Privacy, Right To Know, Right To Education, Right To Protection Of Health, Medical Care And Environment.

The Government Of India Has Acceded To The Universal Declaration Of Human Rights As Well As To The International Covenant Of Economic, Social And Cultural Rights And Also To The International Covenant On Civil And Political Rights And Deposited Its Document Of Accession In The United Nations, By A Declaration Dated April 10, 1979 With Certain Reservations:

1. The Right Of Self-Determination Shall Apply Only To The People Under Foreign Domination And Not To Section Of The People Of A Sovereign Independent State, Which Is The Essence Of National Integrity.
2. The Right To Compensation For Persons Claiming To Be Victims Of Unlawful Arrest Or Detention Against The State Shall Not Be Enforceable Under Indian Legal System.

3. The Government Of India Reserves The Right To Apply Its Own Law Relating To Foreigners. Heeding To Some Criticisms By Some International Agencies, The Government Of India Enacted The Protection Of Human Rights Act, 1993 To Provide For The Setting Up Of National Human Rights Commission, Human Rights Commission In States And The Human Rights Courts For The Better Promotion And Protection Of Human Rights. Under The Act, So Far The National Human Rights Commission (NHRC) At New Delhi And State Human Rights Commissions (Shrcs) In 17 States Have Been Set Up. Like Judiciary, These Commissions, Independent Of The Government, Inquire Into The Matters Of Abetment Of Human Rights Violations And Negligence And Submit Their Findings And Recommendations To The Government. The NHRC Along With The Shrcs Has, Time To Time, Come Out With Wide Measures And Various Suggestions For The Protection Of Human Rights And Has Immensely Contributed In The Field Of Human Rights Awareness And Education In India.

Creation Of Various Other Statutory Bodies For The Protection Of The Rights Of Women, Children, Minorities, Scheduled Castes, Scheduled Tribes And Backward Classes Have Further Strengthened The Cause Of Humanitarian Principles And Social Justice. Moreover, Indian Cultural Ethos Based On Sarva Dharma Sambhav And Ahimsa Provides A Moral Safeguard To The Protection Of Human Rights.

Besides Poverty, Illiteracy, Inequality, Hunger And Disease, The Problems Of Religious Fundamentalism, Ethnic Conflicts And More Particularly Macabre Emergence Of Terrorism Give Rise To The Problems In The Way

Of Human Rights Protection In The Developing Nations Like India. Often Strong Actions Against The Terrorists, Make The Human Rights Of Ordinary People To Suffer, Whereas, Neither The Terrorists Nor The State Has The Right To Trample Upon Human Rights.

Often, While Dealing And Defining The Human Rights, We Are Caught In Paradoxical Situations Like Majority Versus Minority Rights; Individual Liberty Verses Social Control; Rights Of Other Nationals Versus Indigenous People; Obscenity Versus Decency; Democracy Versus National Security; Socialism Versus Capitalism, Etc. In These Situations, Application Of Human Rights Is Bound To Become A Situational And Relational Concept. Moreover, There Are Differences In The Understanding And Practices Of Human Rights Due To The Differences In Historical Background, Social Systems, Cultural Traditions And Economic Development Of The Countries. Today, The Challenge Before Us Is That How To Strike A Balance Between Natural And National Principles Of Human Rights. Nani Palkivala, The Renowned Lawyer Has Rightly Suggested That The Responsibilities Should Always Go With The Rights, Else Freedom Would Depreciate Its Own Value. The Rights Without The Responsibilities Make Life Too Easy For The Criminals And Too Difficult For The Law-Abiding Citizens. But Nani Palkiwala Has Also Cautioned Simultaneously That "Liberty Has A Hypnotizing Sound, While Unfortunately Responsibilities Have No Sex Appeal."

With The Total Agreement To The Call Of Prof. Amartya Sen, The Nobel Laureate, That There Is A Need For Ensuring Primary Education For Everyone In India, The Right To Education, Though Lately, Has Been Included As Fundamental Right In The Constitution Of India.

It Is Known To All That Education Is The Process As Well As Means Of Human Development. No Development Can Be Complete Without Education, Which Alone Ensures That The Citizens Enjoy Their Rights And Are Not Deprived Of The Same.

Human Beings Were Primarily And Essentially Concerned With Obtaining Guarantees For Them Against The Rulers. Even Today This Is Predominantly The Constitutional Position In Most Of The Countries. Likewise, The Fundamental Rights In Indian Constitution Are Made Enforceable Only Against The State, Whereas Both The Individual And The Government Can Impair Them. Rights Of Men Are Not Only Against The Government But Also Against The People Collectively With The Entire Obligation With Family Membership. We Must Guard Against The Devaluation Of Human Rights By Proliferation. It Is Good To Increase The Currency, But Not At The Cost Of Depreciating It. Paul Singhart Pointed Out “The Test Of

Rights Is Not Whether, The Prosperous, With Access To The Law Courts, Are Well Protected, Or Whether The Weak Are Helped By The Strong. The Ultimate Measure Of Whether A Society Can Properly Be Called Civilized Is How It Treats Those Who Are Near The Bottom Of Its Human Heaps”. After All,

(A) Human Rights Issues Are Essentially Concerns Of Human Dignity And Nothing Else.

(B) Right To Assemble Peacefully And Without Arms.

(C) Right To Form Unions And Associations.

(D) Right To Move Freely Throughout The Territory Of India.

(E) Right To Reside And Settle In Any

Part Of The Territory Of India Art. 20 (1): Everyone Has The Right To Freedom Of Peaceful Assembly And Association.

Art. 23 (4) :

Everyone Has The Right To Form And To Join Trade Unions For The Protection Of His Rights.

Art. 13 (1): Everyone Has The Right To Freedom Of Movement And Residence Within The Borders Of Each State. Right To Expression Everyone Has The Right To Freedom Of Opinion & Expression;

This Right Includes Freedom To Hold Opinion Without Interference And To Seek Receive And Impart Information And Ideas Through Any Media Regardless Of Frontiers (Art 19)

Art.20 (1) : No Person Shall Be Convicted Of Any Offence Except For A Violation Of Law In Force At The Time Of Commission Of The

Art.11 (2) : No One Shall Be Held Guilty Of Any Penal Offence On Account Of Any Act Or Commi- Ssion Which Did Not Constitute A Penal Act Charged As An Offence, Nor Be Subjected To A Penalty Greater Than That Which Might Have Been Inflicted Under The Law In Force At The Time Of The Commission Of The Offence. Offence, Under National Or International Law, At The Time When It Was Committed. Nor Shall A Heavier Penalty Imposed Than The One That Was Applicable At The Time The Penal Offence Was Committed.

Art.21 : No Person Shall Be Deprived Of His Life Or Personal Liberty Except According To Procedure Established By Law.

Art. 3 : Everyone Has The Right To Life, Liberty And Security Of Person.

Art. 9 : No One Shall Be Subjected To Arbitrary Arrest, Detention Or Exile
Right To Life Everyone Has The Right To Life, Liberty And Security Of Person (Art. 03)

Art. 23 (1) : Traffic In Human Being And 'Begar' And Other Similar Forms Of Forced Labor Are Prohibited And Any Contravention Of This Provision Shall Be An Offence Punishable In Accordance With Law.

Art. 4 : No One Shall Be Held In Slavery Or Servitude And The Slave Trade Shall Be Prohibited In All Forms. Subject To Public Order, Morality And Health And To The Provisions Of This Part, All Persons Are Equally Entitled To Freedom Of Conscience And Right Freely To Profess, Practice And Propagate Religion.

Art.18 : Everyone Has The Right To Freedom Of Thought, Conscience And Religion; This Right Includes Freedom To Change His Religion Or Belief, And Freedom, Either Alone Or In Community With Others And In Public Or Private, To Manifest His Religion Or Belief In Teaching, Practice, Worship And Observance. Right To Religion Everyone Has The Right To Freedom Of Thought, Conscience And Religion; This Right Includes Freedom To Change His Religion Or Belief, And Freedom, Either Alone Or In Community With Other And In Public Or Private, To Manifest His Religion Or Belief In Teaching, Practice, Worship And Observance. (Art 18}

Art.25(1) : Subject To Public Order, Morality And Health And To The Provisions Of This Part, All Persons Are Equally Entitled To Freedom Of

Conscience And Right Freely To Profess, Practice And Propagate Religion.Art.18 :

Everyone Has The Right To Freedom Of Thought, Conscience And Religion; This Right Includes Freedom To Change His Religion Or Belief, And Freedom, Either Alone Or In Community With Others And In Public Or Private, To Manifest His Religion Or Belief In Teaching, Practice, Worship And Observance. Right To Religion Everyone Has The Right To Freedom Of Thought, Conscience And Religion; This Right Includes Freedom To Change His Religion Or Belief, And Freedom, Either Alone Or In Community With Other And In Public Or Private, To Manifest His Religion Or Belief In Teaching, Practice, Worship And Observance. (Art 18).

3.6 DECLARATION OF THE RIGHT TO PROTECT HUMAN RIGHTS :

The Right To Promote And Protect Human Rights Is Essential For The Prevention Of Violation Of The Human Rights. The Universal Declaration Of Human Rights Laid Down The Rights Of Human Beings. Protection If The Universally Re-organized Human Rights Itself Requires Certain Rights To Be Given To The Individual, Groups And Organs Of The States Despite The Fact that The Prime Responsibility And Duty To Promote And Protect Human Rights Lie Within In The State. It Did Not Stipulate The Means By Which These Rights Can Be Promoted And Protected. In Order To Provide This Rights To Individuals And Other Groups In The States, The General Assembly On The Recommendation Of The Economic And Social Council Adopted A Resolution Entitled “Declaration On The Right And Responsibility Of Individuals, Groups And Organs Of Society” To Promote And Protect Universally Recognized Human Rights And Fundamental

Freedom Often Referred As The Declaration Of The Human Rights Defenders On 9th December,1998.

Some Of The Rights Laid Down In The Declaration Are :

1. Everyone Has The Right To Promote And To Strive For The Protection Of Human Rights(Article 1).

2. Each State Has A prime Responsibility And Duty To Protect, Promote And Implement All Human Rights By Adopting Necessary Measures(Article 2).

3.Each State Shall Adopt Necessary Legislative, Administrative And Other Steps To Ensure That The Right To Protect Human Right Is Effectively Guaranteed(Article 2).

4. Everyone Has A Right To Meet Peacefully Or Assemble To Form, Join And Participate In Non-Governmental Organization, Associations Or Groups And To Communicate With Non-Governmental Organizations For The Purpose Of Promoting And Protecting Human Rights(Article 5).

5. Everyone Has The Right To Know, Seek, Obtain, Receive And Hold Information About All Human Rights Including The Access To Information As To How Those Rights Are Given Effect In Domestic, Legislative, Judicial And Administrative System(Article 6).

6. Everyone Has The Right To Submit To Governmental Bodies And Agencies And Organizations Concerned With Public Affairs, Criticism And Proposal For Improving Their Functioning (Article 8).

7. Everyone Has The Right, Individually And In association With Other, To Participate In peacefull Activities Against Violation Of Human Rights(Article 12).

8. Everyone Has The Right To Benefit From An Effective Remedy And To Be Protected In The Event Of The Voilation Of The Right To Promote And Protect Human Rights(Article 9).

9.No One Shall Participate By Act Or By Failure To Act In Activites Violating Human Rights And No One Shall Be Subjected To Punishment Or Adverse Action Of Any Kind For Refusing To Do So(Article 10).

10.Individual, Groups, Institutions And Non-Governmental Have An Important Role To Play In Promoting Human Rights And Contributing, As Appropriate, to The Promotion Of The Right Of Everyone(Article 18).

CHAPTER 4
ENUMERATION OF POLITICAL AND CIVIL
FUNDAMENTAL RIGHTS UNDER THE
CONSTITUTION OF INDIA

The Political And Civil Rights Are Termed As 'Fundamental Rights' And Enshrined In Part-III Of The Indian Constitution Which Includes The Following Rights:—

- (1) Right To Equality - Articles 14, 15 And 16.
- (2) Right To Six Freedoms - Article 19.
 - (A) Freedom Of Speech And Expression.
 - (B) Freedom To Assemble Peacefully And Without Arms.10
 - (C) Freedom To Form Associations Or Unions.
 - (D) Freedom To Move Freely Throughout The Territory Of India.
 - (E) Freedom To Reside And Settle In Any Part Of The Territory Of India.
 - (F) Freedom To Practice Any Profession Or Carry On Any Occupation, Trade Or Business.
- (3) Right To Life And Personal Liberty - Articles 20, 21 And 22.
- (4) Right To Freedom Of Religion - Articles 25, 26, 27 And 28.
- (5) Cultural And Educational Rights - Articles 29 And 30.
- (6) Right To Property - Article 31.

(The 44th Amendment Has Deleted This Right And Re-Enacted It In Article 300 A, As Constitutional Right).
- (7) Right Against Exploitation - Articles 23 And 24.
- (8) Right To Constitutional Remedies - Article 32.

4.1 ENUMERATION OF CULTURAL, SOCIAL AND ECONOMIC RIGHTS UNDER THE DIRECTIVE PRINCIPLES OF THE CONSTITUTION OF INDIA :

Part-IV Of The Indian Constitution Detailing 'Directive Principles Of State Policy' Lays Down The Following Rights. The Socialist And Welfare Precepts Have Particularly Been Incorporated In Article 39 Of The Constitution.

- (1) Right To Adequate Means Of Livelihood - Article 39 (A).
- (2) Right Against Economic Exploitation - Article 39 (E). The Health And Strength Of Both Sexes And Tender Age Of Children Are Not Abused And Are Not Forced By Economic Necessity To Enter Avocations Unsuitable To Their Age Or Strength.¹¹
- (3) Right To Both Sexes To Equal Pay For Equal Work - Article 39(D).
- (4) Right To Work - Article 41.
- (5) Right To Leisure And Rest - Article 41.
- (6) Right To Public Assistance In Case Of Unemployment, Old Age Sickness (Social Security) - Article 41.

Part IV Of The Constitution Also Incorporates The Directive Principles Of Economic And Social Justice And Certain Ideals Which The State Should Strive To Achieve. Article 38 Directs The State To Bring About The Welfare Of The People By Securing And Protecting Effectively A Social Order Where

Justice, Social, Political And Economic Shall Inform All The Institutions Of National Life.

(7) It Directs The State To Create Conditions Where There Will Be No Concentration Of Wealth And Means Of Production To The Common Detriment And Where The Ownership And Control Of The Material Resources, Of The Community Are So Distributed As Best To Sub-Serve The Common Good. [Article 39 (B) And (C)].Further, The Directive Principles Are Provided In The Articles Of

4.2 The Constitution Mentioned Herein Below:

(8) Article 42 - Just And Human Conditions Of Work And Maternity Leave.

(9) Article 43 - Mandatory Payment Of Living Wages Etc. To Workers.

(10) Article 44 - Uniform Civil Code.

(11) Article 45 - Free And Compulsory Education.

(12) Article 46 - Promotion Of Educational And Economic Interests Of Scheduled Castes, Scheduled Tribes And Other Weaker Sections.

(13) Article 47 - Duty Of The State To Raise The Level Of Nutrition And The Standard Of Living And To Improve Public Health.¹²

(14) Article 48 - Organisation Of Agriculture And Animal Husbandry.

(15) Article 49 - Protection Of Monuments And Places And Objects Of National Importance.

(16) Article 50 - Separation Of Judiciary From Executive.

(17) Article 51 - Promotion Of International Peace And Security. By 42nd Amendment Of The Constitution, Three More Articles Were Added Therein:

(18) Article 43A - Participation Of Workers In Management Of Industries.

(19) Article 39A - Equitable Justice And Free Legal Aid.

(20) Article 48A - Protection And Improvement Of Environment And Safeguarding Of Forests And Wild Life. These Additions By Amendments Are Unexceptional.

Thus, A Broad Statement Of The Eminent Scholar, K. Subba Rao, May Be Aptly Acceded To: "What American And Other Highly Developed Democratic Countries Have Achieved Through Judicial Decision And Pragmatism Has Been Crystallized, Embodied And Improved Upon By The Indian Constitution. (K. Subba Rao, Enforcement Of Basic Human Rights In Law And The Commonwealth, 73).

UNENUMERATED INDIVIDUAL RIGHTS OR 'NATURAL RIGHTS'

UNDER WRITTEN CONSTITUTION

The General Rules Of Interpretation In This Context May Be Borne In Mind:-

- (A) Generally A Statutory Enumeration Excludes Every Thing Other Than What Is Enumerated. (Crawford, Statutory Constitution; P. 333).¹³
- (B) Nonetheless, A Liberal Or Progressive Interpretation Is Not Debarred From Being Given To The Express Provisions Of The Constitution, To Meet The Growing Needs Of Civilization Or The Changes In The Social Background; For, A Constitution Is An Organic Instrument For The Governance Of The Country. In India

The Supreme Court Has Propounded The Theory Of 'Emanation' Has Departed From The Traditional View That Part III Of The Constitution Provides An Exhaustive List Of Fundamental Rights. The Theory, Basically Means That Even Though Right Is Not Specifically Mentioned In Part III, It

May Still Be Regarded As A Fundamental Right If It Can Be Regarded As An Integral Part Of A Named Fundamental Right; In Other Words, "It 'Emanates' From A Named Fundamental Right Or Its Existence Is 'Necessary' In Order To Make The Exercise Of A Named Fundamental Right Meaningful And Effective". (Maneka Vs. Union Of India, A.I.R. 1978 S.C. 597, Para 77).Applying The 'Emanation' Theory, The Supreme Court Has Evolved

4.3 The Following Unenumerated Rights As, Fundamental Rights:

- (1) The Right To Privacy (As An Emanation From Arts 19(1)(D) And 21).
- (2) The Right To Human Dignity (As An Emanation From Arts. 14, 19, 21).
- (3) The Right To Travel Abroad (As An Emanation From Art. 21)
- (4) The Right Against Torture, Cruel Or Unusual Punishment Or Degrading Treatment, (As An Emanation From Art. 21); Such As Solitary Confinement.
- (5) The Right To Speedy Trial (Emanating From Art. 21).
- (6) The Right To Free Legal Aid In Criminal Trial (From Art. 21).
- (7) The Right Against Delayed Execution.
- (8) The Right Against Custodian Violence.¹⁴
- (9) The Rights To Shelter, To Doctor's Assistance, The Right To Health.
- (10) The Right To Pollution Free Environment.
- (11) The Right To Education Of A Child Until He Attains The Age Of 14.
- (12) The Freedom Of Press, And Right To Listen, And Right To Know. (From Art. 19(1) (A)).

The Role Of Media As A Watchdog Is Equally Important In The Protection And Promotion Of Human Rights. It Is However, Witnessed That The Media Fails Either To Highlight The Instances Of Human Rights Violations, Or Willfully Collaborates With The State Agencies To Cover-Up The Incidents.

At Times, The Media Also Plays A Negative Role By Sensationalizing An Incident (Sometimes Referred To As Trial By Media), Which Can Have Grave Repercussions For Both The Society And The Individual. Hence Media Must Be Sensitized To Play An Important Role In Securing Rights Of The People. It Would Not Be Wrong To Say That The Violation Of Human Rights Can Be Controlled Only When There Is A Firm Determination For The Human Dignity And Values. It Is Equally Important That The Indian Society At Large, Including The Political Elite, Both Civil And Police Administration, The Media, Civil Society And Intellectuals Who Yield Influence In Moulding The Opinion In The Society Should Have Proper Approach And Attitude Towards The Protection Of Human Rights. I Have Certain Suggestions For Protection Of Human Rights.

- Education Related To Human Rights Be Included As A Part Of The General Curriculum.
- Research In The Field Of Human Rights To Be Encouraged With Financial Assistance Which Will Help To Develop A Modern Theory For Human Rights Useful In Modern Times.
- The Law Enforcement Agencies Be Sensitized And Trained To Ensure The Observation Of Human Rights Standards.

15

- A Special Law Giving Statutory Recognition To Human Rights Be Enacted.
- Policies And Programs Be Implemented To Ensure That People Have Access To Their Rights.
- Special Care Be Taken For Protection Of Rights Of Women And Children.

India And The Universal Declaration

India Was A Signatory To The Universal Declaration Of Human Rights. A Number Of Fundamental Rights Guaranteed To The Individuals In Part III Of The Indian Constitution Are Similar To The Provisions Of The Universal Declaration Of Human Rights. Declaration Indian Constitution

1. Equality Before Law Article 07 Articles 14

2. Equality Of Opportunity In Matters Of Public Employment
Article 21(2) Article 16(1)

3. Protection Of Certain Rights Regarding Freedom of Speech, Etc,
Article 19 Article 19(1) A.

4. Protection In Respect Of Conviction For Offences
Article 11(2) Article 20 (1).

5. Protection Of Life And Personal Liberty Article 9 Article 21

6. Prohibition Of Trafficking In Human Beings And Forced Labor
Article 14 Article 23.

7. Freedom Of Conscience And Free Profession Practice And Propagation Of Religion
Article 18 Article 25 (1).

8. Protection Of Interests Of Minorities Article 22 Article 29 (1)

9. Right Of Minorities To Establish And Administer Educational Institutions
Article 20(3) Article 30(1)

10. Right To Property Article 17 (2) Not A Fundamental Rights

After Amendment 44, But Now In Article 300A

11. Remedies For Enforcement Of Rights Conferred By This Part Article 8
Article 32.

4.4 CONVENTION ON CIVIL AND POLITICAL RIGHTS :

Article 21 Article 19 (1b) To form association or unions Article 22(1)
Article 19(1c) To move freely throughout the territory of India Article 12
(1) Article 19(1d,e,g) Protection in respect of conviction forences Article
15(1) Article 14 (7) Article 20(1)(2) No person accused of any shall be
compelled to be a witness against himself Article 14(3g) Article 20(3)
Protection of life and personal liberty Article 6 (1), Article 9 (1) Article 21
Protection against arrest and detention in certain cases Article 9 (2,3,4)
Article 22 Freedom of conscience And free profession, practice and
propagation of religion Article 18(1) Article 25

Table 3.2: Similarities between Covenant on Civil and Political Rights and
Indian Constitution. The table below shows that most of the economic,
social and cultural rights proclaimed in the Universal Declaration of Human
Rights have been incorporated in part IV of the Indian Constitution.

1. Equal pay for equal work Article 7a (1) Article 39d

2. Provision for just and humane conditions of work and maternity relief
Article 7b Article 42

3. Right to work, to education and public assistance in certain cases Article 6(1) Article 41

4. Opportunity for children Article 10 (3) Article 41f

5. Compulsory education for children Article 13 (2a) Article 45.

6. Living wage, etc, for workers Article 7(a)(11) Article 7 (d) Article 43.

7. Nutrition and standard of living Article 11.

4.5 SIMILARITIES BETWEEN COVENANT ON ECONOMICS, SOCIAL AND CULTURAL RIGHTS:

In *Keshavananda Bharati V. State Of Kerala*, The Supreme Court Observed, "The Universal Declaration Of Human Rights May Not Be A Legally Binding Instrument But It Shows How India Understood The Nature Of Human Rights At The Time The Constitution Was Adopted." In The Case Of *Jolly George Varghese V. Bank Of Cochin* The Point Involved Was Whether A Right incorporated In The Covenant On Civil And Political Rights, Which Is Not Recognized In The Indian Constitution, Shall Be Available To The Individuals In India. Justice Krishna Lyer Reiterated Dualism And Asserted That The Positive Commitment Of The State Parties Ignites Legislative Action At Home But Does Not Automatically Make The Covenant An Enforceable Part Of The 'Corpus Juris' In India. Thus, Although The Supreme Court Has Stated That The Universal Declaration Cannot Create A Binding Set Of Rules And That Even International Treaties May At Best Inform Judicial Institutions And Inspire Legislative Action. Constitutional

Interpretation In India Has Been Strongly Include By The Declaration. The International Covenant On Civil And Political Rights And The International Covenant On Economic, Social And Cultural Rights On March 27, 1979. The Optional Protocol To the International Covenant On Civil And Political Rights, 1989, However, Was Not Ratified By India.¹⁰ Fundamental Rights And Human Rights. The Judicially Enforceable Fundamental Rights Which Incompass all Seminal Civil And Political Rights And Some Of The Rights Of Minorities Are Enshrined In Part III Of The Constitution (Articles 12 To 35). These Include The Right To Equality, The Right To Freedom, The Right Against Exploitation, The Right To Freedom Of Religion, Cultural Educational Rights And The Right To Constitutional Remedies. Fundamental Rights Differ From Ordinary Rights In The Sense That The Former Are Inviolable. No Law, Ordinance, Custom, Usage, Or Administrative Order Can Abridge Or Take Them Away. Any Law, Which Is Violative Of Any Of The Fundamental Right, Is Void. In *ADM Jabalpur V. Shukla*, Justice Beg Observed "The Object Of Making Certain General Aspects Of Rights Fundamental Is To Guarantee Them Against Illegal Invasion Of These Rights By Executive, Legislative, Or Judicial Organ Of The State." Earlier, Chief Justice Subba Rao In *Golak Nath V. State Of Punjab* Had Rightly Observed, "Fundamental Rights Are The Modern Name For What Have Been Traditionally Known As Natural Rights. "The Supreme Court Of India Recognizes These Fundamental Rights As 'Natural Rights' Or 'Human Rights'. While Referring To The Fundamental Rights Contained In Part III Of The Constitution, The Then Chief Justice Of The Supreme Court, In *Keshavananda Bharati V. State Of Kerala*, "Observed, "I Am Unable To Hold These Provisions To Show That Rights Are Not Natural Or Inalienable Rights. As A Matter Of Fact India Was A Party To The Universal Declaration

Of Rights . . . And That Declaration Describes Some Fundamental Rights As Inalienable." The Chief Justice Patanjali Shastri In State Of West Bengal V. Subodh Gopal Bose Observed Referred To Fundamental Rights As Those Great And Basic Rights, Which Are Recognized And Guaranteed As The Natural Rights Inherent In The Status Of A Citizen Of A Free Country.

Article 14 Of The Indian Constitution Proclaims The General Right Of All Persons To Equality Before The Law, While Article 15 Prohibits the State From Discriminating Against Any Citizen On Grounds Of Religion, Race, Caste, Sex Or Place Of Birth, And Prohibits Any Restriction On Any Citizen's Access To Any Public Place, Including Wells And Tanks. Equality Of Opportunity For All Citizens In Matters Of Public Employment Is Guaranteed Under Article 16. Article 15 abolishes Untouchability And Makes Its Practice An Punishable Under Law. Both Articles 15 And 16 Enable The State To Make Special Provisions For The Advancement Of Socially And Educationally Backward Classes, For Such Castes And Tribes As Recognized In The Constitution (Known As The Scheduled Castes And Scheduled Tribes) Require Very Special Treatment For Their Advancement. Article 18 Abolishes All Non-Military Or Non-Academic Titles. The Right To Freedom Guaranteed To All Citizens Under Article 19 Encompasses The Right To Freedom Of Speech And Expression, The Right To Assemble Peaceably Without Arms, The Right To Form.

4.6 OTHER FUNDAMENTAL RIGHTS (UNENUMERATED FUNDAMENTAL RIGHTS)

A Number Of Rights, Which Are Stated In The Covenant, Are Not Laid Down In Part III Of The Constitution. The Indian Constitution Has Specially

Enumerated All The Fundamental Rights. In *Birma V. State Of Rajasthan* it was held that "Treaties Which Are Part Of International Law Do Not Form Part Of The Law Of The Land, Unless Explicitly Made So By The Legislative Authority." Further in *Shivkumar Sharma And Others v. Union Of India* The Delhi High Court held that in India treaties do not have the force of law, and consequently obligations arising therefrom will not be enforceable in municipal courts unless backed by legislation. In *A. D.M. Jabalpur v. Shukla* Supreme Court by a majority of four to one, held that the constitution of India did not recognize any natural or common law rights other than that expressly conferred in the constitution.¹⁰ The attitude of the Supreme Court has changed especially after 1978. The courts on many occasions by accepting the rule of judicial construction have held that regard must be paid to international conventions and norms for constructing domestic law. In *Maneka Gandhi v. Union Of India*, Justice Bhagwati in the special bench for the Supreme Court observed that:

The expression 'Personal Liberty' in Article 21 is of the widest amplitude and it covers a variety of rights. Personal liberty of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 1 specifically mentioned in the constitution.¹⁰

1. Right To Travel Abroad (Article 21)

.The Right To Travel Abroad.

CHAPTER 5

DIRECTIVE PRINCIPLES OF STATE POLICY AND HUMAN RIGHTS

Judicially Non-Enforceable Rights) Judicially Non-Enforceable Rights In Part IV Of The Constitution Are Chiefly Those Of Economic And Social Character. However, Article 37 Makes It Clear That Their Judicial Non-Enforceability Does Not Weaken The Duty Of The State To Appl). Them In Making Laws, Since They Are Nevertheless Fundamental In Ihe Governance Of The County. 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 The Duties Of The State Encompass Securing A Social Order With Justice, Social, Economic And Political, Striving To Minimize And Eliminate All Inequalities (Article 38), Securing For "The Citizens, Men And Wome Equally" The Right To An Adequate Means Of Livelihood (Article 39 (A)), Distribution Of Ownership And (Control Of Community Resources To Subsedy} The Common Good (Article 3S(B)), Of Concentration Of Wealth And Means Of Production T2 The Common Detriment (Article 39(C)), Securing Equal Pay For Equal Work For Both Men And Women (Article 39(D)), Preventing 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), Organisation Of Village Democracies (Article 40),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 Worlc (Article 42), Living Wage And A Decent Standard Of Life (Article 43), Securing Participation Of Workers In The Management Of Industries (P.Rticle 43A), Provision Of A Uniform Civil Code For The Whole Country (Article 44), Provision For Early Child Care And Education To Children Belovv The Age Of Six Years. The State Shall Endeavour To Provide Early Childhood Care And Education For All Children Until They Complete The Age Of Six Years (Article45), Promotion Of Educational And Economic Interest Of The Weaker Sections Of The People And Their Protection From Injustice And All Forms Of Exploitation(Article46), Raising The Standard Of Living, Improving The Level Of Nutrition And Public Health And Prohibition Of Intoxicating Drinks And Of Drugs (Article 47), Scientific Reorganisation Of An Ma1 Husbandry And Agriculture (Article 48) Conservation Of Environment, Forests And Wildlife (Article 48A), Protection Of Monuments And Things Of Irtistic Or Historical Importance (Article 19), Separation Of Judiciary From Ttie Executive (Article 50) And Promotion Of International Peace And Securily (Article 51).

5.1 FUNDAMENTAL DUTIES AND HUMAN RIGHTS:

Part IV(A) Of The Constitution Embodies The Eleven Fundamental Duties Of Every Indian Citizen (Article 51-A). These Are: The Duties To Respect The Constitution And Its 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 To The Dignity Of Women, To Preserve The Cultural Heritage, To Protect And Improve The Natural Environment, To Have Compassion For Living Creatures, To Develop The Scientific Temper, To Safeguard Public Property And Abjure Violence And To Strive Towards Excellence In All Excellence In All Spheres Of Individual And Collective Activity. The Eighty-sixth Constitutional Amendment 2002 Inserted A New Clause (K) In Article 51(A) Instructing "A Parent Or Guardian To Provide Opportunities For Education To His Child Or As The Case May Be, Ward Between The Ages Of 6 And 14 Years." 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' Clauses In Part III, Article 21, And The Seldom-Used Part IV-A Have Given The Judiciary Ample Scope For The 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 Personal Liberty."

POLITICAL RIGHTS AND HUMAN RIGHTS :

India Is The Largest Representative Democracy In The World, Based On Universal Adult Suffrage, Providing Every Indian Of At Least Eighteen Years Of Age The Right To Vote. The Constitution Provides For Direct Elections To The House Of The People Of The Central Parliament, I.E. The Lok Sabha And The State (Provincial) Legislative Assemblies, Once In Every Five Years At The Latest. The Members Of The State Legislatures Do The Elections To The Council Of States, I.E. Rajya Sabha, Which Is The Upper House Of Parliament. The Elected Members Of Parliament And State Legislative Assemblies Elect The President. Both The Houses Of Parliament Together Elect The Vice-President. 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. The Constitution Provides For An Independent Election Commission (Article 324), Which Has In Fact Acquitted Itself Quite Admirably In The Recent Elections, Both Provincial As Well As Parliamentary, And Set An Agenda For Clean Elections And Elimination Of The Criminal - Politician Nexus.

INSTITUTIONAL FRAMEWORK AND HUMAN RIGHTS:

India is divided into twenty-eight states and seven union (centrally administered) territories. The Constitution provides for division of legislative functions between Parliament and the state legislatures. 97 items are placed under Parliament, 66 items are allocated for state legislatures and 47 are made subject to concurrent jurisdiction of both, with the power of Parliament overriding in case of overlapping legislation (Article 246 and the seventh schedule of the Constitution). Parliament has power to make laws, inter alia, on preventive detention (Item 9, Union List, and Item 3, Concurrent List), offences against laws in respect of any matter in the Union List (Item 93), and any matter not enumerated in any of the three lists (Item 97 and Article 248). Public order (Item 1), prisons and reformatories (Item 3), relief to the disabled and the unemployed (Item 9), and industries other than those declared by Parliament to be controlled by the Union (Item 24) are among the items in the State List. The police is a state subject (Item 2), whereas deployment of any armed forces of the Union or any other force under the control of the Union is in the Union List (Item 2-A). Criminal law and procedure (Items 1 and 2), preventive detention for reasons connected with the security of the state, the maintenance of public order, or the maintenance of essential supplies and services (Item 3), transfer of prisoners (Item 4), actionable wrongs, civil procedure (Item 13), economic and social planning (Item 20), labour matters (Items 22, 23 and 24), education (Item 25), and factories (Item 36) are in the Concurrent List. Further, Article 253 empowers Parliament to make laws for implementation of any treaty, notwithstanding the above distribution of legislative powers. The executive power of the Union is invested with the Prime Minister and his 'Cabinet' who are responsible to the Parliament. The executive power of a state is vested with the Chief Minister and his cabinet who are responsible to the state legislative assembly. The President of India on the advice of the Prime Minister appoints the Governor, the head of a state. There is a common civil service for the whole of India, whose officers head the Union administration and nonmilitary security forces, and also the state administrations and police forces. There is mobility between the Union and state senior positions. The judiciary is presided over by the Supreme Court. The state judiciary is under the control of a high court, which in certain respects enjoys even broader powers than the Supreme Court, although the law declared by the Supreme Court binds it. In the scheme of the Constitution, there exists a separation of powers among the legislature, the executive and the judiciary, with the judiciary being fiercely independent of the other two, charged with the task of enforcing the constitutional norms, including human rights, and adjudicating upon all inter-individual, inter-institutional disputes. To monitor the implementation of the constitutional 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 Scheduled Castes and Scheduled Tribes and a National Commission for Women. The National Human Rights

Commission(N.H.R.C.) Came Into Being In 1993 By Virtue Of The Protection Of Human Rights Act. N.H.R.C. 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 Has Been Monitored Chiefly By The Press Council Of India Since 1979.

JUDICIARY AND HUMAN RIGHTS :

Of The Three Organs Of Government, The Judiciary Has Become A Vanguard Of Human Rights In India. It Performs This Function Mainly By Innovative Interpretation And Application Of The Human Rights Provisions Of The Constitution. The Supreme Court Of India Has In The Case *Ajay Hasia V. Khalid* Held That It Has A Special Responsibility, "To Enlarge The Range And Meaning Of The Fundamental Rights And To Advance The Human Rights Jurisprudence." As Has Already Been Pointed Out The Supreme Court Of India And The State High Courts Have Broad Powers Under The Constitution To Enforce The Fundamental Rights And They Have Liberally Interpreted These Powers. The Major Contributions Of The Judiciary To The Human Rights Jurisprudence Have Been Two-Fold: (A) The Substantive Expansion Of The Concept Of Human Rights Under Article 21 Of The Constitution, And (B) The Procedural Innovation Of Public Interest Litigation. Article 21 Reads As Follows, Protection Of Life And Personal Liberty - "No Person Shall Be Deprived Of His Life Or Personal Liberty Except According To The Procedure Established By Law."

The Expansion Of Article 21 Of The Constitution Has Taken Place In Two Respects:

- A) The Expression "The Procedure Established By Law" Received A New Interpretation Not Intended By The Founding Fathers Of The Constitution. In 1950, Thoms Very First Year Of The Constitution, The Supreme Court In The Case *A.K. Gopalan V. State Of Madhya Pradesh* Reflecting On The Intentions Of The Constitution-Makers, Held That "Procedure Established By Law" Only Meant That A Procedure Had To Be Set By Law Enacted By A Legislature. This Phrase Was Deliberately Used In Article 21 In Preference To The American "Due Process" Clause. Three Decades Later, In ***Maneka Gandhi V. Union Of India Case***, The Supreme Court Noted That "The Supreme Court Rejected Its Earlier Interpretation And Holds That The Procedure Contemplated Under Article 21 Is A Right, Just And Fair Procedure, Not An Arbitrary Or Oppressive Procedure, Which Is Reasonable And Fair, Must Now Be In Conformity With The Test Of Article 14 - "In Effect It Has Become A Due Process." There Is No Doubt That The Experience Of National Emergency (1975-1977) Prompted The Court To Go All Out For Vindication Of

Human Rights. Since Then Every Case Of Infringement Of Rights By The Legislature Has Undergone Judicial Scrutiny In Terms Of The New Interpretation Laid Down In The Maneka Gandhi's Case. Further, This Approach Has Led To Procedural Due Process Innovations Such As The Right To Claim Legal Aid For The Pocr And The Right To Expeditious Trial.

B) The Judiciary Interprets 'The Right To Life And Personal Liberty' To Encompass All Basic Conditions For A Life With Dignity And Liberty. Such An Approach Allows It To Come Down Heavily On The System Of Administration Of Criminal Justice And Law Enforcement. It Also Brings Into The Fold Of Article 21 All Those Directive Principles Of State Policy That Are Essential For A "Life With Dignity." Thus, The Judiciary Has Interpreted "Life" To Include The Right To Possession Of Each Organ Of One's Body And A Prohibition Of Torture Or Inhuman Or Degrading Treatment By Police. In The Francis Coralie Mullin V. The Administrator, Union Territory Of The Supreme Court Held That "Life" Couldn't Be Restricted To Mere Animal Existence, Or Physical Survival. The Right To Life Means The Right To Live With Dignity And All That Goes With It - The Basic Necessities Of Life Such As Adequate Nutrition, Clothing, Shelter And Facilities For Reading, Writing And Expressing Oneself. Many Of The Article 21 Cases That Came Before The High Courts And The Supreme Court Often Revealed "A Shocking State Of Affairs And Portray A Complete Lack Of Concern For Human Values " The Hussainara Khatoon V Home Secretary, Bihar Case:⁴⁷ It Has Been Held By The Supreme Court That Though Speedy Trial Is Not Specifically Enumerated As A Fundamental Right, It Is Implicit In The Broad Sweep And Content Of Article 21, Which Deals With The 'Right To Life And Liberty'. Justice Bhagwati Held "If A Person Is Deprived Of His Liberty Under A Procedure Which Is Not 'Reasonable', 'Fair' Or 'Just', It Would Fall Foul Of Article 21. There Can, Therefore, Be No Doubt That Speedy Trial, And By Speedy Trial We Mean Reasonably Expeditious Trial, Is An Integral And Essential Part Of The Fundamental Right To Life And Liberty Enshrined In Article 21. It Was Also Held By The Supreme Court That 'Detention In Jail For A Period Longer Than What They Would Have Been Sentenced For, If Convicted, Is Illegal As Being A Violation Of Their Fundamental Right Under Article 21 Of The Constitution. Deoraj Khatri V. State Of Bihar Case:⁴⁸ Raised The Case Of Police Brutality In Which 80 Suspected Criminals Were Brutally Blinded During Police Investigation (Bhagalpur Blinding Case). The Supreme Court Condemned It As A "Barbaric Act And A Crime Against Mankind." In Sheela Barse V. The State Of Maharashtra Case,⁴⁹ 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. The Supreme Court Has Also Read Into Article 21 A Right To Monetary Compensation For Deprivations Of The Right To Life And Liberty Suffered At The Hands Of The State. This Was Highlighted In The Rudal Shah V. State Of Bihar Case.⁵⁰ The Emergence Of The Right To Compensation Has Nullified One Of The Reservations Made B). India In Its Instrument Of Accession To The Human Rights Covenants, Which Stated That The Indian Law Did Not Recognize Such A Right In The

Event Of Right Deprivation. The Health Problems Of Workers In The Asbestos Industry Led The Supreme Court In The Case *Paramanand Katra V. Union Of India* To Rule That The Right To Life And Liberty Under Article 21 Also Encompasses The Right Of The Workers To Health And Medical Aid.⁵ The Right To Life Has Been Held To Include The Right To Receive Instant Medical Aid In Case Of Injury And The Right Of A Child To Receive Free Education Up To The Age Of Fourteen.

5.3 PUBLIC LITIGATION AND HUMAN RIGHT

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. The Rule Of 'Locus Standi' Normally Dictates That He Who Approaches The Court Must Prove His Legal Standing Vis-A-Vis The Claim He Seeks To Vindicate, Usually In Terms Of A Legal Right Or A Legal Obligation Violated By The Defendant 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 Court's Door When They Knock Shall Open ... How Can A Bonded Labourer Working In A Stone Quarry Ever Know Of Moving The Supreme Court?, Asks Justice Krishna Lyer, 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, Product Safety, Consumer Protection And Social Exploitation Being Served By Professionals Like Lawyers And Public Interest Lobbies Working For 'Reform Of Decision-Making Processes In Government And Outside, Affecting The Public At Large'. 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 Part Of Democracy (Of The Disabled) And Of The Movement To Vindicate Social Justice Through Professions For The People. As A Result, 'Judges With A Vision Have New Universes To Behold, And Mansions Of People's Justice To Build.' Justice Krishna

Iyer Realises That The Public Interest Litigation Is

Likely To Be Abused. Hence He Advised That The Court Should Prima Facie Be Satisfied That The Information Laid Before It Is Of Such A Nature That It Calls For Examination. By Looking At The Credentials Of The Informant, The Specific Nature Of The Allegation, The Gravity Or Seriousness Of The Complaint, And Any Other Relevant Circumstances Should Also Be Derived. It Should Also Use Its Own Wide Investigative Faculties As Appropriate For The Situation Ever Since The Public Interest Litigation Came To Be Promoted By The Supreme Court, There Has Been An Ongoing Debate In The Country Between Its Supporters And Opponents. In The *Sunil Batra V. Union Of India* Case,⁵⁴ The Supreme Court Entertained A Letter From Batra, A Prisoner, Complaining About The

Treatment Meted Out To A Fellow Prisoner In A Jail. The Letter Activated [He Court To Deal With A Wide Variety Of Issues Such As Solitary Confinement In Jails, Conditions Of Under-Trial Prisoners, Sexual Exploitation, Sexual Exploitation Of Blind Girls In Schools, Detention Of Mentally Ill Persons, Minimum Wages, Illegal Sale Of Babies, Bonded Labour, Environmental Protection, Ill-Treatment Of Freshers In Colleges, Better Roads, Land Entitlement, Conditions Of Children In Children's Homes, Treatment Of Inmates Of Carehomes, Conditions Of Mental Hospitals And Deaths At Alleged Police Encounters. As The Court Opened Its Doors Wide Shedding Procedure Formalism, Many Of These Issues Repeatedly Came Before It As Well As Many Others Such As Torture Of Young Prisoners, Police Brutality Like Blinding Of Suspects During Investigation, Custodialviolence Against Women Prisoners, Deaths In Police Custody, Handcuffing Of Accused Persons Facing Trials And Fetters On Incarcerated Prisoners. As The Legal Procedule Became Deformalised, The Court Evolved New Devices To Assist It In Dealing With Public Interest Litigation, Such As Special Inquiry, Fact-Finding Commission, Scheme Remedies And Postdecisional Monitoring. A Nation-Wide Legal Aid Scheme Came To Be Established On The Initiative Of The Supreme In 1982 The Supreme Court Promised To Examine A Range Of Relevant Issues Concerning Ihe Public Interest Litigation Procedure. An Examination Of These Issue;; May Be Useful To Streamline The Public Interest Litigation Law And Pra1:Tice With A View To Discouraging Abuses. As Justice Krishna Lyer Remark;; It Is "Too Late To Burke PIL, But Always Welcome To Reaffirm, And Ref~Ne,E Liminate The Entropy And Abuse Of The Process."56 It Is Quite Possi3le That The Burden Of A Backlog Of Cases Awaiting Adjudication Is What Worries The Court. But This Is Never A Reason When 'We The Peopl~?O F India Demand Social Justice,' Remindsjustice ~Yer.~' The Judiciary Should Never Bite More Than It Can Chew, Justice Sujata Manohar Strikes A Note Of Caution In The Context Of Article 21 Of The Constitution. Article 2' Embodies A Judicially Enforceable Right. Therefore, It Should Essentially Be A Right Capable Of Being Protected By A Judicial Order. A Right Not Ca~~Abolfe S Uch Enforcement, If Spelled Out From Article 21. . . May Result In The Trivialization Of Court's Pronouncements And May Encourage The Habit Of Ignoring Them . . . Every Human Right May Not Be Capable Of Judicial T?Nf~Rcement.~It ~P Oints Out The Limits And Limitations Of Judicial Activism.Taking Into Account The Peculiar Nature Of Public Interest Litigation, The Supreme Court Of India In A Public Interest Litigation, D.K. Basu V. State Of West Bengal,=' Iss~ledg Uidelines To Be Followed In All Cases For Arrest And Detention By The State Interrogatory Agencies Till Legal Provisions Are Made On That Oehalf As Preventive Measures.

The Guidelines Are:

1. The Police Personnel Carrying Out The Arrest And Handling The Interrogation Of The Arrestee Should Bear Accurate, Visible And Clear Identification And Name Tags With Their Designations. The Particulars Of Such Pke Personnel Who Handle Interrogation Of The Arrestee Must Be Recorded In A Register.

2. The Police Officer Executing The Arrest Shall Prepare A Memo At The Time Of Arrest And Shall Be Attested By At Least One Witness. This May Be Either A Member Of The Family Of The Arrested Or A Respectable Person Of The Locality From Where The Arrest Is Made. It Shall Be Countersigned By The Arrestee And Shall Contain The Time And Date Of Arrest.

3. A Person Who Has Been Arrested Or Detained And Is Being Held In Custody In A Police Station Or Interrogation Centre Or Other Lockups, Shall Be Entitled To Have One Friend Or Relative Or Other Person Known To Him Or Having Interest In His Welfare Being Informed As Soon As Possible That He Has Been Arrested And Is Being Detained In A Particular Place, Unless The Attesting Witness Of The Memo Of Arrest Is Himself Such :l Friend Or A Relative Of The Arrestee.

4. The Time, Place Of Arrest And Venue Of Custody Of An Arrestee Must Be Notified By The Police When The Next Friend Or Relative Of The Arrestee Lives Outside The District Or Town Through The Legal Aid Organisation In The District And The Police Station Of The Area Concerned Telegraphically ~ ~ Always Within 8-12 Hours Of The Arrest.

5. The Person Arrested Must Be Made Aware Of His Right To Have Some One Informed Of His Arrest Or Detention As Soon As He Is Put Under Arrest Or Is Detained.

6. An Entry Must Be Made In The Diary At The Place Of Detention Regarding The Arrest Of The Person Which Shall Also Disclose The Name Of The Next Friend Of The Person Who Has Been Informed Of The Arrest And The Names And Particulars Of The Police Officials In Whose Custody The Arrestee Is.

7. The Arrestee Should, Where He So Requests, Be Also Examined At The Time Of His Arrest: And The Major And Minor Injuries If Any Present On His Body And Must Be Recorded At That Time. The 'Inspection Of Memo' Must Be Signed By Both The Arrestee And The Police Officer Effecting The Arrest And A Copy Shall Be Provided To The Arrestee.

8. The Arrestee Should Be Subjected To Medical Examination Every 48 Hours During His Detention In Custody By A Doctor From A Panel Of Approved Doctors Appointed By The Director, Health Services Of The State Concerned Or Union Territory. He Should Prepare Such A Panel For All Tehsils And Districts As Well.

9. Copies Of All The Documents Including The Memo Of Arrest Referred To Above Should Be Sent To The Magistrate For His Record.

10. The Arrestee May Be Permitted To Meet His Lawyer During Interrogation Though The Latter May Not Be Present Throughout Interrogation.

11. A Police Control Room Should Be Provided At All District And State Headquarters So That Information Regarding The Arrest And The Place Of Custody Of The Arrestee Can Be Communicated By The Officer Carrying Out The Arrest Within 12 Hours Of Effecting The Arrest And At The Police Control Room It Should Be Displayed On A Conspicuous Notice Board. The Supreme Court ;Also Insists That The Requirements That Flow From Articles 21 And 22 (1) Of The Indian Constitution Are To Be Strictly Followed. These Would Apply With Equal Force To Other Government Agencies Including The Directorate Of Revenue Intelligence, Directorate Of Enforcement, Coast Guard, Central Reserve Police Force (C.R.P.F), Border Security Force (B.S.F.) The Central Industrial Security Force (C.I.S.F), The State Armed Police, Intelligence Agencies, Such As The Intelligence Bureau, RAW, Central Bureau Of Investigation (C.B.I.) And C.I.D. These Guidelines Are Only A Few Out Of A Large Number Of Judgements Of The Apex Court In Which The Court Upheld The Human Rights Of The Oppressed Individuals.

MEDIA AND HUMAN RIGHTS

The Information Media Is An Important Arm Of Any Modern Democratic Polity 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 The Enjoyment Of All Those Rights. Traditionally, The Vehicle Of Public Information Was The Press. Today It Is Called The Media, Which Include The Press, The Radio, The Television And The Internet. The "Fourth Estate" Plays A Crucial Role In A Large Democracy Like India Where About 1500 Different Types Of Newspapers Are Circulated. The Period Of National Emergency Saw, For The First Time, The Gagging Of The Free Press. Many The11 Depended On The BBC For 'Impartial' News About India. It Is No Wonder That The Freedom Of The Press Or Media Became A Watchword After Emergency Disposing Of A Case O: Contempt Of Court Against The Editors Of Two Newspapers, The Supreme Court Remarkd It Is The Duty Of A True And Responsible Journalist To Provide The People With Accurate And Impartial Presentation Of News And His Views After Dispassionate Evaluation Of Facts And Information Received By Him And To Be Published As A News Item. The Editor- Of A Newspaper Or A Journal, The Court Said, Has A Greater Responsibility To Guard Against Untruthful News And Its Publication. If The Newspaper Publishes what is proper, Mischievously False Or Illegal And Abuses Its Liberty, It Must be Punished By A Court Of Law. While A Free And Healthy Press Is Indispensable To The Functioning Of A True Democrat)', the Court Said, "The Freedom Of The Press Is subject to Reasonable Restraint^."'^Since The 1970's The Media In India Have Played A Central Role In Sensitising People With Information About Governance, Development, Science And Technology, For'? relations and So On. However, Of Late It Has Also Come In For Criticism, As Highlighted By The Above Supreme Court

Decision. There Has Been A Decline In Journalistic Credibility, As Noted By The Chairman Of The Press Council Of India Himself In A Seminar. Senior Journalists Feel That The Media Shies Away From Important 'People's Issues' Like Tribal Issues, That It Is Losing Social Content And Becoming A Consumer Product With A Manager Overshadowing The Editor.⁶² While The Media Is "A Vital Leverage To Keep The Rulers In Check," It Has Failed "To Educate People To Assert Their Claim To The Right To Information," Observes Another Senior Journalist. The Press Also Has Come In For Rough Treatment By Terrorists, Insurgents, And Some Individual Politicians. The Chairman Of The Press Council Condemned Increasing Commercialism And Corrupt Practices Emphasizing The Need To Arrest Them.⁶⁴ The Media Also Has Tendency To Launch "Trials By The Media," Even Sentencing By The Media, Even While A Court Proceeding Is Underway.

Considering the totality Of The Impact Of The Media During 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, However, Remains An Impediment In The Effective Exercise Of The Freedom Of Information. Some Other Measures Of Protection Of Human Rights Under Indian Law The Protection Of Civil Rights Act, 1952, Suppression Of Immoral Traffic In Women And Girls Act 1956, Maternity Benefit Act, 1961, Dowry Prohibition Act, 1961, Equal Remuneration Act, 1976, Bonded Labour (Abolition) Act, 1976, Employment Of Children Act, 1938 (Amended In 1985), The Child Labour (Prohibition And Regulation) Act, 1986, Justice Act, 1986, Indecent Representation Of Women (Prohibition) Act, 1986.

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where About 1500 Different Types Of Newspapers Are Circulated. The Period Of National Emergency Saw, For The First Time, The Gagging Of The Free Press. Many The11 Depended On The BBC For 'Impartial' News About India. It Is No wonder That The Freedom Of the Press or Media became A Watchword After Emergency. Disposing Of a Case O: Contempt Of Court Against The Editors Of Two Newspapers, The Supreme Court Remarkd. It Is The Duty Of A True And Responsible Journalist To Provide the People With Accurate And Impartial presentation Of News And His Views After Dispassionate Evaluation Of Facts And Information Received By Him And To Be Published As A News Item. The Editor- Of A Newspaper Or A Journal, The Court Said, Has A Greater Responsibility To Guard Against Untruthful News And Its Publication. If The Newspaper Publishes What Is improper, Mischievously False Or Illegal And Abuses Its Liberty, It Must be Punished By A Court Of Law. While A Free and Healthy Press Is Indispensable To The Functioning Of A True Democrat)', The Court Said, "The Freedom Of The Press Is Subject To Reasonable Restraint^."'^ Since The 1970's The Media In India Have Played A Central Role In Sensitising People With Information About Governance, Development, Science And Technology, For'? Relations and So On. However, Of Late It Has Also Come In For Criticism, As Highlighted By The Above Supreme Court Decision. There Has Been I Decline In Journalistic Credibility, As Noted By The Chairman Of The Press council Of India Himself In A ~Eminarse Nior Journalists Feel That The Media Shies Away From Important 'People's Issues like Tribal Issues, That It Is Losing Social Content And Becoming A Consumer Product With A Manager Overshadowing The Editor.62 While The Media Is A Vital Leverage To Keep The Rulers In Check," It Has Failed "To Educate People To Assert Their Claim To The Right To Information," Observes Another Senior Journalist.T~H~E Press Also Has Come In For Rough Treatment By terrorists,Insurgents, And Some Individual Politicians. The Chairman Of The Press Council Condemried Increasing Commercialism And Corrupt Practices Emphasizing The Need To Arrest Them.64 The Media Also Has A Tendency To Launch "Trials By The Media," Even Sentencing By The Media, Even While A Court Proceeding Is Underway.Considering The Totalit! Of The Impact Of The Media During The Past Two Decades, Despite The Above Pitfalls, One Must Recognise That The Contribution Of The Media li Revealing And Highlighting Human Rights Causes Has Been Most Impressive. A Colonial Law Relating To Official Secrecy, The Official Secrets Act. 1923, However, Remains An Impediment In The Effective Exercise Of The Freedom Of Information.Some Other Measures Of Protection Of Human Rights Under Indian Law The Protection Of Civil Rights Act, 1955 Suppression Of Lmmori3l Traffic In Women And Girls Act, 1956 Maternity Benefit Act, '1961 Dowry Prohibition Act, 1961 Equal Remuneration Act, 1976 Bonded Labour (Abolition) Act, 1976 Employment Of Childrm Act, 1938 (Amended In 1985) The Child Labour (Prohibition And Regulation) Act, 1986 Juvenile Justice Act, 1'386 Indecent Representation Of Women (Prohibition) Act, 1986.

Constituent Assembly and Human Rights

The Indian Constitution was framed by the Constituent Assembly Of india, which met for the first time on December 9,1946. The Constitution of India gave primary importance to human rights. To quote Guha, "The demand for a declaration of fundamental rights arose from four factors."

1. Lack of civil liberty in India during the British rule
 2. Deplorable social conditions, particularly affecting the untouchables and women.
 3. Existence of different religious, linguistic, and ethnic groups encouraged and exploited by the Britishers.
 4. Exploitation of the tenants by the landlords
- The Constituent Assembly incorporated in the Constitution of India the substance of the rights proclaimed and adopted by the General Assembly in the Universal Declaration of Human Rights. Further on 10th December 1948, when the Constitution of India was in the making, the General Assembly proclaimed and adopted the Universal Declaration of Human Rights, which surely influenced the framing of India's Constitution. Viewed from the Indian standpoint, human rights have been synthesized, as it were, not as an integrated fabric by the Preambular promises and various Constitutional clause of the National Charter of 1950.

SOME OTHER MEASURES OF PROTECTION OF HUMAN RIGHTS UNDER INDIAN LAW:

1. The Protection of Civil Rights Act, 1955
2. Suppression of Immoral Traffic in Women and Girls Act, 1956
3. Maternity Benefit Act, '1961

4. Dowry Prohibition Act, 1961.
5. Equal Remuneration Act, 1976.
6. Bonded Labour (Abolition) Act, 1976.
7. Employment of Childrm Act, 1938 (Amended in 1985).
8. The Child Labour (Prohibition and Regulation) Act, 1986.
9. Juvenile Justice Act, 1'386.
10. Indecent Representation of Women (Prohibition) Act, 1986.
11. Sati (Prevention) Act, '1987.
12. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.
13. The National Commission for Women Act, 1990.
14. The National Commission for Minorities Act, 1992.
15. The National Commission for Safari Karamcharis Act, 1993.
16. The National Commission for Backward Classes Act, 1993.
17. The Mental Health Act, 1993.
18. The Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995

International and National Normative Framework Relating to Human Rights Best Practices

The United Nations Human Right Norms ARE :

1. The Universal Declaration of Human Rights 1948 (select)

Article 3 : Everyone has the right to life, liberty and security of person.

Article 5 : No one shall be subjected to torture, or to cruel, unhuman, or degrading treatment or punishment.

Article 7: All are equal before the law and are entitled without any discrimination to the equal protection of the law.

Article 8: Everyone has the right to an effective remedy by the competent National Tribunals for the acts violating the fundamental rights granted to him by the constitution or by law.

Article 9 : No one shall be subjected to arbitrary arrest, detention or exile.

Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations and of the criminal charge against him.

Article 11 : Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12 : No one shall be subjected to arbitrary interferences with his privacy, family, home or correspondence.

Article 14 :

I. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

II. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or — acts contrary to the purposes and principles of the United Nations.

CONCLUSION

In India, the Supreme Court has propounded the theory of 'emanation' has departed from the traditional view that Part III of the Constitution provides an exhaustive list of Fundamental Rights. The theory, basically means that even though right is not specifically mentioned in Part III, it may still be regarded as a fundamental right if it can be regarded as an integral part of a named fundamental right; in other words, "it 'emanates' from a named fundamental right or its existence is 'necessary' in order to make the exercise of a named fundamental right meaningful and effective". (Maneka vs. Union of India, A.I.R. 1978 S.C. 597, Para 77).

Applying the 'emanation' theory, the Supreme Court has evolved the following unenumerated rights as, Fundamental Rights:

- (1) The right to privacy (as an emanation from Arts 19(1)(d) and 21).
- (2) The right to human dignity (as an emanation from Arts. 19, 21).
- (3) The right to travel abroad (as an emanation from Art. 21)
- (4) The right against torture, cruel or unusual punishment or degrading treatment, (as an emanation from Art. 21); such assolitary confinement.
- (5) The right to speedy trial (emanating from Art. 21).
- (6) The right to free legal aid in criminal trial (from Art. 21).

(7) The right against delayed execution.

(8) The right against custodian violence.

(9) The rights to shelter, to doctor's assistance, the right to health.

(10) The right to pollution free environment.

(11) The right to education of a child until he attains the age of 14.

(12) The freedom of Press, and right to listen, and right to know. (From Art. 19(1) (a)). The role of media as a watchdog is equally important in the protection and promotion of human rights. It is however, witnessed that the media fails either to highlight the instances of human rights violations, or willfully collaborates with the state agencies to cover-up the incidents. At times, the media also plays a negative role by sensationalizing an incident (sometimes referred to as trial by media), which can have grave repercussions for both the society and the individual. Hence media must be sensitized to play an important role in securing rights of the people. It would not be wrong to say that the violation of human rights can be controlled only when there is a firm determination for the human dignity and values. It is equally important that the Indian society at large, including the political elite, both civil and police administration, the media, civil society and intellectuals who yield influence in moulding the opinion in the society should have proper approach and attitude towards the protection of human rights.

I have certain suggestions for protection of human rights.

- Education related to Human Rights be included as a part of the general curriculum.
- Research in the field of human rights to be encouraged with financial assistance which will help to develop a modern theory.for human rights useful in modern times.
- The Law Enforcement Agencies be sensitized and trained to ensure the observation of human rights standards.
- A Special Law giving statutory recognition to human rights be enacted.
- Policies and programs be implemented to ensure that people have access to their rights.
- Special care be taken for protection of rights of Women and Children.

While concluding, I would say that, these rights belong to you,they are your rights, and therefore you must be familiar with them.You must help to promote and defend them for yourself as well as for your fellow human beings.

SUGGESTION

the study of human rights plays a vital and a very effective role effectively. since from the adoption, it has exercised a powerful influence on both internationally and nationally. human rights which was regarded as a matter of domestic jurisdiction of the states, has acquired the international character, vis-à-vis, international human rights.

the human right commission has always upheld the basic principles of human rights by promoting, protecting and implementing human rights. it involves a number of cases including serious human rights violation and has submitted report to the government with a number of recommendation suggesting measures to be taken to cure such human right violations. however, the work is least effective and is far from satisfaction. for the better protection of human rights, the researchers proposes the certain amendments in the indian constitution.

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