

## The Human Rights Law

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## **Unit-I: Introduction**

- a. Nature**
- b. Origin and Evolution**
- c. Development of Human Right Regime**

### **a. Nature**

As humans, we all know that we are entitled to certain rights. By birth we are equal in our rights and dignity. These are moral claims which are inherent irrespective of cast, creed, colour or sex. These claims are coherent and are explained in detail in the Human Rights Law. These human rights are also referred to as fundamental rights, inherent rights, basic rights, birth rights and natural rights.

The Universal Declaration of Human Rights (UDHR), 1948, defines human rights as “rights derived from the inherent dignity of the human person.” Human rights when they are secured by a written constitution are known as “Fundamental Rights”, for the simple reason that a written constitution is the fundamental law of the state.

The following are the nature or attributes of Human Rights:

1. **Human Rights are inalienable** –Human Rights are granted to an individual by virtue of his birth or existence. It does not change with cultural differences, cast, creed, sex, age or nationality. These rights are applicable even after the individual’s death, and different religions and cultures have borne a testimony to the same.
2. **Human Rights are necessary and essential** –The physical, social, moral and spiritual wellbeing of an individual is impossible without human rights. They are also essential because they provide the necessary conditions for a person’s moral and material upliftment.
3. **Human Rights and Human Dignity** – Human rights is also about human dignity, which means treating every individual equally irrespective of their sex and social standing.
4. **Human Rights are irrevocable** – Human Rights cannot be taken away from anyone. They are irrevocable since they are acquired by every human being by virtue of their birth.
- 5.

6. **Human Rights are essential for the fulfilment of the purpose of life** – Human rights pertain to those conditions which are important for the fulfilment of life purposes. They are inviolable, sacrosanct and immutable.
7. **Human Rights are universal** – Without any exception, Human rights are universal in nature, devoid of any consideration. Values such as dignity, equality and divinity form the very basis of these rights.
8. **Human Rights are not absolute** –All rights have certain restrictions and limitations. And man is restricted by the society from enjoying certain rights and freedom. Human rights are those limited powers or claims, which are aimed towards the common good of the society and which are recognized and guaranteed by the State, through its laws.
9. **Human Rights are dynamic** – Human rights are not static. They expand with political and socio-cultural developments and evolutions of the State.
10. **Human Rights limit the State's power** - Human rights suggest that every individual has some legitimate claims upon his or her society for certain freedom and benefits. So, in that way, human rights restrict the State's power. These may be negative restrictions on the powers of the State, which threaten to violate the individual freedom.

### b. Origin & Evolution

Throughout a major part of human history, individuals acquired rights and responsibilities by virtue of their membership in a group, family, religion, an indigenous nation, community, class or state. Most societies followed the Golden Rule of “*Do unto others as you would have them do unto you.*” Some of the oldest written scriptures such as the Bible, the Quran, the Babylonian Code of Hammurabi and the Hindu Vedas have discussed an individual's duties, responsibilities and rights in detail.

The twentieth century witnessed the solidification of the entire concept of Human Rights when the United Nations (UN) adopted the UN Charter, 1945, and The Universal Declaration of Human Rights in 1948. A further emphasis was laid on the protection of rights of women, civil and political rights, racial discrimination, economic, cultural and social rights, rights of children, and the abolition of slavery through the International Covenants on Human Rights.

### **The Birth of the United Nations**

It was after the inhuman genocide of millions of Jews by the Nazi Germany during the World War II, that Governments from across the world sworn to commit themselves to establish an organization whose primary goal would be to bolster international peace and prevent conflict. People wanted to ensure that never again would something like the Holocaust happens, and no one should be denied basic rights like life, food, shelter and nationality. This essence was then captured in President Franklin Delano Roosevelt's 1941 State of the Union Address where he spoke of a world founded on four essential freedoms: freedom of speech, religion, want and fear. This played a critical role in the San Francisco meeting where the United Nations Charter was drafted in 1945.

Three years later in 1948, 30 rights and freedom in the form of articles that made up the Universal Declaration of Human Rights (UDHR) were presented to the world, acting for the first time as a recognised and internationally accepted charter. The first article states that "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

### c. Development of Human Rights Regime

The International Human Rights Regime comprises of International and Regional Human Rights Legal Instruments as well as Human Rights Mechanisms - such as the UN Human Rights System as well as the American, African and European Regional Human Rights Systems. The article comprehensively examines the philosophical as well as legal and political framework of the International Human Rights Regime in light of its gradual development in the twentieth century.

When the UDHR was adopted on December 10, 1948, the delegates at the UN General Assembly set up a common set of principles which would help measure the human rights practices of individual member. Although these principles were initially not binding on the UN member states, they did form a basis for the international legal system in the domain of human rights. Following the adoption of UDHR, a global human rights regime emerged incorporating several international conventions, specialized international organizations to monitor compliance, and regional human rights arrangements. And since then the international Human Rights Regime has been developed and consolidates an important component of the global institutional architecture.

The International human rights regime is founded on the basic principles of dignity, the equal worth and equal rights for “*all members of the human family*”, without any distinction of any kind, pertaining to “race, colour, sex, language or religion”, as well as the idea that human rights are inalienable, universal, interdependent and indivisible in nature.

The founding charters of the different international organisations like the Charter of the UN or the Charter of the Organization of American States, and the international human rights instruments themselves establish a range of bodies and procedures to encourage the proper implementation of the regime’s norms. Ultimately, it is these bodies of international human rights regimes who “makes decisions” through different robust monitoring and protection systems or procedures. It is they who determine to what extent states are complying with or violating the international norms they have committed to respect.



## **Unit-II: International Human Rights Law**

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### **a. UN Charter**

#### **Structure**

The Charter of the United Nations was signed on 26 June 1945, in San Francisco, at the end of the United Nations Conference on International Organization, and came into force on 24 October 1945. The Statute of the International Court of Justice forms an integral part of the Charter.

The Charter has 50 original signatories and today the UN has grown to include 193 Member States.

The Charter outlined six convening bodies. These bodies include the General Assembly, Security Council, Economic and Social Council, Secretariat, and the International Court of Justice. The UN Trusteeship Council was formally the sixth organ, established to “provide international supervision for 11 Trust Territories that had been placed under the administration of seven Member States, and ensure that adequate steps were taken to prepare the Territories for self-government and independence.” By 1994, these territories had gained independence or self-government, and the Trusteeship Council suspended operations. While

the General Assembly, Security Council, Economic and Social Council, Secretariat are based at the UN headquarters in New York, The International Court of Justice is located at Hague in Netherlands.

### **Principles of the UN Charter**

1. The Charter emphasizes on the sovereign equality of all its members
2. All members in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with present charter of the United Nations.
3. All members shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered.
4. All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.
5. All members shall give the United Nation every assistance in any action it takes in accordance with the present Charter of the United.
6. This organization shall ensure that states which are not members of the United Nations act in accordance with these principles so far as may be necessary for the maintenance of international peace and security.
7. Nothing contained in the present Charter of the United Nations shall authorize the United Nations in the present matters which are essentially within the domestic jurisdiction of any states or shall require the members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter-VII of the Charter of the United Nations.

### **Purposes and Objectives of the UN Charter**

The objectives of the United Nations as set forth in the Charter are...

1. to maintain international peace and security based on respect for the principle of equal human rights and self-determination of peoples.
2. to develop friendly relations among nations.
3. to cooperate in solving international problems of an economic, social, cultural or humanitarian character.
4. to be a center for harmonizing the actions of nations in achieving these ends.

## **Main Organs**

### **1. General Assembly**

The General Assembly is the only UN Body with universal representation and is the primary deliberative, and policymaking organ of the UN. All 193 Member States of the UN are represented in the General Assembly who meet annually at the UN Headquarters in New York City. The General Assembly is entitled to discuss and recommend and advise on any matter that falls within the scope of the UN charter. Some of its specific duties include the election and appointment of the members of the Economic and Social Council, the board of the UN Industrial Development Organization, and some members of the Trusteeship Council. With the Security Council, it appoints the judges of the International Court of Justice. On the recommendation of the Security Council, the Assembly also appoints the UN secretary-general. Decisions in the General Assembly may be either made by a simple majority vote or by a two-thirds vote on more important matters.

### **2. Security Council**

The Security Council is primarily entrusted under the UN Charter with the responsibility of maintaining international peace and security. The Council has 5 permanent and 10 non-permanent members – each member entitled to 1 vote.

The five permanent member nations are the United States, the Russian Federation (in place of the former Soviet Union), the United Kingdom, France, and China. The Charter requires the permanent members to agree on all decisions made by the council, except for questions of procedure. Even if one permanent member vetoes (rejects) a council decision, that decision is defeated. The 10 non-permanent members serves 2-year terms each. Every year the General Assembly elects five new nations and these nations are selected from all over the world to ensure fair representation from all regions. Every council nation is mandated to have one representative at the New York Headquarters at all times, so that the Council can meet even at a short notice.

### **3. The Economic and Social Council**

Composed of 54 Member States, the Economic and Social Council works under the control and guidance of the General Assembly. The Council does not have any permanent members and each Member State serve 3-year terms – 18 selected each year. The Council is entrusted with the management of major economic and social concerns – including land reform, control of narcotics, and economic development. The Council also co-ordinates the activities and policies of the United Nations and its different specialized agencies.

#### **4. The Trusteeship Council**

The Trusteeship Council was established to provide international supervision to 11 Trust Territories that was placed under the administration of seven Member States, and ensure that adequate measures were adopted to prepare these Territories for self-government and independence. These Territories were mainly former colonies of the European nations. The Trusteeship Council suspended its operation on 1 November 1994, because all of these Trust Territories had attained self-government or independence by then. However, the Council agreed to meet occasionally and as per requirement, either decided by itself or the President of the Council, or at the request of the majority of the Member States, Security Council or the General Assembly.

#### **5. The International Court of Justice**

The International Court of Justice is the main judicial organ of the United Nations. It has 15 judges who are elected to 9-year terms by the General Assembly and the Security Council. The judges are elected on the basis of their qualifications (and not their nationalities). No nation is permitted to have more than one judge on the court at any given time. The International Court of Justice (ICJ) meets at The Hague in the Netherlands. This court has two primary tasks. Firstly, it settles disputes brought forward by the nations for final decision. The ICJ also advises to other UN organs and agencies, although its advisory opinions do not have to be accepted. But they do have a great significance. When some judgments passed with the Court in response to disputes, they are supposed to be followed by all relevant parties.

#### **6. The Secretariat**

The Secretariat is the Administrative body of the UN and is headed by the Secretary General. Apart from the Secretary General, the Secretariat has thousands of other international UN staff members who carry out the day-to-day activities of the UN, as directed and mandated by

the General Assembly and UN's other principal organs. The Secretary-General being chief administrative officer of the Organization, is appointed by the General Assembly and recommended by the Security Council for a five-year, renewable term.

### **Specialized Agencies of the UN**

The Specialized Agencies of the UN are international organizations with their own rules, organs, membership, and financial resources, are legally independent and were brought in collaboration with the United Nations through certain negotiated agreements. Some of these agencies existed before the First World War, while some others were associated with the League of Nations. Some other agencies were created almost along with the United Nations and yet others were created by the United Nations itself to address emerging needs. Each and every specialized agency has its own requirements, concerns, and corporate culture.

1. International Labour Organization (ILO) – The ILO is the only tripartite UN Agency which brings together Governments, employers and workers to formulate policies and programs collaboratively.

The Governing Body of the ILO is the executive body of the International Labour Office (the ILO's permanent secretariat) which meets thrice a year (March, June and November) and takes decisions on ILO policies, the International Labour Conference agenda and the Organization's draft programme and budget for submission to the Conference. It also elects the Director-General in these meetings.

The Agency is committed to accelerate opportunities for men and women and enable them to achieve productive and decent working conditions of equity, security, freedom and human dignity. Its goals are to:

- Promote rights at work
  - Increase social protection
  - Strengthen dialogues in work-related issues, and
  - Encourage decent working conditions
2. Food and Agriculture Organization (FAO)–The objective of the FAO is to raise nutrition levels and standard of living, improve the conditions of the rural people, make improvements in food production and distribution, and contribute towards the expansion of the World economy ensuring its freedom from hunger. The FAO is comprised of the following organizations:
    - Conference

- Council
- Committees of the Council
- Other Inter-Governmental bodies
- Secretariat

The FAO has 191-member nations, one associate member and one member organisation, the European Union. The Council is made of 49 Member States, elected by the Conference for three- year terms. One-third of the members retire each year.

3. United Nations Educational, Scientific and Cultural Organization (UNESCO) – UNESCO was formed in 1945 in order to promote and contribute to peace and security by encouraging collaboration amongst nations through science, culture and education. UNESCO's supreme body is the General Conference which meets every two years. The General Conference elects The Executive Board for a four year term and the former consists of 58 Member States. Each Member State appoints one representative with competence in fields relevant to UNESCO and also qualified to fulfil the administrative and executive duties of the Board.
4. World Health Organization (WHO) – WHO was adopted in 1946 by the representatives of 61 member States. According to Article 1 of the Constitution, WHO's objectives is "*the attainment by all peoples of the highest possible level of health*". The WHO is composed of the World Health Assembly, the Executive Board and the Secretariat. The Executive Board is has 34 individuals technically qualified in the health field, each one of them designated by a Member State and elected by the World Health Assembly. The World Health Assembly takes place every year, usually in Geneva, Switzerland. The Board meets at least twice a year in Geneva.
5. International Monetary Fund (IMF) – 187 countries that make up the International Monetary Fund work together to foster global monetary cooperation, facilitate international trade, secure financial stability and promote and sustainable economic growth and employment, and reduce poverty. The Board has one governor who is appointed by each member country. Substantive or policy matters are transmitted in the form of a report and draft resolution to the Governors for their vote when one is required. An annual meeting of the Board, in conjunction with that of the World Bank Group, is held in late September/ early October.

6. World Intellectual Property Organization (WIPO)—WIPO is committed to developing a robust and accessible international Intellectual Property (IP) system which would encourage innovation, reward and recognise creativity, and contribute to overall economic development – while safeguarding public interest. The General Assembly is WIPO’s supreme decision-making body and is comprised of 176 members. The Conference has 184 members. 24 treaties that address various legal and administrative aspects of Intellectual Property.
  
7. United Nations Development Programme (UNDP) - The UN Development Programme (UNDP) is the United Nations lead agency targeted towards the UN development system. Its primary goal is to build sustainable, inclusive and resilient societies. UNDP has a presence in 176 countries and territories, providing expert advice, training and financial support. UNDP lays special emphasis to the needs of the Least Developed Countries (LDCs) and countries that are emerging from conflicts. UNDP works with developing countries to address solutions to:
  - Environment & Energy
  - Poverty Reduction
  - Democratic Governance
  - Crisis Prevention & Recovery
  - HIV and AIDS
  
8. United Nations Children's Fund (UNICEF)—UNICEF was established by the General Assembly to provide emergency assistance to children in war-ravaged countries after the World War II, and for addressing the needs of the children from developing countries. Later in 1953, this mandate was extended indefinitely to further lay emphasis on programmes giving long-term benefits to children everywhere, particularly those in developing countries, and changed the organization's name to the United Nations Children's Fund but retained the UNICEF acronym. The Fund provided relief and rehabilitation assistance in emergencies.

## **b. Universal Declaration of Human Rights (UDHR)**

### **Introduction**

The Universal Declaration of Human Rights is a formal declaration which was adopted by the United Nations General Assembly on December 10th of 1948. The UDHR was formulated as a result of the second World War, and it represents the first global expression of rights to which everyone is entitled to. It consists of 30 articles- each elaborated in subsequent international treaties, human rights instruments and national laws.

### **Structure of the UDHR**

The structure of the Universal Declaration of Human Rights was primarily influenced by the Code Napoleon. The document contains a Preamble and other various introductory general principles. Rene Cassin was responsible for preparing and moulding the structure of the Universal Declaration of Human Rights.

#### *Article 1-2: Basic Rights*

These Articles emphasize that we are all human and that we're born free, with the ability to think for ourselves. The declaration applies to everybody irrespective of race, colour, sex or nationality.

#### *Article 3-12: Personal Rights*

These are the basic rights to life, safety and liberty. These articles basically imply that everybody gets a fair trial in courts, is presumed innocent until proven guilty, and can't be arrested at random. This section ensures that everybody gets equal protection under the law.

#### *Articles 13-17: Political Rights*

Under the political rights, it implies that within your own country, you're free to move around as you please. In case you're being persecuted by your country's government, you have the right to seek protection in another country. Marriage and family, and the foundation of society etc., are protected as human rights.

#### *Articles 18-21: Freedom of Thought*

Under freedom of thought, you can say what you wish to, think what you want to, and believe what you want to. Everyone has the right to access information in any form across national borders.

### *Articles 22-27: Economic and Social Rights*

Everyone has the right to be free from want, which implies that everyone has the right to work, has social security, enjoy fair pay, and good working conditions. Even vacations are embodied as a human right.

### *Articles 28-30: Duties to the Community*

Everyone is entitled to be a part of all good things that come with community - like art and science. You also have "duties to the community"; and finally, the biggest caveat being that no right can interfere with someone else's right.

The UDHR is written in a rather simplistic and straightforward manner, with most of the articles beginning with "*everyone has the right*". The original idea behind the UDHR was to create an international bill of rights that would can be enforced like an international law. The drafting committee behind the UDHR settled on a sort of nonbinding resolution, that it would be easier to get everyone to agree to it in a certain way. The UDHR was the first step towards a more binding agreement.

### **Objectives & Significance of the UDHR**

1. To encourage inter-dependence between countries in all aspects of cooperation by identifying a country's common strengths and opportunities, and which will help minimize poverty and improve quality of life for the people – while developing a knowledge-based society within each country and enhance community and people empowerment.
2. To expand trade, commerce and the financial market within a country and increase the bargaining power of Asian countries, in place of competition and, thus, enhance the country's' economic competitiveness in the global market.

### **Legal Status of the UDHR**

The Universal Declaration of Human Rights is not a treaty, and hence, it does not directly create any legal obligations for countries.

However, the document serves as an expression of the fundamental values which the members of the international community shared. It has had an intellectual and thoughtful influence on the development of international human rights law. Some also argue that just because the countries have consistently and continually invoked the Declaration for more than sixty years now, it is now binding as an integral part of customary international law.

Furthermore, the UDHR has given rise to a number of other international agreements which are legally binding on the countries that ratify them. These include:

- The International Covenant on Civil and Political Rights (ICCPR) and
- The International Covenant on Economic, Social and Cultural Rights (ICESCR).

The UDHR has over the years has served directly and indirectly as a benchmark for many domestic constitutions, laws, regulations, and policies that protect fundamental human rights. Many of the Universal Declaration's provisions have also been incorporated into customary international law, which is binding on all states. This has been confirmed by states in intergovernmental and diplomatic settings, by the actions of intergovernmental organizations, in arguments submitted to judicial tribunals, and in the writings of legal scholars. Although a lot of states are now bound by one or more multilateral conventions addressing human rights issues, the existence of such conventional obligations has not necessarily reduced the importance of the Universal Declaration of Human Rights.

The Universal Declaration is the primary source of global human rights standards to date, and its recognition and acknowledgement as a source of rights and law by the different states throughout the world distinguishes it from conventional obligations. Virtually every international instrument dealing with human rights and declarations adopted unanimously or by the consensus by the UN General Assembly contains at least a preambular reference to the UDHR. However, wherever the provisions of the Declaration have been mirrored in subsequent treaties or constitutions, the latter are cited by judges rather than the Declaration itself. In other jurisdictions however, the UDHR may be more easily invoked as a source of customary international law than a corresponding treaty provision.

### **The UDHR in National Law**

The UN has achieved a great deal in developing and reinforcing minimum, universally applicable human rights standards and several international systems and mechanisms exist to aid in the implementation and execution of these standards. But having said that, it is the national governments at the end of the day that are ultimately responsible and accountable for safeguarding the human rights within their jurisdiction. However, relevance of the Declaration to national law and practice thus should be the starting point for any analysis of the Declaration's impact.

The Universal Declaration may be utilized by a national court in different ways:

- It may provide a rule of decision binding on the court where it contains or reflects customary international law in a system in which international law has a direct application.
- The Declaration may also be used to interpret or inform conventional or domestic law which deals with and is concerned with human rights.
- The Declaration may be deemed to be evidence of governmental policies which the court must (or may) respect. For instance, in many countries courts are obliged to interpret domestic statutes to which has to be consistent with international obligations or principles of foreign policy whenever possible.
- And finally, courts may also explicitly or implicitly reject the relevance of the Declaration to domestic law; and it is such opinions that frequently portray the purely political or non-self-executing nature of the Declaration or the supremacy of national law.

Several Indian cases have specifically referred to the Universal Declaration, which was adopted the year before the Indian constitution and is largely held to have provided the model for the latter's human rights guarantees and provisions. "The [Universal] Declaration [of Human Rights] may not be a legally binding instrument but it shows how India understood the nature of Human Rights" when the Constitution was adopted. Thus, although the Supreme Court has stated that the 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 may be strongly influenced by the Declaration.

### **The UDHR in International Law**

At the time of its adoption in 1948, it was unanimously agreed that the UDHR will not be imposing legal obligations on states. In the often-cited words of Eleanor Roosevelt, the Chairman of the U.N. Commission on Human Rights during the drafting of the declaration:

*"In giving our approval to the declaration today, it is of primary importance that we keep clearly in mind the basic character of the document. It is not a treaty; it is not an international agreement. It is not and does not purport to be a statement of law or of legal obligation. It is a declaration of basic principles of human rights and freedoms, to be stamped with the approval of the General Assembly by formal vote of its members, and to serve as a common standard of achievement for all peoples of all nations."*

The Declaration was merely a “*a manifesto with primarily moral authority*” when it was adopted. The first of “four stages in the generation of the document the General Assembly has called the International Bill of Human Rights.” “The subsequent three documents—the International Covenant on Civil and Political Rights, its Optional Protocol,” and the International Covenant on Economic, Social and Cultural Rights were consciously adopted as those which would be legally binding treaties and ones that are open for ratification or accession by states, in contrast to the more political or hortatory Declaration.

With the passage of time, however, the Universal Declaration has itself acquired significant legal status. While some view it as having provided content to the Charter pledges, partaking therefore of the binding character of the Charter as an international treaty; others see both the Charter and the Declaration as documents which contribute to the development of a customary law of human rights binding on all states.

### c. Covenants of 1966

The United Nations General Assembly adopted two covenants in its resolution 2200 A (XXI): The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 16<sup>th</sup> December 1966. These covenants acted as reinforcements of the Universal Declaration of Human Rights (1948).

The primary objective of the Covenants was to draft a text that was legally restrictive to reinforce the UDHR. This text aimed to consolidate all of the Human Rights (economical, civil, political, social and cultural) and gender equality. The initial development of the text was marked by severe disagreements between the States, reflecting the different ideologies of the latter. This forced the General Assembly to ask for two separate Covenants to be written – one on Civil and Political Rights (ICCPR), and the other on Economic, Social and Cultural Rights (ICESCR). Both these Covenants were adopted on 16<sup>th</sup> December 1966.

### **International Covenant on Civil and Political Rights (ICCPR), 1966**

The International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty adopted by the United Nations General Assembly. The covenant urges its parties to respect the civil and political rights of individuals, including the right to life, freedom of speech, freedom of religion, freedom of assembly, electoral rights and rights to due process and a fair

trial. As of August 2017, the Covenant has 172 parties and six more signatories without ratification.

The ICCPR is part of the International Bill of Human Rights, along with the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR).

The United Nations Human Rights Committee (a separate body to the United Nations Human Rights Council) monitors the ICCPR which includes regular reviews of reports of States parties on how the rights are being implemented. States are mandated to initially report one year after acceding to the Covenant and subsequently whenever the Committee requests (usually every four years) it. The Committee usually meets in Geneva and typically holds three sessions per year.

The Covenant follows the same structure as the UDHR and ICESCR - with a preamble and fifty-three articles, divided into six parts.

#### *Part 1 (Article 1)*

This recognizes the right to self-determination of all, including the right to "freely determine their political status", pursue their social, economic and cultural goals, and manage and dispose of their own resources.

#### *Part 2 (Articles 2 – 5)*

This part obliges parties to make or amend laws where necessary to enforce the rights recognised in the Covenant, and to provide an effective legal remedy for any violation of such rights. It also mandates that the rights be recognised "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," and ensures that they are equally enjoyed by women. The rights can only be limited "in time of public emergency which threatens the life of the nation," and even in such situations there must be no derogation from the rights to life, freedom from torture and slavery, the freedom from retrospective law, the right to personhood, and freedom of thought, conscience and religion.

Part 3 (Articles 6 – 27) lists some rights which include rights to:

- physical integrity, in the form of the right to life and freedom from torture and slavery (Articles 6, 7, and 8);

- liberty and security of the person, in the form of freedom from arbitrary arrest and detention and the right to habeas corpus (Articles 9 – 11);
- procedural fairness in law, in the form of rights to due process, a fair and impartial trial, the presumption of innocence, and recognition as a person before the law (Articles 14, 15, and 16);
- individual liberty, in the form of the freedoms of movement, thought, conscience and religion, speech, association and assembly, family rights, the right to a nationality, and the right to privacy (Articles 12, 13, 17 – 24);
- prohibition of any propaganda for war as well as any advocacy of national or religious hatred that constitutes incitement to discrimination, hostility or violence by law (Article 20);
- political participation, including the right to the right to vote (Article 25);
- Non-discrimination, minority rights and equality before the law (Articles 26 and 27).

Many of these rights also include specific actions which need to be undertaken to realise them.

#### *Part 4 (Articles 28 – 45)*

This Part governs the establishment and operation of the Human Rights Committee and the reporting and monitoring of the Covenant. It also allows for the parties to recognise that the Committee is competent to resolve disputes between parties on the implementation of the Covenant as per Articles 41 and 42.

#### *Part 5 (Articles 46 – 47)*

The Articles here aims to clarify that the Covenant shall not be interpreted in any way as interfering with the operation of the United Nations or "the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources".

#### *Part 6 (Articles 48 – 53)*

Governs ratification, entry into force, and amendment of the Covenant.

The ICCPR is a legally binding treaty. This implies that states which ratify the treaty are legally bound by it, while states that do not ratify are neither bound by the treaty obligations nor are entitled to invoke those obligations against other state parties. In terms of their legal

status, the rights mandated in the ICCPR are to be applied by states with immediate effect. Simply put, civil and political rights are directly applicable and judicially enforceable.

### **International Covenant on Economic, Social Cultural Rights (ICESCR), 1966**

The International Covenant on Economic, Social and Cultural Rights (ICESCR) along with the Universal Declaration on Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) make up the International Bill of Rights.

The rights acquired by the ICESCR are critical to enable people to live with dignity. This treaty covers important areas of public policy, such as the right to:

- work
- fair and just conditions of work
- social security
- an adequate standard of living, including adequate food, clothing and housing
- health
- education

#### *What are Economic, Social and Political Rights?*

Human rights are typically categorized into ‘civil and political rights’ and ‘economic, social and cultural rights’. While Civil and political rights protect individuals’ freedom from interference by the state and ensuring that everyone can participate in civil society, Economic, social and cultural rights protect the basic necessities for life. The former includes freedom of speech, freedom of assembly and the right of not to be tortured; and the latter ensures that every individual has the right to food and water, a roof over their heads, and adequate healthcare.

#### *Structure*

The ICESCR follows a similar structure as the UDHR and the ICCPR, with a preamble and thirty-one articles, divided into five parts.

#### *Part 1 (Article 1)*

This Part recognises the right of all peoples to self-determination, including the right to "freely determine their political status", manage and dispose of their own resources and

pursue their economic, social and cultural goals. It recognises a negative right of the people not to be deprived of its means of subsistence, and imposes an obligation on those parties still responsible for non-self-governing and trust territories (colonies) to encourage and respect their self-determination.

#### *Part 2 (Articles 2–5)*

This Part emphasizes the principle of "progressive realisation". It also mandates that the rights be recognised "without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". These rights can only be limited by law, and in a manner which is aligned to the nature of the rights, and only for the purpose of "promoting the general welfare in a democratic society".

#### *Part 3 (Articles 6–15)*

This part enlists the rights themselves. These include rights to:

- work, under "just and favourable conditions", with the right to form and join trade unions (Articles 6, 7, and 8);
- social security, including social insurance (Article 9);
- family life, including paid parental leave and the protection of children (Article 10);
- an adequate standard of living, including adequate food, clothing and housing, and the "continuous improvement of living conditions" (Article 11);
- health, specifically "the highest attainable standard of physical and mental health" (Article 12);
- education, including free universal primary education, generally available secondary education and equally accessible higher education. This should be directed to "the full development of the human personality and the sense of its dignity", and enable all persons to participate effectively in society (Articles 13 and 14);
- participation in cultural life (Article 15).

Many of these rights include specific actions which must be undertaken in order to realise them.

#### *Part 4 (Articles 16–25)*

This part governs reporting and monitoring of the Covenant and the steps taken by the parties to follow it through. It also permits the monitoring body to make general recommendations to the UN General Assembly on appropriate measures to realise the rights (Article 21)

*Part 5 (Articles 26–31)*

The Articles in this part governs ratification, entry into force, and amendment of the Covenant.

**Unit-III: National Human Rights Law in India**

**A. Indian Constitution**

- a. Constitutional Provisions – under Constitutional law – refer to attached paper (Copy Paste)
- b. Fundamental Rights - under Constitutional law – refer to attached
- c. Directive Principles of State Policy - under Constitutional law – refer to attached

**B. Human Rights Act, 1993**

- a. NHRC: Composition, Powers and Functions
- b. Role of State HRC, NCW, NCM, SC/ST Commission
- c. Role of Civil Societies and Media

**Definition:**

Constitution is the legally documented fundamental or supreme law of a State and its primary objective is:

- to define the elementary features of the State
- to determine the relation between the State and its citizens
- to specify the provisions that determine the distribution of powers of all three organs of the govt.- the Executive, the Legislature and the Judiciary
- to lay down the principles of distribution of power among the Union and the State govts. in a federation

- to specify the rights and duties of the citizens

### a. Constitutional Provisions of Human Rights

Human rights refer to "the basic rights and freedoms to which all humans are entitled to." These can be civil and political rights, such as the right to life and liberty, freedom of expression, and equality before the law; and social, cultural and economic rights, including the right to participate in culture, the right to work, and the right to education.

The preamble of the Indian Constitution clearly describes the values of equality, justice, secularism and cultural pluralism to make a stable democratic society and polity.

A large part of human rights as mentioned in the Indian Constitution are mentioned as Fundamental Rights – and are named as Fundamental Rights, and the right to enforce Fundamental Rights itself has been made a Fundamental Right. The Fundamental Rights in the Indian Constitution constitute the Magna Carta of individual liberty and human rights. The Fundamental Rights under Articles 14-31 of the Constitution provide individual right based on right to equality, right to freedom, right against exploitation, right to freedom of religion, right to cultural and educational rights.

These are negative rights which can be enforceable against the state, if violated. These rights can be summed up in different categories:

#### **Right to Equality (Art. 14-18)**

Right to equality is the cornerstone of human rights in Indian Constitution. While Article 14 states that "the state shall not deny to any person equality before the law and equal protection of the laws within the territory of India," the Article 15 goes into more specific details that "the state shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them be subject to any disability, liability, restriction or condition with regard to (a) access to shops, public restaurants, hotels and places of public entertainment." Article 16 states that "there shall be equal opportunity for all citizens in matters relating to employment or appointment to any office under the state." Article 17 and 18 directs the state to abolish untouchability and titles respectively.

#### **Right to Freedom (Art. 19-22)**

The rights to freedom under articles 19-22, is the essence of human rights in India. Article 19 states that "all citizens shall have the right to freedom of speech and expression; to assemble

peacefully and without arms; to form associations or unions: to move freely throughout the territory of India; to reside and settle in any part of the territory of India; and to practice any profession or to carry on any occupation, trade or business."

According to Article 20, "no person shall be convicted of any offence except for violation of a law at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence." However, the most important article of individual freedom is stated in Article 20, which says that "no person shall be deprived of his life or personal liberty except according to the procedure established by law."

### **Right against Exploitation (Art. 23-24)**

The Constitution under Articles 23-24, lists down a set of rights that prohibits exploitation, human trafficking and similar such exploitations. Article 23 prohibits human trafficking and other forms of forced labour. Instead of the word 'slavery', Indian Constitution used a more comprehensive expression - "traffic in human beings", which not only puts a prohibition of slavery, but also of trafficking of women or children or crippled, for immoral or other purposes.

Article 24 of the Constitution prohibits the employment of children below the age of 14 years in factories or mines or in any other hazardous employment or environment. Thus, forced labour is prohibited and children have been protected as an important part of fundamental rights.

### **Right to Freedom of Religion (Art. 25-28)**

The Part III of the Constitution of India (under Articles 25-28) prescribe for certain religious freedoms for the citizens of India. These include freedom of conscience of free pursuit of profession, practice and propagation of religion, freedom to manage religious affairs, freedom to payment of taxes for promotion of any particular religion and freedom as to attendance at religious instruction or religious worship in certain educational institutions. In short, these are vital rights of religious minorities in India.

### **Cultural and Educational Rights (Art. 29-30)**

Article 29 and 30 of the Constitution guarantees certain cultural and educational rights to the minority sections. While Article 29 guarantees the right of any section of the citizens

residing in any part of the country having a distinct language, script or culture of its own, and to conserve the same, Article 30 provides that "all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice". In brief, these are important rights as far the protection of human rights of minority groups in a majority society as India is concerned.

Human Rights provide that environment for people in which they grow and survive in a more wholesome manner, and one which is imperative for their overall development.

### **b. Other Fundamental Rights**

Those sections in the Constitution of India which prescribe the fundamental obligations of the states to its citizens and the duties and the rights of the citizens to the State are the Fundamental Rights, Directive Principles of State Policy and Fundamental Duties. Considered very vital elements of the Constitution, these were developed between 1947 and 1949 by the Constituent Assembly of India.

Fundamental Rights are guaranteed under Part III C, Articles 12-35 of the Constitution. There were initially 7 rights described as fundamental but after the deletion of Right to Property from the list of Fundamental Rights, the number has come down to 6. They are-

1. Right to Equality
2. Right to Freedom
3. Right against Exploitation
4. Right to Freedom of Religion
5. Cultural and Educational Rights
6. Right to Constitutional Remedies (Art. 32)

### **Fundamental Rights**

- a. Right to Equality (Articles 14-18)
- b. Fundamental Freedom (Article 19)
- c. Right to Life and Personal Liberty (Articles 20-22)
- d. Right to Education (Article 21A): RTE Act, 2009

e. Right against Exploitation (Articles 23-24): Forced Labour, Child Employment and Human Trafficking

f. Freedom of Religion and Cultural and Educational Rights of Minorities (Articles 25-30)

### **Right to Constitutional Remedies**

a. Writ Petitions: Habeas Corpus, Mandamus, Certiorari, Prohibition and Quo-warranto

b. Article. 32 and Article. 226

c. Judicial Review

d. Writ Jurisdiction and Private Sector

### **Directive Principles and Fundamental Duties**

a. Nature and Justiciability of the Directive Principles

b. Detailed Analysis of Directive Principles (Articles 37-51)

c. Fundamental Duties d. Inter-Relationship between Fundamental Rights and Directive Principles

### **C. Directive Principles of State Policy – Under Constitutional Law**

#### **DIRECTIVE PRINCIPLES OF STATE POLICY (DPSP) AND FUNDAMENTAL DUTIES**

Part IV of the Constitution comprising of Articles 36-51 lay down the Directive Principles of State Policy. Article 36 states that ‘State’ shall be construed to mean same as under Part III.

#### **NATURE AND JUSTICIABILITY OF DIRECTIVE PRINCIPLES**

DPSP’s can be described as positive obligations of the State. It provides a blueprint or guidelines that guide the State towards achieving a social order in which social, economic and political justice informs all institutions of national life. The Directive Principles of State Policy are ‘directive’ in nature, directing the policy of the State.

The Principles have two characteristics as stated by Article 37. Firstly, they are not enforceable in any court of law. Therefore, if the State fails to obey or implement a DPSP, the citizens cannot compel it to do so through judicial proceedings. The rationale behind making DPSP’s non-justiciable is that implementation of DPSPs largely depend on the level of socio-economic development achieved by the State in any given time period. Therefore, it is the State which must decide and take steps to implement DPSPs, looking into the need of the

hour and the resources available. For example, the RTE Act, 2009 has been enacted and Article 21A was added to Fundamental Rights in 2002. Elementary education, till then, was part of DPSP. In 1947, with the literacy rate in the country being 12%, the State could not have taken on the obligation to educate all children with the resources then available. However, in 2002, the State could take on the obligation which was made justiciable (a right that could be enforced by people).

Secondly, the DPSP are fundamental in the governance of the country and it is the duty of the State to apply these Principles when making laws. Therefore, the DPSPs act as a 'common political manifesto' for all ruling parties. The parties may have different ideologies but they all must work for the same objectives, when acting as the government. They also serve as a crucial test to evaluate performance of each government. Citizens can examine the government programs and policies in light of the DPSP. The DPSP's also serve as guiding lights for the judiciary. When the judiciary reviews a law which restricts Fundamental Rights, the DPSP's shed light on what might qualify as a 'reasonable restriction' for the greater good of the country. A law implementing a DPSP invokes a presumption of constitutionality (within constitutional limits) of the impugned law.

#### ANALYSIS OF DIRECTIVE PRINCIPLES

The DPSP are listed one after the other in the Indian Constitution. One criticism invited by the DPSP's is that they are not logically and systematically arranged. For ease of study, the DPSP's may be grouped under three broad categories:

A. **Socialistic Principles-** The Preamble to the Indian Constitution declares India as a Socialist State. The 'socialist' character of the State is enshrined in the DPSPs. It provides for social and economic justice, thereby making the Indian State a 'Welfare State'. The DPSP under this head are:

1. **Article 38-** To promote the welfare of the people by securing a social order permeated by social, economic and political justice and to minimize inequalities in income, status, facilities and opportunities.
2. **Article 39-** to secure (a) the right to adequate means of livelihood for all citizens; (b) the equitable distribution of material resources of the community for common good; (c) prevention of concentration of wealth and means of production; (d) equal pay for equal work

for men and women; (e) preservation of the health and strength of workers and children against forcible abuse; and (f) opportunities for healthy development of children.

3. Article 39A- to promote equal justice and to provide free legal aid to the poor.
  4. Article 41- to secure the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement. (Art 41)
  5. Article 42- to make provision for just and humane conditions for work and maternity relief. (Art 42)
  6. Article 43- to secure a living wage, a decent standard of life and social and cultural opportunities for all workers (Art 43)
  7. Article 43A- to take steps to secure the participation of workers in the management of industries (Art 43A)
  8. Article 47- to raise the level of nutrition and the standard of living of people and to improve public health. (Art 47)
- B. Gandhian Principles- These Principles ensure that the Indian State abides by some aspects of Gandhian ideology. The Mahatma, being the Father of the Nation, left behind his thoughts on the organization of the Indian State. These thoughts are captured in the following principles:
1. Article 40- to organize village Panchayats and endow them with necessary powers and authority to enable them to function as units of self-government.
  2. Article 43- to promote cottage industries on an individual or co-operation basis in rural areas.
  3. Article 43B- to promote voluntary formation, autonomous functioning, democratic control, and professional management of co-operative societies.
  4. Article 46- to promote the educational and economic interests of SCs, STs and other weaker sections of the society and to protect them from social injustice and exploitation.
  5. Article 47- to prohibit the consumption of intoxicating drinks and drugs which are injurious to health.
  6. Article 48- to prohibit slaughter of cows, calves and other milch and draught cattle and to improve their breeds.

C. Liberal- Intellectual Principles- These Principles capture the liberal ideology of the Indian State. They direct the State to:

1. Article 44- to secure for all citizens a uniform civil code.
2. Article 45- to provide early childhood care and education for all children until they complete the age of 6 years.
3. Article 48- to organize agricultural and animal husbandry on modern and scientific lines.
4. Article 48A- to protect and improve the environment and to safeguard forests and wildlife.
5. Article 49- to protect monuments, places and objects of artistic or historic interest which are declared to be of national importance.
6. Article 50- to separate the judiciary from the executive in the public services of the state.
7. Article 51- to promote international peace and security and maintain just and honourable relations between nations; to foster respect for international law and treaty obligations, and to encourage settlement of international disputes by arbitration.

D. New Directives- Certain Principles were added in recent times. The first set were added by the 42nd Constitutional Amendment of 1976. These are:

1. To secure opportunities for healthy development of children (Article 39).
2. To promote equal justice and to provide free legal aid to the poor (Article 39A).
3. To take steps to secure the participation of workers in the management of industries (Article 43A)
4. To protect and improve the environment and to safeguard forests and wildlife (Article 48A)

The 44th Amendment Act of 1978 added the directive which requires the State to minimize inequalities in income, status, facilities and opportunities (Article 38).

The 86th Amendment Act of 2002 changed the subject matter of Article 45 as enumerated in the Article 21A section under Fundamental Rights.

The 97th Amendment Act of 2011 added the Directive related to co-operative societies. It requires the State to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies (Article 43B).

## RELATIONSHIP BETWEEN DPSP AND FUNDAMENTAL RIGHTS

The curious positioning of DPSP, as non-justiciable yet fundamental principles in the governance of the country vis-à-vis the justiciable fundamental rights, has been a source of constant confrontation between the two.

It began with *State of Madras v. ChampakamDorairajan*<sup>1</sup> where the Supreme Court held that Directive Principles, being non-justiciable, have to conform to and run as subsidiary to the Fundamental Rights Chapter, which are justiciable. A law giving effect to the Directive Principles must satisfy the constitutional limitations, Fundamental Rights being the most important amongst them. If it violates the limitations, the law must be held unconstitutional. The case involved challenging a Madras government order which fixed quotas for admission to medical and engineering colleges for different communities including Harijans. The order was sought to be defended under Article 46. The Court held Fundamental Rights to be supreme over Directive Principles but observed that Fundamental Rights could be amended by Constitutional Amendment Acts.

The Case: With regard to admission of students to the Engineering and Medical Colleges of the State, the Province of Madras had issued an order (known as the Communal G. O.) that seats should be filled in by the selection committee strictly on the following basis, i.e., out of every 14 seats, 6 were to be allotted to Non-Brahmin (Hindus), 2 to Backward Hindus, 2 to Brahmins, 2 to Harijans, 1 to Anglo-Indians and Indian Christians and 1 to Muslims.

On 7.6.1950, Smt. ChampakamDorairajan made an application to the High Court of Judicature at Madras under Art. 226 of the Constitution for protection of her fundamental rights under Art.15 (1) and Art.29 (2) of the Constitution and prayed for the issue of a writ of mandamus or other suitable prerogative writ restraining the State of Madras and all officers and subordinates thereof from enforcing, observing, maintaining or following or requiring the enforcement, observance, maintenance or following by the authorities concerned of the

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<sup>1</sup>AIR 1951 SC 226.

notification or order generally referred to as the Communal G. O. in and by which admissions into the Madras Medical Colleges were sought or purported to be regulated in such manner as to infringe and involve the violation of her fundamental rights.

Date of Judgment- 9 April, 1951

Judges- Seven-judge Constitutional Bench

The Verdict- It was held that the communal G.O. constituted a violation of the fundamental right guaranteed to the citizens of India by Article 29(2) of the Constitution of India and was therefore void under Article 13. The directive principles of State Policy laid down in Part IV of the Constitution cannot in any way override or abridge the fundamental rights guaranteed by Part III. On the other hand, they have to conform to and run as subsidiary to the fundamental rights laid down in Part III.

The next landmark came in the *I.C. Golaknath v. State of Punjab*<sup>2</sup> where the Supreme court held that the Parliament cannot take away or abridge any of the Fundamental Rights which are 'sacrosanct' in nature. This meant that Fundamental Rights could not be amended to implements DPSP's. In response to the judgment, the Parliament enacted the 25th Amendment Act which inserted Article 31C. The Article contains two provisions:

1. No law that seeks to implement the socialistic DPSP's (in Article 39 (b) and (c)) could be declared void on grounds of contravention of Fundamental Rights under Article 14, Article 19 or Article 31.
2. No law containing a declaration for giving effect to above policy could be questioned in any court of law on the ground that it does not give effect to such policy.

The Case- The immediate facts surrounding the case were that the family of one William Golak Nath had over 500 acres of property in Punjab. Acting under Punjab Security and Land Tenures Act, 1953 which was placed in 9th Schedule by the 17th Constitutional Amendment Act, 1964, the state government intimated to petitioner that he can now only possess 30 acres of land & rest will be treated as surplus. Aggrieved by this intimation of the state government petitioner filed a writ petition under Article 32 of Indian Constitution and pleaded the violation of his Fundamental Rights mentioned under Articles 19(1)(f) (Right to hold & acquire property), 19(1)(f) (Right to practice any profession) and 14 (Equality before Law & Equal protection of laws).

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<sup>2</sup>1967 AIR 1643.

Date of Judgment- 27 February, 1967

Judges- Eleven-judge Constitutional Bench

The Verdict- The majority opinion in the judgment reflects the uneasiness & scepticism in the judiciary's mind about the then course of Parliament. Since 1950's Parliament, through invoking Article 368, had passed numerous legislations that had in one pretext or another violated the Fundamental Rights. They suspected that soon a time could come when all the Fundamental Rights adopted by the Constituent assembly would be diluted through amendments and finally extinguished. Keeping this probable annihilation in mind and fearing the gradual transfer of democratic India into totalitarian India, the majority held that Parliament cannot amend Fundamental Rights.

In *Kesavananda Bharti Case*<sup>3</sup> the Supreme Court declared the second provision of the 25th Amendment Act unconstitutional, for judicial review was held to be part of the basic structure of the Constitution which could not be taken away. The first provision was held to be valid. Through the 42nd Amendment Act, the Parliament sought to enlarge the first provision to include all DPSP's (not just Article 39 (b) and (c). This firmly put DPSP above Fundamental Rights.

This provision of the Act was challenged in *Minerva Mills v. Union of India*<sup>4</sup>. DPSP were again made subordinate to Fundamental Rights except Articles 14 and 19 which were accepted as subordinate to Article 39 (b) and (c). However, the Supreme Court went a step further in to settle the supremacy debate. It held that the Indian Constitution rested on 'the bedrock of the balance between the Fundamental Rights and the Directive Principles. They together constitute the core of commitment to social revolution.' The Court further held that the harmony and balance between the DPSP and Fundamental Rights was one essential feature of the basic structure of the Constitution. The goals set out by the DPSP have to be achieved without abrogation of the means prescribed by Fundamental Rights. The current position is that Fundamental Rights, being justiciable, are supreme over DPSP. But the Parliament has full liberty to make laws to implement DPSP. To do so they may amend Fundamental Rights as long as the amendment does not destroy the 'harmony and balance' between the two.

## FUNDAMENTAL DUTIES

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<sup>3</sup>*KesavanandaBharti v. State of Kerala*, (1973) 4 SCC 225.

<sup>4</sup>AIR (1980) SC 1789.

Fundamental Duties under Part IV-A with a single Article 51A was added as an afterthought, to the Indian Constitution. Ten fundamental duties were added by the 42nd Amendment Act of 1976 pursuant to the recommendations made by the Swaran Singh Committee set up by the Congress Government. The Fundamental Duties are a feature borrowed from the Constitution of the erstwhile USSR. They were amended once in 2002 to add an additional fundamental duty which rounds up the number to eleven.

Article 51A says that it shall be the duty of every citizen of India:

1. To abide by the constitution and respect its ideal and institutions; the National Flag and the National Anthem
2. To cherish and follow the noble ideals which inspired our national struggle for freedom;
3. To uphold and protect the sovereignty, unity and integrity of India;
4. To defend the country and render national service when called upon to do so;
5. To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities, and to renounce practices derogatory to the dignity of women;
6. To value and preserve the rich heritage of our composite culture;
7. To protect and improve the natural environment including forests, lakes, rivers, and wildlife and to have compassion for living creatures;
8. To develop the scientific temper, humanism and the spirit of inquiry and reform;
9. To safeguard public property and to abjure violence;
10. To strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement.
11. To provide opportunities for education to his child or ward between the age of six and fourteen years.

The Duties have often been criticized for many reasons. The first among many being that they are non-enforceable. The State cannot compel citizens to perform these duties. The Fundamental Duties are meant only for citizens of India and are not for foreign nations, unlike the Fundamental Rights. Further, the Duties are criticized for not being exhaustive and

missing out on detailing vital responsibilities of citizens like paying taxes, voting in elections, family planning, etc. They are also vague and ambiguous, often beyond understanding of the common man who is to discharge them. Phrases like ‘noble ideals’, ‘composite culture’, ‘scientific temper’, etc, are not easily decipherable.

However, the Duties also have a vital significance. As part of the Constitution, the Duties remind the citizens of a simple legal and moral principle that ‘where there is a right, there is a correlative duty’. They also help the Courts in determining the constitutionality of certain laws. The Parliament has the power to enact laws to compel citizens to perform duties. For example, the Prevention of Insults to National Honor Act, 1971, certain provisions of the Indian Penal Code, etc, provide for sanctions if certain Fundamental Duties are not discharged

### **B. Protection of Human Rights Act, 1993**

The Human Rights Commission Bill was introduced in the Lok Sabha on May 14, 1992 and was referred to the Standing Committee on Home Affairs in the Parliament. The President of India promulgated an Ordinance, which established a National Commission on Human Rights on September 27, 1993. Subsequently, a Bill on Human Rights was passed in the Lok Sabha on December 18, 1993 to replace the ordinance promulgated by the President. The Bill became an Act, on January 8, 1994 (Act 10 of 1994) and was published in the Gazette of India, Extraordinary Part II, Section I, on January 10, 1994. This was how the Protection of Human Rights Act (No. 10 of 1994) came into force.

#### **Definition of the Act**

Section 2(d) of the Act defines human rights as the rights relating to life, liberty, equality and dignity of all individuals guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India. The above definition, however, restricted the scope of the functioning of the National Human Rights Commission. India, therefore, ratified the two Covenants - International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. But the Covenants are not directly enforceable as law before the Indian courts. The definition of human rights under the Protection of Human Rights Act 1993 limits human rights strictly to the fundamental rights embodied in part III of the Constitution, which are enforceable by the courts in India.

### a. The National Human Rights Commission

It is the State's responsibility to not only protect the human rights of the people from any violation, but also to prevent such violations by providing the much-required means for the realization of this goal, and further ensuring human development. The State discharged such responsibility through its institutions. But at a national level, National Human Rights Commission was established under the Protection of Human Rights Act of 1993 to fulfil this responsibility.

### **Constitution & Functions of the National Human Rights Commission**

Section 3 of the Act provides talks about the constitution of National Human Rights Commission. The Commission is composed of 1 Chairperson and 4 other members. In order to ensure representation of the backward and oppressed sections of the society, the chairmen of the National Commission for Minorities, the National Commission for SCs, the National Commission for STs and the National Commission for Women are given ex-officio membership of the Commission.

The functions of the National Human Rights Commission are provided under Section 12, which are as follow:

- a) Inquire into the cases of violation of human right *suomotu*, on petition presented tohim or on the direction of the Court.
- b) Intervene in any proceeding involving allegation of violation of human rightspending before a court with the approval of such court.
- c) Visit a jail or any other institution under the control of the State Government,where individuals are detained or lodged for purposes of treatment, reformation, orprotection, for an understanding of the living conditions of such inmates and makerecommendations for improvement thereof to the Government.
- d) Conduct a systematic and consistent review of the Government's human rights policy in order to identify shortcomings in human rights observance and to provide suggestions for improvement.
- e) Review various factors for violations, including those acts concerning terrorism that threaten the enjoyment of humanrights and suggest appropriate remedial measures.

- f) Study treaties and other international instruments on human rights and make recommendations for their effective implementation.
- g) Undertake and promote research in the field of human rights.
- h) Spread awareness about human rights among various sections of the society and promote literacy of the safeguards available for the protection of these rights through publications, media, seminars and other available means.

### **Powers of the NHRC**

The National Human Rights Commission is empowered to:

- Exercise the powers of civil court with respect to summoning attendance of witnesses and their examination, discovery and production of documents, receiving evidence on affidavit etc.
- Utilize the services of any officer or investigation agency of the Central or State Government For the purposes of conducting any investigation pertaining to an inquiry.
- Make guidelines and recommendations to various authorities. These may be education, health, jail reforms, guidelines on arrest, food security bill, violence against women and the like.

*In the case of **Gujarat Communal Riot's Case**<sup>5</sup>, the commission took suo motu action on communal riots that took place in Gujarat in early 2002, wherein A team of the Commission visited Gujarat in March, 2002 and prepared a confidential report, which was later published. The Commission observed that the State has failed to discharge its primary and inescapable responsibility to protect the rights to life, liberty, equality and dignity of all of those who constitute it.*

*In Bonded Labourers Working in Chauna Stone Mines, District Gwalior Madhya Pradesh (Case No: 1351/12/2001-2002(FC), Bonded Labour Liberation filed a complaint that 400 bonded labourers had been working in Chauna Stone mines in District Gwalior and they were not paid their wages; besides they were tortured and harassed. Commission asked government to direct Labour Commissioner, MP to ensure the inspection of these establishments and strict enforcement of all labour laws. 44 persons were released and sent to other districts as per their wishes.*

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<sup>5</sup>Case No. 1150\6\2001-2002, 6 March 2002.

Similarly, In Case No. 2432/4/39/2012,46, the Commission took suomotu cognizance of a press report which read - "Kids thrashed for refusing insect infested school meal". The report alleged that students of a school at MithaniMilki village of Vaishali district near Patna, Bihar were allegedly beaten up by their headmaster till they fainted for refusing to eat a midday meal in which they found insects. In this case, the Commission issued a notice to the Chief Secretary, Government of Bihar and the District Magistrate, Vaishali to submit a report in this matter mentioning what steps they had taken in this regard.

## b. Role of HRC, NCW, NCM, SC/ST Commission

### Human Rights Courts (HRC)

One of the primary objects of the Protection of Human Rights Act, 1993 as stated in the preamble of the Act, is the establishment of Human Rights Courts at district level. The HRC protects and realizes human rights at the grassroots. These courts were set up for providing speedy trial of offences arising out of violation of human rights.

The HRC was set up by State Governments with concurrence of the Chief Justice of the High Court, specifying a Court of Session as a Human Rights Court under Section 30. A Special Public Prosecutor is appointed by the State Government for conduct cases in human rights court under Section 31 of the Act.

The HRC have been set up in the States of Assam, Andhra Pradesh, Tamil Nadu, Sikkim, and Uttar Pradesh; and it communicates with the respective High Courts to oversee the precise nature of the offences which are tried in these courts and other details regarding the conduct of their different functions. The Sessions Court of a particular district is considered as the Human Rights Court. Under the Criminal Procedure Code, 1973 a Sessions Judge cannot take cognizance of the offence. He can only try the cases committed to him by the magistrate under Section 193 of the Cr.P.C.

*In Potluri Purna Chandra Prabhakara Rao v. State of A.P.<sup>6</sup>, Ujjagarsingh & others v. State of Haryana & another<sup>7</sup>, and some other cases, it was held that the Special Court (Court of Session) does not get jurisdiction to try the offence under the Act without committal by the Magistrate. The Supreme Court also held same view in Moly & another V. State of Kerala, 2004(2) Criminal Court Cases 514. Consequently, the trial of all these cases under the Prevention of Atrocities Act were stopped and all the cases were sent to the Courts of*

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<sup>6</sup>2002(1) Criminal Court cases 150.

<sup>7</sup>2003(1) Criminal Court Cases 406.

*jurisdictional Magistrates. Subsequently, the respective Magistrates took cognizance of the cases and committed them to the Special Courts. The Special Courts started trying the cases after they were committed to them. The Act was later amended giving the Special Courts the power to take cognizance of the offences under Act.*

### **National Commission of Women (NCW)**

The National Commission for Women (NCW) is a statutory body of the Government of India, typically concerned with advising the Government on all policy matters impacting and with respect to women. It was established in January 1992 under the provisions of the Indian Constitution, as defined in the 1990 National Commission for Women Act.

The role of the NCW is to represent the rights of women in India and to provide a voice for their issues and concerns. The subjects of these campaigns have often been seen to include politics, domestic violence, complaints against NRI marriages, torture, murder, kidnapping and abduction, dowry, religion, equal representation for women in jobs, and the exploitation of women for labour. NCW has also in some cases discussed police abuses against women. The commission regularly publishes a monthly newsletter, *RashtraMahila*, in both Hindi and English.

The NCW consists of a chairperson, five members and a member secretary. A person ‘committed to the cause of women’ is nominated and appointed as Chairperson by the Central Government. The other five members are also nominated by the Central Government.

The major functions of the NCW Include:

- Investigating and examining all matters concerning the safeguards provided for women under the Constitution and other laws.
- Presenting reports to Central Government on the different initiatives taken towards these safeguards, and make recommendations for effective implementation of such safeguards to Union or State Governments.
- Reviewing and revisiting women related to legislations and bring forth inadequacies.
- Undertaking and forwarding cases of violation of law against women to appropriate authorities.
- Looking into complaints and take suo moto action over them.
- Working towards women’s rights
- Eliminating hardships of women and ensuring their welfare and relief

- Calling for special investigations and studies into specific problems and situations
- Participating in planning process of socio-economic development of women

The Commission processes all complaints received verbally or in writing. It also considers *suo moto* notice of cases related to women.

### **National Commission of Minorities (NCM)**

In order to safeguard the interests of the minorities, the Constitution of India has drawn up a number of rights. These rights are put in place to provide enough equality and to do away with discrimination, and are mentioned in the Fundamental Rights (Part III), Directive Principles of State policy (Part IV), and also in the Fundamental Duties (Part IV-A).

The Union Government established the National Commission for Minorities (NCM) under the National Commission for Minorities Act, 1992. Six religious' communities, viz; Muslims, Christians, Sikhs, Buddhists, Zoroastrians (Parsis) and Jains have been notified in Gazette of India as minority communities by the Union Government all over India. The original notification of 1993 was for Five religious communities Sikhs, Buddhists, Parsis, Christians and Muslims.

The act states that the Commission shall consist of:

- a Chairperson,
- a Vice Chairperson and
- Five Members to be nominated by the Central Government from amongst persons of eminence, ability and integrity – and that all five members including the Chairperson shall be from amongst the minority communities.

The Commission has the following functions:

- Evaluate and analyse the progress of the development of Minorities under the Union and States.
- Monitor the working of the safeguards provided in the Constitution and in different laws enacted by Parliament and the State Legislatures.
- Make recommendations for effective implementation of safeguards for the protection of the interests of Minorities by the Central Government or the State Governments.

- Oversee specific complaints regarding deprivation of rights and safeguards of the Minorities and take up such matters with appropriate authorities.
- Cause studies to be undertaken into concerns arising out of any discrimination against Minorities and recommend measures for their removal thereof.
- Conduct studies, research and analysis on the issues relating to socio-economic and educational development of Minorities.
- Suggest appropriate improvement measures in respect of safeguarding the rights of any individual minority.
- Submit periodical or special reports to the Central Government on any matter pertaining to Minorities, especially the difficulties confronted by them.
- Any other matter which may be referred to it by the Central Government.

The Commission has the following powers:

- Summon and enforce the attendance of any person from any part of India and examining him on oath.
- Mandate the discovery and production of any document.
- Receive evidence on affidavit.
- Order the requisition of any public record or copy thereof from any court or office.
- Issue commissions for the ex.

### **Scheduled Castes/Scheduled Tribe Commission**

The first Commission for Scheduled Castes and Scheduled Tribes was set up in August 1978 with Bhola Paswan Shastri as Chairman and other four Members. In 1990 the Commission for SCs and STs was renamed as the National Commission for Scheduled Castes and Scheduled Tribes, and was formed in 1987. It comes under article 338, and it was set up as a National Level Advisory Body to advise the Government on broad policy issues and levels of development of Scheduled Castes and Scheduled Tribes.

The following are the functions of the commission:

- To investigate and monitor matters directed towards safeguarding the rights of Scheduled Castes under the Constitution of India or under any other law, or under any order of the Government and to evaluate the working of such safeguards.
- To inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes;

- To participate and advise on planning processes of socio-economic development of the Scheduled Castes and to appraise the progress of their development under the Union and any State;
- To annually or occasionally as the Commission may deem fit, present to the President, different reports on the working of those safeguards and rights.
- To highlight and enumerate in those reports, various recommendations as to the measures that should be taken by the Union or any State for effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes; and
- To discharge other similar functions in relation to the protection, welfare and development and advancement of the Scheduled Castes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

### c. Role of Civil Societies and Media

Civil society is a set of civic rights, primarily including everyone's right to participate in Public life. These rights provide direction which helps to steer the right course between system of state with all its competences of power, and the corporate cartel of organizations and institutions which in some circumstances can threaten freedom of individuals. Civil society plays a critical role in building and maintaining the democracy. Civil society movements have the capability to significantly influence government policies and social attitude.

However, these societies must perform some roles to maintain and strengthen the democracy.

- Empowerment of citizens - Civil society empowers citizens about their rights and duties and emphasizes its importance to them. It also encourages the traditionally excluded groups such as women, Dalits and minorities to utilize their rights and the access to power effectively.
- Keep state power from abuse - Civil society aims to check political abuses and violations of law. An empowered civil society can hold the State accountable in case of abuse of political power and other violations.
- Mitigates political conflicts- A well-established civil society minimizes and sometimes mitigates main differences and helps State in ensuring that the best interests are addressed.

- Promotes democratic attributes - Civil society promotes democratic attributes amongst its citizens such as tolerance, willingness to compromise and respect for the conflicting views.
- Provides opportunities for political parties - It allows political parties and other organizations to represent their interests, thus improving the quality of democracy.
- Supports political & economic reforms - Civil society performs this role and paves way for reforms in the society.
- Educates and trains new political leaders – In situations where the State fails to represent the society's best interests or if its interests are narrow and stagnant, civil society helps in identifying and training the new political leaders to revitalize their government.
- Election monitoring- In many states, non-partisan volunteer organisations monitored elections to keep the legitimacy of the process intact.

By performing all of these duties, civil society represents citizen interests and forms policies and make their society more democratic.

### **Role of Media in the Protection of Human Rights**

Media is considered as the eyes and ears of any democratic society. Unless a society knows what is happening to it and its members, it becomes impossible to protect or promote the rights of the individual living in the society.

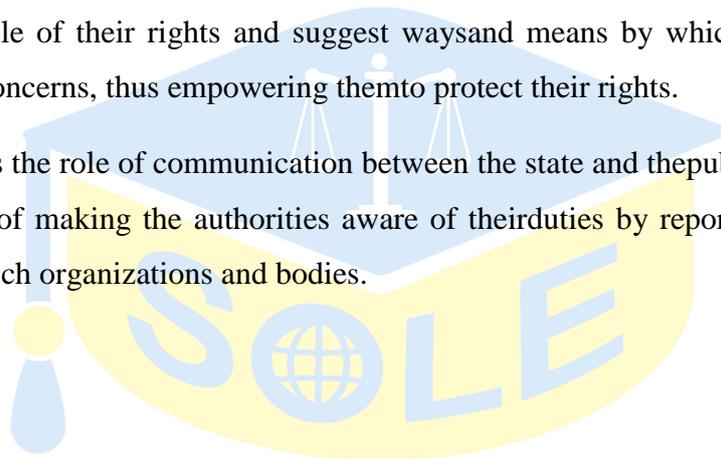
There has been a revolutionary change and growth in the world of communication and media in the recent past, and media today, plays a decisive role in the development of society. Thus the role of media in protection of human rights cannot be ignored or understated. Media is a communicator of the public. Its role surpasses giving facts and news, to also include analyse and comment on the facts, and by doing so it shapes the views of the people. The impact of media on society today is beyond doubt and debate. Media has been setting for the nation its social, political economic and even cultural agenda in some cases. With the advent of satellite channels and live televisions, not to mention internet, its impact is even sharper and deeper.

In India media, especially the print, has played an important role in educating and informing citizens of their rights as well as the violations of such rights. In South India, The Hindu, constantly attracted the wrath of the earlier British government because of the simple reason that it drew the attention of the readers to the gross violation of people's dignity and

rights. Significant sections of the national media has in the past challenged events that have changed the course of history in India – including the Emergency, Babri Masjid demolition, murder of Graham Steins and his children and some other high-profile cases like the Delhi gang rape of 2012, the Godhra carnage, and more recently Nandigram.

Media has been playing a major role in protecting and promoting human rights in the entire world. It has been educating of the need to promote certain values in the cause of human rights which are of eternal value to the mankind. Some of the common agenda for the media has been Peace, non-violence, maintenance and promotion of ecological balance, unpolluted environment and ensuring human rights to all. The media performs this role in different ways. It makes people aware of their rights, by exposing its violations and focuses on people and areas in need of the protection of human rights and also pursues their case till they achieve them. Media also has been providing publicity to those individuals and organisations, which are engaged in securing and safeguarding human rights. It is the role of the media to inform and educate people of their rights and suggest ways and means by which they can address their issues and concerns, thus empowering them to protect their rights.

Since media plays the role of communication between the state and the public, it can also play an effective role of making the authorities aware of their duties by reporting, analysing and commenting of such organizations and bodies.



#### **Unit-IV: Group Rights in India**

- a. Prisoners
- b. Women and Children
- c. Indigenous People
- d. Disabled
- e. Senior Citizens
- f. Refugees

#### **a. Prisoners**

The rights guaranteed in the part III of Indian Constitution are available to prisoners; because a prisoner is treated as a person in prison.

Article 14 contemplated that like should be treated alike, and also provided the concept of reasonable classification. This article provides the basis for prison authorities to determine various categories of prisoners and their classification with the object of reformation. Indian constitution guarantees six freedoms to citizens of India, among which certain freedom can't be enjoyed by the prisoners. They are #freedom of movement, freedom to residence and to settle and freedom of profession. But other freedoms conferred in this article are enjoyed by the prisoners. Moreover, constitution provides various other provisions though cannot directly be called as prisoner's rights but may be relevant. Among them are Article 20(1), (2), and Article 21 and Article 22(4-7).

*Public interest litigations have been granted judicial validation where a person can seek redress on behalf of the aggrieved persons, in the name of public interest. The landmark case of **HussainaraKhatoon (I) v. State of Bihar**<sup>8</sup> is a popular case in the field of judicial activism. In this case, a famous newspaper published a series of articles highlighting the anguish of under trial prisoners in Bihar. Some instances showed that many under trial prisoners had served a maximum sentence possible without even being charged. An advocate took note of this situation and filed a public interest litigation. As an outcome, the apex court*

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<sup>8</sup>(1980) 1 S.C.C. 81.

*opined that a right to speedy trial is a fundamental right embedded in Article 21 of the Constitution. The court further assumed the role of a judicial activist and directed the state to facilitate free legal aid to under trial prisoners and resolve the issue.*

*In the case of **Sheela Barsev. State of Maharashtra**<sup>9</sup>, the Supreme Court took a bold step and treated a letter addressed to it by a journalist as a writ petition (public interest litigation). This letter discussed custodial violence against women prisoners. The Supreme Court directed the concerned authorities to take quick and effective action in this regard.*

## **b. Women and Children**

### **Women**

The Fundamental Rights, Duties and the Directive Principles drafted in the Indian Constitution emphasizes on women empowerment and protection. They can be clearly understood from the following Articles in the Constitution:

#### **Article 21**

The Article 21 states "No person except according to procedure established by law shall be deprived of his life or personal liberty. Fundamental right under Article 21 of the object personal liberty except according to procedure established by law is to prevent encroachment on and loss of life." - Anyone, including women, can seek protection under this.

#### **Article 14**

This Article guarantees Right to Equality, "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth."

#### **Article 19**

Article 19 gives all the citizens of India (including both women, men and third gender) the Right to Freedom, which guarantees freedom of speech and expression, freedom of practising trade and profession, freedom of movement etc among others.

#### **Article 32**

Article 32 gives the right to seek constitutional remedies through the Supreme Court of India for violation of any Fundamental Rights.

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<sup>9</sup>1983 AIR 378.

Alongside the above-mentioned constitutional safeguards, there are some other rights that women are entitled to under the law, such as:

### **Right to Equal Pay**

According to provisions under the Equal Remuneration Act, an individual cannot be discriminated on the basis of sex when it comes to salary or wages. Working women have the right to draw an equal salary.

### **Right to Dignity and Decency**

In situations where the accused is a woman, any medical examination procedure on her must be performed by or in the presence of another woman.

### **Right against harassment at work**

The enactment of the *Sexual Harassment of Women at Workplace Act* gives a woman the right to file a complaint against sexual harassment. The law empowers a sexually harassed woman employee to file a written complaint to an Internal Complaints Committee (ICC) at a branch office within a period of 3 months as per the Sexual Harassment Act.

### **Right to anonymity in case of Sexual Harassment**

Women victims of a sexual assault have a right to anonymity. To ensure that her privacy is protected, a sexually assaulted woman may record her statement alone before the district magistrate when the case is under trial, or in the presence of a female police officer.

### **Right to free legal aid**

All female rape victims have the right to free legal aid, under the Legal Services Authorities Act. It is mandatory for the Station House Officer (SHO) to inform the Legal Services Authority, who would then arrange for the lawyer.

### **Right not to be arrested at night**

A woman cannot be arrested after sunset and before sunrise (except in exceptional cases and on the orders of a first class magistrate). The law also states that, "The police can interrogate a woman at her residence in the presence of a woman constable and family members or friends". A woman is also not allowed to be detained at night at the police station without legal permission.

### **Right to register their complaint virtually**

In situations where a woman is incapable of physically going to a police station and file a complaint, there is a provision for virtual complaints where she can lodge a complaint via e-mail or write her complaint and send to a police station from a registered postal address. The SHO (Station House Officer) is subsequently required to send police to the complaint's place to record her.

### **Right against indecent representation**

The figure of a woman; her form or body or any part in such cannot be depicted in a manner which may be deemed indecent, or derogatory, or suggest denigrating women, or is likely to deprave, corrupt or injure the public morality or morals. In cases where this is violated, it is a punishable offence.

### **Right against being stalked**

Section 354D of the IPC and subsequent legal action can be taken against an offender who stalks a woman. Stalking has been defined by the law as, "To follow a woman and contact, or attempt to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or monitor the use by a woman of the internet, email or any other form of electronic communication."

### **The provision of zero FIR**

The ruling by Supreme Court mentions that a woman who is a victim can register her complaint at any police station under the Zero FIR ruling. The Zero FIR is an FIR that can be filed at any police station irrespective of the location where the incident occurred or a specific jurisdiction it comes under. Once the FIR has been filed, it can then be moved to the Police Station in whose jurisdiction the case falls under.

### **Children**

The Constitution of India along with the fundamental rights and directive principles provides for the primary responsibility of ensuring that all the needs of children are met and that their basic human rights are fully protected.

#### **A. The Fundamental Rights in the Constitution that directly relate to children are:**

Article 15(3), which requires the state to make special provisions for children.

Article 21-A provides free and compulsory education to all children of the age 6 – 14 years, in a manner that the State may by law determine. This Article 21A also envisages that children between the ages of 6 to 14 years have a fundamental right to education.

Article 23 prohibits trafficking of human beings including children.

Article 24 mandates that no child below 14 years can work in any hazardous occupation or industry.

**B. The Directive Principles of State Policy that directly relate to children are:**

Article 39(a) & (f) mandate that the state policies are directed towards securing the tender age of children.

Article 45 mandates that the State shall try to provide early childhood care and education for all children until they complete the age of six years.

Article 51-A states that it shall be the fundamental duty of the parent and guardian to provide opportunities for education to his child or ward between the age of six and fourteen.

**Need of Protection**

Every child has the right to protection, and this also includes children who are in different and difficult circumstances, have suffered violence, abuse and exploitation, and also those who are not in any of these adverse situations and yet need to be protected in order to ensure that they remain within the social security and protection net.

Following are the children who are more vulnerable in term of the harm/danger/risk to their right to survival/ development/ participation:

1. Homeless children (pavement dwellers, displaced/evicted, etc.)
2. Refugee and migrant children
3. Orphaned or abandoned and destitute children
4. Children whose parents cannot or are not able to take care of them
5. Street and working children
6. Child beggars

7. Victims of child marriage
8. Trafficked children
9. Child prostitutes
10. Children of prisoners
11. Children affected by conflict/civil strife
12. Children affected by disasters both natural and manmade
13. Children affected by substance abuse, HIV/AIDS and other terminal diseases
14. Disabled children
15. Children belonging to ethnic, religious minorities and other marginalized groups
16. The girl child
17. The unborn child
18. Children in conflict with law (those who commit crime)
19. Children who are victims of crime.

### c. Indigenous People

The Constitution of India does not define the term “Scheduled Tribes”. Instead, Article 366(25) refers to Scheduled Tribes as those communities who are scheduled in accordance with Article 342 of the Constitution. According to Article 342 of the Constitution, the Scheduled Tribes are the tribes or tribal communities or; part of or groups within these tribes and tribal communities that have been declared as such by the President of India through a public notification. In India, 461 ethnic groups are recognized as Scheduled Tribes, and these are considered to be India’s indigenous people. In mainland India, the Scheduled Tribes are usually referred to as *Adivasis*, which literally mean “indigenous people”.

The largest concentrations of indigenous people are found in the seven states of north-east India, and the so-called “central tribal belt”, stretching from Rajasthan to West Bengal. India has several laws and constitutional provisions, such as the Fifth Schedule for mainland India and the Sixth Schedule for certain areas of northeast India, which recognize indigenous peoples’ rights to land and self-governance.

The 5th Schedule and 6th Schedule to the Constitution of India provide stringent protection of lands belonging to the tribal people. In addition, at the State level, there are several laws prohibiting the sale or transfer of tribal land to non-tribal, and the restoration of alienated tribal lands to them.

Indian Constitution and Tribal Rights (Rights of Indigenous people) strongly acknowledges the idea of equality and justice both in the Social and Political fields for these people. Accordingly, it abolishes any discrimination to any class of person on the ground of religion, race or place of birth. The Indian Constitution specifically provided certain Articles in the Constitution for the upliftment of tribes and tribal communities and also provides for their protection from oppressions caused by the other people in the society. The protective rights granted by the Indian Constitution, 1950 to the tribal people can be classified under the following heads:

1. Educational and Cultural Rights (Articles 15(4), 29, 30(1), 46 and 350.)
2. Social Rights (Articles 17, 23 and 24)
3. Economic Rights (Articles 46, 244 and 275)
4. Political Rights (Articles 164(1), 243D, 332, 330, 334 and 371A.)
5. Employment Rights (Articles 15(4), 16(4) (4A), 335)

In addition to these rights, Articles 33A, 371A, 350A & B and the Fifth and Sixth Schedule of the Indian Constitution completely deals with the welfare of the tribal people.

To Protect Educational and Cultural Rights of Tribal - Article 15(4): It states that reservations should be provided to the socially and educationally backward classes (including Scheduled Tribes). It also empowers the State to make special laws for relaxation of minimum qualifying marks for admission for scheduled castes and scheduled tribes in educational institutions.

There are also some other laws and provisions which safeguard different rights and privileges of the members of the indigenous community, such as:

- The Right to conserve their language, script or culture
- The Right to protection from social injustice and all forms of exploitation

- Right to every person to submit a representation for the redress of grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the States as the case may be.
- It prohibits the system of bonded labour or forced labour, or the employment of children below the age of 14 years in factories and hazardous employment.
- It protects the economic rights of the Tribal community.
- Constitution empowers parliament to make special grants given to the States which undertakes schemes of development for the purpose of promoting the welfare of the scheduled tribes or raising the level of administration of the scheduled areas.

#### d. Disabled

##### **Meaning of Disability**

Disability is an impairment which may be cognitive, developmental, intellectual limitations, sensory or any combination of these. A disability substantially affects a person's normal day-to-day activities and may be either be present from birth or occur during a person's lifetime. The term may also be used to refer to physical or mental attributes that some institutions, particularly medicine, may view as needing to be treated. And it may refer to limitations imposed on people by the constraints of an able society.

##### **1. Prohibition of Discrimination**

Article 15 of the Indian Constitution deals with “prohibition of discrimination” on the grounds of religion, race, caste, sex or place of birth.

It goes as follows:

Article 15(2) says, no citizen shall on the grounds only of religion, race, caste, sex, place of birth or any of them, be subjected to any disabilities liability restriction or condition with regard to :

- (a) Access to shops, public restaurants, hotels and places of public entertainment; or
- (b) The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of the state funds dedicated to the use of the general public.

##### **Equity In Social, Economic And Cultural Rights**

Article 25 of the CRDP recognizes the “right of a person with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity , state parties shall ensure an inclusive education system at all levels and lifelong learning.”

### **Right To Work**

Article 27 of the CRDP “recognizes the right of persons with disabilities to work, on an equal basis with others; this includes the rights to opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities.”

### **Right To Liberty**

Article 14 of the CRPD instructs state parties to guarantee people with disabilities, the right to liberty and security of person.

### **Right To Freedom of Expression**

In article 21, the CRPD mandates to “take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion include the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communications of their choice.”

**Disability Certificate:** It is the basic document that a disabled person should possess in order to avail certain benefits and concessions. The State Medical Boards established under the State governments can issue a disability certificate to any person with more than 40% disability.

**Disability Pension:** People who are above 18 years of age, suffering with more than 80% disability and are living below the poverty line are entitled to the disability pension under the Indira Gandhi National Disability Pension Scheme.

**Employment:** In government jobs, 3% of the seats are reserved for persons with disabilities.

**Income Tax Concession:** Under sections 80DD and 80U of Income Tax Act, 1961, persons with disabilities are also entitled to certain income tax concessions.

### e. Senior Citizens

The Constitution of India safeguards the protection of the rights of the citizens of India, which include senior citizens as well. Under Part IV (Directive Principles of State Policy), provisions directs the State to make effective provisions for securing Right to work and public assistance in certain cases which includes old age. Article 46 directs the State to protect the economic interests of the weaker sections.

#### **Article 41- Right to work, to education and to public assistance in certain cases:**

The State shall, within the limits of economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

#### **Article 46 - Promotion of educational and economic interests and other weaker sections:**

The State shall promote with special care the educational and economic interests of the weaker sections of the people, and shall protect them from social injustice and all forms of exploitation.

However, these provisions are included in the Chapter IV i.e., Directive Principles of the Indian Constitution. The Directive Principles, as stated in Article 37, are not enforceable by any court of law. But Directive Principles impose positive obligations on the state. The Directive Principles have been declared to be fundamental in the governance of the country and the state has been placed under an obligation to use them in law making. The courts however cannot enforce a Directive Principle, as it does not create any justiciable right in favour of any one individual.

### f. Refugees

The Fundamental Rights guaranteed by Articles 14, 20, 21, 21A, 22, 23, 24, 25, 26, 27 and 28 are available to all persons whether citizens, foreigners or refugees. These are as follows:

- Equality before the law and equal protection of laws (Article 14).
- Protection in respect of conviction for offences (Article 20).
- Protection of life and personal liberty (Article 21).
- Right to elementary education (Article 21A).
- Protection against arrest and detention in certain cases (Article 22).
- Prohibition of traffic in human beings and forced labour (Article 23).

- Prohibition of employment of children in factories etc., (Article 24).
- Freedom of conscience and free profession, practice and propagation of religion (Article 25).
- Freedom to manage religious affairs (Article 26).
- Freedom from payment of taxes for promotion of any religion (Article 27).
- Freedom from attending religious instruction or worship in certain educational institutions (Article 28).

All the rights stated above are enforceable by the court, and the foreigner also has the Right under article 32 for enforcing them.

*In the judgment of “Ktaer Abbas Habib Al Qutaifiv. Union of India<sup>10</sup>” the High Court of Gujarat held that “the principle of non-refoulment prevents expulsion of a refugee where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. Its application protects life and liberty of a human being irrespective of his nationality. It is encompassed in Article 21 of the Constitution, so long as the presence of refugee is not prejudicial to the law and order and security of India.”[6]*

*In Dong Lian Kham &Anr. v. Union Of India &Anr.<sup>11</sup> On 21 December 2015 the petitioners who were the citizens of the Republic of the Union of Myanmar had been staying in India under long-term VISA as mandate refugees since 2009 and 2011 respectively. Both the petitioners hail from the Ethnic Chin Community which is a minority in Myanmar. Due to the fear of a retaliatory attack by the Military Junta in Myanmar, they fled from their country at different times and entered India. It was contended that they shouldn't be repatriated to their original state as they are not posing any threat to national security but if deported, they would be subjected to inhuman treatment by the Junta Government in their country.*

*The Delhi High Court ruled that, “Since the petitioners apprehend danger to their lives on return to their country, which fact finds support from the mere grant of refugee status to the petitioners by the UNHCR, it would only be in keeping with the golden traditions of this country in respecting international comity and according good treatment to refugees that the respondent FRRO hears the petitioners and consults UNHCR regarding the option of*

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<sup>10</sup>1999 CriLJ 919.

<sup>11</sup>Cri.M.A No. 12618/2015.

*deportation to a third country, and then decide regarding the deportation of the petitioners and seek approval thereafter, of the MHA (Foreigners Division).*

