

**HUMAN RIGHTS LAW AND PRACTICE**  
By Smt.SOWMYA.K, Asst Professor,VVLC

**VIDYAVARDHAKA LAW COLLEGE, MYSURU**



**HUMAN RIGHTS LAW AND PRACTICE**

**Prepared By**

**Smt.Sowmya.K**

**Asst.Professor**

**VVLC**

**COURSE-II: OPTIONAL-I:**

**HUMAN RIGHTS LAW AND PRACTICE**

**Course contents:**

**UNIT – I**

Jurisprudence of Human Rights; Nature, definition, origin and theories of human rights.

**UNIT – II**

Universal protection of human rights- United Nations and Human Rights- Universal Declaration of Human Rights, 1948; International Covenant on Civil and Political Rights, 1966; International Covenant Economic, Social and Cultural Rights, 1966.

**UNIT - III**

Regional Protection of Human rights- European system- Inter American System- African System

**UNIT – IV**

Protection of Human Rights at national level; Human rights and the Constitution; The Protection of Human rights Act, 1993.

**UNIT - V**

Human Rights and Vulnerable Groups: Rights of Women, Children, Disabled, Tribals, Aged and Minorities - National and International Legal Developments.

**Prescribed Books:**

Meron Theodor- Human Rights and International Law: Legal and Policy Issues, 2 Vols.  
S.K.Kapoor- Human rights Under International Law and Indian Law.

**Reference Books:**

Henkin Luis- Rights of Man Today.  
Singh Nagendra-Enforcement of Human Rights in Peace and War and the future of humanity.

**Relevant International Instruments.**

- *United Nations Charter, 1945.*
- *Universal Declaration of Human Rights, 1948.*
- *International Convention on the Elimination of All Forms of Racial Discrimination, 1948.*
- *International covenant on civil and Political Rights, 1966.*
- *International covenant on Economic and Cultural Rights, 1966.*
- *Convention on Elimination of All forms of Discrimination against Women, 1979.*
- *Convention on the Rights of the Child, 1989.*

**The objectives of the subject**

- ◎ To prepare for responsible citizenship with awareness of the relationship between Human Rights, democracy and development; to foster respect for international obligations for peace and development;
- ◎ To impart education on national and international regime of Human Rights;
- ◎ To sensitize students to human suffering and promotion of human life with dignity;
- ◎ To develop skills on human rights advocacy and
- ◎ To appreciate the relationship between rights and duties and to foster respect for tolerance and compassion for all living creatures.

**UNIT – I**

**Jurisprudence of Human Rights; Nature, definition, origin and theories of human rights.**

The philosophy of Human Rights is reflected in the following popular version “*Loka Samastha Sukhino Bhawanthu*” which means that the entire humanity be happy. Human Rights are rooted in the culture and values of every nation of the world. Human rights are the basic rights and freedoms that belong to every person in the world, from birth until death. They apply regardless of where you are from, what you believe or how you choose to live your life. They can never be taken away, although they can sometimes be restricted – for example if a person breaks the law, or in the interests of national security. These basic rights are based on shared values like dignity, fairness, equality, respect and independence. These values are defined and protected by law.

**DEFINITION ON HUMAN RIGHTS**

Generally we can say that “Human rights are defined as those rights, which every human being is entitled to enjoy by virtue of being a member of the human species.”

- ◎ **Richard Wasserstrom:** “one ought to be able to claim as entitlements (i.e. as Human Rights) those minimal things without which it is impossible to develop one’s capabilities and to have life as human being”. That is Human Rights are moral entitlements possessed only by persons.
- ◎ **Tiber Macham:** “Human Rights are universal and irrevocable elements in a scheme of justice. Accordingly, justice is the primary moral virtue within human society and all rights are fundamental to justice”.
- ◎ **Joel Feinberg:** “Human Rights as moral rights held equally by all human beings, unconditionally and unalterably. That is for Feinberg Human Rights are moral claims based on primary human needs”.

## **HUMAN RIGHTS LAW AND PRACTICE**

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- ⊙ **Kant Baier:** “Human Rights as, those moral rights whose moral ground and generating factors are the same, namely being human in some relevant sense”.
- ⊙ **Cranstan:** “Human Rights by definition is a universal moral right, something which all people, everywhere at all times ought to have, something of which no one may be deprived without grave affront to justice, something which is owing to every human being simply because one is human”.
- ⊙ **D.D. Basu:** “Human Rights as those minimal rights which every individual must have against the State or other public authority by virtue of his being a member of the human family, irrespective of any other consideration”
- ⊙ **The Universal Declaration of Human Rights (UDHR), 1948,** defines human rights as-  
“Rights derived from the inherent dignity of the human person.”
- ⊙ **Section 2 (1)(d) of the Protection of Human Rights Act,1993** defines "human rights" as-  
  
"Human Rights are the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India".
- ⊙ According to **Susan Moller Okin** “ Human Rights as a claim to something of crucial importance for human life”

### **OBJECTIVES OF HUMAN RIGHTS**

- ⊙ To protect human being
- ⊙ To Develop individual self respect
- ⊙ To value human dignity
- ⊙ To promote respect, understanding and appreciation of diversity
- ⊙ To promote democracy, social justice and friendship among people and nations

**SOURCES OF HUMAN RIGHTS**

1. Universal declaration of Human Rights
2. International treaties and covenants
3. International Customs
4. Judicial Decisions
5. Official Documents

**KINDS OF HUMAN RIGHTS**

1. **Civil and Political Rights-** Right to life, liberty, right to privacy, right to freedom from torture and inhuman treatment
2. **Economic and Social Rights-** Right to food, clothing, housing, adequate standard of living and freedom from hunger..etc.
3. **Collective Rights-** Right to Self Determination, right to peace and development.

**CHARACTERISTICS AND NATURE OF HUMAN RIGHTS**

- 1) Human Rights are Inalienable
- 2) Human Rights are Essential and Necessary
- 3) Human Rights are in connection with human dignity
- 4) Human Rights are Irrevocable
- 5) Human Rights are Necessary for the fulfillment of purpose of life
- 6) Human Rights are Universal
- 7) Human Rights are never absolute

- 8) Human Rights are Dynamic
- 9) Rights as limits to state power

### **HISTORY OF HUMAN RIGHTS**

The belief that everyone, by virtue of her or his humanity, is entitled to certain human rights is fairly new. Its roots, however, lie in earlier tradition and documents of many cultures; it took the catalyst of **World War II** to propel human rights onto the global stage and into the global conscience.

Throughout much of history, people acquired rights and responsibilities through their membership in a group – a family, indigenous nation, religion, class, community, or state. Most societies have had traditions similar to the "golden rule" of "Do unto others as you would have them do unto you."

The Hindu Vedas, the Babylonian Code of Hammurabi, the Bible, the Quran (Koran), and the Analects of Confucius are five of the oldest written sources which address questions of people's duties, rights, and responsibilities. In addition, the Inca and Aztec codes of conduct and justice and an Iroquois Constitution were Native American sources that existed well before the 18th century. In fact, all societies, whether in oral or written tradition, have had systems of propriety and justice as well as ways of tending to the health and welfare of their members.

- **Precursors of 20th Century Human Rights Documents**

Documents asserting individual rights, such the Magna Carta (1215), the English Bill of Rights (1689), the French Declaration on the Rights of Man and Citizen (1789), and the US Constitution and Bill of Rights (1791) are the written precursors to many of today's human rights documents. Yet many of these documents, when originally translated into policy, excluded women, people of color, and members of certain social, religious, economic, and political groups. Nevertheless, oppressed people throughout the world have drawn on the principles these documents express to support revolutions that assert the right to self-determination.

Contemporary international human rights law and the establishment of the United Nations (UN) have important historical antecedents. Efforts in the 19th century to prohibit the slave trade and to limit the horrors of war are prime examples. In 1919, countries established the International Labor Organization (ILO) to oversee treaties protecting workers with respect to their rights, including their health and safety. Concern over the protection of certain minority groups was raised by the League of Nations at the end of the First World War. However, this organization for international peace and cooperation, created by the victorious European allies, never achieved its goals. The League floundered because the United States refused to join and because the League failed to prevent Japan's invasion of China and Manchuria (1931) and Italy's attack on Ethiopia (1935). It finally died with the onset of the Second World War (1939).

- **The Birth of the United Nations**

The idea of human rights emerged stronger after World War II. The extermination by Nazi Germany of over six million Jews, Sinti and Romani (gypsies), homosexuals, and persons with disabilities horrified the world. Trials were held in Nuremberg and Tokyo after World War II, and officials from the defeated countries were punished for committing war crimes, "crimes against peace," and "crimes against humanity."

Governments then committed themselves to establishing the United Nations, with the primary goal of bolstering international peace and preventing conflict. People wanted to ensure that never again would anyone be unjustly denied life, freedom, food, shelter, and nationality. The essence of these emerging human rights principles was captured in President Franklin Delano Roosevelt's 1941 State of the Union Address when he spoke of a world founded on four essential freedoms: freedom of speech and religion and freedom from want and fear (See Using Human Rights Here & Now). The calls came from across the globe for human rights standards to protect citizens from abuses by their governments, standards against which nations could be held accountable for the treatment of those living within their borders. These voices played a critical role in the San Francisco meeting that drafted the United Nations Charter in 1945.

- **The Universal Declaration of Human Rights**

Member states of the United Nations pledged to promote respect for the human rights of all. To advance this goal, the UN established a Commission on Human Rights and charged it



with the task of drafting a document spelling out the meaning of the fundamental rights and freedoms proclaimed in the Charter. The Commission, guided by Eleanor Roosevelt's forceful leadership, captured the world's attention.

On December 10, 1948, the Universal Declaration of Human Rights (UDHR) was adopted by the 56 members of the United Nations. The vote was unanimous, although eight nations chose to abstain.

The UDHR, commonly referred to as the international Magna Carta, extended the revolution in international law ushered in by the United Nations Charter – namely, that how a government treats its own citizens is now a matter of legitimate international concern, and not simply a domestic issue. It claims that all rights are interdependent and indivisible. Its Preamble eloquently asserts that:

Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world.

The influence of the UDHR has been substantial. Its principles have been incorporated into the constitutions of most of the more than 185 nations now in the UN. Although a declaration is not a legally binding document, the Universal Declaration has achieved the status of customary international law because people regard it "as a common standard of achievement for all people and all nations."

- **The Human Rights Covenants**

With the goal of establishing mechanisms for enforcing the UDHR, the UN Commission on Human Rights proceeded to draft two treaties: the International Covenant on Civil and Political Rights (ICCPR) and its optional Protocol and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Together with the Universal Declaration, they are commonly referred to as the International Bill of Human Rights. The ICCPR focuses on such issues as the right to life, freedom of speech, religion, and voting. The ICESCR focuses on such issues as food, education, health, and shelter. Both covenants trumpet the extension of rights to all persons and prohibit discrimination.

As of 1997, over 130 nations have ratified these covenants. The United States, however, has ratified only the ICCPR, and even that with many reservations, or formal exceptions, to its full compliance. (See From Concept to Convention: How Human Rights Law Evolves).

- **Subsequent Human Rights Documents**

In addition to the covenants in the International Bill of Human Rights, the United Nations has adopted more than 20 principal treaties further elaborating human rights. These include conventions to prevent and prohibit specific abuses like torture and genocide and to protect especially vulnerable populations, such as refugees (Convention Relating to the Status of Refugees, 1951), women (Convention on the Elimination of All Forms of Discrimination against Women, 1979), and children (Convention on the Rights of the Child, 1989). As of 1997 the United States has ratified only these conventions:

1. The Convention on the Elimination of All Forms of Racial Discrimination
2. The Convention on the Prevention and Punishment of the Crime of Genocide
3. The Convention on the Political Rights of Women
4. The Slavery Convention of 1926

- **The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

In Europe, the Americas, and Africa, regional documents for the protection and promotion of human rights extend the International Bill of Human Rights. For example, African states have created their own Charter of Human and People's Rights (1981), and Muslim states have created the Cairo Declaration on Human Rights in Islam (1990). The dramatic changes in Eastern Europe, Africa, and Latin America since 1989 have powerfully demonstrated a surge in demand for respect of human rights. Popular movements in China, Korea, and other Asian nations reveal a similar commitment to these principles.

- **The Role of Nongovernmental Organizations**

Globally the champions of human rights have most often been citizens, not government officials. In particular, nongovernmental organizations (NGOs) have played a cardinal role in focusing the international community on human rights issues. For example, NGO activities

surrounding the 1995 United Nations Fourth World Conference on Women in Beijing, China, drew unprecedented attention to serious violations of the human rights of women. NGOs such as Amnesty International, the Antislavery Society, the International Commission of Jurists, the International Working Group on Indigenous Affairs, Human Rights Watch, Minnesota Advocates for Human Rights, and Survivors International monitor the actions of governments and pressure them to act according to human rights principles.

Government officials who understand the human rights framework can also effect far reaching change for freedom. Many United States Presidents such as Abraham Lincoln, Franklin Roosevelt, Lyndon B. Johnson, and Jimmy Carter have taken strong stands for human rights. In other countries leaders like Nelson Mandela and Václav Havel have brought about great changes under the banner of human rights.

## **THEORIES OF HUMAN RIGHTS**

### **1. The Theory of Natural Rights**

This is the earliest theory of rights. Its origin can be traced back to the ancient Greeks. According to this theory, rights belong to the man by nature and thus are self-evident truths. They are considered as inborn absolute, pre-civil and according to some, they are even pre-social. They can be asserted anywhere and everywhere. Thomas Paine, Grotius, Tom Paine and John Locke, to name a few, are the main exponents of this theory. These theorists derived their ideas about right from God, reason or a prior moral assumption. To them, every individual possesses a unique identity and is expected to account for his actions as per his own conscience.

### **2. The Legal Theory of Rights**

This theory is a reaction against the theory of natural rights. Advocates of this theory argue that the ideas of natural law and natural rights are an abstract and ridiculous phenomenon. Hence, the existence and enjoyment of the fundamental rights of an individual could be better maintained and practiced by the state rather than by the individual himself. Thomas Hobbes, John Austin, and Jeremy Bentham are the main profunder of this theory

### **3. The Anti-utilitarian Theory of Rights**

There are yet other theorists who strongly argue that the priority of the well-being of the majority as stated by the utilitarian is not the prime objective of state. Amongst them Dworkin, Nozic and John Rawls are the leading ones. They hold the view that the welfare of the majority might lead to detrimental consequences as far as the welfare of a particular person or a group of persons is concerned. So there has to be proper reconciliation between the well being of the majority and individual well-being for the better enjoyment of social and individual rights. Today, the demand for right to development on international foray is perhaps the manifestation of this theory.

#### **4. The Legal Realist Theory of Rights :**

The Legal Realist Theory of Rights is of recent origin. It mainly originated in U.S.A. with the expansion of regulatory activities followed by president Roosevelt's "New Deal Policy." A group of jurists such as Karl Llewellyn, Roscoe Pound and others discussed the point as to what law does, rather than what law is, in a highly complex and industrialized society. These theorists did not propound a common theory of rights. Rather, they considered rights as the end product of both the interaction of prevailing moral values of the society as well as the broad-based international sharing of values. So human rights, as they argue, are nothing but a manifestation of an on-going process rather than a theoretical debate.

#### **5. The Marxist Theory of Rights**

Rights, according to Marx are simply concept and a product of bourgeois capitalist society primarily designed to maintain and reinforce the predominant position of the ruling class. This theory of rights is very simple and to a certain extent convincing too. Marx regards the state as a coercive agency to uphold the particular type of social organization and law is a tool of the state that perpetuates and safeguards the interest of the dominant group in the society. He firmly believes that rights can exist and flourish only in a classless society where all are equal and no one is an exploiter.



## **UNIT – II**

**Universal protection of human rights- United Nations and Human Rights- Universal Declaration of Human Rights, 1948; International Covenant on Civil and Political Rights, 1966; International Covenant Economic, Social and Cultural Rights, 1966.**

### **INTRODUCTION**

The Universal Declaration of Human Rights (UDHR) was proclaimed and adopted by the United Nations General Assembly (UNGA) on 10 December 1948. It declares that Human Rights are Universal to be enjoyed by all people, no matter who they are or where they live.

Its adoption was a milestone in the history of the development of international human rights law and because of its profound significance it is also termed as ‘Magna Carta’ of all mankind. The UDHR represents the earliest international agreement on the content of ‘human rights’, the term that finds reference at several places in the UN Charter but is nowhere elaborated in the Charter. It catalogues basic human rights and fundamental freedoms that all human beings are entitled and should enjoy. Together with the International Covenant on Civil and Political Rights (ICCPR) and its two Optional Protocols, and International Covenant on Economic, Social and Cultural Rights (ICESCR), the UDHR form the International Bill of Human Rights.

### **Pre-UN Charter Development**

The Genesis of the UDHR is closely linked with the demand, made after the Second World War, to have an international bill of human rights. Massive abuse of human life and dignity during and immediately preceding the Second World War was main reason behind this demand. The need was felt for a formal and detailed international measure of protection for human rights.

### **Post-UN Charter Development**

As mandated under the UN Charter, the ECOSOC, at its **1st session, established a Commission on Human Rights** in nuclear form (nuclear Commission) on 16 February 1946 by Resolution

1/5.The ECOSOC decided that the work of the nuclear Commission should primarily be devoted to submitting proposals, recommendations and reports for an international bill of human rights.

**PREAMBLE OF UNIVERSAL DECLARATION OF HUMAN RIGHTS**

“Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

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

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

**Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS** as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of

society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.”

### **STRUCTURE AND CONTENT OF UDHR**

The UDHR consists of a Preamble and 30 Articles, setting forth the basic human rights and fundamental freedoms to which all men and women, everywhere in the world, are entitled, without any discrimination.

The rights specified therein encompass both civil and political rights and economic, social and cultural rights. Proclaimed by the General Assembly as a ‘common standard of achievement for all peoples and all nations’, the UDHR is addressed to every individual and every organ of the society that they shall strive to promote respect for and to secure the universal and effective recognition and observance of the rights and freedoms enumerated in it.

Based on the content and the nature of the rights enumerated therein, the 30 Articles of the UDHR can be broadly classified into four categories.

#### **1. Articles general in nature**

Articles 1 and 2 of the UDHR come under this category. Both the Articles provide the philosophical assumptions upon which UDHR is founded.

**Article 1** proclaims that ‘All human beings are born free and are equal in dignity and rights’. It emphasizes that humans are endowed with reason and conscience and they should act towards each other in a spirit of brotherhood.

**Article 2** states that everyone is entitled to all the rights and freedoms set forth in the UDHR, without distinction of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. It further states that ‘no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which

a person belongs'. In brief, Article 2 incorporates the principles of equality and non-discrimination and states in a negative way what Article 1 states in positive terms.

## **2. Articles proclaiming civil and political rights**

This category comprises the largest number of Articles. Articles 3 to 21 of the UDHR set forth the civil and political rights to which everyone is entitled. It includes Right to life, outlawing of Slavery or torture, equality before law, the rights to a fair trial[Sec3-11, freedom of movement, the rights to nationality, right to marry and found a family[Sec12-17], Spiritual and religious rights of individuals, right to peaceful assembly and association, right to vote[Sec 18-21]

## **3.Articles proclaiming economic, social and cultural rights**

[Articles 22 to 27 of the UDHR form part of this category like right to work, right to education, right to rest and leisure, right to a decent standard of living ]

## **4. Concluding articles**

[Articles 28 to 30 of the UDHR, which constitute the fourth and last category, provide a larger framework in which all human rights are to be universally enjoyed.]

## **INFLUENCE OF THE UDHR**

The UDHR has exercised a profound influence, both internationally and nationally, since its adoption. The UDHR provided the framework, upon which the two international human rights covenants, i.e., ICCPR and ICESCR, were constructed and adopted by the UNGA on 16 December 1966. It has been the source of inspiration and has been the basis for the UN in making advances in standard setting as contained in number of international human rights treaties. The core international human rights instruments make reference to the UDHR. It has inspired a number of declarations and international conventions concluded under the auspices of the UN and of the specialized agencies. The UDHR as a whole or its different articles have been frequently quoted in the resolutions of the UNGA as justification for actions taken by the UN.



**INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS,**

**1966**

The ICCPR is a key international human rights treaty, providing a range of protections for civil and political rights. The ICCPR, together with the Universal Declaration of Human Rights and the International Covenant on Economic Social and Cultural Rights, are considered the International Bill of Human Rights.

**PURPOSE:**

The ICCPR recognizes the inherent dignity of each individual and undertakes to promote conditions within states to allow the enjoyment of civil and political rights. Countries that have ratified the Covenant are obligated to protect and preserve basic human right and compelled to take administrative, judicial, and legislative measures in order to protect the rights enshrined in the treaty and to provide an effective remedy.”

There are currently 74 signatories and 168 parties to the ICCPR.

**STRUCTURE OF ICCPR**

The covenant contains six parts with 53 articles.

**PART 1**

-contains Article 1 which recognizes the right of all peoples to self-determination, including the right to “freely determine their political status”, pursues their economic, social and cultural goals, and manage and dispose of their own resources. It recognizes a negative right of a 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( A.2 TO 5)**

- The unifying themes and values of the ICCPR are found in Articles 2 and 3 and are based on the notion of **non-discrimination**. Article 2 ensures that rights recognized in the ICCPR will be respected and be available to everyone within the territory of those states who

have ratified the Covenant (State Party) and imposes a duty on the State party to take all necessary steps to implement these rights.

Article 3 ensures the equal right of both men and women to the enjoyment of all civil and political rights set out in the ICCPR.

- Article 4 of ICCPR(Limitation on rights) allows for certain circumstances for States Parties to derogate from their responsibilities under the Covenant, such as during times of public emergencies. However, State Parties may not derogate from Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18.

### **PART 3: RIGHTS (A.6-27)**

#### **Rights to physical integrity**

Article 6 – Right to life.

Article 7 – Freedom from torture.

Article 8 – Right to not be enslaved.

#### **Liberty and security of person**

Article 9 – Right to liberty and security of the person.

Article 10 – Rights of detainees.

Article 11 – Right to not be imprisoned merely on the ground of inability to fulfill a contractual obligation.

#### **Procedural fairness and rights of the accused**

Article 14 – Equality before the courts and tribunals. Right to a fair trial.

Article 15 – No one can be guilty of an act of a criminal offence which did not constitute a criminal offence.

Article 16 – Right to recognition as a person before the law.

#### **Individual liberties**

Article 12 – Freedom of movement and choice of residence for lawful residents.

Article 13 – Rights of aliens.

Article 17 – Freedom from arbitrary or unlawful interference.

Article 18 – Right to freedom of thought, conscience and religion.

Article 19 – Right to hold opinions without interference.

Article 20 – Propaganda for war shall be prohibited by law.

Article 21 – Right of peaceful assembly.

Article 22 – Right to freedom of association with others.

Article 23 – Right to marry.

Article 24 – Children’s rights

Article 25 – Right to political participation.

Article 26 – Equality before the law.

Article 27 – Minority protection.

**PART 4: HUMAN RIGHTS COMMITTEE (A.28-45)**

This part governs the establishment and operation of the Human Rights Committee and the reporting and monitoring of the Covenant.

The Human Rights Committee was established to monitor the implementation of the ICCPR. It is composed of 18 independent experts with recognized competence in the field of human rights. Committee members are elected for a term of four years and must be from countries that have ratified the Covenant. As of January 2020, members of the Committee come from: Paraguay, Tunisia, Latvia, Guyana, Egypt, Japan, South Africa, Mauritania, Canada, Uganda, Greece, Chile, Slovenia, Portugal, Israel, France, Germany, Albania.

**Functions Of The Human Rights Committee**

The Human Rights Committee meets three times a year for sessions lasting three weeks at the United Nations Office in Geneva, Switzerland. Countries that have ratified the ICCPR are obliged to report to the Committee every four years. Three to five countries are invited to present their reports at each session which is open to the public and is usually live streamed. The Committee examines the report and addresses its concerns and recommendations to the country in the form of "concluding observations." The Committee also publishes general comments which are its interpretation of the content of the treaty’s human rights provisions

**PART 5: (ARTICLES 46 – 47)**

This part clarifies that the Covenant shall not be interpreted 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: (A48-53)**

It governs ratification, entry into force, and amendment of the Covenant.

<b>RIGHTS</b>	<b>ICCPR</b>	<b>CONSTITUTION OF INDIA</b>
Right to life and personal liberty	Art. 6(1) & 9(1)	Art. 21
Prohibition of traffic in human beings and forced labour	Art. 8(3)	Art. 23
Protection against arrest detention in certain Cases	Art. 9(2) & (3) & (4)	Art. 22
Right to movement	Art. 12(1)	Art. 19(1)(d)
Right to equality	Art. 14(1)	Art. 14
Protection against self-incrimination	Art. 14(3)(g)	Art. 20(3)
Protection against double-jeopardy	Art. 14(7)	Art. 20(2)
Protection against ex-post facto law	Art.15(1)	Art. 20(1)
Freedom of conscience and free profession, practice and propagation of religion	Art.18(1)	Art 25
Right of expression of thoughts and feelings using spoken language.	Art. 19(1) & (2)	Art. 19(1)(a)
Right to assemble peaceably and without arms	Art. 21 Art.	19(1)(b)
Right to form associations or unions	Art. 22(1)	Art. 19(1)(c)
Right to equality of opportunity in matters of public employment	Art. 25(c)	Art. 16(1)

Government is prohibited from making Law which discrimination of its citizens.	Art. 26	Art. 14 & 15(1)
Protection of interests of minorities and right of minorities to establish and administer educational institutions	Art. 27	Art. 29 & 30

**INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

**PURPOSE:**

The preamble of the covenant states that in order to enjoy freedom from fear and want conditions whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights have to be created. Considering that justice, freedom and peace in the world can be achieved only if inherent dignity of human beings are guaranteed, the covenant was adopted.

**STRUCTURE:**

The covenant consists of 31 articles that are divided into 5 parts and an Optional Protocol.

**PART I (Article 1)**

**Article 1** of the ICESCR states that all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” This provision is identical to Article 1 of the International Covenant on Civil and Political Rights.

**PART II (Article 2-5)**

**Article 2:**

Each State Party undertakes to take steps to the maximum of its available resources to achieve progressively the full realization of the rights in this treaty. Everyone is entitled to the same rights without discrimination of any kind.

**Article 4**

Limitations may be placed on these rights only if compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

**PART III (Article 6- 15)**

**Economic Rights**

Economic rights protected by the ICESCR include the rights to work, to receive a fair wage, safe working conditions, and to form and join trade unions.

**Article 6**

Everyone has the right to work, including the right to gain one's living at work that is freely chosen and accepted..

**Article 7**

Everyone has the right to just conditions of work; fair wages ensuring a decent living for himself and his family; equal pay for equal work; safe and healthy working conditions; equal opportunity for everyone to be promoted; rest and leisure.

**Article 8**

Everyone has the right to form and join trade unions, the right to strike.

**Social Rights**

**Article 9**

Everyone has the right to social security, including social insurance.

**Article 10**

Protection and assistance should be accorded to the family. Marriage must be entered into with the free consent of both spouses. Special protection should be provided to mothers. Special measures should be taken on behalf of children, without discrimination. Children and youth should be protected from economic exploitation. Their employment in dangerous or harmful work should be prohibited. There should be age limits below which child labor should be prohibited.

**Article 11**

Everyone has the right to an adequate standard of living for himself and his family, including adequate food, clothing and housing. Everyone has the right to be free from hunger.

**Article 12**

Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health.

**Cultural Rights**

Cultural rights protected by the ICESCR include the rights to education, to take part in cultural life, to enjoy the benefits of scientific progress, and copyright and trademark protections.

**Article 13**

Everyone has the right to education. Primary education should be compulsory and free to all.

**Article 14**

Those States where compulsory, free primary education is not available to all should work out a plan to provide such education.

**Article 15**

Everyone has the right to take part in cultural life; enjoy the benefits of scientific progress and to protection of material and moral interests.

- i) The Right to Take Part in Cultural Life (Article 15(1)(a))
- ii) The Right to Enjoy the Benefits of Scientific Progress (Article 15(1)(b))
- iii) The Right to Benefit from the Protection of Moral and Material Interests Resulting from Scientific, Literary and Artistic Productions (Article 15(1)(c))

**PART IV (Articles 16–25)**

**Monitoring & Enforcement**

The following Special Procedures monitor and promote economic, social and cultural rights:

## **HUMAN RIGHTS LAW AND PRACTICE**

**By Smt.SOWMYA.K, Asst Professor,VVLC**

1. Independent Expert on the effects of foreign debt and other related international financial obligations of states on the full enjoyment of all human rights, particularly economic, social and cultural rights
2. Independent Expert on human rights and the environment
3. Intergovernmental Working Group on the right to development
4. Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context
5. Special Rapporteur on extreme poverty and human rights
6. Special Rapporteur in the field of cultural rights
7. Special Rapporteur on the human right to safe drinking water and sanitation
8. Special Rapporteur on the right to education
9. Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health
10. Special Rapporteur on the right to food
11. Special Rapporteur on the rights of indigenous people.

### **PART V(Articles 26–31)**

It governs ratification, entry into force, and amendment of the Covenant.





**UNIT - III**

**Regional Protection of Human rights- European system- Inter American System- African System**

**EUROPEAN SYSTEM**



**EUROPEAN SYSTEM**

Established in 1949 by a group of 10 states to promote democracy, the rule of law, and greater unity among the nations of Western Europe. Until 1990 confined to Western Europe; today: 47 member states'

- ⊙ United Kingdom, France, Belgium, the Netherlands and Luxembourg invited Ireland, Italy, Denmark, Norway and Sweden to attend the Conference on the establishment of a Council of Europe, held at St James's Palace in London (3 - 5 May 1949) It has its permanent seat in Strasbourg[France].
- ⊙ 1949 Greece and Turkey
- ⊙ 1950 Iceland

- ⊙ 1951 the Federal Republic of Germany
- ⊙ 1996 The Republic of Croatia got the membership.

The oldest and most well-developed regional system for the protection of human rights is the European system. The Council of Europe (CoE) is a regional inter-governmental organisation which promotes human rights, democracy and the rule of law in its member states. The organisation is separate from the European Union, which is a politico-economic union. The Council of Europe established the European Convention on Human Rights and Fundamental Freedoms, which entered into force in 1953, and is the main European human rights convention. It is popularly known as “European Convention on Human Rights” or simply “ECHR”.

The said Convention was drafted by the Council of Europe after the Second World War and was designed to protect individuals fundamental rights and freedoms. Accordingly, it deals with a lot many civil and political rights, and is in that sense similar to the ICCPR. It must also be pointed out that several additional Protocols have added to its substantive and procedural provisions.

The main objectives of **the Council of Europe** (one of the most efficient and competent inter-governmental organizations in Europe) are:

- ⊙ the promotion of European Unity by proposing and encouraging common European action in economic, social, legal and administrative matters;
- ⊙ **the protection of human rights, fundamental freedoms and pluralist democracies;**
- ⊙ the development of a European cultural identity.

### **EUROPEAN CONVENTION ON HUMAN RIGHTS**

The ECHR consists of three parts.

1. The main rights and freedoms are contained in the first part, which consists of Articles 1 to 18.
2. The second part consists of Articles 19 to 51, which sets up the European Court of Human Rights and its rules of operation.

3. Finally, the third part gives out some miscellaneous provisions dealing with rules overall and not falling within the ambit of either part one or part two.

ECHR is the greatest achievement of the Council of Europe. But among important conventions prepared by the Council of Europe which complement and extend the protection of human rights in Europe are:

1. The European Social Charter;
2. The Framework Convention for the Protection of National Minorities;
3. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.
4. The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (the Convention on Human Rights and Biomedicine)

The ECHR was opened for signatures on 4 November 1950 and entered into force in September 1953. 47 European states are contracting states to the ECHR. The ECHR, together with its Protocols and procedures for enforcement, constitutes the first and the most efficient regional arrangement for the protection of human rights. Rights protected under the Convention are both civil and political rights.

**Substantive Rights Protected Under The ECHR**

- ⊙ Right to life;
- ⊙ Prohibition of Torture;
- ⊙ Prohibition of Slavery and Forced Labour;
- ⊙ Right to a Fair Trial;
- ⊙ Right to No Punishment without Law;
- ⊙ Right to Respect for Private and Family Life;

- ⊙ Freedom of Thought, Conscience and Religion;
- ⊙ Freedom of Expression;
- ⊙ Freedom of Assembly and Association;
- ⊙ Right to Marry;
- ⊙ Right to an Effective Remedy;
- ⊙ Prohibition of Discrimination.

**THE EUROPEAN COURT OF HUMAN RIGHTS [ARTICLE-21]**

The number of judges is the same as the number of contracting states (47) The criteria for the office of judges are: [1-3-7-17]

- ⊙ Each judge is elected by majority vote in the Parliamentary Assembly of the Council of Europe from among three candidates nominated by each contracting state.
- ⊙ A judge sits in his individual capacity and does not represent any state;
- ⊙ He or she must hold a high moral standing;
- ⊙ Have relevant qualifications in his/her country for holding position of high office;
- ⊙ Must act with total impartiality and independence .
- ⊙ Judges are nominated by a contracting state
- ⊙ There are two categories of applicants under the ECHR: contracting states and individuals

**Procedure**

The conditions of admissibility:

- ⊙ There must be a prima facie violation of one or more of the provisions of the ECHR;
- ⊙ The available domestic remedies must be exhausted;

- ⊙ The application must be lodged within six months of the final decision of the highest domestic court or authority.

**Procedure on the Merits**

- a) Chambers decide cases by a majority vote
- b) The judges are allowed to give separate dissenting or concurrent judgements
- c) Within three months of the judgment of a Chamber, any party may ask for a referral to a Grand Chamber – it is possible if the case raises a serious question affecting the interpretation or application of the Convention or the protocols or a serious issue of general importance
- d) **A final judgment is binding** on the respondent state concerned and its execution is supervised by the Committee of Ministers

**An application will be rejected if:**

- ✓ It is anonymous;
- ✓ If it is similar to a case already been submitted to another procedure or international investigation or settlement;
- ✓ If it constitutes an abuse of the right complaint (for example it is brought for political propaganda purposes);
- ✓ If it concerns matters falling outside the scope of ECHR.

**Judgment**

- ⊙ **A judgement delivered by a chamber** becomes final after the expiry of a three-month period during which the applicant or Government may request the referral of the case to the Grand Chamber in **an appeal procedure**.
- ⊙ The judgment of the Grand Chamber is final.

**RESPONSES OF STATES TO FINDINGS OF VIOLATIONS**

- ▶ In Austria, where the Convention has the rank of constitutional law, the Code of Criminal Procedures was modified as well as the system of legal aid;
- ▶ Belgium: amendments to the Penal Code, its vagrancy legislation, and its Civil Code to ensure equal rights to legitimate and illegitimate children;
- ▶ Germany: the Code of Criminal Procedure concerning pre-trial detention was amended
- ▶ Ireland: court proceedings simplified and civil legal aid and advice schemes set up

**INTERSTATE CASES**

Any contracting state to the European Convention on Human Rights can sue another contracting state in the court for alleged breaches of the convention, although in practice this is very rare. As of 2019, only four interstate cases have been decided by the court:

- ◎ *Ireland v. United Kingdom* (no. 5310/71), judgement of 18 January 1978 on inhuman and degrading treatment in Northern Ireland (art. 3)

**Ongoing as of 2020:**

- ◎ *The Netherlands v Russia* (filed 2020), relating to Malaysia Airlines Flight 17 disaster
- ◎ *Liechtenstein v Czech Republic* (filed 2020), property dispute related to Beneš decrees

**Brogan v. United Kingdom**

- ▶ The Prevention of Terrorism Act (1984) authorized arrest without warrant of a person who is suspected to be involved with “acts of terrorism” in Northern Ireland; provided for detention after arrest for not over 48 hours, except if the Secretary of State extends this period to not more than 5 days
- ▶ **The applicants:** neither charged nor brought before a court during their detention; damages: (administrative detention for the purpose of gathering information)

- ▶ **The Court:** the need for a proper balance between the defence of the institutions of democracy and the protection of human rights
- ▶ **Conclusion:** detention of suspected terrorists for 6 days and 14 hours and 4 days and 6 hours respectively was justified by the public emergency.

**STTK ry and Tehyry v. Finland (2001),**

The Committee found that health sector Workers in Finland had been exposed to radiation at the workplace, and held that this violated Article 24, which requires states parties “to eliminate risks in inherently dangerous or unhealthy occupations.

**THE EUROPEAN UNION**

In the EU the protection of human rights has acquired two dimensions:

1. First many issues relating to human rights arise under the EU internal and external competences;
2. The second dimension is that human rights are envisaged in a broad context in respect of all EU policies as being part of the general principles of EC law

**Article 2** of the Treaty on European Union:

“The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail. ,,

**Article 6**

“1. The Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.

The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.

The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.

2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.

3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law."

### **The European Charter of Fundamental Rights**

- ⦿ First the document adopted by the Intergovernmental Conference in Nice (December 2000) as the declaration - non-binding proclamation, after the Treaty of Lisbon (December 2009) it should be treated as a primary law of the EU
- ⦿ The Charter contains 50 articles.
- ⦿ Its main purpose is to make fundamental rights and freedoms more visible more explicit and more familiar to EU citizens

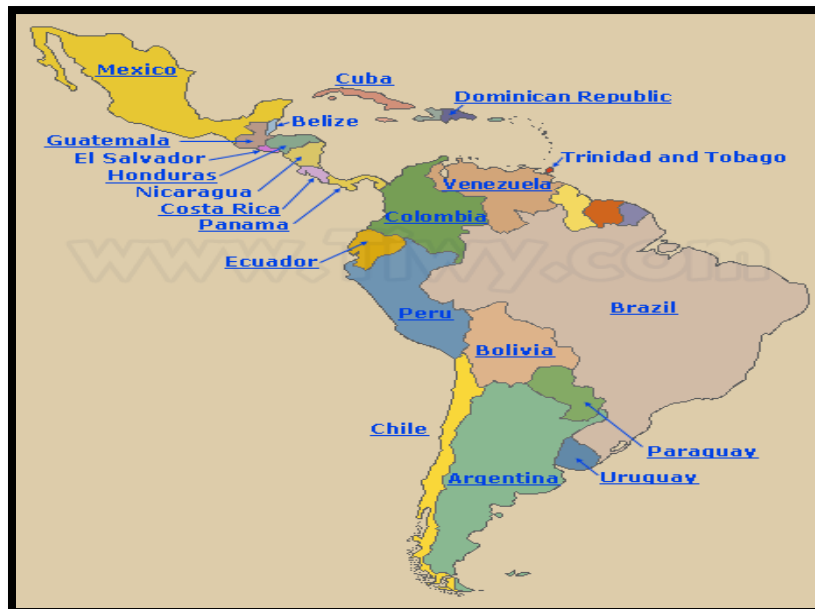




**INTER AMERICAN SYSTEM**



**NORTH AMERICA**



**SOUTH AMERICA**

## **INTRODUCTION**

The American Convention on Human Rights, also known as the Pact of San José. In the Americas, the regional human rights arrangements exist within the intergovernmental organisation known as the Organisation of American States (OAS). The OAS was established in order to achieve among its member states ñ as stipulated in Article 1 of the Charter in an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence. Two organs of the OAS that are central to the enforcement of its human rights regime are:

- ⦿ the Inter-American Commission on Human Rights (IACHR) and
- ⦿ the specialized organization known as Inter-American Court of Human Rights (IACHR).

The OAS Charter established the IACHR way back in 1959, whereas the IACHR was established much later in 1979, after the American Convention on Human Rights entered into force.

### **Parties to the convention**

Argentina, Barbados, Bolivia, Brasil, Chile, Colombia, Costa Rica, Dominica, Ecuador, El Salvador, Granada, Guatemala, Haití, Honduras, Jamaica, México, Nicaragua, Panamá, Paraguay, Perú, República Dominicana, Surinam y Uruguay.

## **REGIONAL HUMAN RIGHTS SYSTEM IN AMERICA**

### **AMERICAN CONVENTION ON HUMAN RIGHTS**

The American Convention was adopted after the Inter-American Specialized Conference on Human Rights, on November 22, 1969 in the city of San José, Costa Rica, and entered into force on July 18, 1978, in accordance with its Article 74.2. The American Convention on Human Rights (ACHR) is divided into three parts.

- ⦿ Part I deals with all the rights that are protected under the Convention and all that the State is obligated to do.

- ⊙ Part II lists out provisions that govern the setting up and functioning of both IACHR and OAS.
- ⊙ Finally, Part III deals with General and Transitory Provisions which are not covered elsewhere in the Convention.

The American Convention on Human Rights (ACHR) was adopted on 20 November 1969 and entered into force on 18 July 1978. It is the key regional human rights instrument for the protection of civil and political rights in the Americas. The majority of major OAS Member States have ratified the Convention with the notable exception of the USA and Canada, and in 2012 Venezuela denounced the Convention citing dissatisfaction with its monitoring bodies.

The Convention confers competence with respect to matters relating to the fulfillment of its obligations to two organs:

- ⊙ the Inter-American Commission on Human Rights and
- ⊙ the Inter-American Court of Human Rights.

### **Contents of the convention**

**Ch.I:** General obligations: obligation to respect rights (Art.1) and domestic legal effects (Art.2).

**Ch.II:** Civil and political rights: juridical personality (Art.3); right to life (Art. 4);

right to humane treatment (Art.5); freedom from slavery (Art. 6); right to personal liberty (Art.7); right to fair trial (Art.8); freedom from law (Art. 9); right to compensation (Art.10); right to privacy (Art.11); freedom of conscience and religion (Art. 12); freedom of thought and expression (Art.13); right to reply (Art.14); right to assembly (Art.15); freedom of association (Art.16); rights of the family (Art.17); right to a name (Art.18); rights of the child (Art.19); right to nationality (Art.20); right to property (Art. 21); freedom of movement and residence (Art. 22); right to participate in government (Art.23); right to equal protection (Art. 24); and right to judicial protection (Art.25).

**Ch.III:** Economic, social and cultural rights (Art. 26).

**Ch.IV:** suspension of guarantees, interpretation and application (Art.27 to 31).

**Ch.V:** personal responsibilities (Art.32).

**Ch. VI:** competent organs (Art.33).

**Ch. VII:** Inter-American Commission on Human Rights (Art.34 to 51).

**Ch.VIII:** Inter-American Court of Human Rights (Art.52 to 69).

**Ch. IX:** common provisions (Art.70 to 73).

**Ch.X and XI:** general and transitory provisions (Art.74 to 82).

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS [ART-34-51]**

The IACHR is a principal and autonomous organ of the OAS whose mandate stems from the Charter of the OAS. The Commission is made up of seven members, independent experts on human rights who do not represent any country and are elected by the General Assembly of OAS. The IACHR was created in 1959 and held its first session in 1960. In fact, by 1961, the IACHR had begun to carry out on-site visits to observe the general human rights situation in member states. Thereafter, by 1965, the IACHR was expressly authorized to examine complaints or petitions regarding specific cases of human rights violations.

**Procedure to follow before file a complaint**

However, it must be noted that before a petition is filed with the IACHR, the following requirements must have been met:

- (a) all remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law,
- (b) the petition must have been lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment,
- (c) the subject of the petition must not be pending in any other international proceeding,

(d) the petition must contain the name, nationality, profession, domicile and signature of the person or persons or of the legal representative of the entity lodging the petition.

**Powers of the Commission**

If the Commission finds the State responsible for human rights violations, it issues a report on the merits that includes recommendations to the State that are aimed at:

- (a) bringing a halt to the acts that are in violation of human rights,
- (b) clarifying the facts, carrying out an official investigation, and imposing a sanction,
- (c) making reparation for the harm caused,
- (d) making changes to the law,
- (e) requiring the adoption of other measures or actions by the State

**Functions of the Commission**

1. It receives, examines and investigates individual complaints or petitions which allege violations of the rights guaranteed under the American Declaration or the American Convention.
2. It refers cases to the Inter-American Court of Human Rights under the American Convention and appears before the Court. Before the Court, the Commission, acting as guardian of the Convention and of the Inter-American system for the protection of human rights, presents its own case while the alleged victim has independent legal counsel presenting his/her case.
3. It requests advisory opinions from the Court regarding questions of interpretation of the American Convention.
4. It monitors the general human rights situation in the member states. It carries out on-site visits to observe the general human rights situation in a country or to investigate specific situations.

5. It publishes special reports on the general human rights situation of member countries when it considers it appropriate.
6. It undertakes research and publishes documents.

⊙ **Case of the Mayagna (Sumo) AwasTingni Community v. Nicaragua (August 31, 2001)**

The Court finally ordered the government to demarcate the land, recognizing the community's ancestral and historical title to it, and to establish legal procedures for the demarcation and titling of the traditional lands of all indigenous communities in Nicaragua.

⊙ **Case of Expelled Dominicans and Haitians v. Dominican Republic (August 28, 2014)**

The Commission submitted to the Court this case against the State of the Dominican Republic. This case related to the arbitrary detention and summary expulsion by the Dominican Republic within its territory, of the victims who were Haitians and Dominicans of Haitian descent, including children. Among other things, the IACHR unanimously held that "the State violated the rights to recognition of juridical personality, the right to protection of the family recognized in Article 17 of the Convention."

**THE INTER-AMERICAN COURT ON HUMAN RIGHTS**

The Inter-American Court is one of the three regional courts for the protection of human rights, together with the European Court of Human Rights and the African Court of Human and Peoples' Rights. It is an autonomous judicial institution whose objective is to apply and interpret the American Convention. The Inter-American Court exercises a contentious function, which includes the resolution of contentious cases and the mechanism for monitoring sentences; an advisory function; and the function of issuing provisional measures.

- ⊙ The Court came into being in 1979 following the entry into force of the American Convention.
- ⊙ The Court is the supreme judicial organ established by the American Convention and exercises both contentious and advisory jurisdiction.

- ⦿ The Court is composed of seven judges elected for a term of six years who may be re-elected once.
- ⦿ The Court is a part-time body, with its seat in San José, Costa Rica.

### **Jurisdiction of Inter-American Court**

#### **1. Advisory jurisdiction**

The Court's advisory jurisdiction is unique in several ways. In addition to the Inter-American Commission and other authorized bodies of the OAS, all OAS member states have the right to request advisory opinions regardless of whether they are parties to the American Convention or whether they have recognized the Court's jurisdiction over contentious matters.

#### **2. Contentious jurisdiction**

States parties do not accept the contentious jurisdiction of the Court merely by becoming parties to the Convention. The acceptance of its jurisdiction is optional and requires a separate declaration or special agreement. A declaration of acceptance of the Court's jurisdiction may be made at the time of ratification or adherence to the Convention or at any subsequent time (Article 62(1) ACHR). Declarations may be unconditional, recognizing the Court's jurisdiction as binding ipso facto, without requiring special agreement. States can also accept the Court's jurisdiction on the condition of reciprocity (inter-state cases), for a specified period or for specific cases.



## **AFRICAN SYSTEM**



### **African Protection of Human rights**

In 1981, the Organization of African Unity (OAU), which was established with the main objective to rid the continent from colonization and apartheid, adopted the African Charter on Human and Peoples' Rights (also known as the Banjul Charter or the African Charter) to stand as the primary human rights instrument for the African Continent.

The African System, like the Inter-American System and the European System (as originally designed), is composed of two entities: a Commission and a Court. These entities are tasked with the interpretation and application of a number of regional human rights instruments (in addition to the Banjul Charter). Some of these are:

- (a) African Charter on the Rights and Welfare of the Child,
- (b) Protocol on the African Human and Peoples' Rights Court,
- (c) Protocol to the African Charter on the Rights of Women in Africa,
- (d) Convention on the Prevention and Combating of Terrorism, 1999,



(e) Convention for the Protection and Assistance of Internally Displaced Persons, 2009.

**AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS OR BANJUL CHARTER**  
**OR AFRICAN CHARTER**

The Banjul Charter was adopted in June 27, 1981. Since then, Africa has experienced scores of human rights catastrophes of extreme proportions:

- ⊙ the scourge of poverty,
- ⊙ the HIV/AIDS pandemic,
- ⊙ the 1994 Rwandan genocide,
- ⊙ the Darfur crisis, and
- ⊙ civil wars in Somalia, Sierra Leone among others. Through these tough times, the Banjul Charter has stood the test of time and has helped steer Africa from the age of human wrongs into the new age of human rights.

**AFRICAN UNION**

- ⊙ Currently, the African Union comprises 55 Member States. Mauritius joined the AU in August 1968.
- ⊙ The current chair of the AU is Egypt with one year term of office ( Feb 2019-2020) whilst the Chairperson of the AU Commission is Tchad, with a four year term of Office( March 2017-2021) and the Deputy Chairperson is from Ghana.

**OBJECTIVES OF AFRICAN UNION**

- ⊙ To promote the unity and solidarity of African states;
- ⊙ To coordinate and intensify their cooperation and
- ⊙ efforts to achieve a better life for the continent's 800 million citizens;
- ⊙ To defend their sovereignty, territorial integrity and independence;

## HUMAN RIGHTS LAW AND PRACTICE

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- ⊙ To eradicate all forms of colonialism from Africa;
- ⊙ To promote international cooperation, giving due regard to the Charter of the United Nations (1945) and The Universal Declaration of Human rights (1948);
- ⊙ To coordinate and harmonise member states political, diplomatic, economic, educational, cultural, health, welfare, scientific, technical and defence policies;
- ⊙ To boost development to eradicate poverty and incorporate Africa into the global economy.

### AFRICAN COMMISSION ON HUMAN AND PEOPLE'S RIGHTS (ACHPR)

- ⊙ The African Commission on Human and People's Rights (ACHPR) is charged with interpreting the African Charter and investigating violations. The ACHPR's work has been hampered by the noncompliance of AU member states as well as by its own shortcomings. The organ tasked with the interpretation of the Charter, as well as investigating individual complaints referring to its violation is the African Commission on Human and Peoples' Rights (ACHPR).
- ⊙ The ACHPR was established according to Art. 30 of Charter and was inaugurated in November 1987. The ACHPR meets on ordinary session twice a year and has its Secretariat in **Banjul (Gambia)**.
- ⊙ As a body formally dependent from the AU, the 11 individual members who form the ACHPR are elected by the AU Assembly among the experts nominated by member states.
- ⊙ The work of the ACHPR is supported by 15 special mechanisms including special rapporteurs and working groups. The ACHPR can issue non-binding resolutions, and it has delivered around 300 recommendations via resolutions and communication since it began its work. It has also engaged on a number of promotional missions. So far however, its powers of persuasion and influence have not always been effective. Despite these provisions numerous states have delayed the proceedings and over ten countries have never submitted a report.

**AFRICAN COURT OF HUMAN AND PEOPLE'S RIGHTS**

⊙ **CONSTITUTION:**

A Protocol to the African Charter establishing the African Court of Human and Peoples' Rights (Court) was approved in 1998, and entered into force in 2004. The seat of the Court is **Arusha (Tanzania)** and it meets **four** times a year. The court has **11 judges** elected by the AU Assembly; in September 2012 the Court elected Justice Sophia A. B. Akuffo (Ghana) as President and Justice Fatsah Ougergouz (Algeria) as Vice-President for a two-year term.

⊙ **JURISDICTION:**

The Court has **jurisdiction** over the cases and disputes submitted to it concerning the interpretation and application of the African Charter, thus complementing the mandate of the ACHPR. However, the Court's jurisdiction applies only to the **26 states** which so far have ratified the Court's Protocol 6 . Complaints by individuals and Non-Governmental Organisations (NGOs) are investigated by the Court upon referral by the ACHPR.

- ⊙ Only six AU member states - Burkina Faso, Ghana, Malawi, Mali, Rwanda and Tanzania - have made optional declarations under article 34 (6) of the Protocol that entitles citizens to present individual complaints directly.
- ⊙ This court would have two sections: one for general affairs, the other for human rights.



**UNIT – IV**

**Protection of Human Rights at national level; Human rights and the Constitution; The Protection of Human rights Act, 1993.**

**PROTECTION OF HUMAN RIGHTS AT NATIONAL LEVEL**

The situation of human rights in India is a complex one, as a result of the country's large size and tremendous diversity, its status as a developing country, and its history as a former colonial territory. It is often held, particularly by Indian human rights groups and activists, that members of the Dalit or Untouchable caste have suffered and continue to suffer substantial discrimination. Although human rights problems do exist in India, the country is generally not regarded as a human rights concern, unlike other countries in South Asia.

**Human Rights in Ancient India**

In ancient India, human life was clear in the expression of human dignity. And eventual individual development depended exclusively upon the uplift and improvement of humanity as a whole. The individual not only comprise the right to be treated with equality, but also a duty to strive for the happiness of every other individual. A distinctive feature of Indian culture is its thorough understanding of nature, human values and dignity of man. In ancient India the rule of law was a significant embracing institution to protect the innate of all. The existing rule of law protects the dignity of every individual and the king could not interfere by means of enacting or altering the law substantially at his will.

The individual soul has been the entity in the study of mankind since from pre-historic time. Indian servants and sages categorically uttered the entire mankind forms a single species. And in spite of outer diversities each and every one have the common self-respect which supplies the connection of unity in the minds of its diversity. No individual possibly will claim to be, or to be considered as superior to others. Individuals don't barely have the right to be treated with parity, but also a duty to attempt for the pleasure of every other individual. India had been the cradle of the various great religions. For at least a thousand years, a figure of religions has thrived in India. Each religion has its own philosophy, divinity, mythology, ceremonies and rituals. In spite of these outward diversities of religious faith and practice, the gigantic bulk of

people in India had developed definite common fundamental standards of life based on the principle of human dignity which might sustain and build up into a great extensive society.

Government of India Act, 1915, in pursuance of the demands for fundamental rights, guaranteed equality of opportunity in public services. A succession of resolutions adopted by the National Congress between 1917 and 1919 repeated the insist for civil rights and parity of status with the English.

### **Motilal Nehru Committee**

In 1925 the Indian National Congress finalizes the draft of the Common Wealth of India adopting a 'Declaration of Rights.' The Madras Session of the Congress held in the year 1927 - demand incorporation of a 'Declaration of Fundamental Rights' in any future constitutional framework. A committee under the leadership of Motilal Nehru was appointed by the National Congress to revise the fundamental rights. It is fascinating to note that the Constitution of the Republic of India, enacted in 1950, incorporated ten of the nineteen rights enumerated in the Motilal Nehru Committee Report, 1928. The rights emphasized as a result of the Motilal Nehru Committee reports were:

1. Personal liberty, inviolability of dwelling place and property
2. Freedom of conscience, and of profession and practice of religion
3. Expression of opinion and the right to assemble peaceably without arms and to form associations
4. Free elementary education
5. Equality for all before the law and rights
6. Protection from punishment under ex-post facto laws
7. Non-discrimination against any person on grounds of religion, caste or creed in the matter of public employment
8. Equality of right in the matter of access to and use of public roads and wells etc.

9. Freedom of combination and association for the maintenance and implementation of labor and economic factors
10. Right to keep and bear arms
11. Equality of rights of man and woman

**Constituent Assembly and Human Rights**



The Simon Commission, selected by the British Government in 1927, Though, totally rejected the demands uttered by the Nehru Committee reports. Afterward The Government of India Act, 1935 was passed exclusive of any bill of rights greatly to the disappointment of the Indian leaders. It was the '**Sapru Committee**' of 1945 that consequently stressed the require for a written code of fundamental rights and the Constituent Assembly raise a powerful command for the insertion of human rights in the Constitution.

The Indian Constitution was framed by the Constituent Assembly of India, which met for the first time on December 9, 1946. The Constitution of India gives primary importance to human rights. The demand for a declaration of fundamental rights arose as of four factors.

1. Lack of civil liberty in India during the British rule
2. Deplorable social conditions, particularly affecting the untouchables and women
3. The existence of different religious, linguistic, and ethnic groups encouraged and exploited by the Britishers

4. Exploitation of the tenants by the landlords.

The Constitution of the Republic of India which came into force on 26th January 1950 with 395 Articles and 8 Schedules, is one of the most detailed fundamental laws eternally adopted.

**MODERN RIGHTS IN MODERN INDIA**

The framers of the Indian Constitution, 1950 were motivated by the motivating goals set out in the Universal Declaration of Human Rights, 1948. The preamble to the Constitution of India, 1950 underlines the call for secure to all its citizens justice, liberty, equality and also the dignity of the personality as important ideals.

A number of civil and political rights such as the right to equality, freedom of speech, right to life and personal liberty, the right to free primary education, right to practice and propagation of religion etc., be provided as fundamental rights. A number of economic, social and cultural rights like the right to education, health and work have been provided under the provision of Directive Principles of State Policy, which are fundamental in the supremacy of the country. The legislative body has enacted a range of legislations which seek out to protect and promote the right of the susceptible sections of the society like the disable, the scheduled castes and scheduled tribes, women and children. As far as women are concerned, the legislations wrap issues such as dowry harassment, immoral traffic, prevention of sati and female feticide.

The parliament enacted the Protection of Human Rights Act 1993 which provides for the constitution of the National Human Rights Commission, the State Human Rights Commission and Human Rights Courts, which are constituted for the better fortification of human rights as well as for matters associated therewith or subsidiary thereto National Commission on Human Rights was set up in India on September, 27, 1997.

## **HUMAN RIGHTS AND THE CONSTITUTION**

There are six fundamental rights in India. They are Right to Equality, Right to Freedom, Right against Exploitation, Right to Freedom of Religion, Cultural and Educational Rights, and Right to Constitutional Remedies.

### **1. Right to Equality (Articles 14–18)**

Right to Equality ensures equal rights for all the citizens. The Right to Equality prohibits inequality on the basis of caste, religion, place of birth, race, or gender. It also ensures equality of opportunity in matters of public employment and prevents the State from discriminating against anyone in matters of employment on the grounds only of religion, race, caste, sex, descent, place of birth, place of residence or any of them.

Note: • The State cannot refuse this right to equality u/Art 14. But no persons or group of persons can demand for any special treatment or any special privilege.

- The State u/Art 15 has the right to make special treatment for women, children and for the development of backward class, scheduled caste or scheduled tribe people.
- However, u/Art 16 the State may provide special reservation to the people of backward classes, scheduled castes or scheduled tribes for the upliftment of the weaker sections as well as for a person professing that particular religion in case of religious institution.

### **2. Right to Freedom (Articles 19–22)**

It guarantees the citizens of India the following six fundamental freedoms subject to certain restrictions:-

- i. Freedom of Speech and Expression
- ii. Freedom of Assembly
- iii. Freedom of form Associations
- iv. Freedom of Movement
- v. Freedom of Residence and Settlement



vi. Freedom of Profession, Occupation, Trade and Business

But some of these rights are subject to security of the State, friendly relation with foreign countries, public order, decency or morality and for which certain restrictions may be imposed by the State on individual liberty under specified condition.

**3. Right against Conviction Article 20 and Article 22**

Right against Conviction gives protection from ex post facto laws, double jeopardy and freedom from self-incrimination. And u/Art 22 provides specific rights to arrested and detained persons.

**4. Right to protection of life or personal liberty Article 21**

This right prevents the encroachment of life or personal liberty by the State. No person shall be deprived of his life or personal liberty except according to procedure established by law.

**5. Right against Exploitation (Articles 23–24)**

It condemns human trafficking, child labor, forced labor making it an offense punishable by law, and also prohibit any act of compelling a person to work without wages where he was legally entitled not to work or to receive remuneration for it.

**6. Right to Freedom of Religion**

Right to Freedom of Religion guarantees religious freedom and ensures secular states in India. The Constitution says that the States should treat all religions equally and impartially and that no state has an official religion. It also guarantees all people the freedom of conscience and the right to preach, practice and propagate any religion of their choice.

**7. Cultural and Educational Rights**

Cultural and Educational Rights protects the rights of cultural, religious and linguistic minorities by enabling them to conserve their heritage and protecting them against discrimination. Educational rights ensure education for everyone irrespective of their caste, gender, religion, etc.

## **8. Right to Constitutional Remedies**

Right to Constitutional Remedies ensures citizens to go to the supreme court of India to ask for enforcement or protection against violation of their fundamental rights. The Supreme Court has the jurisdiction to enforce the Fundamental Rights even against private bodies, and in case of any violation, award compensation as well to the affected individual

### **Cases related Human Rights**

#### **1. National Legal Services Authority v. Union of India [2012]**

This is a landmark decision by the Supreme Court of India, which declared transgender people to be a 'third gender', affirmed that the fundamental rights granted under the Constitution of India will be equally applicable to transgender people, and gave them the right to self-identification of their gender as male, female or third-gender. This judgment is a major step towards gender equality in India. Moreover, the court also held that because transgender people were treated as socially and economically backward classes, they will be granted reservations in admissions to educational institutions and jobs.

#### **2. Olga Tellis v. Bombay Municipal Corporation, [1985]**

This case was a 1985 case in the Supreme Court of India. It came before the Court as a writ petition by pavement and slum dwellers in Bombay (Now Mumbai), seeking to be allowed to stay on the pavements against their order of eviction during the monsoon months by the Bombay Municipal Corporation.

The Court held that “the right to life which is conferred by Art. 21 includes the right to livelihood and two, that it is established that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood.

#### **3. Justice K. S. Puttaswamy (Retd.) and Anr. vs Union Of India And Ors**

**[Popularly known as Aadhaar Card Case ]**

This case is a landmark judgment of the Supreme Court of India, which holds that the right to privacy is protected as a fundamental constitutional right under Articles 14, 19 and

21 of the Constitution of India. It also held that “The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution”.

**4. MC Mehta v. Union of India, 1986**

MC Mehta filed a Public Interest Litigation for escape of poisonous gases by a plant in Bhopal. The court in this case extended the scope of Article 21 and 32 of the Constitution of India. The case is also famous as *Bhopal Gas Tragedy*.

**5. Vishaka V/s State of Rajasthan, 1997**

This case came before the Supreme Court as a Public Interest Litigation against State of Rajasthan and Union of India by Vishakha and other women groups. The petitioners demanded enforcement fundamental rights for working women under Articles 14, 19 and 21 of the Constitution. For this, Vishaka Guidelines were issued. The judgment also provided basic definitions of sexual harassment at the workplace along with provided guidelines to deal with the same.

**6. Selvi v. State of Karnataka, 2010**

The apex court in the following case held brain mapping, lie detector tests and narco analysis as unconstitutional and violative Article 20 (3) of Fundamental Rights. It observed that these techniques cannot be conducted forcefully on any individual and requires consent for the same. When they are conducted with consent, the material so obtained is regarded as evidence during trial of cases according to Section 27 of the Evidence Act.

**The Protection of Human rights Act, 1993.**

The Act came into force on 28th September 1993. The Act is divided into 8 chapters and 43 sections.

**Preamble**

The Preamble of the Act proclaims the object of enacting it which is to establish the National Human Rights Commission, the State Human Rights Commissions and the Human Rights Courts for “better” protection and promotion of human rights.

**Section 2(d)** of the Act. It states that human rights mean ‘the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.’

### **NATIONAL HUMAN RIGHTS COMMISSION**

This Act was enacted with the main purpose of establishing a National Human Rights Commission which has been discussed under Chapter 2 of the Act. Section 3 of the Act provides that the Central Government shall constitute a body known as the National Human Rights Commission. The Commission shall have the following 8 members.

The Hon’ble Supreme Court in *Paramjit Kaur v. State of Punjab* observed that, the chairperson of the Commission and the members of the Commission who are Chief Justice of High Court have throughout their tenure as a judge have considered, explained and enforced the fundamental rights and thus they are an expert in the field of human rights.

The National Human Rights Commission’s headquarter are to be located in Delhi however, with the prior approval of the Central Government they may have offices in any other place in India.

### **Appointment of the Chairperson**

The appointment of the Chairperson has been dealt with in Section 4 of the Act. The Chairperson is to be appointed by the President after obtaining the recommendations from a committee that shall consist of-

- a) The Prime Minister as Chairperson;
- b) Speaker of House of People;
- c) Home Minister;
- d) Leader of Opposition in Lok Sabha;
- e) Leader of Opposition in Rajya Sabha;
- f) Deputy Chairman of Rajya Sabha;

The Commission consists of a Chairperson, five full-time Members and four deemed Members. The statute lays down qualifications for the appointment of the Chairperson and Members of the Commission. Section 6 of the Act provides that the Chairperson so appointed shall hold the office for a term of 5 years or till he or she reaches the age of seventy whichever is earlier. In case of Members, a similar term of five years is provided but they shall be eligible for re appointment for another term of 5 years. Such persons shall also become ineligible for further employment under the Government after they cease to hold office.

**Constitution of National Human Rights Commission**

The Commission shall consist of—

- (a) a Chairperson who has been a Chief Justice of the Supreme Court;
- (b) one Member who is, or has been, a Judge of the Supreme Court;
- (c) one Member who is, or has been, the Chief Justice of a High Court;
- (d) two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

**Removal of Members of Commission:**

The member of the Commission shall cease to hold office on either resignation or removal by the President either after an inquiry conducted by the Supreme Court.

**Functions of the Commission**

The Commission's functions have been outlined in **Section 12** of PHRA. They are

- Inquire into any complaint of human rights violation or any negligence in preventing it by a public servant, either suo moto or based on a petition or on direction by the court.
- Intervention in the proceedings pending before a court with its approval if it involves any allegation of violation of human rights

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- Review and report the conditions of jail or any other institution for treatment, protection and reformation where persons are detained or lodged, to the government along with recommendations for their improvement.
- Review and recommend for the effective implementation of the safeguards for the protection of human rights provided either under the Constitution or under any other law.
- Review the causes that impede the enjoyment of human rights and recommend for their remedial measures.
- Review and recommend the effective implementation of international instruments on human rights.
- Undertake research projects in the field of human rights.
- Spreading human rights literacy and promote awareness of the safeguards available through media, publications or any other available means.
- Encourage the efforts of NGOs and other institutions working in the field of human rights.
- Any other function necessary for protection and promotion of human rights.

### **Powers of the Commission**

Section 13 provides that the commission shall have the power of the civil court when inquiring into complaints under Section 12(a) like,

- Summoning and enforcing attendance of witness.
- Compelling production of a document.
- Recording of evidence.
- Examination of witnesses and documents.
- Production of any public copy from any court or a public office. Compelling any person to furnish information.
- Enter any building where it believes that a document relating to the inquiry can be found.

### **The NHRC can deal only with the Human Rights listed in Chapter II of the Constitution –**

- ⊙ Protection of the right to life
- ⊙ Protection of the right to personal liberty

- ⊙ Protection from slavery and forced labour
- ⊙ Protection from inhuman treatment
- ⊙ Protection from deprivation of property
- ⊙ Protection for privacy of home and other property
- ⊙ Provisions to secure protection of law
- ⊙ Protection of freedom of conscience
- ⊙ Protection of freedom of expression
- ⊙ Protection of freedom of assembly and association
- ⊙ Protection of freedom to establish schools
- ⊙ Protection of freedom of movement
- ⊙ Protection from discrimination in the public sector on the ground of race, caste, place of origin, political opinions, colour, creed or sex.

**State Human Rights Commissions (SHRC)**

State Human Rights Commission are provided under Chapter V of the Act. Section 21 provides that SHRCs shall be constituted by the State Government for inquiring into violation of human rights related to matters provided in List II and List III of the Seventh Schedule of the Constitution provided it is not being inquired into by the National Human Rights Commission or any other Commission duly constituted for this purpose.

The State Commission shall have the following members for a term of 5 years or the age of 70 years whichever is earlier.

The chairperson shall be appointed according to Section 22 by the **Governor** after a recommendation from a **committee** consisting of

- a) the Chief Minister as the Chairperson,

- b) Speaker of the Legislative Assembly,
- c) Minister in Charge of the Department of Home
- d) and Leader of Opposition in the Legislative Assembly.

The members shall cease to hold office in the same manner as the members of the National Human Rights Commission. It shall also have the same functions and powers as the National Human Rights Commission.

The State Human Rights Commissions shall submit annual reports to the state government. Such reports shall be laid down before the legislative assembly.

### **CHAPTER VI of the Act**

### **HUMAN RIGHTS COURTS**

**Article-30. Human Rights Courts.**—For the purpose of providing speedy trial of offences arising out of violation of human rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights Court to try the said offences: Provided that nothing in this section shall apply if—

- (a) a Court of Session is already specified as a special court; or
- (b) a special court is already constituted, for such offences under any other law for the time being in force.

31. **Special Public Prosecutor.**—For every Human Rights Court, the State Government shall, by notification, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.





**UNIT - V**

**Human Rights and Vulnerable Groups: Rights of Women, Children, Disabled, Tribals, Aged and Minorities - National and International Legal Developments.**

**MEANING OF VULNERABLE GROUPS.**

Our society is a diversified patchwork of different sets of people practicing different cultures, customs and belonging to different race, religion, caste, gender and so on. These diversities however lead to a lot of inequalities in the population. In such conditions there is a growth of vulnerable groups who are the most exploited, suppressed and discriminated groups in the country. The Constitution of India uses the term “Weaker Sections” to refer to these vulnerable groups.

Vulnerability within the right to health framework means deprivation of certain individuals and groups whose rights have been violated from the exercising agency. Certain groups in the society often encounter discriminatory treatment and need special attention to avoid potential exploitation. This population constitutes what is referred to as Vulnerable Groups. Vulnerable groups are disadvantaged as compared to others mainly on account of their reduced access to medical services and the underlying determinants of health such as safe and potable drinking water, nutrition, housing, sanitation etc.

- ◎ According to **European Foundation for the improvement of living Working Conditions**, vulnerable people means :

“Groups that experience a higher risk of poverty and social exclusion than the general population, ethnic minorities, migrants, disabled people, the homeless, those struggling with substance abuse, isolated elderly people and children all often face difficulties that can lead to further social exclusion, such as low levels of education and unemployment or underemployment, refugees, stateless persons, victims of war are described as vulnerable groups”.

**Human Rights of Women**



Women constitute almost half of the world population. However, their enjoyment of rights equally with that of men is far from satisfactory. In every society from ancient to modern times, women are considered as the property of men to serve their interests in both society and domestic front. In order to halt such practices, the UN and the international community have evolved a number of methods to augment the rights of women on par with men without any kind of discrimination.

In the beginning, international politics and law discriminated women and avoided equal status to women on par with men. However, after the Second World War with the raising voice of women the situation changed considerably. During the drafting stages of the Charter of the United Nations, the protest voices of women were answered. Accordingly, the preamble of the Charter of the United Nations unequivocally declared that the human rights of the people of the world be enjoyed by all without any kind of discrimination towards women.

The international community reiterating its commitment to promote the human rights of women appointed **Mrs. Eleanor Roosevelt**, the former first lady of America as the chairperson of the drafting committee of the Universal Declaration of Human Rights. The former President of USA, **Henry Truman** appreciating her efforts termed her as the “**First Lady of the World who championed noble cause of promoting human rights of the people of the World.**” The efforts of Mrs. Roosevelt considerably changed the face of international politics and opened the gates for the adoption of a number of legal documents avoiding discrimination against women. A

series of special instruments have been adopted for the protection of women's rights to eliminate gender-based discrimination in the world.

**The Convention On The Elimination Of All Forms Of Discrimination Against Women (Popularly Referred To As CEDAW Convention)**

During this period, a number of committees were constituted to evolve specific strategies. Based on the feedback, the UN in 1979 adopted The Convention on the Elimination of All Forms of Discrimination against Women (popularly referred to as CEDAW Convention). This convention became a milestone in the development of women's rights and addressed to eliminate all kinds of discrimination.

The convention has come into force in 1981 and 187 states have ratified the convention and became parties. Among the few who have not become parties to it are Iran, Palau, Somalia, Sudan, South Sudan, Tonga, and United States of America. USA and Palau have signed but not ratified the convention.

The convention has a preamble and 30 articles. It defines acts that constitute as discrimination and specifies the strategies to the national governments to adopt policies to eliminate such discrimination against women.

According to the Convention, discrimination against women as "...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." (Article 1).

By accepting the Convention, States commit themselves to undertake a series of measures to end discrimination against women in all forms, including: (Article 2)

It sets out equal rights for women, regardless of their marital status, in all fields - political, economic, social, cultural and civil - and calls for national legislation banning discrimination. (Article 3)

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These principles have been further enunciated in detail in the Convention. The convention for the first time guaranteed the health rights of women, including that of reproductive health and choice. As per the provisions of the Convention, each country need to submit independent reports to the committees appointed by the UN at periodical intervals on the steps taken by them in the promotion of women's rights. In this context, it is to be noted that the effectiveness of the Convention in promoting the rights of women is significantly undermined by the states by making reservations to several provisions of the convention.

### **UNITED NATIONS ENTITY FOR GENDER EQUALITY AND THE EMPOWERMENT OF WOMEN**

The main functions of the **UN WOMEN** (2000)are:

- ⦿ To support inter-governmental bodies, such as the Commission on the Status of Women, in their formulation of policies, global standards and norms.
- ⦿ To help Member States, to implement these standards, to provide suitable technical, financial support to those countries that request it, and to forge effective partnerships with civil society.
- ⦿ To hold the UN system accountable for its own commitments on gender equality, including regular monitoring of states.

### **NATIONAL STANDARDS TO PROTECT THE RIGHTS OF WOMEN**

After independence, the Constitution of India adopted on January 26, 1950 abolished all kinds of discriminatory practices against women. The constitution on the lines of the Universal Declaration of Human Rights 1948 recognizing the rights of women, has a number of provisions to protect in augmenting their rights. Some of the Salient Features are:

- ⦿ The Constitution of India through Article 14 recognized equality and equal protection before law for both men and women.
- ⦿ No discrimination against women is permissible. (Article 15 (1)).

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- ⊙ Equality of opportunity in matters of public appointments for all citizens is guaranteed and in particular gender-based discrimination in respect of employment or office under the state has been prohibited. (Art. 16).
- ⊙ Through Article 15 clause (3) it permits the state to make any special law or provisions or concession to be extended for the promotion and welfare of Women.
- ⊙ Article 21 guarantees the Life and Liberty to all the citizens without any sort of discrimination.
- ⊙ The Directive Principles of States Policy (which in the language of human rights described as Economic, Social and Cultural Rights) directs the State to make provisions through Article 39 (a) the state to ensure both men and women have the right to an adequate means of livelihood.
- ⊙ Article 39 (Clause D) Provide for equal pay for equal work without any kind of discrimination.
- ⊙ Article 42 allows the state to make provisions for securing just and human conditions of work and maternity relief.
- ⊙ According to Article 51( A) (e) it is the fundamental duty of every citizen to renounce practices derogatory to the dignity of women

To achieve the objectives of the constitution and to discharge its international obligations to uplift the rights of women, the Government of India enacted a number of special legislations and amended some of the existing civil, criminal, and family laws. They are:

1. **The Dowry Prohibition Act-1961** -that prohibits demand of dowry by the in laws in any form linked with the marriage of women, and if proved it constitutes as a crime under the eye of law.

2. **Child Marriage Restraint Act-1929-** as amended in 1956 prohibits any marriage of a girl below the age of 18 years. In case if marriage is performed below the age 18, constitutes as a crime where in the elders and the husband together are punishable. This Act increased the age limit of a female from 15 to 18 years and that of a male from 18 to 21 years.

**3. The Hindu Marriage Act, 1955** -as amended in 1976 provides equal right of inheritance of property for women as a coparcener in the joint property of a family. This Act further provides the rights to a girl to repudiate any child marriage performed before attaining majority.

**4. Immoral Traffic (Prevention) Act 1986** - (which repealed the Suppression of Immoral Traffic Act of 1956), prohibits of selling, soliciting women or girls for any immoral purpose including keeping them as brothels. The aim of the Act is to prohibit sexual exploitation of person, which includes men and children. It decriminalizes prostitution.

**5. Indecent Representation of Women (Prohibition) Act 1986:** This act punishes the exploitation of women or depiction of women in any indecent manner that affects the dignity of women. It makes such acts as a criminal offence.

**6. Commission of Sati (prevention) Act 1987:** This act prohibits any kind of act forcing a woman to immolate along with the dead body of the husband. This is again a criminal offence where in the punishment may be awarded up to life imprisonment.

**7. National Commission of Women Act 1990:** This Act was enacted to establish a National Commission of women to monitor and to help women related issues, especially to review the Constitutional and Legal safeguards for women; to recommend remedial legislative measures ; to facilitate redressal of grievances and to advise the Government on all policy matters affecting women.

**8. Prenatal Diagnostic Technique ( Regulation and Prevention of Misuse ) Act 1994:** This Act prohibits scanning of a foetus and performing illegal abortions to kill a female foetus.

**9. Protection of Women from Domestic Violation Act 2005:** This Act was amended to discharge the international commitments of the Government of India to the CEDAW Convention. According to this Act, any type of intimidation of women or harassment by family or otherwise, which constitutes a violation to the dignity of women, is punishable and is a criminal offence.

**NATIONAL POLICY OF WOMEN**

The Government of India in the year 2001 adopted a National Policy of Women for advancement, development and empowerment of women. The Ministry of Women and child development takes care of various aspects of women's development and empowerment. The aims and objectives of the policy are looked after by the Ministry to achieve self sufficiency of Indian women.

The aims and objectives of the policy are:

- (i) Creating an environment through positive economic and social policies for full development of women to enable them to realize their full potential.
- (ii) The de-jure and de-facto enjoyment of all human rights and fundamental freedom by women on equal basis with men in all spheres – political, economic, social, cultural and civil.
- (iii) Equal access to participation and decision making of women in social, political, and economic life of the nation.
- (iv) Equal access to women to healthcare, quality education at all levels, career and vocational guidance, employment, equal remuneration, occupational health and safety, social security and public office etc.
- (v) Strengthening legal systems aimed at elimination of all forms of discrimination against women.
- (vi) Changing societal attitudes and community practices by active participation and involvement of both men and women.
- (vii) Mainstreaming a gender perspective in the development process.
- (viii) Elimination of discrimination and all forms of violence against women and the girl child;  
and
- (ix) Building and strengthening partnerships with civil society, particularly women's organizations.

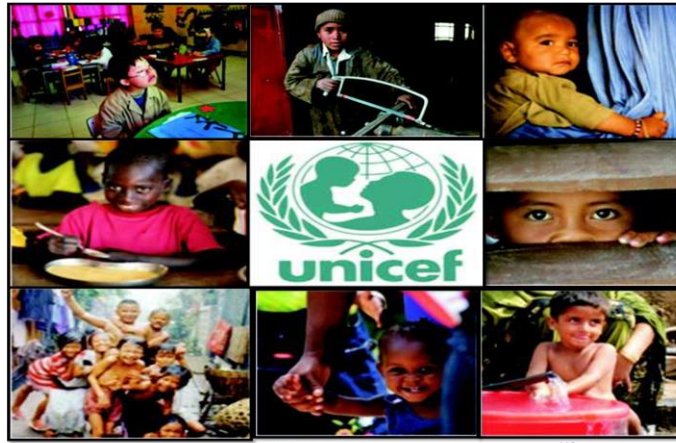
© In **Madhu Kishwaar v. State of Bihar (AIR. 1996 p.2178)**,

It was held that by the Supreme Court that the Convention on the Elimination of All Forms Of Discrimination Against Women is an integral scheme of the Fundamental Rights and the Directive Principles. Article 2(e) of CEDAW enjoins the States Parties to breathe life into the dry bones of the Constitution International Convention and the Protection of Human Rights Act, to prevent gender-based discrimination and to effectuate right to life including empowerment of economic, social and cultural rights. Article 2(f) read with Articles 3,14 and 15 of CEDAW embodies the concomitant right to development as an integral scheme of the Indian Constitution and Human Right Act.





**RIGHTS OF CHILDREN**



**MEANING OF CHILD**

Under the **Convention on the Rights of the Child,(1989)** a child “means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier”

**The Indian Majority Act, 1875** was enacted basically to bring about uniformity in the applicability of laws to person of different religions. It provides, “unless a particular personal law specifies otherwise, every person domiciled in India is deemed to have attained majority upon completion of eighteen years of age. But in case of a minor for whose person or property or for both, a guardian has been appointed or declared by any Court of Justice the majority may be attained before the age of eighteen years.”

**Immoral Trafficking (Prevention) Act, 1986**, child has been defined as, “a person who has not completed the age of eighteen years.”

According to the **United Nations Children’s Emergency Fund (UNICEF)** around ten million children every year below the age of five die due to lack of proper medical care. About 100 million children mostly girls are not in schools. In the developing world, about 150 million children are underweight due to lack of nutritious food. Therefore, it is the duty of family, society and the nation- states to render their assistance to augment the rights of children in every sphere.

Under the **Juvenile Justice (Care and Protection of Children) Act, 2000**, “Child in need of care and protection” means a child who:

- ⊙ Is found begging or who is a street child or a working child;
- ⊙ Is found without having any home or settled place of abode and without any ostensible means of subsistence;
- ⊙ Who resides with a person (whether a guardian of the child or not) and such person has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person;
- ⊙ Who is mentally challenged or ill, or children suffering from terminal diseases or incurable diseases having no one to support or look after;
- ⊙ Has a parent or guardian who is unfit or incapacitated to exercise control over the child;
- ⊙ Lives in a brothel or with a prostitute or frequently goes to any place used for the purpose of prostitution or is found to associate with any prostitute or any other person who leads an immoral, drunken or deprived life;
- ⊙ Who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts;
- ⊙ Who is found vulnerable or is likely to be inducted into drug abuse or trafficking;
- ⊙ Who is a victim of any armed conflict; civil commotion or natural calamity.

According to **World Health Organization**, child abuse may have varied facets such as:

- 1) **Physical abuse** -beating, hitting, punching, shaking, kicking, burning or otherwise harming a child.
- 2) **Sexual abuse** -fondling a child’s genitals, intercourse, incest, rape, sodomy, exhibitionism and sexual exploitation.

- 3) **Emotional abuse** -It includes acts or the failures to act by parents or caretakers that have caused or could cause serious behavioral, cognitive, and emotional or mental trauma.
- 4) **Neglect.**

### **ROLE OF UNICEF**

The full form of UNICEF is United Nations International Children's Emergency Fund. It works towards responding to children's needs and better the environment they grow up in through a multifaceted approach. It works in almost 200 countries with 157 programmes. It was established in 1946 as the United Nations International Children's Emergency Fund.

It works towards spreading humanitarian and developmental aid to children all over the world. It functions to respond to the various needs of children as well as develop their environment to facilitate their unhindered growth so they become responsible citizens in a modern world.

Its work is focused in the following areas:-

- Providing treatment to mothers and children suffering from HIV.
- Spreading education and affordable health care for all children.
- Enhancing prenatal, childhood and maternal nutrition as well as immunization of children against communicable and non communicable diseases.
- Providing safe access to drinking water, sanitation fact and personal hygiene.
- Prevention of female genital mutilation and child marriage.
- Prevention of violence against and exploitation of children and adolescents.
- Providing protection and rehabilitation to child refugees.
- Creating safe and inclusive environments for children with disabilities.
- Providing long term assistance to children at risk during natural, public health and political emergencies.
- Promoting gender equality across the world.

**Note:** UNICEF or United Nations Children's Fund is an agency of the United Nations which was previously known as the United Nations International Children's Emergency Fund. It is very

much different from the United Nations Human Rights Council and the United Nations High Commission for Refugees, although they have similar functions.

**Objectives of UN Convention on the rights of the child (UNCRC), 1989**

*UN Convention on the rights of Child (UNCRC), 1989* aims at such rights of the child which will Be “the foundation of freedom, justice and peace” ‘treating all the human beings as members of the human family’ (Preamble CRC, 1989). These objectives are in fact goals of many early international initiatives. These are:

- Recognition of inherent dignity and of equal and inalienable rights for the child
- Entitlement of rights to all without discrimination of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status
- “Special care and assistance” for the child owing to its’ physical and mental immaturity” and “appropriate legal protection” before and after its birth
- Aiming at promotion of social progress and better guards of life
- To see that the child is brought up in family environment, in an atmosphere of happiness, love and understanding
- To see that family as a fundamental group be afforded the necessary protection and assistance such that it stands for well-being of all, particularly children.
- To see that the child lives as an individual with the spirit of peace and ideals
- Giving due importance to the traditional and cultural values to help harmonious development of child
- Sensing the need that “there are children living in exceptionally different conditions all over the world who need special attention” and
- Recognition for the need for international co-operation everywhere with particular reference to the children in developing countries

Further UNCRC insists the state parties to be accountable to convention of child and to see all the children grow up as healthy individuals. In this process it also lays down parental responsibility and state’s assistance to provide a healthy environment. A child needs good

support mechanisms too in this context. Child rights study is not an exclusive study but is related to other issues as poverty of people and nations and literacy and health in broader categories.

### **THE NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS**

The United Nations Convention on the Rights of the Child (“CRC”) was adopted by the UN General Assembly and opened for signature, ratification and accession on 20 November 1989 and entered into force on 2 September 1990. India acceded to the CRC on 11 December 1992.

The objective of the Convention is to give every child the right to survival and development in a healthy and congenial environment. The CRC makes it obligatory for State parties to take all necessary steps for the effective protection of children in addition to the responsibilities and obligations accepted through the CRC.

Together with the steps taken at UN and the national calls for an autonomous body dealing with children’s rights, the National Commission for Protection of Child Rights (“NCPCR” or the “Commission”) was constituted by the Government of India which came into existence in March 2007 in pursuance of the Commission for Protection of Child Rights Act, 2005 (“CPCR Act”) to exercise and perform the powers and functions assigned to it under the CPCR Act.

#### **Functions and Powers of the Commission**

The Commission is entrusted with performing the following functions:

- ⦿ examine and review the safeguards provided by or under any law for the time being in force for the protection of child rights and recommend measures for their effective implementation;
- ⦿ present to be central government, annually and at such other intervals, as the commission may deem fit, reports upon working of those safeguards;
- ⦿ inquire into violation of child rights and recommend initiation of proceedings in such cases;

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- ⦿ examine all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence, riots, natural disaster, domestic violence, HIV/AIDS, trafficking, maltreatment, torture and exploitation, pornography and prostitution and recommend appropriate remedial measures;
- ⦿ look into the matters relating to the children in need of special care and protection including children in distress, marginalized and disadvantaged children, children in conflict with law, juveniles children without family and children of prisoners and recommend appropriate remedial measures;
- ⦿ study treaties and other international instruments and undertake periodical review of existing policies, programmes and other activities on child rights and make recommendations for their effective implementation in the best interest of children;
- ⦿ undertake and promote research in the field of child rights;
- ⦿ spread child rights literacy among various section of society and promote awareness of the safeguards available for protection of these rights through publications, the media, seminar and other available means;
- ⦿ inspect or cause to be inspected any juveniles custodial home, or any other place of residence or institution meant for children, under the control of the Central Government or any State Government or any other authority, including any institution run by a social organization; where children are detained or lodged for the purpose of treatment, reformation or protection and take up with these authorities for remedial action, if found necessary;
- ⦿ inquire into complaints and take *suo motu notice of matter relating to :*
- ⦿ deprivation and violation of child rights;
- ⦿ non-implementation of laws providing for protection and development of children;
- ⦿ non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of the children and provide relief to such children, or take up the issues rising out of such matters with appropriate authorities.

- ⦿ such other functions as it may consider necessary for the promotion of child rights and any other matter incidental to the above functions.

One of the core functions of the Commission is to inquire into complaints of violations of child rights. The complaints may be made to the Commission in any language listed in the 8th Schedule of the Constitution and there is no fee chargeable. The complaint must be clear, genuine, legible and not vague, trivial, frivolous, anonymous or pseudonymous. It should disclose a complete picture of the matter leading to the complaint and must not be related to civil disputes such as property rights, contractual obligations, service matters and the like.

Further, it must not be relating to any matter which is pending before any other commission duly constituted under the law or sub-judice before a court/ tribunal.<sup>14</sup> Finally, the complaint must not have already been decided by the Commission and must not be outside the purview of the Commission on any other grounds



**LEGAL FRAMEWORK FOR THE PROTECTION OF THE RIGHTS OF  
PERSONS WITH DISABILITIES**



**Definition of Disability**

Disability is a broad term. It generally refers to any person suffering from physical, cognitive, mental, sensory, emotional, developmental problems, or some combination of any of these problems.

The term Disability includes within its meaning, impairments, activity limitations, and participatory restrictions. Impairment is a problem of body function or structure; an activity limitation is a difficulty encountered by an individual in executing a task or action; while a participatory restriction is a problem experienced by an individual in numerous life situations. Thus, disability is a complex phenomenon, reflecting an interaction between features of a person's body and features of the society in which he or she lives.

**According to World Health Organization,**

An individual may also qualify as disabled if he/she has had an impairment in the past or is seen as disabled based on a personal or group standard or norm. Such impairments may include physical, sensory, and cognitive or developmental disabilities, Mental disorders (also known as psychiatric or psychosocial disability) and various types of chronic disease may also qualify as disabilities.

Accordingly, disabilities may be of various types such as Physical Disability, Mental Disability, Sensory Disability, Visual Disability or hearing impairment etc.



Persons with disabilities have been facing discrimination, exclusion, marginalization as a result of which, they are unable to enjoy the full range of their human rights on par with others. This affects their right to education, health care, livelihood etc. They face significant physical, mental, environmental, attitudinal and other barriers in real life which forces them to live as second class citizens. This fact becomes clear when we review how many of our public premises (like Schools, hospitals, banks, post offices) are accessible to persons with disabilities and whether our transport systems have been designed to take care of the persons with special abilities.

### **UN and the Disabled**

In order to augment the rights of disabled persons, the United Nations adopted a Convention and a Protocol in 2006 and established a special agency called as UN Enable, which works in close coordination with various organs of the UN. The Convention intends to be a human rights instrument with explicit, social development dimension. It adopts a broad categorization of persons with disabilities and reaffirms that all persons with different types of disabilities must enjoy all human rights and fundamental freedoms.

According to the **UN Convention on the Rights of Persons with Disabilities (CPRD), 2006**, disability arises from an interaction between a non-inclusive society and individuals.

The Preamble of CRPD states: ‘Disability is an evolving concept, and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders full and effective participation in society on an equal basis with others’

The UN adopted a set guiding principles that need to be followed and adopted by every state and society in order to foster respect for the human rights of the disabled. They are:

- Full and effective participation and inclusion of the Disable into the various activities of the society;
- To Foster Respect for their Dignity and autonomy;

- To provide equal opportunities on par with other sections of the society
- To extend Equality between men and Women of the disabled without any further discrimination on grounds of sex
- To provide Accessibility in all respects equally with other persons of the state Respect for difference of their human diversity
- Non-discrimination on any ground

### **Rights of Persons with Disability in India**

- Constitutional Provisions relating to Disabled.

The principles of International Law of human rights of disabled persons are reflected in Indian Constitution by way of provisions dealing with Fundamental Rights as well as Articles on Directive Principles of State Policy. The Constitution does not provide for any specific provision dealing with the rights of disabled persons. However, Entry 9 of the State List in the Seventh Schedule of the Constitution refers to – Relief of the disabled and unemployable. Apart from the constitutional provisions, the Government of India enacted specific legislations for the protection and augmentation of the Rights of the Disabled.

- Laws Relating to Disabled

In order to discharge its international and constitutional obligations, the government of India has enacted a number of legislations concerning the rights of Differently abled persons. Among the various legislations, the most important of them are:

1. The Indian Lunacy Act 1912,
2. The Lepers Act, 1899.
3. Rights of Persons with Disability in India
4. Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995
5. National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act 1999.
6. Rehabilitation Council of India Act 1992

7. The Mental Health Act 1987.

Under the Persons with Disabilities Act 1995, disability means, any person suffering not less than 40% of any disability as certified by a medical authority. The provisions of the Act further include disability as Blindness; Low Vision; Leprosy- Cured; Hearing Impairment; Loco-motor disability; Mental Retardation and Mental illness as part and partial of the concept of disability.

The Rights of Persons with Disabilities Act, 2016

This Act seeks to give effect to various provisions in the Convention on the Rights of Persons with Disabilities. It has increased the number of recognized disabilities from 7 to 21. It includes, among others, disability due to acid attacks, Thalassemia, Haemophilia, Muscular Dystrophy, Learning Disabilities and Parkinson's.

Mental Health Act, 2017

The Mental Health Act 2017 in its Preamble states that it seeks to “provide for mental healthcare and services for persons with mental illness and to protect, promote and fulfill the rights of such persons during delivery of mental healthcare and services and for matters connected therewith.”It further states that this legislation to seeks to align and harmonize the existing laws with the UN Convention on the Rights of Persons With Disabilities 2006 which India signed and ratified on 1 October 2007.

**Indra Sawhney v. Union of India (1992 Supp (3) SCC)**

The Apex Court examined the legality of reservation in favor of the disabled who are not clearly covered under Article 16 of the Constitution. The Court pointed out that “... mere formal declaration of the right would not make unequals equal. To enable all to compete with each other on an equal plain, it is necessary to take positive measures to equip the disadvantaged and the handicapped to bring them to the level of the advantaged. Article 14 and Article 16(1) no doubt would by themselves permit such positive measures in favor of the disadvantaged to make real the equality guaranteed by them.



## **RIGHTS OF TRIBALS**



### **INTRODUCTION**

Scheduled tribes (STs) are the communities within the country who have for long inhabited mainly forest land where they are an integral part of the land and the eco-system. However, due to their geographical disconnect with the other population, they have been suffering from extreme economic and social backwardness, thus requiring special consideration for safeguarding their interests. These communities have been notified as 'Scheduled Tribes' under Articles 341(1) and 342(1) of the Indian Constitution.

STs face discrimination from the larger society due to their low literacy levels and non-participation in the formal economy. At the same time, they face threat of displacement from the mining operations in their lands since they usually inhabit forest land which are rich in mineral resources. These necessitate a human-rights based protection mechanism for STs which is sought to be provided in the form of the National Commission for Scheduled Tribes (NCST).

As per the Government of India 2011, census, the Scheduled Tribes population comprise 8,43,26,240 (8.2%) of the total populations. The State with highest proportion of Scheduled Tribes is Mizoram (94.5%), while the lowest proportion being Goa (0.04%).

### **IMPORTANT CHARACTERISTICS OF STs**

The following are some important characteristics of STs:-

**1. Geographical isolation** - They live in cloister, exclusive remote and inhospitable areas like hills and forests;

**2. Backwardness-** Livelihood based on primitive agriculture, low cost closed economy based on low level of technology which leads to their poverty and have a low level of literacy, employment and health.

**3. Distinctive culture, language and religion-** These communities are generally associated with a territory or a habitat, mostly in hilly and forest regions. They are governed by their own customs and traditions. Many of them have their own distinct language or dialect.

### **CONSTITUTIONAL PROVISIONS ON SCHEDULED TRIBES**

According to Art.342 of Constitution of India, the President after consulting with the state governments concerned, has promulgated nine order so far. This promulgation has clearly specified the Scheduled Tribes in relation to concerned State and Union territories. India can proudly be called the largest TRIBAL population in the world.

#### **Basic Safeguards Provided In Indian Constitution**

##### **I. Educational & Cultural Safeguards**

Art. 15(4):- Special provisions for advancement of other backward classes (it includes STs)

Art. 29:- Protection of Interests of Minorities (it includes STs)

Art. 46:-The State shall promote, with special care, the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes, and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Art. 350:- Right to conserve distinct Language, Script or Culture;

Art. 350:- Instruction in Mother Tongue.

##### **II. Social Safeguard**

Art. 23:- Prohibition of traffic in human beings and beggar and other similar form of forced labour;

Art. 24:- Forbidding Child Labour.

### **III. Economic Safeguards**

Art.244:- Clause(1) Provisions of Fifth Schedule shall apply to the administration & control of the Scheduled Areas and Scheduled Tribes in any State other than the states of Assam, Meghalaya, Mizoram and Tripura which are covered under Sixth Schedule, under Clause (2) of this Article.

Art. 275:- Grants in-Aid to specified States (STs&SAs) covered under Fifth and Sixth Schedules of the Constitution.

### **IV. Political Safeguards**

Art.164(1):- Provides for Tribal Affairs Ministers in Bihar, MP and Orissa;

Art. 330:- Reservation of seats for STs in Lok Sabha;

Art. 337- Reservation of seats for STs in State Legislatures;

Art. 334:- 10 years period for reservation (Amended several times to extend the period.);

Art. 243:- Reservation of seats in Panchayats.

Art. 371:- Special provisions in respect of NE States and Sikkim

### **V. Service Safeguards**

(Under Art.16(4),16(4A),164(B) Art.335, and Art. 320(40)

### **Other Provision In Regards With Rights Of Scheduled Tribes In Indian Constitution**

#### **Art.15(4). Promotion Of Social, Economic And Educational Interests**

This article empowers the state to make any special provision for the advancement of socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes.

This clause has been especially incorporated to prevent any special provision made by a state for the advancement of socially or educationally backward classes of citizens from being challenged in the law courts on the ground of discrimination.

#### **Art.19(5) Safeguard Of Tribal Interests**

While the rights of free movement and residence throughout the territory of India and of acquisition and disposition of property are guaranteed to every citizen, special restrictions

may be imposed by the state for the protection of the interests of any Scheduled Tribe. (For example state may impose restrictions on owning property by non tribals in tribal areas.)

**Art.23 Human Trafficking**

Traffic in human beings, begar and other similar forms of forced labour are prohibited • . This is a very significant provision so far as Scheduled Tribes are concerned.

**Art.29 Cultural And Educational Rights**

According to this article a cultural or linguistic minority has right to conserve its language or culture. The state shall not impose upon it any culture other than the community's own culture.

**Article.164**

It provides for a Minister-in-charge of tribal welfare in the states of MP, Chattisgarh, Orissa and Jharkhand. These states have substantial tribal population and special provision of a Minister looking after tribal welfare is an evidence of the concern of the framers of the constitution for safeguarding the interests of Scheduled Tribes.

**NATIONAL COMMISSION FOR SCHEDULED TRIBES**

Initially, under the original provisions of Art.338 of the Constitution, a Special Officer (Commissioner) for SC&ST appointed was designated the duty to investigate all matters relating to the Safeguards for SCs and STs in various Statutes and to report to the President upon the working of these Safeguards. In 1987, the Govt. (through another Resolution) modified functions of the Commission (making it as a National Level Advisory Body) to advise the Govt. on Broad Policy Issues and levels of Development of SCs and STs. Thereafter, a National Commission for SCs & STs came into being on 12-3-92 (after the Constitutional (65th) Amendment); Act of 1990.

Finally, as per the provision of the Constitution (89th) Amendment Act, 2003, through a notification dated 19-2-2004, the erstwhile National Commission for SC & ST was replaced by two Commissions viz; National Commission for Scheduled Castes (NCSC) and National Commission for Scheduled Tribes (NCST).

**Functions, duties and powers of the Commission**

Under Article 338A, clause (5), NCST is entrusted with the following functions and duties: -

- ⦿ To investigate & Monitor matters relating to Safeguards provided for STs under the Constitution or under other laws or under Government Order, to evaluate the working of such Safeguards;
- ⦿ To inquire into specific complaints relating to Rights & Safeguards of STs;
- ⦿ To participate and Advise in the Planning Process relating to Socio-economic development of STs, and to Evaluate the progress of their development under the Union and any State;
- ⦿ To submit report to the President annually and at such other times as the Commission may deem fit, upon/working of Safeguards, Measures required for effective implementation of Programmes/Schemes relating to Welfare and Socio-economic development of STs;
- ⦿ To discharge such other functions in relation to STs as the President may, subject to the provisions of any law made by Parliament, by rule specify.

**Measures need to be taken by NCST**

Measures that need to be taken over conferring ownership rights in respect of minor forest produce to STs living in forest areas.

- ⦿ Measures to be taken to safeguard rights of the tribal communities over mineral resources, water resources etc. as laid down by law.
- ⦿ Measures to be taken for the development of tribal to plug loopholes and to work more viable livelihood strategies.
- ⦿ Measures to be taken to improve the efficacy of relief and rehabilitation measures for tribal groups displaced by development projects.



- ⊙ Measures to be taken to prevent alienation of tribal people from land and to effectively rehabilitate such people in whose case alienation has already been taken place.
- ⊙ Measures to be taken to elicit maximum cooperation and involvement of tribal communities for protecting forests and undertaking social afforestation.
- ⊙ Measures to be taken to ensure full implementation of the provision of Panchayat (Extension to Scheduled Areas) Act, 1996.
- ⊙ Measures to be taken to reduce and ultimately eliminate the practice of shifting cultivation by tribal that lead to their continuous disempowerment and degradation of land and the environment.”

**Prevention Of Atrocities Act, 1989**

Assistance is provided to states/UTs for implementation of Scheduled Tribes (Prevention of Atrocities) act, 1989. Financial assistance is provided to the States/ UTs for implementation of these Acts, by way of relief of atrocity victims, incentive for inter-caste marriages, awareness generation, setting up of exclusive Special courts, etc. Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (No.1 of 2016) was notified in the Gazette of India (Extraordinary) on 01.01.2016. The Amendment Act came into force on 26.01.2016.



## **RIGHTS OF AGED**



### **INTRODUCTION**

Ageing is a process which occurs naturally in the human life cycle. It is the decline in the capacity of the functioning of the organs of human body. However, they constitute a reservoir of human resource, gifted with knowledge, deep insights and varied experiences. The population of the aged has been increasing over the years. Their rights are being encroached upon each day and protection of them comes naturally to balance the human rights scale. They are the most vulnerable class of our society.

### **DEFINITION**

**National Policy for Older Persons, 1999:** The National Policy for Older Persons formulated in the year 1999 by the Government of India identified that “any person who has attained the age of 60 years or above as an old/ elderly person.”

**Maintenance and Welfare of Parents and Senior Citizens Act, 2007:** According to Section 2(h) of the Maintenance and Welfare of Parents and Senior Citizens Act,2007, “Senior Citizen means any person being a citizen of India, who has attained the age of sixty years or above”.

**Issues faced by the Elderly Population and the Societal Reflection and Perception towards Ageing**

## **HUMAN RIGHTS LAW AND PRACTICE**

**By Smt.SOWMYA.K, Asst Professor,VVLC**

In the Age Well Foundation's, "Human Rights of Elderly in India Survey", conducted in association with ECOSOC in 2015, it was found that the elderly in India suffers the following problems:

- Lack of gainful engagement opportunities
- Declining health status
- Lack of respect in family/society
- Loneliness/isolation
- Psychological issues
- Financial problems
- Legal issues
- Interpersonal problems

### **UN INITIATIVE**

The question of ageing emerged as an important issue for discussion since the inception of United Nations. In 1971, the General Assembly asked the Secretary- General to prepare a comprehensive report on the elderly and to suggest guidelines for the national and international action. Following the decision of the General Assembly in 1978 for holding a World Conference on Ageing, the World Assembly on Ageing was held in Vienna from July 26 to August 6, 1982, wherein an International Plan of Action on Ageing was adopted. Besides, it also adapted the following:

In 1992, the U.N. General Assembly adopted the proclamation to observe the year 1999 as the International Year of the Older Persons; The U.N. General Assembly has declared "1st October" as the International Day for the Elderly, later rechristened as the International Day of the Older Persons. The U.N. General Assembly on December 16, 1991 adopted 18 principles, which are organized into five clusters, namely-independence, participation, care, self fulfillment, and dignity of the older persons. In has conducted World Conference on aged people to address the rights of theirs. Among them Second Global Conference conducted in the year 2002 at

Madrid adopted a Plan of Action with three important Priority areas to rights relating to Older people. These areas are :

- ⦿ Older Persons and Development;
- ⦿ Advancing health and well-being into old age; and
- ⦿ Ensuring enabling and supportive environments.

Apart from conducting World conferences on Elderly people, it has entrusted the work to the Economic and Social Council to work in close association with other organs and the various States to adopt policies in the promotion and protection of the rights of elderly persons. A number of other working groups, special commissions also constituted, to monitor and to continuously evolve various issues relating to elderly people and to assist the nation-states in policymaking.

### **Constitutional Provisions Relating To Aged People**

Upon approaching old age, physical and mental problems become daily affair. Due to such afflictions, he is unable to work and earn his own livelihood which in turn makes him dependent on others. In order to protect the interest of the most valuable assets of the country i.e. elderly people, our Constitutional framers have inserted certain provisions on this subject under **Part IV** of the Constitution. i.e. Directive Principles of State Policy. Furthermore, although not explicitly stated as a Fundamental Right, the judiciary reads the rights of the elderly as a facet of **Article 21** of the Constitution.

**Article 41** of the Constitution provides that, “The State shall, within the limits of its 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 38(1)** enjoins the State to strive to promote welfare of the people by securing and protecting as effective as it may a social order in which justice social, economic and political shall inform all institutions of the national life. In particular the State shall strive to minimize the inequalities in status, facilities and opportunities. **Article 39(e)** requires the State to secure that

the health and strength of workers, men and women and children of tender age are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their area of strength. To achieve these goals, State provides pensions as monetary benefit to former employees so that they can live meaningful life with dignity.

By keeping these Directive Principles in mind, legislations to protect the interest of the elderly have been enacted. This includes the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and Rules on the same along with other legislations.

**Maintenance and Welfare of Parents and Senior Citizens Act, 2007**

The Salient features of the Act are :

- ⦿ Parents who are unable to maintain themselves through their own earnings or out of their own property may apply for maintenance from their adult children.
- ⦿ The maintenance includes the provision for proper food, shelter, clothing and medical treatment.
- ⦿ Parents include biological, adoptive and stepmothers and fathers, whether senior citizens or not.
- ⦿ A childless Senior Citizen who is sixty years and above, can also claim maintenance from relatives who are in possession of or are likely to inherit their property.
- ⦿ The application for maintenance may be made by Senior Citizens themselves or they may authorize a person or voluntary organization to do so. The Tribunal may also take action on its own.
- ⦿ Tribunals on receiving these applications may hold an enquiry or order the children/ relatives to pay an interim monthly allowance for the maintenance of their Parents or Senior Citizen.
- ⦿ If the Tribunal is satisfied that children or relatives have neglected or refused to take care of their parents or Senior Citizen, it shall order them to provide a monthly maintenance amount, up to a maximum of Rs.10,000 per month.

- ⦿ The State Government is required to set up one or more tribunals in every subdivision.
- ⦿ It shall also set up Appellate Tribunals in every district to hear the appeals of Senior Citizens against the decision of the Tribunals.
- ⦿ No legal practitioner is required or permitted for this process.
- ⦿ Erring persons are punishable with imprisonment up to three months or a fine of up to rupees five thousand or with both.
- ⦿ State Governments should set up at least one Old Age Home for every 150 beneficiaries in a district. These homes are to provide Senior Citizens with minimum facilities such as food, clothing and recreational activities.
- ⦿ All Government hospitals or those funded by the Government must provide beds for Senior Citizens as far as possible. Also, special queues to access medical facilities should be arranged for them.

### **Welfare Programmes**

Welfare Programmes are government funded schemes to provide financial aid and other such facilities to disadvantaged groups in the community. The United Nations had decided to observe the year 1999 as the 'International Year of Older Persons'. Pursuant to this India recognized to bring in the issues faced by Older Persons or Senior Citizens in the forefront by adopting a National Policy for Older Persons. A policy of such nature was first introduced in 1999 and later revised in 2011.

• **Financial Security:** It was recorded that almost two thirds of the 60+ population is financially fragile. Old age pension, better and effective disbursement of retirement benefits, expansion of pension coverage, favourable taxation policies, right of maintenance.

• **Healthcare and nutrition:** affordable and highly subsidised healthcare for older persons, trusts and charitable societies would be encouraged to take this up by providing them with tax incentives, special training in care of the elderly, state sponsored hospices, spreading awareness about the special needs of older people.

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- **Shelter:** housing schemes specifically targeting the older generation such as the Indira AwasYojana, speedy development, easy availability of loan. Developing the housing society with specific services for instance group housing facilities with meals, laundry, common room etc. would be encouraged.
- **Education:** education and training in areas specifically relevant for this age group. continuing education programmes, out-reach programmes.
- **Welfare:** Among the older persons the most vulnerable group would be identified and welfare services would be provided to them on a priority basis. Old-age homes, voluntary organisations would be given grants to carry out these objectives, welfare fund for older persons would be set up.
- **Protection of Life and Property:** older generation has become an easy target for criminal elements. They are often victims of fraudulent dealings, physical and emotional abuse. Intervention of voluntary organisations and friendly vigils by Police would be appreciated.



## **RIGHTS OF MINORITIES**



### **MEANING OF MINORITIES**

The term 'minority' includes only those non-dominant groups of the population which possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population; Such minorities should properly include the number of persons sufficient by themselves to preserve such traditions or characteristics; and Such minorities should be loyal to the state of which they are nationals.

- **A.M.Patoni v. Kesavan [AIR 1965 Ker 75]**

It was held that “ Minorities means a community, which is numerically less than 50 percent“ In other words we can say that Minority means, a group constituting a minority group have a feeling of belonging to one common unit, a sense of akinness or community, which distinguishes from those belonging to the majority of the inhabitants. They are "group held together by ties of common descent, language or religious faith and feeling themselves different in these respects from the majority of the inhabitants of the given political entity."

### **International Initiation on Minorities**

The first international human rights instrument which guarantees minority rights is the International Covenant on Civil and Political Rights, 1966 (ICCPR). Article 27 of the ICCPR is in these terms: “In those states in which ethnic, religious or linguistic minorities exist, persons



belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion or to use their own language.” However, ICCPR does not define a minority. The historic UN Declaration on Minorities 1992 also does not contain a definition of minorities.

According to **Mr. Francesco Capotorti**, Special Rapporteur of the Sub Commission, a minority is, “a group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members-being nationals of the State-possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.”

Apart from the above convention, the following legal instruments have provisions addressing the various aspects relating to the rights of minorities. There are as follows:

- ⦿ Convention on the Prevention and Punishment of the Crime of Genocide 1948
- ⦿ Convention on the Elimination of All forms of Discrimination 1965;
- ⦿ International Convention of Economic Social and Cultural Rights, 1966;
- ⦿ International Convention on Civil and political Rights, 1966;
- ⦿ The Child Rights Convention, 1989;
- ⦿ The UNESCO Convention against Discrimination in Education 1960;
- ⦿ The UNESCO Convention on Race and Racial Prejudice 1978;
- ⦿ UN Declaration on the Rights of the Persons Belonging to National or Ethnic, Religious and Linguistic Minorities 1992

### **Minorities and India**

According to the Government of India Gazette notification issued on 23<sup>rd</sup> October 1993 by Ministry of Welfare, five religious communities viz; the Muslims, Christians, Sikhs,

Buddhists and Zoroastrians (Parsis) were notified as minority communities. As per the 2001 Census, these five religious minority communities constitute 18.42% of the country's population.

To protect the rights of minorities, the Constitution of India made exclusive provisions for the protection and free exercise of their human rights. Articles 25 to 28 of the Constitution guarantee the right to freedom of religion, including freedom of conscience and free profession, practice and propagation of religion. Articles 29 and 30 of the Constitution, protects the cultural and educational rights of minorities. In order to guarantee the rights of Minorities, the Union and the States adopted a number of policies and extended a large number of concessions on various fronts. In a number of cases, the Indian Judiciary has also upheld the provisions of the constitution and supplemented the policy perspectives of the Union and the States.

### **Constitutional rights and safeguards provided to the minorities in India**

Though the Constitution of India does not define the word 'Minority', it only refers to 'Minorities' and speaks of those minorities that are 'based on religion or language through Article 30. Accordingly, Muslims, Christians, Parsis, Buddhists, Sikhs and Jains are normally considered as Minorities in India. In the State of Jammu and Kashmir, Mizoram, Meghalaya and Lakshadweep Hindus are considered as a religious minority . The other articles applicable to all the citizens are applicable to minorities too. In a number of judgments, the courts have liberally interpreted the provisions of the constitution in tune with the human rights philosophy and upheld the various concessions extended by the state to minorities.

The Constitution has provided a definite space for both the 'domains' i.e. 'common' as well as 'separate'. In Part III of the Constitution, which deals with the Fundamental Rights it is divided into two parts viz.

- (a) the rights that fall in the 'common domain' and
- (b) the rights which fall under 'separate domain'.

**In the 'common domain', the following fundamental rights and freedoms are covered:**

- ◎ people's right to 'equality before the law' and 'equal protection of the laws'[**Article 14**]

prohibition of discrimination against citizens on grounds of religion, race, caste, sex or place of birth; [**Article 15 (1) & (2)**]

- ⊙ authority of State to make ‘any special provision for the advancement of any socially and educationally backward classes of citizens’ (besides the Scheduled Castes and Scheduled Tribes); [**Article 15 (4)**]
- ⊙ citizens’right to ‘equality of opportunity’in matters relating to employment or appointment to any office under the State – and prohibition in this regard of discrimination on grounds of religion, race, caste, sex or place of birth; [**Article 16(1)&(2)**]
- ⊙ authority of State to make ‘any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State; [**Article 16(4)**]
- ⊙ people’s freedom of conscience and right to freely profess, practice and propagate religion – subject to public order, morality and other Fundamental Rights; [**Article 25(1)**]
- ⊙ right of ‘every religious denomination or any section thereof – subject to public order, morality and health – to establish and maintain institutions for religious and charitable purposes, ‘manage its own affairs in matters of religion’, and own and acquire movable immovable property and administer it ‘in accordance with law’; [**Article 26**]
- ⊙ prohibition against compelling any person to pay taxes for promotion of any particular religion’; [**Article 27**]
- ⊙ people’s ‘freedom as to attendance at religious instruction or religious worship in educational institutions’ wholly maintained, recognized, or aided by the State.[**Article 28**]

**‘Separate Domain’of Minority Rights**

The Minority Rights provided in the Constitution that fall in the category of ‘Separate Domain’are as under:-

- ⊙ right of ‘any section of the citizens’ to ‘conserve’ its ‘distinct language, script or culture’;  
[**Article 29(1)**]
- ⊙ restriction on denial of admission to any citizen, to any educational institution maintained or aided by the State, ‘on grounds only of religion, race, caste, language or any of them’;  
[**Article 29(2)**]
- ⊙ right of all Religious and Linguistic Minorities to establish and administer educational institutions of their choice;[**Article 30(1)**]
- ⊙ freedom of Minority-managed educational institutions from discrimination in the matter of receiving aid from the State;[**Article 30(2)**]
- ⊙ special provision relating to the language spoken by a section of the population of any State;[**Article 347**]
- ⊙ provision for facilities for instruction in mother-tongue at primary stage;[**Article 350 A**]
- ⊙ provision for a Special Officer for Linguistic Minorities and his duties; and [**Article 350 B**]
- ⊙ Sikh community’s right of ‘wearing and carrying of kirpans; [**Explanation 1 Article 25**]

**Part IV of the Constitution of India, containing non-justiciable Directive Principles of State Policy, includes the following provisions having significant implications for the Minorities**

**:-**

- ⊙ obligation of the State ‘to endeavour to eliminate inequalities in status, facilities and opportunities’ amongst individuals and groups of people residing in different areas or engaged in different vocations;[**Article 38 (2)** ]
- ⊙ obligation of State ‘to promote with special care’ the educational and economic interests of ‘the weaker sections of the people’ (besides Scheduled Castes and Scheduled Tribes);  
[**Article 46**]

**Part IVA of the Constitution, relating to Fundamental Duties as provided in Article 51 A applies in full to all citizens, including those belonging to Minorities. Article 51 A which is of special relevance for the Minorities stipulates as under :-**

- ⊙ citizens' duty to promote harmony and the spirit of common brotherhood amongst all the people of India 'transcending religious, linguistic and regional or sectional diversities; and
- ⊙ citizens' duty to value and preserve the rich heritage of our composite culture.' socially and educationally backward classes of citizens' (besides the right of all Religious and Linguistic Minorities to establish and administer

**National Commission for Minorities**

In spite of the constitutional guarantee, and legal enactments, there is a sense of insecurity, inequality and discrimination that persists among the minorities. In order to wipe out such feelings, and to augment their rights, the Government of India in the year 1992 enacted a National Commission for Minorities Act. Accordingly, in the year 1993, it established a Minority Commission. According to Section 9 of the Act, the commission exercises the following functions to augment the rights of the minorities:

- ⊙ Evaluation of the progress of the development of minorities under the Union and States; monitor the working of the safeguards for minorities provided in the Constitution and in laws enacted by Parliament and the State Legislatures;
- ⊙ To make recommendations for the effective implementation of safeguards for the protection of the interests of minorities by the central or state governments;
- ⊙ To look into specific complaints regarding deprivation of rights and safeguards of minorities and taking up such matters with the appropriate authorities;
- ⊙ To undertake studies into the problems arising out of any discrimination against minorities and recommending measures for their removal;
- ⊙ To conduct studies, research and analysis on the issues relating to socioeconomic and educational development of minorities;

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- ⦿ To suggest appropriate measures in respect of any minority to be undertaken by the Central Government or the State Governments;
- ⦿ To make periodical or special reports to the Central Government or any matter pertaining to minorities and in particular the difficulties confronted by them; and On any other matter, which may be referred to it by the Central Government

In the year 2006, the Government of India established a separate Ministry to augment the rights of Minorities in the country. The aim and objectives of the Ministry are to ensure more focused approach towards issues relating to minorities. Its responsibility is to facilitate formulation of policy perspectives, planning, coordination, evaluation and review of the regulatory framework and developmental programmes for the benefit of the minority communities. It is also the vision of the Ministry to develop a healthy environment for the free exercise of rights by minorities and to halt all kinds of discriminatory practices.

