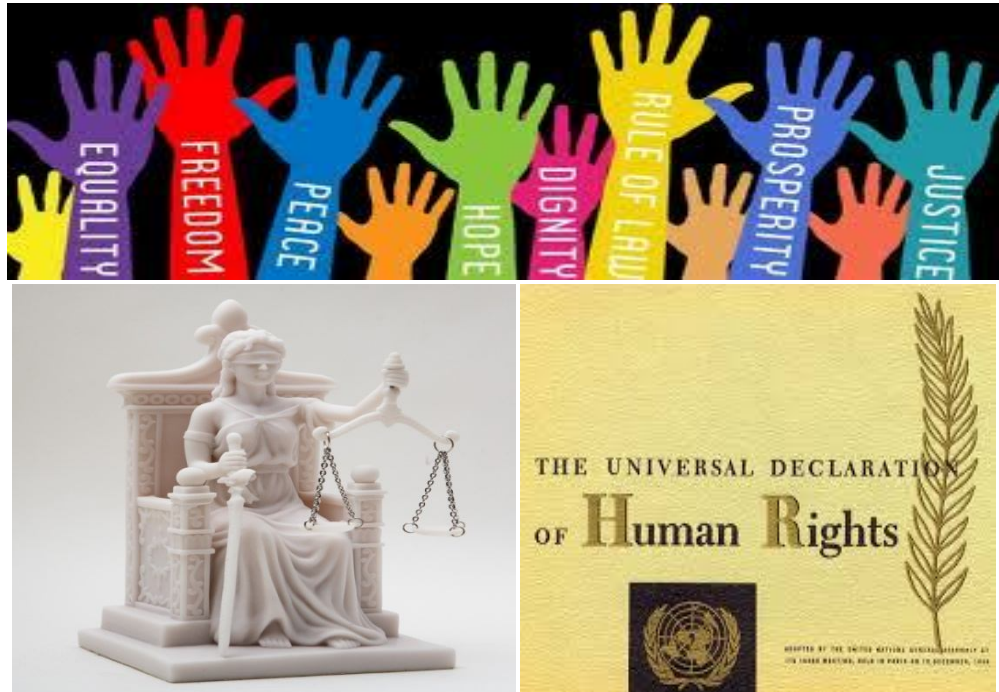




Vardhaman Mahaveer Open University, Kota



Human Rights in India

Course: HR-02



Vardhaman Mahaveer Open University, Kota

Human Rights

in

India

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Human Rights in International Scenario

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This Course is conceived and produced for the students of Certificate Program in Human Rights who need to study different basic aspects of Human Rights. It will provide understanding, skill and elementary knowledge of Human Rights. It will train learner for career as Human rights volunteers or professionals. Course will also inculcate the understanding of national and International dimensions in human Rights field.

This Block contains Ten Units. First Unit will introduce students with Historical background of the Human Rights in India and the Nature of Human Rights along with the Development of Human Rights in India as well as at international level. In Second Unit students will be able to appreciate the Human Rights that are recognized by the Indian Constitution. It will also explain the role of Supreme Court and High Court in protecting the Human Rights. Third Unit will explain students about Factor responsible for passing Protection of Human Rights Act, 1993 and the Consequences of UDHR on Indian Constitution. It will also apprise you with important provisions of Protection of Human Rights Act, 1993. Unit Four will introduce students with Various Policies adopted by Indian government to protect Human Rights. It will apprise you with Definition of Disability and the various planning and policies for disabled person.

Unit Five help students in knowing the Structure of the NHRC and SHRC and their functions and powers. It will also apprise you with various divisions of the NHRC. Unit Six will explain students about the Working system of NHRC and the Role of NHRC in protecting Human Rights in India. Unit seventh will introduce students with the various rights of women and children and the Role of National Commission for Women in protection Human Rights in India. It will also apprise you with the Legal and Judicial Trend for them. Unit Eight will explain students about the Status of SCs and STs in India. It will also apprise you with role of The National Commission for Scheduled Castes and Scheduled Tribes and Provision of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Unit Nine will explain students about the Various National and International NGOs working for the Protection of Human Rights along with the contribution of NGOs to develop the Human Rights. Unit Ten will apprise students about the various commissions that are working for the protection of human rights and their Powers and Functioning along with the provision for safeguarding the rights of scheduled castes and scheduled tribes.

UNIT-I

ORIGIN AND DEVELOPMENT OF HUMAN RIGHTS IN INDIA

STRUCTURE:

- 1.1 Introduction
- 1.2 Meaning of Human Rights
- 1.3 Characteristics and Nature of Human Rights
- 1.4 Development of Human Rights
- 1.5 International Covenants on Human Rights
- 1.6 Classification of Human Rights
- 1.7 Protection of Human Rights in India
- 1.8 Terminal Questions
- 1.9 Answer to check your progress
- 1.10 Key words
- 1.11 Suggested Readings

OBJECTIVES:

After going through this Unit you should be able to understand:

- Historical background of the Human Rights
- Nature of Human Rights
- Development of Human Rights in India and at international level

1.1 INTRODUCTION:

Throughout the history, every society has sought to define the concept of human dignity, in the sense of seeking to ascertain the qualities and inherent value, if any, of each person and his relation to society. These questions have been answered in various ways, whether on the basis of the social obligations and duties owed by individuals, in terms of social hierarchy based on birth or sex, through submission to the will or royal or divine force or on the basis of the over-riding importance attached to the maintenance of social harmony. Invariably, the ethical, religious or political bases by which each society has premised its answers to these questions have been reflected to a large extent, in values and systems by which that society

has in turn been governed.

It is in this context that the concept of Human Rights a concept which tends to emphasize the worth of the individual and to recognize his or her rights as against their society arises. As generally used today, the term Human Rights covers the series of often disparate rights and freedoms asserted by many to be universally accepted and essential prerequisites for people's enjoyment of life based on the centrality of human dignity. Proponents of Human Rights regard them as being inherent, inalienable and universal, inherent in the sense that they are the birth rights of all human beings and people enjoy them simply by virtue of their human existence and as such, they do-not have to be granted to them by any superior or sovereign authority, inalienable in the sense that people cannot agree to give them up or have them taken away from them; and universal in the sense that they do not just apply to individuals as citizens or groups but to all persons regardless of their group identities.¹

The concept of Human Rights is as old as the human race. These rights have their roots in antiquity. The roots for the protection of the Human Rights may be traced as far as back as in the Babylonian laws, Assyrian laws and in the Dharma of the Vedic period in India. Writings of Plato and other Greek and Roman philosophers also depict for the protection of Human Rights though they had a religious foundation. The laity state of Greece have equal freedom of speech, equality before law, right to vote, right to be elected to public office, right to trade and of access to justice to their citizens. Similar rights were secured to the Roman by the Jus civil of Roman law.²

1.2 MEANING OF HUMAN RIGHTS:

Human Rights may be defined, 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. Bennett says,³ "Human Rights include those areas of individual or group freedom that are immune from governmental interference or that, because of their basic contribution to human dignity or welfare, are subject to governmental guarantee, protections or promotion."

¹ Human Rights Manual, Deptt. of Foreign affairs and Trade (1993) p.10

² P.N. Bhagwati J. in inaugural address at the seminar on Human Rights, organized by International Law Association, Allahabad centre (1980) p.9

³ D.D. Basu (2003) Human Rights in constitutional Law, P.8

Human beings are rational beings. They by virtue of their being human possess certain basic and inalienable rights which are commonly known as Human Rights. Since these rights belong to them because of their very existence, they become operative with their birth. Human Rights, being the birth rights, are, therefore, inherent in all the individuals irrespective of their caste, creed, religion, sex and nationality.

These rights are essential for all the individuals as they are consonant with their freedom and dignity and are conducive to physical, moral, social and spiritual welfare. They are also necessary as they provide suitable conditions for the material and moral uplift of the people. Because of their immense significance to human beings, Human Rights are also sometimes referred to as fundamental rights, basic rights, inherent rights, natural rights and birth rights. Human Rights are a generic term and it embraces civil rights, civil liberties and social, economic and cultural rights. However, it can be said that the rights that all people have by virtue of being human are Human Rights. These are the rights which no one can be deprived without a grave affront to justice.⁴

The Human Rights resemble to natural rights because they have not been created by any legislative enactment. A civilized society or nation is bound to recognize these inalienable rights. The legal obligation to protect them includes the legal obligation to respect them. Members of the United Nations have committed themselves to promote respect for and observance of Human Rights and fundamental freedoms.⁵

International concern with Human Rights is not a modern idea but in fact, heir to all the great historic movements for man's freedom to the enduring elements in the tradition of natural law and natural rights and in the most of the world's great religious and philosophies and the findings of contemporary science about interrelations of simple respect for human dignity and other individual and community values.⁶

Prof Louis Henkin explained 'Human Rights' asClaims which every individual has or should have, upon the society in which he or she lives.⁷

Human dignity is the essence of Human Rights. All those rights which are essential for the protection and maintenance of dignity of individuals and create conditions

⁴ Dr. H.O. Aggrawal, "International Law and Human Rights in constitutional Law (2003) p. 8

⁵ J.E.S. Fawcett (1968), The Law of Nations, p-15

⁶ M.S.Mc Dougal and Bebr (1964), "Human Rights in the United Nations, A.J.I.L., Vol. 56, p.604

⁷ Rights here and there, 81 Columbia Law Review 1582 (1981)

in which every human being can develop his personality to the fullest extent may be termed as Human Rights.⁸ However, dignity cannot be defined exactly, but it accords with justice and good society. In 1993 a world conference on Human Rights was held it was stated in its declaration that all Human Rights derive from the dignity and worth inherent in the human person and that the human person is at the centre of Human Rights and fundamental freedoms. Gavison is of the view that Human Rights are rights that belong to every person and do not depend on the specifics of the individual or the relationship between the right-holder and the right grantor. Moreover, Human Rights exist irrespective of the question whether they are granted or recognized by the legal and social system within which we live.⁹ Thus, Human Rights are those rights which belong to an individual as a result of being human being; Human Rights are those rights which belong to human as a means to maintain the human dignity and honor. These are the rights which all men everywhere at all times ought to have, something of which no one may be deprived without a grave affront to justice. Section 2(a) of the protection of Human Rights Act, 1993 says 'Human Rights' means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the International Covenants and enforced by courts in India.

A close scouting of the various definition shows that the Human Rights are universal in nature, belong to all human beings at all times and at all places. They do not depend on status of a person or gender or race. They neither differ with history nor with the geography. It is the duty of the state to recognize, protect and implement them.¹⁰

1.3 CHARACTERISTICS AND NATURE OF HUMAN RIGHTS:

Following are the characteristics of Human Rights:

1. Human Rights are Inalienable-

Human Rights are conferred on an individual due to the very nature of his existence. They are inherent in all individuals irrespective of their caste, creed,

⁸ Bhagwati J. in Maneka Gandhi V. Union of India, A.I.R. 1978, S.C. 597, at p.619

⁹ The Globalization of Human Rights, edited by Jean Mare Colacud, Michal W.Doyle & Anne Mari Gardner (2004) p.25

¹⁰ Atul Gaur, " Protection and Implementation of International Human Rights in Domestic Law," (ed.2010) p.46

religion, sex and nationality. Human Rights are conferred to an individual even after his death. The different rituals in different religions bear testimony to this fact.

2. Human Rights are Essential and Necessary–

In the absence of Human Rights, the moral, physical, social and spiritual welfare of an individual is impossible. Human Rights are also essential as they provide suitable conditions for material and moral upliftment of the people.

3. Human Rights are in connection with human dignity –

To treat another individual with dignity irrespective of the fact that the person is a male or female, rich or poor etc. is concerned with human dignity. For e.g. in 1993, India has enacted a law that forbids the practice of carrying human excreta. This law is called Employment of Manual Scavengers and Dry Latrines (Prohibition) Act.

4. Human Rights are Irrevocable:

Human Rights are irrevocable. They cannot be taken away by any power or authority because these rights originate with the social nature of man in the society of human beings and they belong to a person simply because he is a human being. As such Human Rights have similarities to moral rights.

5. Human Rights are Necessary for the fulfillment of purpose of life-

Human life has a purpose. The term “Human Right” is applied to those conditions which are essential for the fulfillment of this purpose. No government has the power to curtail or take away the rights which are sacrosanct, inviolable and immutable.

6. Human Rights are Universal–

Human Rights are not a monopoly of any privileged class of people. Human Rights are universal in nature, without consideration and without exception. The values such as divinity, dignity and equality which form the basis of these rights are inherent in human nature.

7. Human Rights are never absolute–

Man is a social animal and he lives in a civic society, which always put certain restrictions on the enjoyment of his rights and freedoms. Human Rights as such are those limited powers or claims, which are contributory to the common good and which are recognized and guaranteed by the State, through its laws to the individuals. As such each right has certain limitations.

8. Human Rights are Dynamic-

Human Rights are not static, they are dynamic. Human Rights go on expanding with socio-eco-cultural and political developments within the State. Judges have to interpret laws in such ways as are in tune with the changed social values. For eg. The right to be cared for in sickness has now been extended to include free medical treatment in public hospitals under the Public Health Scheme, free medical examinations in schools, and the provisions for especially equipped schools for the physically handicapped.

9. Rights as limits to state power-

Human Rights imply that every individual has legitimate claims upon his or her society for certain freedom and benefits. So Human Rights limit the state's power. These may be in the form of negative restrictions, on the powers of the State, from violating the inalienable freedoms of the individuals, or in the nature of demands on the State, i.e. positive obligations of the State. For eg. Six freedoms that are enumerated under the right to liberty forbid the State from interfering with the individual.

1.4 DEVELOPMENT OF HUMAN RIGHTS:

The important landmarks in the progress of Human Rights are as follows:

The Magna Carta, 1215

The Magna Carta, also known as the Great Charter, of 1215 is the most significant constitutional document of all human history. The main theme of it was protection against the arbitrary acts by the king. The 63 clauses of the Charter guaranteed basic civic and legal rights to citizens, and protected the barons from unjust taxes. The English Church too gained freedom from royal interferences. King John of England granted the Magna Carta to the English barons on 15th June 1215. The king was compelled to grant the Charter, because the barons refused to pay heavy taxes unless the king signed the Charter.

The English Bill of Rights, 1689

The next source and avenue of the development of the philosophy of Human Rights is the English Bill of Rights, enacted on December 16, 1689, by the British Parliament. The British Parliament declared its supremacy over the Crown in clear terms. The English Bill of Rights declared that the king has no overriding authority. The Bill of Rights codified the customary laws, and clarified the rights and liberties of the citizens. It lays down the twin foundations, viz., the supremacy

of the law, and the sovereignty of the nation, upon which, the English constitution rests.

American Declaration of Independence, 1776

The first colonies to revolt against England were the thirteen States of America. These states declared their independence from their mother country on 4th July 1776. The declaration charges the king with tyranny and affirms the independence of the American colonies. The declaration of independence has great significance in the history of mankind as it justified the right to revolt against a government that no longer guaranteed the man's natural and inalienable rights.

The U.S. Bill of Rights, 1791

The U.S. Constitution was enacted on 17th September 1787. The most conspicuous defect of the original constitution was the omission of a Bill of Rights concerning private rights and personal liberties. Madison, therefore proposed as many as twelve amendments in the form of Bill of Rights. Ten of these were ratified by the State legislatures. These ten constitutional amendments came to be known as the Bill of Rights. The overall theme of the Bill of Rights is that the citizen be protected against the abuse of power by the officials of the States.

The French Declaration of the Rights of Man and of the Citizen, 1789

The fall of Bastille and the abolition of feudalism, serfdom and class privileges by the National Assembly ushered France into a new era. On 4th August 1789, the National Assembly proclaimed the Rights of Man and of the Citizens. The Rights were formulated in 17 Articles.

The Declaration of the Rights of Man and of the Citizen has far reaching importance not only in the history of France but also in the history of Europe and mankind. The declaration served as the death warrant for the old regime and introduced a new social and political order, founded on the noble and glittering principles. Further the declaration served as the basis for many Constitutions, framed in different countries, where the framers gave top priority to Human Rights.

Declaration of International Rights of Man, 1929

After World War I, questions about Human Rights and fundamental freedoms began to be raised. In 1929, the Institute of International Law adopted the Declaration of International rights of Man. The Declaration declared that fundamental rights of citizen, recognized and guaranteed by several domestic constitutions, especially those of the French and the U.S.A constitutions, were in

reality meant not only for citizens of the states but for all men all over the world, without any consideration.

The UN Charter, 1945

The United Nations Charter was drafted, approved and unanimously adopted by all the delegates of the 51 states, who attended the United Nations Conference at San Francisco. The UN Charter contains provisions for the promotion and protection of Human Rights. The importance of the Charter lies in the fact that it is the first official document in which the use of 'Human Rights' is, for the first time traceable and which also recognized the respect for fundamental freedom.

The Universal Declaration of Human Rights, 1948

The Universal Declaration of Human Rights was adopted by the General Assembly of the United Nations on 10th December, 1948. The Declaration consists of thirty Articles and covers civil, political, economic, social and cultural rights for all men, women and children. The declaration however is not a legally binding document. It is an ideal for all mankind.

1.5 INTERNATIONAL COVENANTS ON HUMAN RIGHTS:

The Universal Declaration of Human Rights, 1948 was not a legally binding document. It lacked enforcements. This deficiency was sought to be removed by the U.N. General Assembly by adopting in December, 1966, the two Covenants, viz,

1. International Covenant on Civil and Political Rights and
2. International Covenant on Economic, Social and Cultural Rights.

The two International Covenants, together with the Universal Declaration and the Optional Protocols, comprise the International Bill of Human Rights. The International Bill of Human Rights represents a milestone in the history of Human Rights. It is a modern Magna Carta of Human Rights.

United Nations and Human Rights:

After world war-II in 1945 the United Nations Organization was formed and the charter of declaration of Human Rights was signed by its member nations. The United Nations charter reflects its deep attachment and concern to Human Rights. The object of the charter is save the humanity from the scourge of war and the complete development of human personality his liberties and scope for the same.

The 20th century brought a new and changing political context for Human Rights and transformed the philosophical and ideological debates about it; the second half of the century has seen a universal acceptance of Human Rights in principle and general agreement on its content.¹¹

In the preamble of United Nations charter, the people of United Nation expressed their faith in fundamental Human Rights and in the dignity and worth of human persons, in the equal rights of men and women. Article of the charter declares the aim of United Nations in the following words, “to achieve international co-operation is solving International problems of an economic, social and cultural or humanitarian charter and in promoting and enlarging respect of Human Rights and for fundamental freedoms for all without discriminations as to race, sex, language or religion. Article 13 of the charter lays down that General Assembly shall initiate studies and make recommendation for the purpose of assisting for realization of Human Rights. Article 55 Casts on obligation and the UN to promote universal respect for and observance of Human Rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

1.6 CLASSIFICATION OF HUMAN RIGHTS:

Human Rights can be broadly classified on five bases. They are:

- Civil Human Rights
- Political Human Rights
- Economic Human Rights
- Social and Cultural Human Rights
- Development Oriented Human Rights

a. The seventeenth, eighteenth and nineteenth centuries contributed and strengthened the civil and political rights, which assured civil and political liberties. The Civil and Political Human Rights are collectively known as ‘Liberty Oriented Human Rights’ because they provide, protect and guarantee individual liberty to an individual against the State and its agencies. Liberty rights also referred to as Blue Rights are the First Generation of Human Rights.

b. The twentieth century contributed to the development and strengthening of economic, social and cultural rights and the rights of minorities as well. These

¹¹ L. Henkin (1979) “The Right of Man Today” p-18-19

rights aim at promotion of the economic and social security through economic and social upliftment of the weaker sections of the society. These rights are essential for dignity of personhood as well as for the full and free development of human personality in all possible directions. These rights ensure a minimum of economic welfare of the masses and their basic material needs, recognized by the society as essential to civilized living.

The economic, social and cultural rights, including the rights of the minorities are collectively known as the "Security Oriented Human Rights" because these rights collectively provide and guarantee the essential security in the life of an individual. In the absence of these rights, the very existence of human beings would be in danger. These are also known as the "Second Generation of Human Rights". They are also referred to as Red Rights or also as positive rights. These rights along with the Civil and Political Rights were declared by the Universal Declaration of Human Rights and later were recognized by (1) the Covenant on Civil and Political Rights and (2) the Covenant on Economic, Social and Cultural Rights in December 1966.

c. The Development Oriented Human Rights are of a very recent origin in the late twentieth century. These rights enable an individual to participate in the process of all round development and include environmental rights that enable an individual to enjoy the absolutely free gifts of nature, namely, air, water, food and natural resources, free from pollution and contamination. These are known as the Third Generation of Human Rights or Green Rights. They are also called as Solidarity Rights, because their implementation depends upon international cooperation.

Solidarity rights are of special importance to developing countries, because these countries want the creation of an international order that will guarantee to them the right to development, the right to disaster relief assistance, the right to peace and the right to good government.

Rights for Citizens and for all persons

All Human Rights can be further classified into two distinct classes on the basis of the eligibility of individual, who can exercise them as under:

1. The rights for citizens and
2. The rights for all persons

Certain rights are conferred only on citizens. For e.g. In the Indian constitution provisions in Articles 15, 16, 19 and 29 are limited to citizens. The remaining

provisions in Part III of the Indian Constitution are applicable to citizens and aliens alike.

Human Rights are sometimes referred to as fundamental rights, basic rights, inherent rights, natural rights and birth rights. They are essential for all individuals to protect themselves against the State or public authority or against members of its own class. Human Rights are characterized as inalienable, connection with human dignity and necessary for the purpose of fulfillment of human life.

The evolutions of Human Rights have taken place over centuries. The twentieth century witnessed the crystallization of the philosophy of Human Rights when the United Nations adopted the UN Charter, 1945, The Universal Declaration of Human Rights, 1948 and the International Covenants on Human Rights with further emphasis to protection of rights of Women, Abolition of Slavery, Racial Discrimination, Civil and Political Rights, Economic, Social and Cultural Rights and most importantly the Rights of children.

Human Rights have been classified in different bases. Each right signifies the awareness and emancipation of a particular century. For e.g. the development oriented rights belong to the twentieth century which is essential to maintain world peace as well as right to clean and wholesome environment along with environment protection and improvement.

1.7 PROTECTION OF HUMAN RIGHTS IN INDIA:

In the Preamble to the United Nations Charter, the peoples of the United Nations declare their determination "to save succeeding generation from the scourge of war, reaffirm faith fundamental human rights, and to promote social progress and better standards of life in larger freedom." In India National Human Rights Commission was constituted in October 1993 under the "Human Rights Ordinance of 28th September, 1993, which was soon after enacted as the Protection of Human Rights Act, 1993. It is a fully autonomous body; its autonomy derived out of the method of appointment of the members, their fixity of tenure, and statutory guarantees, thereto, the status they have been accorded; the manner in which the staff responsible to the Commission would be appointed and would conduct themselves; as also the autonomy it enjoys in terms of its financial powers.

The little drops of humanism which jointly makes humanity a cherished desire of mankind has seemingly dried up when the perpetrators of the crime had burnt alive helpless woman and innocent children. Was their fault that they were born in the

houses of persons belonging to a particular community? If it is assuming alarming proportions, now a days, all around it is merely on account of the devilish devices adopted by those at the helm of affairs who proclaim from roof tops to be the defenders of democracy and protectors of people' rights and yet do not hesitate to condescend behind the screen to let loose their men in uniform to settle personal scores, feigning ignorance of what happens and pretending to be peace loving puritans and saviors of citizens' rights". The court laid down the following guidelines till legislative measures are taken: the Police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations.

The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register. The arrestee should, if he so requests, if any present on his/her body must be recorded at that time. The "inspection memo" must be signed by both the arrestee and the police officer affecting the arrest and its copy provided to the arrestee. The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by doctor on the panel of approved doctors appointed by the director, health services of the concerned state/UT.

The Indian Judiciary has acted in the protection and promotion of Human Rights contained in the Constitution and the Civil and Political Rights Covenants and Economic, Social and Cultural Rights Covenants and Universal Declaration of Human Rights of the United Nations. The punch of law requires more propensity and effect. The working of judicial system particularly, the criminal justice system has collapsed. It is marred by delays and dying under its own weight due to mounting pendency of cases. The whole judicial system requires to be reformed. The successive cries of the persons who matter in the affairs of judiciary for remedial measures have fallen on deaf ears.

1.8 TERMINAL QUESTIONS:

1. Which is not characteristic of Human Rights?
 - a. Human Rights are inalienable
 - b. Human Rights are in connection with human dignity
 - c. Human Rights are revocable
 - d. Human Rights are universal
2. Human Rights depend on status of a _____.

- a. Person
 - b. Gender
 - c. Race
 - d. None of the above
3. Magna Carta was granted in _____.
- a. 1621
 - b. 1215
 - c. 1950
 - d. 1857
4. English Bill of Rights was enacted in _____.
- a. 1689
 - b. 1215
 - c. 1772
 - d. 1589
5. The United Nations Charter was drafted, approved and unanimously adopted by all the delegates of the _____.
- a. 51 states
 - b. 52 states
 - c. 48 states
 - d. 47 states
6. The Universal Declaration of Human Rights was adopted by the General Assembly of the United Nations on _____.
- a. 10th December, 1948
 - b. 9th September, 1947
 - c. 10th June, 1948
 - d. 10th November, 1948
7. Which Human Rights are collectively known as 'Liberty Oriented Human Rights'?
- a. Economic and civil Human Rights
 - b. Economic and social Human Rights
 - c. Social and Cultural Human Rights
 - d. Political and civil Human Rights

8. Which rights ensure a minimum of economic welfare of the masses and their basic material needs, recognized by the society as essential to civilized living?

- a. Social Human Rights
- b. Cultural Human Rights
- c. Economic Human Rights
- d. All of the above

9. Human Rights are essential for all individuals to protect themselves against the _____.

- a. State
- b. public authority
- c. members of its own class
- d. All of the above

10. Which rights enable an individual to participate in the process of all round development?

- a. Political Human Rights
- b. Development Oriented Human Rights
- c. Social and Cultural Human Rights
- d. Economic Human Rights

1.9 ANSWER TO CHECK YOUR PROGRESS:

- 1. (c) Human Rights are revocable
- 2. (d) None of the above
- 3. (b) 1215
- 4. (a) 1689
- 5. (a) 51 states
- 6. (a) 10th December, 1948
- 7. (d) Political and civil Human Rights
- 8. (d) All of the above
- 9. (d) All of the above
- 10. (b) Development Oriented Human Rights

1.10 KEY WORDS:

- **Nationality** - The status of belonging to a particular nation by origin, birth, or naturalization. A people having common origins or traditions and often constituting a nation.
- **Dignity**- The state or quality of being worthy of honour or respect.
- **Universal**- relating to or done by all people or things in the world or in a particular group; applicable to all cases.
- **Physically Handicap**- means loss of or failure to develop a specific bodily function or functions, whether of movement, sensation, coordination, or speech, but excluding mental impairments or disabilities
- **Legitimate**- means able to be defended with logic or justification; valid:
- **Covenants** - an agreement, usually formal, between two or more persons or countries to do or not do something specified.

1.11 SUGGESTED READINGS:

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- World Report 2011: India "Human Rights Watch", 2011
- Ms. Jyoti "The Role of Judiciary in Protection of Human Rights in India: A Study"
- Micheline R., "The history of human rights: from ancient times to the globalization era"

UNIT-II

INDIAN CONSTITUTION AND HUMAN RIGHTS

STRUCTURE:

- 2.1 Introduction
 - 2.2 Fundamental Rights and Human Right
 - 2.3 Judicial Trends
 - 2.4 Terminal Questions
 - 2.5 Answer to check your progress
 - 2.6 Key words
 - 2.7 Suggested readings
-

OBJECTIVES:

After going through this Unit you should be able to understand:

- Human Rights recognized by the Indian Constitution
 - Role of Supreme Court and High Court to protect the Human Rights
-

2.1 INTRODUCTION:

The Indian Constitution bears the impact of the Universal Declaration of Human Rights and this has been recognized by the Supreme Court of India. After Universal Declaration of Human Rights 1948 by United Nations and ratified by many of the country it was implemented and enforced in most of the countries. When we talk about the Indian constitution, it is widely accepted and enforced here. Article 12-35 contains Fundamental Rights. It is the resultant of the broad vision of our constitution framers that these Fundamental Rights are the basic rights for living a human being so they made this provision. If there is any violation of these rights one can directly approach to the Supreme Court of India under the provision of Article 32. While referring to the Fundamental Rights contained in part III of the Constitution, Sikri, C.J. of the Supreme Court, in *Kesavanand Bharti v. State of Kerala*,¹² observed: "I am unable to hold these provisions how that rights are not natural or inalienable rights. As a matter of fact,

¹² AIR 1973 SC 1461

India was party to the Universal Declaration of Human Right..... and that Declaration describes some fundamental rights as inalienable.”

Earlier, in *Golak Nath v. State of Punjab*,¹³ the Supreme Court observed: “Fundamental rights are the modern name for what have been traditionally known as natural rights.”

2.2 FUNDAMENTAL RIGHTS AND HUMAN RIGHT:

The provisions of Part III of the Constitution (Articles 12 – 35) enshrine the Fundamental Rights, which are more elaborate than those of any other existing written constitutions dealing with Fundamental Rights. The constitution classifies Fundamental Rights under the five categories. The fundamental rights are elaborated as follows:

1. Right to Equality:

Article 14 talks about Equality before Law which is based on Austin Philosophy that Law is the command of sovereign and everybody is equal before law. Article 15 prohibits discrimination on the basis of religion, race, caste, sex or place of birth. Article 16 provides Equality of opportunity in matter of public employment and Article 17 and 18 respectively provides for Abolition of untouchability and titles.

2. Right to Freedom:

It is under Article 19 to 22. It provides (a) right to freedom of speech and expression; (b) to assemble peaceably without arms; (c) to form association or union; (d) to move freely throughout the territory of India; (e) to reside and settle any part of India; (g) to practice any profession, or to carry on any occupation, trade or business. It also provides protection of life and personal liberty as well as double jeopardy, right to education, protection against arrest and detention in certain cases.

3. Right against Exploitation:

Article 23 - Prohibition of traffic in human beings and forced labour and Prohibition of employment of children in factories etc. - Article 24.

4. Right to Freedom of Religion:

¹³ AIR 1967 SC 1643

Article 25 to 31 deals about the rights regarding freedom to profess any religion and to contribute any religious association for the welfare, freedom to manage religious affairs etc.

5. Right to Constitutional Remedies:

If there is violation of these rights one can get remedies under Article 32.

Under Article 14 there are special provisions regarding women and children, people of Schedule caste and tribes as well as people who belongs to backward class.

2.3 JUDICIAL TRENDS:

The Covenant on Civil and Political Right is an international treaty. So it is applicable to States rather than to individual. Therefore, rights enshrined therein become the obligation of a state only when they have been incorporated in the State's internal law. Several judgments of Indian Court have held this. The following rights have been recognized by the Supreme Court of India in its various decisions-:

Right to Live with Human Dignity:

Thus in Maneka Gandhi's¹⁴ case the Court gave a new dimension to Article 21. It held that the right to 'live' is not merely confined to physical existence but it includes within its ambit the right to live with human dignity. Elaborating the same view the Court in Francis Coralie v. Union Territory of Delhi,¹⁵ said that the Right to live is not restricted to mere animal existence. It means something more than just physical survival. The Right to 'live' confined to the protection of any faculty or limb through which life is enjoyed or the soul communicates with the outside world but it also includes "the right to live with human dignity", and all that goes along with it, namely, the bare necessities of life such as, adequate nutrition, clothing and shelter and facilities for reading, writing and expressing ourselves in diverse forms, freely moving about and mixing and commingling with fellow human being.

Following Maneka Gandhi and Francis Coralie cases the Supreme Court in Peoples Union for Democratic Rights v. Union of India,¹⁶ held that non-payment of minimum wages to the workers employed in various Asiad Projects in Delhi was a denial to them of their right to live with basic human dignity and violate the Article

¹⁴ AIR 1978 SC 597

¹⁵ AIR 1981 SC 746

¹⁶ AIR 1982 SC 1473

21 of the Constitution. Bhagwati, J. (as he then was) speaking for the majority held that the rights and benefits conferred on the workmen employed by a contractor under various labour laws are "clearly intended to ensure basic human dignity to workmen and if the workmen are deprived of any of these rights and benefits, that would clearly be a violation of Article 21". He held that the non-implementation by the private contractors and non-enforcement by the State Authorities of the provisions of various labour laws violated the fundamental right of workers "to live with human dignity."

This decision has heralded a new legal revolution. It has clothed millions of workers in factories, fields, mines and projects sites with human dignity, they had fundamental right to maximum wages, drinking water, shelter crèches, medical aid and safety in the respective occupations covered by the various welfare legislations.

Right to Livelihood:

In *Olga Tellis v. Bombay Municipal Corporation*,¹⁷ popularly known as the 'pavement dwellers case' a five judge bench of the Court has finally ruled that the word 'Life' in Article 21 includes the 'right to livelihood' also. The court said:

"It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because no person can live without the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest ways of depriving a person of his right to life would be to deprive him of his means of livelihood. In view of the fact that Articles 39 (a) and 41 require the State to secure to the citizen an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life."

In that case the petitioners had challenged the validity of Sections 313, 313-A, 314 and 497 of the Bombay Municipal Corporation Act, 1888 which empowered the Municipal Authorities to remove their huts from pavement and public places on the ground that their removal amounted to depriving them of their right to livelihood and hence it violated the Article 21. While agreeing that the right to livelihood is included in Article 21, the Court held that it can be curbed or curtailed by

¹⁷ AIR 1986 SC 180

following just fair procedure. It was held that the above sections of the Bombay Municipal Corporation Act were Constitutional since they imposed reasonable restrictions on the right of livelihood of pavement and slum dwellers in the interest of the general public. Public streets are not meant for carrying on trade or business. However, the Court took a humanistic view and in order to minimize their hardships involved in the eviction it directed the Municipal Authorities to remove them only after the end of the current monsoon season. The Court also directed the Corporation to frame a scheme for demarcating hawking and non-hawking zones and give them licenses for selling their goods in hawking zones. License in hawking zones cannot be refused except for good reasons.

Right to Shelter:

In *Chameli Singh v. State of U.P.*,¹⁸ it has been held that the right under Art. 21 of the Constitution in any organized society, the right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to benefit himself. 'Right to live' guaranteed in any civilized society implies the right to food water, decent environment, education, medical care and shelter. These are basic human rights known to any civilized society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without the basic human rights. Shelter for human being, therefore, is not a mere protection of his life and limb. It is home where he had opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being.

In view of the importance of the right to shelter, the mandate of the Constitution, and the obligation under the Universal Declaration of Human Right, the Court held that it is the duty of the State to provide housing facilities to Dalits and Tribes, to enable them to come into the mainstream of national life.

Virginity Test Violates Right to Privacy:

¹⁸ AIR 1966 SC 1051

In *Surjit Singh Thind v. Kanwaljit Kaur*¹⁹ the Punjab and Haryana High Court has held that allowing medical examination of a woman for her virginity amounts to violation of their right to privacy and personal liberty enshrined under Article 21 of the Constitution. In this case the wife has filed a petition for a decree of nullity of marriage on the ground that the marriage has never been consummated because the husband was impotent. The husband had taken the defense that the marriage was consummated and he was no impotent. In order to prove that the wife was not virgin the husband filed an application for her medical examination. The Court held that allowing the medical examination of a woman's virginity violates her right to privacy under Article 21 of the Constitution. Such an order would amount to roving enquiry against a female who is vulnerable even otherwise. The virginity test cannot constitute the sole basis, to prove the consummation of marriage.

Right to Health and Medical Assistance:

In *Parmananda Katara v. Union of India*,²⁰ it has been held that it is the professional obligation of all doctors, whether government or private, to extend medical aid to the injured immediately to preserve life without waiting legal formalities to be complied with by the police under Cr.P.C. Article 21 of the Constitution casts the obligation on the State to preserve life. It is the obligation of those who are in Charge of the health of the community to preserve life so that the innocent may be protected and the guilty may be punished. Social laws do not contemplate death by negligence which amounts legal punishment. No Law or State action can intervene to delay the discharge of this paramount obligation of the members of the medical profession. The obligation being total, laws of procedure whether statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained and must, therefore give way. The Court directed that in order to make everyone aware of this position the decision of the Court must be published in all journals reporting decisions of this Court and adequate publicity highlighting these aspects should be given by the national media. The Medical Council must send copies of this judgment to every medical college affiliated to it. This is a very significant ruling of the Court. It is submitted that if this decision of the Court is followed, in its true spirit it would help in saving the lives of many citizens who die in accidents because no immediate medical aid is given by the doctors in the ground that they are not authorized to treat medico-legal cases . Let us hope that all

¹⁹ 2005 Cr.L.J. 4119

²⁰ AIR 1989 SC 2039

doctors (Government or private) of this country should follow this ruling of the Court earnestly.

In *Vincent Parikur Langara v. Union of India*,²¹ the Supreme Court held that the right to maintenance and improvement of public health is included in the right to live with human dignity enshrined in Art. 21. A healthy body is the very foundation of all human activities. In a welfare state this is the obligation of the State to ensure the creation and sustaining of conditions congenial to good health.

Right of a Raped Minor Girl to Bear a Child:

In a land mark judgment,⁷³ a two-judge Bench of the Madras High Court held that a minor girl had the right to bear a child in this case a 16 year old minor girl, Sashikala became pregnant and wanted to have the child against the opposition from her father. The father had filed a case in the Court seeking permission to have the pregnancy medically terminated on the ground that she was legally and otherwise also too young to take the decision to bear the child. It was argued that this would be detriment to the health of the minor mother and the child born of a minor mother and also have a wider social consequence. On the other hand, the public prosecutor, defending the case of the girl had argued that she had the right to bear public prosecutor, defending the case of the girl, had argued that she had the right to bear the child under the broader "right to privacy" Even a minor had a right to privacy under Article 21 of the Constitution. He argued that the Indian Constitution does not make any distinction between "minor" and major in so far as fundamental rights were concerned. He argued that Sashikala was a nature minor who is fully conscious of the consequences of bearing and delivering the child. The Court accepted that Sashikala was a minor but did not agree with the petitioner's father, that the delivery in the case of minors was fraught not agree with the petitioner's father, that the delivery in the case of minors was fraught with dangerous medical consequences. "The younger the mother; the better the birth" the other hand termination of the first pregnancy could lead to sterility. Quoting extensively from English and American laws and an American decision the bench held that in the case of a mature and understanding minor the opinion of the parent or guardian was not relevant. The Judges also quoted chapter and verse from Christian, Islamic and Hindu texts to show that destruction of human life even in the mother's womb had no moral sanction.

²¹ AIR 1987 SC 990

Abuse of Children in Circus:

In *Bachpan Bachao Andolan v. Union of India*,²² the Supreme Court in a PIL for the serious violations and abuse of children forcefully detained in circus without access to their families under extreme inhuman conditions, sexual, physical and emotional abuse and deprived of basic human needs like food and water, sanitation, Sleeping times, high risk factor etc. issued these directions: (1) For implementing fundamental rights under Article 21 -A the Central Government must issue suitable notifications prohibiting the employment of children in circuses within two months" (2) The respondents would conduct simultaneous raids in all the circuses to liberate the children and check the violation of their fundamental rights and the rescued children would be kept in the Care and protective homes till the attainment of 18 years age (3) The respondents would frame proper scheme for rehabilitation of rescued children from circuses and (4) The Secretary of Ministry of human Resources Development, Department of Women and Children Development would file a comprehensive affidavit within 10 weeks.

Prisoner's Rights and Article 21:

The protection of Article 21 is available even to convicts in jails. The Convicts are not by mere reason of their conviction deprived of all the fundamental rights which they otherwise possess. Following the conviction of a convict is put into the jail he may be deprived of fundamental freedoms like the right to move freely throughout the territory of India or the right to "practice" a profession. But the Constitution guarantees to them other freedom like the right to acquire, hold and dispose of property for the existence of which detention can be no impediment. Likewise, even a convict is entitled to the precious right guaranteed by Article 21 and he shall not be deprived of his life or personal liberty except according to procedure established by law. In *D.B.M. Patnaik v. State of A.P.*,²³ the petitioners, who were Naxalite Undertrial Prisoners, were undergoing the sentence in the Central Jail, Vishakhapatnam. They contended that the armed police guards posted around the jail and the live-wire electrical mechanism fixed on the top of the jail was an infringement of their right to 'life' and 'personal liberty' guaranteed by Article 21 of the Constitution. The Court, however, held that in the present case the convicts were not deprived of their fundamental rights by the posting of police guards outside the jail. 146 Naxalite prisoners were lodged in jail as a result of which

²² AIR 1984 SC 802

²³ AIR 1974 SC 2092

usual watch and ward arrangement proved inadequate. Some prisoners had escaped from the prison. It was decided thereafter to take adequate measures preventing the escape of prisoners from jail. The Court said, "A convict has no right, more than anyone else, to devstate, where guard to be posted to prevent the escape of prisoners. The installation of live-wire mechanism does not offend their right. It is a preventive measure intended to act as a deterrent and cause death only if a prisoner causes death by scaling the wall while attempting to escape from lawful custody. The installation of live- wire does not by itself cause the death of the prisoner."

In *Babu Singh v. State of U.P.*²⁴ it was held that refusal to grant bail' in a murder case without reasonable ground would amount to deprivation of personal liberty under Article 21. In that case six appellants were convicted by the Sessions Judge in a murder case. In appeal by the state the High Court convicted the appellants and sentenced them to life imprisonment. Five appellants had suffered sentence of 20 months and sixth was on bail. These appellants were the entire male members of their family and all of them were in jail. As such their defense was likely to be jeopardized. During appeal before the High Court the State did not press for their custody. Moreover, there was nothing to show that during the long period of five years when the appellants have been out of show that during the long period of fi9ve years when the appellants have been out of prison pending appeal before High Court there had been any conduct on their part suggestive of disturbing the peace of the locality, threatening anyone in the village or otherwise thwarting the life of the community or the course of justice. The appellants applied for bail during pendency of their appeal before the Supreme Court. The Court held that refusal to grant bail amounted to deprivation of personal liberty of accused persons. Personal liberty of an accused or convict is fundamental and can be taken away only in accordance with procedure established by law. So, deprivation of personal liberty musty be founded on the most serious consideration relevant to the welfare objectives of the society specified in the Constitution. In the circumstances of the case, the Court held that Subject to certain safeguards, the appellants were entitled to be released on bail.

Right to Free Legal Aid:

²⁴ AIR 1978 SC 527

In *M.H. Hoskot v. State of Maharashtra*,²⁵ the Supreme Court applied the ruling of *Maneka Gandhi's Case*.²⁶ In that case petitioner, who was a Reader holding M.Sc. and Ph.D. Degrees, was convicted for the offence of attempting to issue canter's university degree. The Scheme was, however, foiled. He was tried by the Sessions Court which found him guilty of grave offences but took a very lenient view and sentenced him to simple imprisonment till the rising of the court. The High court allowed the state appeal and enhanced punishment to three years. The High Court judgment was pronounced in November, 1973 only in 1978. It was disclosed that although a free copy of the order had been sent promptly by the High Court meant for the applicant, to the Superintendent of the jail but he claimed that he never received it. The Superintendent claimed that the copy had been delivered to him but later it was taken back for the purpose of enclosing it with a mercy petition to the Government for remission of sentence. The Supreme Court, although dismissed the special leave application because of the settled practice that the Court could not interfere with the concurrent findings of the two lower courts but it thought it proper to make the legal position clear. The court held that "a single right of appeal' on facts, where the conviction is fraught with long loss of liberty, is basic to civilized jurisprudence," One component of fair procedure is natural justice" Every step that makes the right of appeal fruitful is obligatory and every action or inaction which stultifies it is unfair and therefore offends Article 21. There are two ingredients of a right of appeal :(1) service of a copy of a judgment to the prisoner in time to enable him to file an appeal, and (2) provision of free legal service to a prisoner who is indigent or otherwise disabled from securing legal assistance. These are State responsibilities under Article 21. Any jailor who by indifference or vendetta withholds the copy thwarts the court process and violates Article 21 and may make the further imprisonment illegal. He suggested that the Jail Manuals should be updated and should include this mandate and the State must make available a copy of the judgment to the prisoner. Regarding the right to free legal aid, Krishna Iyer, J.; declared, "This is the State's duty and not Government's Charity." If a prisoner is unable to exercise his constitutional and statutory right of appeal including special leave to appeal for want of legal assistance, there is implicit in the court, under Article 142, read with Articles 21 and 39-A of the Constitution, the power to assign counsel to the prisoner provided he does not

²⁵ AIR 1978 SC 1548

²⁶ AIR 1978 SC 597

object to the lawyer named by the court. Equality, is the implication that the State which sets the law in motion must pay the lawyer an amount fixed by the Court.

Right against Handcuffing:

In *Prem Shankar v. Delhi Administration*,²⁷ the Supreme added yet another projectile in its armory to be used against the war for prison reform and prisoners rights. In that case the validity of certain clauses of Punjab Police Rules was challenged as violation of Articles 14, 19 and 21 of the Constitution. Krishna Iyer, J., delivering the majority judgment held the provisions in para 26 and 22 that every under trial who was accused of a non-bailable offence punishable with more than three years jail-term would be handcuffed, were violative of Articles 14, 19, 21 of the Constitution. Handcuffing should be resorted to only when there is "clear and present danger of escape" breaking out the police control and for this there must be clear material, not merely an assumption. In special circumstances the applications of iron is not ruled out. But even where in extreme cases, handcuffing is to be put on the prisoner; the escorting authority must record simultaneously the reasons for doing so otherwise under Article 21 of the procedure would be unfair and bad in law. This is implicit in Article 21 which insists upon fairness, reasonableness and justice in the procedure for deprivation of life and liberty. His Lordship said:-

"Handcuffing is prima facie inhuman and, therefore, unreasonable, is over harsh and at the first flush, arbitrary. Absent of fair procedure and objective monitoring, to inflict 'irons' is to resort to zoological strategies repugnant to Article 21....."

Humiliation by the Police on Independence day - In *Raghuvansh Dewachand Bhasin v. State of Maharashtra* the Supreme Court held that the execution of warrant on the independence day and arrest of the appellant an Advocate, in a club just to humiliate him was violation of his personal liberty when the warrant had been issued by The ACJM for being not present in the Court at an earlier stage of proceeding for an offence under Section 324 of IPC but cancelled latter on by the Court when he attended the court. He could not produce any document before the police constable who on the direction of R-2. The Supreme Court held that the R-2 did not act in a responsible manner, when the warrant had been issued on 7th August 2002 returnable on 31st August 2002 and it had not been executed for a week. It was an undesirable interference in the personal liberty

²⁷ AIR 1980 SC 1535

of the appellant, an unwarranted humiliation and degradation in front of his fellow members of the club. He had no Criminal history and had been regularly attending the Court. It was regrettable that he lost his freedom, though for a short while, on the Independence Day. The appellant was held not entitled to further monetary compensation after Rs. 200/- awarded by the High Court as the Conducts of R-2 in detaining the appellant on the strength of warrant was deplorable but not per se without authority of law and he had been sufficiently reprimanded.

Right against Inhuman Treatment:

In *Kishore Singh v. State of Rajasthan*,²⁸ the Supreme Court held that the use of "third degree" method by police is violative of Article 21 and directed the Government to take necessary steps to educate the police so as to inculcate a respect for a long period from 8 to 11 months and putting bar fetters on the prisoner in jail for several days on flimsy ground like "loin tiring in the prison", "behaving insolently and in an uncivilized manner", "tearing of his history ticket" must be regarded as barbarous and against human dignity and hence violative of Articles 21, 19 and 14 of the Constitution. Section 46 of the Prisons Act and Rajasthan Prison Rules must be in conformity with Art. 21 "Human Dignity is a clear value of our Constitution not to be bartered away for mere apprehension entertained by jail officials," declared, Krishna Iyer, J. Similarly, torture and ill-treatment of women suspects in police lockups has been held to be violative of Art. 21 of the Constitution. The Court gave detailed instruction to concerns authorities for providing security and safety in police lockup and particularly to women suspects. Female suspects should be guarded by female constables. The Court directed the I.G. Prisons and State Board of legal Aid Advice Committee to provide legal assistance to the poor and indigent accused (male and female) whether they are under trial or convicted prisoners.⁹⁹

Compulsory Blood Test to Determine Paternity Violates Art.21:

In a Significant judgment in *Nigamma V. Chikkaiah*²⁹ the Karnataka High Court has held that compelling a person to submit himself to medical examination of his blood test without his consent or against his wish amounts to interference with his fundamental right of life or liberty particularly even where there is no provision either in the Code of civil Procedure or in the Evidence Act or any other law which may be said to authorize to Court to Compel a person to undergo such a blood test

²⁸ AIR 1981 SC 625

²⁹ AIR 2000 Kant 50

and create a doubt about the chastity of a woman or create a doubt about man's paternity. The facts of the case are that plaintiffs (1) wife and (2) daughter filed a suit for maintenance against defendant respondent. The defendant denied the allegation that plaintiff 2 was the daughter of plaintiff (1) from defendant (1) In other words the defendant denied his relationship with plaintiff (2) as father and daughter. The plaintiff contended that the plaintiff (2) is not his daughter as plaintiff (1) had left defendant's house in the year 1968 and she was not living with defendant (1) the defendant moved an application with the prayer to the effect that in the circumstances of the case, the Court may direct plaintiffs (1) and (2) to subject themselves for Medical Examination of their blood group test in order to determine the paternity of plaintiff (2). The High Court held that such an order by the trial Court was violative of Art. 21 to the Constitution and the plaintiffs cannot be compelled to submit to Medical Examination of their blood group.

Protection against Illegal Arrest, Detentions and Custodial Death:

In *Jogindar Kumar v. State of U.P.*,³⁰ the Supreme Court has laid down guidelines governing arrest of a person during investigation. This has been done with a view to strike a balance between the needs of police on the one hand and the protection of human rights of citizens from oppression and injustice at the hands of law enforcing agencies. The Court has held that a person is not liable to be arrested merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the police officer effecting the arrest that such arrest was necessary and justified.

In the instant case, a practicing lawyer was called to the police station in connection with a case under inquiry on 7.1.1994 on not receiving any satisfactory account of his whereabouts the family member of the detained lawyer filed a habeas corpus petition before the Supreme Court and in compliance with the notice, the lawyer was produced on 14.1.1994 before the Court. The police contended that the lawyer was not in detention but was only assisting the police to detect some cases. The Court held that though at this stage the relief in habeas corpus could not be granted yet the Supreme Court laid down certain requirements to be followed by the police before arresting a person.

Following are the guidelines laid down by the Court:

³⁰ (1994) 4 SCC 260

(1) An arrested person being held in custody is entitled, if he so requests to have one friend, relative or other person who is known to him or likely to have an interest in his welfare told as far as is practicable that he has been arrested and where is being detained.

(2) Police officer shall inform the arrested person when he is brought to the police station of this right.

(3) An entry shall be required to be made in the Diary as to who was informed of the arrest.

These protections from power flow from Article 21 and Article 22 of the Constitution and therefore they must be enforced strictly.

In a landmark judgment of *Nilabati Behera v. State of Orissa*,³¹ the Supreme Court awarded compensation of Rs.1,50,000/- to the mother of the deceased who died in the police custody at about 8 a.m. on Dec. 1, 1987 by ASI. He was arrested in connection with the investigation of an offence of theft in village and detained at the Police outpost. He was handcuffed, tied and kept in custody in the police station. His mother went to the police station at about 8 p.m. with food for him which he ate. At about 2p.m. on Dec. 2 the petitioner came to know that the dead body of her son with a handcuff and multiple injuries was found lying on the railway track. The police version was that the deceased had escaped from police custody at about 3 a.m. by chewing off the rope and thereafter his body was found at the railway track. On the basis of evidence and medical report it was found that the deceased had died due to beating and the Court awarded Rs. 1,50,000 as compensation to the deceased's mother.

2.4 TERMINAL QUESTIONS:

- Which part of the Indian Constitution contains Fundamental Rights?
 - a. Part II
 - b. Part III
 - c. Part IV
 - d. Part V
- Which Article of the Constitution of India deals with Right to life and personal liberty?
 - a. Article 23
 - b. Article 24

³¹ (1993)2 SCC 746

- c. Article 29
- d. Article 21
- Article 14 talks about:
 - a. Right to Equality
 - b. Right to life
 - c. Right to Know
 - d. Freedom of Press
- In which case it was held that the right to 'live' is not merely confined to physical existence but it includes within its ambit the right to live with human dignity.
 - a. Maneka Gandhi v. Union of India
 - b. Keshwanand Bharti v. State of Kerala
 - c. Olga Tellis v. Bombay Municipal Corporation
 - d. None of the above
- In Olga Tellis v. Bombay Municipal Corporation, popularly known as the:
 - a. Umbrella case
 - b. Pavement dwellers case
 - c. Railway case
 - d. Kaveri water dispute case
- Virginitiy Test Violates:
 - a. Right to Equality
 - b. Right to Know
 - c. Right to privacy
 - d. Right to Life
- "It is the professional obligation of all doctors, whether government or private, to extend medical aid to the injured immediately to preserve life without waiting legal formalities to be complied with by the police under Cr.P.C." It was held in:
 - a. Maneka Gandhi v. Union of India
 - b. Olga Tellis v. Bombay Municipal Corporation
 - c. Parmananda Katara v. Union of India
 - d. Bachpan Bachao Andolan v. Union of India
- The protection of Article 21 is not available to:
 - a. Citizen
 - b. Every person

- c. Convicts in jails
- d. None of the above
- Use of “third degree” method by police is:
 - a. Violative
 - b. Legal
 - c. Constitutional
 - d. Valid, if he is criminal

2.5 ANSWER TO CHECK YOUR PROGRESS:

- c. Part IV
- d. Article 21
- a. Right to Equality
- a. Maneka Gandhi v. Union of India
- b. Pavement dwellers case
- c. Right to privacy
- c. Parmananda Katara v. Union of India
- d. None of the above
- a. Violative

2.6 KEY WORDS:

- **Equality**- Equality means that state of being the same in quantity or measure or value or status. In law, it means that citizens are given equal opportunities without discrimination of sex, blood, language, social origin or religion.
- **Freedom**- the state of being free or at liberty rather than in confinement or under physical restraint.
- **Exploitation**- means to take unfair advantage of a person.
- **Remedy** -The manner in which a right is enforced or satisfied by a court when some harm or injury, recognized by society as a wrongful act, and is inflicted upon an individual.
- **Torture**- means any act or omission which causes pain, whether physical or mental, to any person.

- **Custodial Death**- means the death of a person in the custody of a public officer. The term 'custody' also implies illegal detention and all other occasions, like the deaths of persons who have been arrested or otherwise detained by a public officer. It also includes deaths occurring whilst a person is being arrested or taken into detention; being questioned, irrespective of the fact that whether the person is a witness in a case or not. The death may have taken place on police, private or medical premises, in a public place or in a police or other vehicle.
- **Third Degree**- Mental or physical torture used to obtain information or a confession from a prisoner.

2.7 SUGGESTED READINGS:

- R.C. Agrawal, "Constitutional Development Movement" and National
- Pawan Sinha "National Human Rights Commission (NHRC)"
- Dr.T. S.N. Sastry, "Introduction to Human Rights and Duties" UN General Assembly Resolution on Human Rights Education
- Miachel R. Anderson and Sumit Guha, "Changing concepts of rights and justice in South Asia"
- Delhi: OUP, 2006
- Aftab, "Human Rights in India: issues and challenges"

UNIT-III

PROTECTION OF HUMAN RIGHTS ACT, 1993

STRUCTURE:

- 3.1 Introduction
- 3.2 Salient feature of UDHR
- 3.3 Importance and influence of the declaration
- 3.4 Universal Declaration vs. Constitution of India
- 3.5 Protection of Human Rights Act, 1993
- 3.6 Terminal questions
- 3.7 Answer to check your progress
- 3.8 Key words
- 3.9 Suggested readings

OBJECTIVES:

After going through this Unit you should be able to understand:

- Factor responsible for passing Protection of Human Rights Act, 1993
- Consequences of UDHR on Indian Constitution
- Important provisions of Protection of Human Rights Act, 1993

3.1 INTRODUCTION:

After world war-II in 1945 the United Nations Organization was formed and the charter of declaration of Human Rights was signed by its member nations. The United Nations charter reflects its deep attachment and concern to Human Rights. The object of the charter is save the humanity from the scourge of war and the complete development of human personality his liberties and scope for the same. The 20th century brought a new and changing political context for Human Rights and transformed the philosophical and ideological debates about it; the second half of the century has seen a universal acceptance of Human Rights in principle and general agreement on its content.³²

³² L. Henkin (1979) "The Right of Man Today" p-18-19

In the preamble of United Nations charter, the people of United Nation expressed their faith in fundamental Human Rights and in the dignity and worth of human persons, in the equal rights of men and women. Article of the charter declares the aim of United Nations in the following words, "to achieve international co-operation is solving International problems of an economic, social and cultural or humanitarian charter and in promoting and enlarging respect of Human Rights and for fundamental freedoms for all without discriminations as to race, sex, language or religion. Article 13 of the charter lays down that General Assembly shall initiate studies and make recommendation for the purpose of assisting for realization of Human Rights. Article 55 Casts on obligation on the UN to promote universal respect for and observance of Human Rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

The Universal Declaration of Human Rights commonly known as the Magna Carta of Human Rights marked the emergence of a worldwide trend of Protection and guarantee of certain basic Human Rights. The historic Universal Declaration of Human Rights (UDHR) was adopted and proclaimed by the United Nations General Assembly on December 10, 1948 is said to be a first step in formulation on an International Bill of Human Rights. UDHR is universally regarded as a common standard of achievements for all people and all nations to strive by teaching and education to promote respect for those rights and freedom. In the preamble of the declaration it is stated, that 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.

3.2 SALIENT FEATURE OF UDHR:

The Declaration consists of a preamble and 30 Articles, setting forth the Human Rights and fundamental freedoms to which all men and women, everywhere in the world, are entitled, without any discrimination.

Article 1, which lays down the philosophy on which the Declaration is based, reads: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. The Article thus defines the basic assumptions of the Declaration: "that the right to liberty and equality is man's birthright and cannot be alienated: and that, because man is a rational and moral being, he is different from other creatures on earth and therefore entitled to certain rights and freedoms which other

creatures do not enjoy.”

Article 2, which sets out the basic principle of equality and non discrimination as regards the enjoyment of Human Rights and fundamental freedoms, forbids “distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

Article 3, the first cornerstone of the Declaration, proclaims the right to life, liberty and security of person - a right essential to the enjoyment of all other rights. This Article introduces Articles 4 to 21, in which other civil and political rights are set out, including: freedom from slavery and servitude; freedom from torture and cruel, inhuman or degrading treatment or punishment; the right to recognition everywhere as a person before the law; the right to an effective judicial remedy; freedom from arbitrary arrest, detention or exile; the right to a fair trial and public hearing by an independent and impartial tribunal; the right to be presumed innocent until proved guilty; freedom from arbitrary interference with privacy, family, home or correspondence; freedom of movement and residence; the right of asylum; the right to a nationality; the right to marry and to found a family; the right to own property; freedom of thought, conscience and religion; freedom of opinion and expression; the right to peaceful assembly and association; and the right to take part in the government of one’s country and to equal access to public service in one’s country.

Article 22, the second cornerstone of the Declaration, introduces Articles 23 to 27, in which economic, social and cultural rights -the rights to which everyone is entitled “as a member of society” -are set out. The Article characterizes these rights as indispensable for human dignity and the free development of personality, and indicates that they are to be realized “through national effort and international cooperation”. At the same time, it points out the limitations of realization, the extent of which depends on the resources of each State.

The economic, social and cultural rights recognized in Articles 22 to 27 include the right to social security; the right to work; the right to equal pay for equal work; the right to rest and leisure; the right to a standard of living adequate for health and well-being; the right to education; and the right to participate in the cultural life of the community.

The concluding Articles 28 to 30, recognize that everyone is entitled to a social and international order in which the Human Rights and fundamental freedoms set forth in the Declaration may be fully realized, and stress the duties and responsibilities

which each individual owes to his community. Article 29 states that “in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society”. It adds that in no case may Human Rights and fundamental freedoms be exercised contrary to the purposes and principles of the United Nations. Article 30 emphasizes that no State, group or person may claim any right, under the Declaration, “to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth” in the Declaration.

Thus, the declaration include the under mentioned civil and political rights:

1. Right of life, liberty and security of persons.
2. Prohibition of slavery and slavery trade.
3. Prohibition of torture, cruel, inhuman or degrading treatment or punishment.
4. Right to be recognized as person before law.
5. Equality before the law and equal protection of law against any discrimination in violation of the Declaration.
6. Right to effective remedy by the competent national tribunals.
7. Prohibition of arbitrary arrest, detention or exile.
8. Right to a full equality to a fair and public hearing by an independent and impartial tribunal.
9. Right to be presumed innocent until proved guilty according to law in public trial.
10. Freedom from ex-post facto laws.
11. Freedom from arbitrary interference with privacy, family, home, correspondence or attack on honour or reputation and right to protection by law against such interference.
12. Right to freedom of movement and residence within the borders of State.
13. Right to leave any country, including his own, and to return to his country.
14. Right to seek and enjoy in other countries asylum from prosecution in respect of political crimes.
15. Right to nationality.
16. Freedom from arbitrary deprivation of nationality and right to change nationality.

17. Right to marry and to found a family and equal rights as to marriage, during marriage and at its dissolution.
18. Right to own property and freedom from arbitrary deprivation of property.
Right to freedom of thought, conscience and religion.
19. Right to freedom of opinion and expression.
20. Right to freedom of peaceful assembly and association.
21. Right to take part in the government of his country. And
22. Right to equal access to public service in his country.

3.3 IMPORTANCE AND INFLUENCE OF THE DECLARATION:

Conceived as “a common standard of achievement for all peoples and all nations”, the Universal Declaration of Human Rights has become just that: a yardstick by which to measure the degree of respect for, and compliance with, international Human Rights standards.

Since 1948 it has been and rightly continues to be the most important and far-reaching of all United Nations declarations, and a fundamental source of inspiration for national and international efforts to promote and protect Human Rights and fundamental freedoms. It has set the direction for all subsequent work in the field of Human Rights and has provided the basic philosophy for many legally binding international instruments designed to protect the rights and freedoms which it proclaims.

In the Proclamation of Teheran, adopted by the International Conference on Human Rights held in Iran in 1968, the Conference agreed that “the Universal Declaration of Human Rights states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community”. The Conference affirmed its faith in the principles set forth in the Declaration, and urged all peoples and Governments “to dedicate themselves to [those] principles . . . and to redouble their efforts to provide for all human beings a life consonant with freedom and dignity and conducive to physical, mental, social and spiritual welfare”.

In recent years, there has been a growing tendency for United Nations organs, in preparing international instruments in the field of Human Rights, to refer not only

to the Universal Declaration, but also to other parts of the International Bill of Human Rights.

3.4 UNIVERSAL DECLARATION VS. CONSTITUTION OF INDIA:

The aspirations of the people have found expression in the Indian Constitution, which enacted a nearly complete catalogue of Human Rights around the time when the international scene was witnessing the framing of Universal Declaration of Human Rights. The Fundamental Rights, Directive Principles along with the promises made under the Preamble and other provisions of the constitution, lay the emphasis on making the Indian Constitution a viable instrument of the Indian people's salvation and to secure the basic minimum Human Rights, as contemplated as the founding stones of good governance.

The rights guaranteed and provided in the Constitution are required to be in conformity with the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights in the view of the fact that India has become a party to these covenants by ratifying them and as these Covenants are a direct consequence and follow-up of the Universal Declaration of Human Rights, it is this aspect of the Declaration which has been the guiding force and the mentor of Human Rights incorporation in the Constitution of India.

The declaration of Fundamental Rights in the Constitution serves as a reminder to the Government in power that certain liberties and freedoms essential for all the people and assured to them by the Fundamental Law of the land are to be respected. The emphasis on the entire scheme of the Constitution under the heading of the Preamble, the Fundamental Rights and the Directive Principles is on the building of an Egalitarian Society and on the concept of Socio-Economic Justice. The Fundamental Rights and the Directive Principles together constitute the heart and soul of the Indian Constitution.

The Fundamental Rights that are guaranteed under the Constitution have a close similarity with those in the UN Declaration of Human Rights in form and content in Articles 14, 15, 16, 19, 20, 21, 23, 25, 29, 31 and 32. For example, the Universal Declaration addressed the question of affordability in Article 22 when it mentioned the resources of each state in the implementation of Economic, Social and Cultural Rights.

The Economic, Social and Cultural Rights enshrined in the Universal Declaration of Human Rights and also in the Covenant on Economic, Social and Cultural Rights are included in Part IV of the Indian Constitution and are known as the Directive Principle of State Policy. The Constitution therein directs the State to provide adequate means of livelihood, equitable distribution of material resources, equal pay for equal work, a living wage for all workers, just and human conditions of work, unemployment cover for all people in old age and sickness, and free and compulsory education for children.

The Prevention of Ex-post Facto Operation of Criminal Law, as a principle, enshrined as the nature of that no person shall be accused and convicted of an offence for an act, which was not an offence under the law in force on the date when it was committed, is guaranteed under Article 20 (1) of the Constitution of India, as a Fundamental Right along with Article 11(2) of the Universal Declaration of Human Rights.

Article 19 of the Universal Declaration of Human Rights (1948), "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers". The freedom of opinion and expression is an internationally protected Human Right.

"Everyone has the right to education...directed to the full development of the human personality and to the strengthening of respect for Human Rights and fundamental freedoms". It is in reference to this provision that with the President giving his assent to the Constitution (83rd Amendment) Bill, the right to education has been incorporated in the Constitution of India as a Fundamental Right. The Bill seeks to make the right to free and compulsory education for children from 6-14 years of age- a Fundamental Right. At the same time it also makes it a fundamental duty of the parents to provide opportunities for education to children belonging to this age group. Thus this Amendment supersedes Article 45, which provided for compulsory and free education of children up to 14 years of age as a Directive Principle of State Policy. It has now become obligatory to provide free and compulsory education to children in the age group of 6-14. The amended Act requires governments in the states and union territories to enact laws for the enforcement of this right within one year from the commencement of the Act. Freedom of religion is also guaranteed by Article 18 of the Universal Declaration of Human Rights.

The Indian Supreme Court in the case of *Maneka Gandhi v. Union of India*³³ has held that “Universal Declaration of Human Rights was adopted by the United Nations General Assembly on December 10, 1948 while debates in the Indian Constitution were going on. Hence, it must be assumed that the makers of the Indian Constitution, in framing Part III of the Constitution on the Fundamental Rights were influenced by the provisions of the Universal Declaration. It is therefore legitimate for the Court to refer to the comparable provisions of the Universal Declaration in construing the intent and scope of the relevant text of Part III of the Constitution.” In view of Article 1 to 4 of the Universal Declaration, the expression “traffic in human being” has been interpreted to include a contract for the sale of a woman to a man for marriage.

3.5 PROTECTION OF HUMAN RIGHTS ACT, 1993:

The western country and America, in particular, criticized India for violation of Human Rights by Indian armed and security forces especially in the state of Jammu and Kashmir. Though it is now well recognized that terrorism is a serious violation of human rights yet these countries especially America never lost an opportunity to criticize India whenever Indian security forces sought to deal sternly with extremists and ultras in Jammu and Kashmir, in North Eastern States and Andhra Pradesh. In order to meet this criticism, apart from other reasons, India decided to establish a National Commission of Human Rights for the redressal of grievances of Human Rights violations. On 28, September, 1993 the president of promulgated an Ordinance which established a National Commission of Human Rights. Thereafter, a Bill on Human Rights was passed in the Lok Sabha on December 18, 1993 to replace the Ordinance earlier promulgated by the President. This Bill received the assent of the President on January 18, 1994 and was published in the Gazette of India.

The Preamble of the Act makes it clear that it is an Act to provide for the constitution of National Human Rights Commission; Commissions in States and Human Rights Courts for better protection of Human Rights and for matters connected therewith or incidental thereto.

Section 2 of the Act deals with definitions. According to Section 2(1) In this Act, unless the context otherwise requires-

³³ AIR 1978 SC 597

- (a) "armed forces" means the naval, military and air forces and includes any other armed forces of the Union;
- (b) "Chairperson" means the Chairperson of the Commission or of the State Commission, as the case may be;
- (c) "Commission" means the National Human Rights Commission under section 3;
- (d) "human rights" means 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.
- (e) "Human Rights Court" means the Human Rights Court specified under section 30;
- (f) "International Covenants" means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural rights adopted by the General Assembly of the United Nations on the 16th December, 1966 [and such other Covenant or Convention adopted by the General Assembly of the United Nations as the Central Government may, by notification, specify"³⁴];
- (g) "Member" means a Member of the Commission or of the State Commission, as the case may be;
- (h) "National Commission for Minorities" means the National Commission for Minorities constituted under section 3 of the National Commission for Minorities Act, 1992;
- (i) "National Commission for the Scheduled Castes" means the National Commission for the Scheduled Castes referred to in Article 338 of the Constitution¹;
- (ia) "National Commission for the Scheduled Tribes" means the National Commission for the Scheduled Tribes referred to in Article 338A of the Constitution;
- (j) "National Commission for Women" means the National Commission for Women constituted under section 3 of the National Commission for Women Act, 1990;
- (k) "Notification" means a notification published in the official Gazette;
- (l) "Prescribed" means prescribed by rules made under this Act;

³⁴ Added by Act 43 of 2006

(m) "Public servant" shall have the meaning assigned to it in section 21 of the Indian Penal Code;

(n) "State Commission" means a State Human Rights Commission constituted under section 21.

According to Section 2(2) Any reference in this Act to a law, which is not in force in the State of Jammu and Kashmir, shall, in relation to that State, be construed as a reference to a corresponding law, if any, in force in that State.

Under Section 3 of the Protection of Human Rights Act 1993 the National Human Rights Commission was constituted for better protection of human rights and for matters connected therewith or incidental thereto (NHRC).

Protection of Human Rights Act 1993 provides the Commission with functional autonomy as enshrined in Paris Principles. Composition of the Commission, qualifications of the members and method of appointment of the members as enshrined in the Act are such that ensures an independent functioning of the Commission. For example the selection committee to appoint the members the Commission consists of, (A) Prime Minister of India, (B) Speaker of Lok Sabha (C) Minister, and Ministry of Home Affairs Government of India (D) Leader of Opposition in Lok Sabha (E) Leader of Opposition in Rajya Sabha, and (F) Deputy Chairman of the Council of States. The very composition of the selection committee shows that the members of the Commission must have the confidence of not only the ruling party but also the Opposition. Also the presence of Speaker of Lok Sabha and Deputy Chairperson of Rajya Sabha ensures the support of Legislature to these members.

In addition to this, presence of three members from judiciary also provides further legitimacy and independence to the Commission. Security of the tenure of the members, removal of the members by the President of India on the ground of proved misconduct or incapacity and the budget of the Commission which is passed by the Parliament (Section 32(1) and (2)) are certain other features of the Act to provide independence to the Commission.

Functions of the Commission:

The Commission performs following functions (Section 12 of the Act),

(a) inquires, suo-motu or on a petition presented to it by a victim or any person on his behalf, on the violation of human rights or abetment thereof and negligence by a public servant in the prevention of such violation,

- (b) intervenes in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;
- (c) visits, under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon;
- (d) reviews the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;
- (e) reviews the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures;
- (f) studies treaties and other international instruments on human rights and make recommendations for their effective implementation;
- (g) undertakes and promotes research in the field of human rights;
- (h) spreads human rights literacy among various sections of society and promotes awareness of the safeguards available for the protection of these rights through publications, media, seminars and other available means;
- (i) encourages the efforts of non-governmental organizations and institutions working in the field of human rights;
- (j) such other functions as it may consider necessary for the protection of human rights.

State Human Rights Commission:

According to Section 21 (1) of the Protection of Human Rights Act, 1993 a State Government may constitute a body to be known as the(the name of the State) Human Rights Commission to exercise the powers Chapter V of the Act.

According to Section 21 (2) The State Commission shall, with effect from such date as the

State Government may by notification specify, consist of—

- (a) a Chairperson who has been a Chief Justice of a High Court;
- (b) one Member who is, or has been, a Judge of a High Court or District Judge in the State with a minimum of seven years experience as District Judge;
- (c) one Member to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

3.6 TERMINAL QUESTIONS:

1. How many Articles does UDHR contain?
 - a. 35
 - b. 30
 - c. 33
 - d. 32
2. Articles 22 to 27 recognize _____.
 - a. Economic right
 - b. Social right
 - c. Cultural right
 - d. All of the above
3. Which Article of UDHR provides “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”?
 - a. Article 2
 - b. Article 3
 - c. Article 4
 - d. Article 5
4. Article 3 of UDHR talks about _____.
 - a. Right to life, liberty and security
 - b. Right to education
 - c. Right to be presumed innocent until proved guilty
 - d. Right against cruel, inhuman or degrading treatment or punishment
5. In which case it was held “the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.”
 - a. Kesavananda Bharati v. State of Kerala
 - b. Francis Coralie Mullin v. Administrator, Union Territory of Delhi
 - c. Saheli v. Commissioner of Police, Delhi
 - d. Khatri v. State of Bihar
6. Freedom of religion is also guaranteed by _____ of the Universal Declaration of Human Rights.
 - a. Article 22 Article 20
 - b. Article 19 Article 18

7. Which part of the Indian Constitution contains Directive Principle of State Policy?
 - a. Part III
 - b. Part II
 - c. Part IV
 - d. Part V
8. Which right UDHR does not include?
 - a. Right to Education
 - b. Right to nationality
 - c. Right to marry
 - d. Right to freedom of opinion and expression

3.7 ANSWER TO CHECK YOUR PROGRESS

1. b. 30
2. d. All of the above
3. c. Article 5
4. a. Right to life, liberty and security
5. b. Francis Coralie Mullin v. Administrator, Union Territory of Delhi
6. d. Article 18
7. c. Part IV
8. a. Right to Education

3.8 KEY WORDS:

- **Preamble**- a preliminary or preparatory statement; an introduction.
- **Magna Carta**- the royal charter of political rights given to rebellious English barons by King John in 1215
- **Discrimination**- the unjust or prejudicial treatment of different categories of people, especially on the grounds of race, age, or sex.
- **Violation**- means Breaking or dishonoring of law, or contravention of a duty or right. A violation is not automatically a crime.
- **Proclamation**- An act that formally declares to the general public that the government has acted in a particular way. A written or printed document issued by a superior government executive, such as the president or governor, which sets out such a declaration by the government.

3.9 SUGGESTED READINGS:

- Sinha, P. C., "Global sourcebook on Human Rights" New Delhi: Kanishka Pub., 2000.
- Sharma, "Human Rights violation: A Global Phenomenon"s New Delhi: APH, 2002
- Chauhan, Rajinder S., "Globalization and Human Rights" New Delhi: Radha, 2007
- Usha Ramanathan, "Human Rights in India: A Mapping"
- BuddhadebChaudhuri, "Human Rights as an Academic Discipline: Challenges and Opportunities"

UNIT-IV

HUMAN RIGHTS POLICIES AND PLANNING IN INDIA

STRUCTURE:

- 4.1 Introduction
- 4.2 Policies for Human Rights
- 4.3 Role of Public Interest Litigation (PIL)
- 4.4 Human Rights of Disabled Persons
- 4.5 Steps taken by NHRC
- 4.6 Terminal questions
- 4.7 Answer to check your progress
- 4.8 Key words
- 4.9 Suggested readings

OBJECTIVES:

After going through this Unit you should be able to understand:

- Various Policies adopted by Indian government to protect Human Rights.
- Definition of Disability
- Various planning and policies for disabled person

4.1 Introduction:

The state has adopted strategies, and measures, dealing with human rights violations, and for pre-empting the occurrence of such violations. While some of these strategies and measures are perceived by activists as having supportive potential, others are seen as providing spaces for human rights violations with impunity; this is particularly so in the case of extraordinary laws.

The establishing of 'Commissions' including: the NHRC (by Act of 1993), the NCW (by Act of 1990), the National Commission for Backward Classes (by Act of 1992), the National Commission for Safai Karamcharis (by Act of 1993). It is a widely held opinion that the NHRC was established in response to international pressure. Though the Protection of Human Rights Act says that there shall be 'two

members having knowledge, or practical experience in, matters relating to human rights' there has been no person from the human rights community in the NHRC; nor does there seem to be enthusiasm among the members of the human rights community to be appointed to the NHRC.

The NHRC has standardized compensation as a response to human rights violations. It does recommend disciplinary action and prosecution of errant officers, but this is not invariable. There has been an acknowledgment of custody deaths, and there is a direction that all cases of custody deaths be reported to the NHRC within 24 hours of its occurrence. The numbers have been seen to be increasing each year; the NHRC puts it down to increased reporting. There is a direction that post-mortem of persons who have died in custody be videotaped; it is not apparent that this has made a difference. The NHRC was at one with the human rights community in demanding that TADA be not re-enacted. It also recommended ratification of the Torture Convention, but the government does not have to heed the NHRC, since its opinion is only recommendatory; and the Torture Convention remains not ratified.

The exclusion of the armed forces from the purview of the NHRC is identified by activists as a grave lacuna in the Act that establishes the institution. This is especially so since human rights violations by the armed forces are a matter of concern and contention in the conflict-torn regions of the country. It is also that this exclusion is viewed in the context of the NHRC's reach over 'terrorism', and, therefore, found anomalous. In defending its human rights record before the Human Rights Committee, the state has used the NHRC, along with PIL, as reason to believe that all human rights violations have avenues for redressal within the state.

The Supreme Court, too, has passed on the burden of PIL cases which deal with human rights issues, included bonded labour, mentally ill in institutions and women in 'protective' homes, to the NHRC. This shift from a binding fundamental rights jurisdiction to an institution with recommendatory powers has been viewed with growing concern by activist lawyers.

The judge-heavy composition of the NHRC has influenced the procedure of 'hearing', setting out of a 'case', and even 'affidavits' and 'arguments'.

The Annual Report of the NHRC is to be placed before Parliament, making it a public document. The government is to give an Action Taken Report along with it. In the Annual Report of 1998-99, the NHRC refers to the non-tabling of the report

of the previous year; the more significant recommendations from the previous year have been reiterated in 1998-99. There has been no challenge to this governmental neglect.

4.2 Policies for Human Rights:

The soft approach, sometimes amounting to a clear negation of rights, as in the Punjab Disappearances case, has been castigated by activists. The impact of directives issuing from the NHRC, on custody deaths for instance, is unclear. Documentation of cases, and the reports of investigations, is not easy of access, and no system has been devised for ensuring such transparency.

State Human Rights Commissions (SHRCs) have been set up only in some states. Andhra Pradesh, with its escalating record of encounter killings, has not established a SHRC. In West Bengal, activists do approach the SHRC, but they explained that they were confronted with popular prejudices - such as judging a victim of custodial torture as not worthy of the energies of human rights activists; and their concern being 'misplaced'. An orientation to human rights was found missing when such poses were struck, they contended. Activists in other states, such as Tamil Nadu, seemed to prefer approaching the NHRC rather than the SHRC; a question of competence and demonstrated seriousness of purpose at the state level, they explained.

Courts:

The setting up of human rights courts at the district level has begun, and activists have engaged with the process of establishing rules and guidelines in terms of the procedure to be adopted by these courts. These don't seem to have become functional yet, and they remain sidelined and hazily constructed within the dominant judicial system. Also, activists in Tamil Nadu said that human rights courts were restricting themselves to civil and political rights; it will lead to a defining of what constitutes human rights in this lexicon, they said.

Mahila Courts, or courts for women, have been set up in some states, including Karnataka. The appointment of women as judges to person Mahila Courts, and the setting up of all women police stations, are measures that are expected to make the system more accessible, and sympathetic, to women. Some respondents said that conscientisation of judges on women's issues was of importance; appointing women as judges was no guarantee that the necessary sensibilities would enter the system, they said.

Compensation:

Like the NHRC, the state too uses compensation as a remedial tool. Ex gratia payments made to victims is a response that has got standardised especially in areas of conflict. The state generally provides compensation for victims of 'terrorist violence'. Victims of violence practised by the security forces, or state violence, are not accorded this recognition.

Extraordinary Laws:

While using the language of 'law and order', 'public order' and of 'terrorism', the state, at the centre and the states, has enacted extraordinary laws. These represent an assumption of extraordinary powers premised on security and safety of the state and of the population at large. The Indian state is also in the vanguard in negotiating an international law on terrorism. Cross-border terrorism is identified by the state as a major threat to human rights, and more prominently, to the security of the state.

Other Laws

The state has enacted, re-enacted, or amended, laws which deal with rights of populations considered vulnerable. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 is one instance. More recently, the Juvenile Justice Act 1986 was replaced by the Juvenile Justice (Care and Protection of Children) Act 2000.

Both these laws have been through the process of consultation. In the case of the Persons with Disabilities Act, in 1998, the government set up a committee to review the legislation. The Committee held regional consultations where interested persons could state their position before the committee. No changes have, however, been brought into the legislation since then. Consultations were sponsored by the government and other agencies when changes to the Juvenile Justice Act were being considered. A division of opinion on children in conflict with the law was discernible at a stage in the consultation. This was not investigated further, nor resolved. The government instead consulted with a closer group of professionals and the Juvenile Justice (Care and Protection of Children) Act 2000 was enacted as a result.

Counseling:

The setting up of Crimes Against Women cells in Delhi, for instance, is intended to provide a place for registering complaints seeking help, providing counseling and,

where relevant, reconciliation. Violence in the home has been the primary target. We also heard of the counseling of the families of naxalites by the police, though we did not get insights into the intent, and techniques employed in counseling.

Census:

The inclusion of the category of 'disability' in the 2001 census has been a statement of recognition of persons with disability being persons requiring specific state attention. Apart from providing a basis for asserting their rights, it has also placed persons with disability within the agenda of the Planning Commission. Women in prostitution have, however, been agitated by their profession being classed with beggars and the unemployed, particularly since it is being done at a time when they are asserting that prostitution be recognised as work.

Samathuvapuram (A Place of Equality):

This is a state-sponsored scheme in Tamil Nadu, expressly intended as an intervention to reduce caste clashes in the state. Envisioned in 1997-98, the scheme is to create a settlement of 100 houses as part of, but some distance from, a village, where contiguous houses will house persons belonging to different castes/religions, even as a large proportion of the houses are allotted to scheduled caste families. The beneficiaries are selected at the gram sabha, and they are only to be people from the villages immediately in the vicinity of the new settlement. 150 samathuvapurams are planned. The second and the 77th samathuvapuram were visited. There was a case of a caste clash that broke out in the 2nd samathuvapuram where a dispute over filling water from a common tap resulted in a dalit woman being assaulted by a family belonging to a higher caste. Local political activists explained that the issue had been resolved with the withdrawal of allotment of the house to the higher caste woman and her family, and their being sent back to their abode in the original village. This is an experiment that calls for long term follow up.

National Commission for Women:

- Established by statute in 1990, this was one of the consequences of the demand of women's groups that women be given a space in intervening on their own behalf.
- The NCW has, over the years

- intervened where women's rights have been violated, as in the case of custodial rape, or where young women have been kept confined by their families to prevent them from going away with a man they choose to marry and live with;
- constructed laws, with regard to domestic violence for instance, to be lobbied for acceptance by parliament;
- held public hearings into the treatment of ousted-women affected by the Maheshwar dam, for instance
- conducted surveys, of women's views on the imposition of death penalty for rape, for instance.
- held consultations on a separate criminal code for women, for instance, or on the issue of cross-border trafficking;
- organized meetings to mount pressure on issues such as the reservation of seats for women in parliament and the legislatures;
- intervened in court cases, as where a woman was awarded the death penalty by the Allahabad High Court, and an appeal was made to the Supreme Court.³⁵
- The Supreme Court has on occasion, asked the NCW to prepare a scheme for the care of victims of rape. Some states, such as Kerala, have also set up a State Commission for Women.³⁶

4.3 Role of Public Interest Litigation (PIL):

This is a jurisdiction that was sponsored by the court, but which developed with the participation and enterprise of activists and the press. The 1990s have, however, seen an appropriation of this jurisdiction by judges and by lawyers, often acting at cross-purposes with activist concerns. At its inception, the PIL jurisdiction of the High Courts and the Supreme Court, with a relaxed rule of standing and simplified procedure, where even a postcard sent to the court highlighting human rights violations could be converted into a petition was a means of asserting the court's relevance in the human rights arena.

The court has used

- commissioners to do fact finding

³⁵ *Panchhi v.State of U.P.* (1998) 7 SCC 177. The Supreme Court, however, did not allow the NCW to intervene, on the ground that they would not entertain a public interest petition in criminal appeals.

³⁶ *Delhi Domestic Working Women's Forum v. union of India* (1995) 1 SCC 14.No scheme has yet emerged from the exercise that must have followed from the 1994 order.

- expert agencies to assist in deciding upon a course of action
- the issuance of directions, and the monitoring of their implementation by the court through report-back methods
- the involvement of all governments, at the state and the centre, since many of the issues have been systemic, and widespread, e.g., the condition of undertrial populations, or the cleaning up of cities.

PIL was conceived as a 'non-adversarial' process, though located within an adversarial judicial system. In 1988³⁷, the Supreme Court asserted its hold over a case, and the cause, even where a public interest petitioner may seek to withdraw the case from the court. The power of the court to reach issues has expanded with PIL, as has the Supreme Court's exercise of its constitutional power to do what it considers necessary in the 'interests of complete justice'. The rights orientation of the court has therefore acquired significance. Conflicts among rights have manifested over time. The use of the courts, and the PIL jurisdiction, by activists, and other public interest petitioners, has come into contention particularly since the *Delhi Industries Relocation* case, *Almitra Patel* and the proceedings in the Bombay High Court in the *Borivili National Park* case.

The cradle scheme in Tamil Nadu was initiated by the state government to prevent female infanticide. The midday meal scheme has been a means of reducing malnourishment among children, while bringing them into the schoolroom. Among schemes to improve the status of the girl child, we heard of a government scheme where if a girl child studies up to standard X, the government will pay Rs.10,000 on marriage. In the nature of 'help lines', which are sometimes located within the offices of high-ranking police personnel, we heard of a 'Crime Stopper Control Bureau' in Tamil Nadu.

The co-opting of NGOs in monitoring and implementing laws, policies and schemes has been reutilized in the last decade. It may take the form of-

- membership of a commission, such as the Rehabilitation Council of India
- membership of committees set up by the government to make policies, e.g., in the making of a population policy
- appointing NGOs as monitoring agencies, e.g. under the Equal Remuneration Act 1976.

³⁷ *Sheela Barse v. Union of India* (1988) 4 SCC 226

- empowering NGOs to take action under the law, e.g., s. 13 of the JJ Act 198675
- funding NGOs carrying out programmes devised by state agencies, e.g., providing child care facilities for children of women in prostitution
- participating in training of judicial officers and policemen, for instance, in gender issues, matters of human rights, and child rights.

In the Janmabhoomi programme of the Andhra Pradesh government, one example of the process of involvement of the people in reviving, or creating, resources - in desilting tanks lying long in disuse, for instance - is achieved through giving work contracts to collectives such as Mahila Mandals. This, however, is not accompanied by a transfer of rights to the local people. The impact this has on the panchayat system may need to be studied. The changes in the role, and autonomy, of the NGOs in relation to the state was adverted to by many respondents, and may need a more systematic appraisal

Commissions of Inquiry:

The appointment of judges to constitute commissions of inquiry under the Commissions of Inquiry Act 1952 is a commonly used device to quell immediate protest and agitation, and to provide a veneer of impartiality to the investigation. This process has lost quite significantly in terms of credibility, since most commission reports come long after the event, and all too often gives a clean chit to the government. The Srikrishna Commission of Inquiry into the Bombay riots of 1992-93 following the demolition of the Babri Masjid is held out by activists as an exception. There is an appropriation by human rights activists of the device of 'Commissions of Inquiry', and this device has been resorted to regularly in the past decade. The legal aid system, now established under the Legal Services Authorities Act 1987, is one potential intervention in the arena of human rights. It however remains litigation-dominated, and is unavailable at the points in the system where human rights violations may occur. The dearth, near-absence, of legal aid available for the victims of the Union Carbide disaster in Bhopal has been represented as one instance of the incapacity, or neglect, of the legal aid system in responding to counseling, litigative and consultative needs of a victim-population.

4.4 Human Rights of Disabled Persons:

According to UN Standard rules "people may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness". Such impairments,

conditions or illnesses may be permanent or transitory in nature. A distinction has been made between disability and handicap. A handicap is considered a loss or limitation of opportunities to take part in community life on an equal level with others. The purpose of this distinction is to emphasize the focus on the shortcomings in the environment and in many organized activities in society that handicap a disabled person.

Thus, Standard Rules have defined disability from a perspective that emphasizes social conditions which disable a group of individuals by ignoring their needs of accessing opportunities in a manner conducive to their circumstances.

The definition of disability adopted by the British Council also takes into account the social conditions which disable a group of individuals by ignoring their needs of accessing opportunities in a manner different from others. However, it also views these social conditions as infringing upon Human Rights of disabled and as instances of discrimination against them. According to this definition, "disability is the disadvantage or restriction of activity caused by a society which takes little or no account of people who have impairments and thus excludes them from mainstream activities". Therefore, like racism or sexism, disability is described as a consequence of discrimination and disregard to the unique circumstances of people with disabilities.

In order to fulfill its international commitment and constitutional mandate India formulated policies, programmes and enacted legislations to empowerment of disabled persons. At present there are following laws in our country to safeguard the rights of disabled persons.

A. The Mental Health Act, 1987:

This is an Act to consolidate and amend the law relating to the treatment and care of mentally ill persons, to make better provision with respect to their property and affairs, and for matter connected there with or incidental thereto.

B. The Rehabilitation Council Act of India, 1992:

The Act was created to provide for constitution of the Rehabilitation Council of India for regulating training of the Rehabilitation Professional and maintaining of a Central Rehabilitation Register and related issues.

C. The Persons with Disabilities (Equal Opportunities, full Participation and Protection of Rights) Act, 1995:

The Act is guided by the philosophy of empowering persons with disabilities and

their associates. The endeavor of the Act has been to introduce an instrument for promoting equality and participation of persons with disability on the one hand, and elimination discriminations of all kinds, on the other.

D. The National Trust (For Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities) Act, 1999:

The trust aim to provide total care to persons with mental retardation and cerebral palsy and also manage the properties bequeathed to the Trust. The Trust also supports programmes that promotes independence and address the concerns of those special persons who do not have family support. The Trust will be empowered to receive grants.

4.5 Steps taken by NHRC:

The National Human Rights Commission in Relation to Right of Persons with Disabilities took following steps:-

(i) Ensuring availability of Braille text book:

The National Human Rights Commission (NHRC) was shocked to learn that blind students routinely receive their Braille textbooks towards the fag end of the academic session or worse still; a majority does not have access to these books at all. Upon delving deep into the matter, it was found that many States and UN administrations have not even set up a single Braille press. Recognizing that children with disability have a right to receive and education in an appropriate environment, the Hon'ble Chairperson, NHRC vide letter dated April 8, 2005 to the Chief Ministers of all States and Union Territories stated that there is a need to ensure that the printing of books in Braille go simultaneously with the printing of regular books. In order to ensure timely availability of Braille text books, the services of high speed computerized Braille presses could be utilized. This would ensure education in an appropriate environment for blind students, in accordance with Section 26 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

(ii) Ensuring education through 'sign' Language to deaf children:

The Commission was astonished to find that the deaf children generally do not receive education through the medium of sign language. Reason being non-availability of child centered sign language in the country and the absence of sign language training from the teacher education programmers for the deaf. To remove this injustice, the Commission advised Ministry of Social Justice and

Empowerment and the Human Resource Development to support a project for standardization of the sign language for the deaf children in age range of 0-14. Towards this end, the Commission facilitated a series of meetings and workshops involving a number of institutions and experts. These consultations were useful in developing a project outline a number of institutions and experts. These consultations were useful in developing a project outline in a multi-partite mode. We note with satisfaction that Ministry of Social Justice and Empowerment has extended the necessary financial and technical assistance to the Ali Yavar Jung National Institute for the Hearing Handicapped, Mumbai (NIHH). The institute has been designated as a nodal agency for the implementation of the sign language project. However, the Ministry of HRD could not arrive at any decision for strengthening sign linguistic component within the linguistic division of Jawaharlal Nehru University. Under the Biwako Millennium Framework India is obliged to develop and coordinate a standardized sign language, finger Braille, tactile sign language. Salamanca Statement emphasized the importance of sign language as the medium of education for the deaf and encourages the State to ensure that all deaf persons have access to education in their National Sign Language.

(iii) Ensuring Economic Opportunities to Disabled:

High correlation between disability and poverty has been a cause of serious concern for the Commission. It is believed that people with disability are very vulnerable to poverty, if they are not already poor, since disability often results in loss of income and demands additional expenditure. The cost of living also increases with the imposition of barriers to access public goods, utilities and services. The Commission in partnership with the National Association for the blind undertook a study to estimate the precise cost of disability-both direct and indirect.

The expenditure on additional facilities and services as brought out in the study for disabled person. The Commission firmly believes that it the duty of the State to relieve the disabled and their families of this extra cost. The study also confirm that, "gains emanating from providing economic opportunities to persons with disabilities and relieving the care givers for taking up alternative productive vocations is a staggering Rs. 25,000/- crore per annum." Employment related provisions comprise the core element of the Persons with Disabilities Act, 1995.

(iv) Project for Disables:

Disability is an emerging are in the field of Human Rights. In order to improve the

capacity of Human Rights Commissions of India and Canada including their associated partners and to cooperatively address major disability issues from a Human Rights perspective, a project was initiated in the year 2003. For grounding firmly the Human Rights perspective on disability, the project worked towards effecting change in the programmes of legal and Human Rights studies. It has also prepared a small cadre of master trainers capable of serving formal and non-formal programmes of Human Rights education and awareness.

(v) Prescribing Paper on Disability in Curriculum Courses:

Apart from these, a curriculum design for a course in Human Rights Disability and Law has also evolved and the Bar Council, National Law Schools and their leading Universities have been asked to introduce an optional paper in Disability at the graduate level.

(vi) Deputation for internship programme:

As a measure to improve in-house capacity for the efficient handling of disability issues the Commission deputed three of its officers for an internship Programme with the Human Rights Commission of Canada (CHRC) which possesses vast experience in the protection and promotion of rights of persons with disability. The officers from the Law, Programme and Research Division of the Commission attended the internship that familiarized them with Canadian legal and policy frameworks, the alternative complaints handling system of CHRC and the Canadian Programme initiatives for non-discrimination and reasonable accommodation in public facilities and employment.

(vii) Organizing conferences:

On June 23, 2005, a National Conference on Human Rights and Disability was hosted by the Commission. The objective was to crystallize strategies from mainstreaming disability in the development agenda of the country. The conference brought together all the major stakeholders like senior officials of concerned Ministries in the Government of India, NGOs working in the Disability Sector, persons with disabilities, head Welfare Secretaries and Vice Chancellors of universities. To keep disability under the spotlight, the participants endorsed establishment of independent Department of Disability and Development (DDD) on the lines of Department of Women and Child Development, Government of India.

(viii) Convened Judicial Colloquium on Disability & Law:

To promote judicial intervention and activism on disability rights and related issues, a Judicial Colloquium on Disability & the Law was convened in December, 2005 at Delhi. It was attended by 52 judges from 15 High Courts of the country and included the Chief Justices of Tamil Nadu and Jammu and Kashmir. The colloquium was organized in partnership with Human Rights Law Network, which is a national network of legal aid centers in the country. The colloquium provided a useful opportunity for the members of the judiciary to analyze some provisions of the Disabilities Act, 1995 for clarity and uniform interpretation. The participating judges and Human Rights experts also examined international standards on disability with a view to identifying areas of policy and law reform.

(ix) Contributed to Disability Convention:

In the elaboration of the Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities the Commission has been playing a significant role.

As far as disables are concerned the NHRC released a manual on "Human Rights, Disability and law on 23rd June 2005. The manual is an impressive Compilation of a range of positive examples of disability Jurisprudence. It Consists of a variety of general and disability specific instruments, such as Core international Human Rights treaties, declarations proclamations and rules to establish their relevance for persons with disabilities The Manual explores all the relevant provisions of the Constitution of India and the statutes. The Commission has also published a handbook under the Caption 'Employment of persons with Disabilities'. The treatise advocates the importance of a barrier free environment. The reviewing officer gave a number of suggestion and recommendations to the concerning state Governments and hospital authorities for Compliance. The Commission has been deeply concerned regarding the issue of silicosis. The issue was taken up for discussion in the National Review meeting on health held on 6th March, 2007 and the Commission felt a need to have a Comprehensive legislation and operational mechanism to ensure prevention of such Cases in future apart form Care for all the affected persons. The commission has also developed a proposal entitled "Indian sign Language for deaf persons.

4.6 TERMINAL QUESTIONS:

1. Which of the following is not type of Mental Disability?
 - a. Imbeciles

- b. Trainable Mentally Retarded
 - c. Dull
 - d. Blind
2. Which Act is related to the treatment and care of mentally ill persons?
- a. The Rehabilitation Council Act of India, 1992
 - b. Mental Health Act, 1987
 - c. Indian Penal Code
 - d. None of the above
3. Which Section of the persons with disabilities Act, 1995, makes the provisions for the Appointment of Chief Commissioner for persons with disabilities?
- a. 55
 - b. 56
 - c. 57
 - d. 58
4. Section 58 the persons with disabilities Act, 1995 deals with:
- a. Functions of the Chief Commissioner
 - b. Appointment of Chief Commissioner
 - c. Penal Provisions
 - d. None of the above
5. The Constitution of India premised on the principle of:
- a. social justice
 - b. Human Rights
 - c. Both a and b
 - d. None of the above
6. Which Article of the Indian Constitution talks about securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement?
- a. Article 45
 - b. Article 41
 - c. Article 46
 - d. Article 47
7. In which the Union Public Service Commission was directed to allow blinds to compete in the examination for Administrative and Allied services.
- a. National Federation of Blinds v. Union of India

- b. Deputy Secretary v. Sanchita Biswas.
- c. State of Rajasthan v. Dr. Vijay Kumar Agarwal
- d. Kunal Singh v. Union of India

4.7 ANSWER TO CHECK YOUR PROGRESS:

- 1. d. Blind
- 2. b. Mental Health Act, 1987
- 3. c. 57
- 4. a. Function of Chief Commissioner
- 5. c. Both a and b
- 6. b. Article 41
- 7. a. National Federation of Blinds v. Union of India

4.8 KEY WORDS:

- **Social Justice** - is justice that follows the principle that all individuals and groups are entitled to fair and impartial treatment. Social justice attempts to prevent human rights abuses. Social justice is based on notions of equality and equal opportunity in society. It focuses on the full and equal participation of all citizens in economic, social and political aspects of the nation. Social justice can also refer to advantages and disadvantages distributed in a society.
- **Testimony** - Oral evidence offered by a competent witness under oath, which is used to establish some fact or set of facts. Testimony is distinguishable from evidence that is acquired through the use of written sources, such as documents.
- **Democracy** - a system of government by the whole population or all the eligible members of a state, typically through elected representatives:
- **Rehabilitation** - means "to restore to useful life, as through therapy and education" or "to restore to good condition, operation, or capacity".
- **Cerebral palsy**- is non-life-threatening, with the exception of children born with a severe case, cerebral palsy is considered to be a non-life-threatening condition. Most children with cerebral palsy are expected to live well into adulthood.

- **Braille**- A system of writing and printing for blind or visually impaired people, in which varied arrangements of raised dots representing letters and numerals are identified by touch.
- **Unsound Mind**- A person of unsound mind is an adult who from infirmity of mind is incapable of managing himself or his affairs. The term, therefore, includes insane persons, idiots, and imbeciles.

4.9 SUGGESTED READINGS:

- The Globalization of Human Rights, edited by Jean Mare colacud, Michal W. Doyle & Anna Mari Gardner (2004)
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- Surela V. Nadagoundar, "Right of disabled persons: An overview of the persons with disabilities Act, 1995," Indian Bar Review, vol. 27(2) 2000

UNIT-V

NATIONAL AND STATE HUMAN RIGHT COMMISSION

STRUCTURE:

- 5.1 National Human Rights Commission
- 5.2 Structure of the National Human Rights Commission
- 5.3 Division of the Commission
- 5.4 Objective of the Commission
- 5.5 State Human Rights Commission
- 5.6 Constitution of State Human Rights Commissions
- 5.7 Terminal questions
- 5.8 Answer to check your progress
- 5.9 Key words
- 5.10 Suggested readings

OBJECTIVES:

After going through this Unit you should be able to understand:

- Structure of the NHRC and SHRC
- Function and power of the NHRC and SHRC
- Various divisions of the NHRC

5.1 NATIONAL HUMAN RIGHTS COMMISSION:

As the constitution of India guarantees to all people, justice, social, economic and political; equality of status and opportunity before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality. These basic rights are so placed, that the rest of the constitutional mechanism works subordinate to it. To reaffirm its Commitment and respect for Human Rights, the government of India had passed, The Protection of Human Rights Act, 1993, where in which National Human Rights Commission has been established. The objective of the Act is to provide for the Constitution of a National, State Human Rights Commission, and Human Rights Courts for better protection of Human Rights and for matters connected therewith or incidental

thereto. Thus it has twin objectives to fulfil namely establishment of institutional structure both at centre and state level and create enforcement machinery by way of Human Rights Courts for Protection of Human Rights. In a global climate of heightened awareness of Human Rights, it has come as no surprise to the Commission that its formation and activities should be the subject of considerable interest both at home and abroad. The Commission welcomes this interest for it is convinced that a country like India, with its open and democratic society, its pluralism, its commitment to the Rule of Law, the Universal Declaration of Human Rights and its own Constitution, should be in the vanguard of the world-wide movement for Human Rights.

Factors leading to the formation of NHRC:

The history of Human Rights movement can be traced from 13th century. Magna Carta (1215), the Petition of Rights (1628), Bill of Rights (1689), Virginia Declaration of Rights (1776), the American Declaration of Independence (1776), the French Declaration of the Rights Man and Citizens (1789), and the American Bill of Rights (1791) were the documents which gave human rights their initial constitutional status. Most of these documents were the result of long struggles of the people. After the First World War, world community started showing its concern for global mechanisms to protect human rights. After the formation of the League of Nations first international effort was made for human rights on 25th September, 1926 in first conference against colonialism and serfdom. Again on 28th June 1930 a conference was held on Forced Labour. But it was only after the formation of United Nations that human rights movement got momentum, they were defined scientifically and concrete measures were taken for the protection and promotion of human rights. On 10th December 1948 UN adopted the Universal Declaration of Human Rights and subsequently adopted two more covenants (one on Economic, Social and Cultural Rights and other on Civil and Political Rights) on 16th December 1966 and they came into force on 3rd January, 1976 and 23rd March 1976 respectively. Both the covenants were binding on the rectifying states. Another major development occurred in September, 1978 when Commission on Human Rights organized a seminar in Geneva where a set of guideline was evolved regarding the functions of National Human Rights Institutions (NHRIs). These guidelines were endorsed by the UN General Assembly. It created a lot of pressure on the member states to constitute NHRIs. A series of reports, workshops and seminar were organized by the UN to prepare the member states for the

cooperation between national and international agencies for Human Rights protection and promotion. The conclusion arrived at, after deliberations of this Workshop, came to be known as *Paris Principles* of 1991. The role of NHRIs was also emphasized in the Vienna Declaration and Programme of Action in 1993. The General Assembly through its resolution 48A/134 of 20th December, 1993 endorsed the same⁵. Since India was closely and actively participating in all these developments, it became obligatory to set up NHRI at home.

On the domestic front also the demand for setting up of a specialized agency to deal with human rights issues was at the peak of it. On the alleged violations of human rights in Assam, Punjab and J& K by the armed forces and terrorists, India was facing criticisms by national and international NGOs and media. Besides these issues like exploitation of women, Child Labour, exploitation of employees at work place, riots etc. were also haunting the government of India. In the absence of any specialized agency the government was in deep dilemma on how to tackle the problem.

Independent Status of National Human Rights Commission:

Protection of Human Rights Act, 1993 provides the Commission with functional autonomy as enshrined in Paris Principles⁶. Composition of the Commission, qualifications of the members and method of appointment of the members as enshrined in the Act are such that ensures an independent functioning of the Commission. For example the selection committee to appoint the members the Commission consists of, (A) Prime Minister of India, (B) Speaker of Lok Sabha (C) Minister, and Ministry of Home Affairs Government of India (D) Leader of Opposition in Lok Sabha (E) Leader of Opposition in Rajya Sabha, and (F) Deputy Chairman of the Council of States. The very composition of the selection committee shows that the members of the Commission must have the confidence of not only the ruling party but also the Opposition. Also the presence of Speaker of Lok Sabha and Deputy Chairperson of Rajya Sabha ensures the support of Legislature to these members. In addition to this, presence of three members from judiciary also provides further legitimacy and independence to the Commission. Security of the tenure of the members, removal of the members by the President of India on the ground of proved misconduct or incapacity and the budget of the Commission which is passed by the Parliament (Section 32(1) and (2)) are certain other features of the Act to provide independence to the Commission.

5.2 STRUCTURE OF THE NATIONAL HUMAN RIGHTS COMMISSION:

The unique feature of the NHRC is its well-arranged and newly developed organizational structure. Organizationally, NHRC consists of a Chairperson, Members, Secretary-General, Heads, Sub-heads and other staff of different divisions.

(i) Composition of the Commission:

The composition to the Commission can be studied taking into consideration the following sub-points:—

(a) Chairperson and Other Members:

Section 3 of the Act envisages that the Commission shall consist of:

- (a) a Chairperson who has been the 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.

In order to facilitate the work to the Commission, the Act also lays down that the Chairpersons of the National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes, and the National Commission for Women are to be deemed to be the Members of the Commission for the discharge of certain functions, except for function relating to inquiry into complaints of violation of Human Rights, viz., that mentioned in section 12(a) (i) and (ii) of the Act.

(b) Appointing Authority:

In accordance with Section 4 of the Act, the Chairperson and members of the Commission are appointed by the President of India on the basis of the recommendations of a committee comprising the Prime Minister, as the Chairperson, the Speaker of the Lok Sabha, the Home Minister the Leaders of the Opposition in the Lok Sabha and Rajya Sabha, and the Deputy Chairman of the Rajya Sabha as members.

(c) Term:

The term of office of the Chairperson and members will be of five years from the date of assumption of office or .until the age of 70 years, whichever is earlier. On

ceasing to hold office, the Chairperson and members shall be ineligible for further appointment under the Government of India or under the Government of any State.

(d) Removal:

The Chairperson or any other member of the Commission can only be removed from his office by an order of the President on the ground of proved mis-behaviour or incapacity after the Supreme Court has, on an inquiry held in this behalf, recommended such removal.

(e) Vacancy of the Office of Chairperson:

In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the President of India may, by notification, authorize one of the members to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy. When the Chairperson is unable to discharge his functions owing to absence or leave or otherwise, such one of the members as the President may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties. However, no sitting Judge of the Supreme Court or a sitting Chief Justice of a High Court shall be appointed without consultation with the Chief Justice of India.

(f) Head Quarter of the Commission:

The Headquarter of the Commission shall be at Delhi and there is an additional provision in the Act to establish offices at other places in India with the previous approval of the Central Government.

(ii) Officers and Other Staff of the Commission:

The Act provides that besides the Secretary-General, the Central Government shall make available to the Commission such police and investigative staff and an officer not below the rank of Director General of Police, and such other officers and staff as may be necessary for the efficient performance of the functions of the Commission. The Commission may appoint other administrative, technical and scientific staff considered necessary in conformity with the rules made by the Central Government in this behalf.

Secretary General:

The Secretary-General of the Commission is an officer of the rank of Secretary to the Government of India. As a Chief Executive Officer of the Commission, all the orders and decisions taken by the Commission are authenticated by him. The

whole secretariat of the Commission, i.e., all the divisions comes under the overall administrative control of the Secretary-General who is directly responsible to the Commission. Being the chief coordinator of the Commission, he also keeps liaison with the various Ministries of the Government of India.

5.3 DIVISIONS OF THE COMMISSION:

There are at least five different divisions of the Commission entrusted with specific task, in close consultation and coordination with each other. These are: the Investigation Division, the Law Division, the Administration Division, the Information and Public Relations Division, and the Research Division. In addition to this, the Commission also maintains a library and computer cell. All these components of the Commission call for a more detailed study.

The Investigation Division:

The Commission has its own investigatory staff for investigating into complaints either through its own initiative or a petition filed by a person in relation to Human Rights violations. As per the Act, the head of the investigation team is an officer of the rank of Director General of Police who is appointed by the Commission itself. This team includes one Deputy Inspector General of Police, 3 Superintendents of Police, 6 Deputy Superintendents of Police, 24 Inspectors of Police and 24 constables. In addition to this, the Act also envisages the association in appropriate cases of outsiders as investigators or observers. However, the specified strength of the division is yet to be achieved. As the head of the division the Director General is responsible for the whole process of investigation into complaints of Human Rights violations. In the process of its inquiry, it is also open to the officials of the division to utilize the services of the Central Government or any State Governments as the case may be. During the investigation process an officer/agency whose services are utilized comes under the direction and control of the Commission. The Commission, through the concerned officer or agency, has the power to summon and enforce the attendance of any person and to examine him. Thereafter, the officer or agency, utilized for this purpose, is required to submit a report to the Commission in a given period of time as prescribed by the Commission. Accordingly, the Commission makes its own recommendations.

Another task of the division is the dispatch of delegation. The main aim of the task is to get more information about the violation of Human Rights and other related problems. For example, a delegation has been recently sent to J & K for an on- the-

field investigation. These are the main responsibilities of the division with the hierarchy of functioning.

The Law Division:

The Law Division of the Commission plays a pivotal role in both receiving of complaints and redressal procedure of such complaints of Human Rights. It also informs the petitioner and violative agency about the action taken or likely to be taken in that regard. The medium of interaction could, however, be through any vernacular language as mentioned in Eighth Schedule of the Constitution. However, no fee is chargeable on complaints.

Presently, it is headed by a Registrar, one Joint Registrar, one Deputy Registrar, 5 Assistant Registrars, 6 Section Officers, 9 Office Assistants and such other ministerial staff. The functioning of the Law Division of the Commission is quite systematic and meticulous. It acts in a sort of circle. First of all it receives the complaints and after formal registration of these it sends to decision-making body of the Commission. The decision-making bench, after a proper assessment of the complaint, passes orders having three different possibilities: Dismissal of complaints on the following grounds:—

- (1) The complaints which do not fall within the purview of the Commission;
- (2) The matter is sub-judice or pending before another commission;
- (3) The event which is the object of the complaint had occurred more than one year before making of the complaint;
- (4) The complaint which is vague anonymous or pseudonymous in nature; and
- (5) The complaint relating to service matter.

Disposal of complaints with direction to the concerned authority where the case is likely to be decided. After the proper assessment of a complaint a notice is given, provided the Commission feels that the case comes within its purview and consequently detailed reports are demanded from concerned authorities. In case of delays in furnishing the report, the Commission sends reminders and then the concerned agencies/authorities are bound to send the report to the Commission which passes the final order and sends the same back to the authority. However, all these works of the Commission are practically done by this division with the help of the computer based network system. Apart from the above three different possibilities, there are certain exceptional cases where the Chairman is likely to write letters to the concerned authorities, which in turn respond directly to the

Chairman's office or to this division.

The Administration Division:

This Division looks after all administrative, personnel, establishment, and cadre matters of all the staff and officers of the Commission. It is headed by a Joint Secretary who is the Head of Department and is assisted by a Director, two Under Secretaries, two Section Officers and such other ministerial staff. This division looks after the meetings of the full Commission, daily sittings of the Commission and issues notices for such meetings/sittings. It also arranges the tours of the Commission including foreign tours/visits. It also looks after the Protocol, arranges staff identity cards, telephones, computers and other equipments of the Commission. The Accounts Branch also functions under the overall charge of the Joint Secretary. It has one Senior Accounts Officer, three Assistants Account Officers and other ministerial staff. This branch looks after all the accounts of the Commission, prepares budget as also monitors the same.

The General Section of the division takes care of all the housekeeping jobs, i.e., procurement of stationary, stores equipments like Type-writers, Electronic Type-writers, Photostat machines, fax and such other equipments, furniture, etc. It also issues various items of housekeeping to different divisions and staff. It also looks after the maintenance, renovation and repairs, etc., of the office premises as also keeps close liaison with CPWD for the maintenance, etc., of the bungalow allotted to the Chairperson and other members of the Commission. Under Secretary (Estt.) is the head of the office and is also assisted by a Drawing and Disbursing Officer (DDO).

A Hindi Section of the Commission also functions presently under this division. This Section arranges translation of complaints from Hindi and other vernacular languages into English as also normal Hindi work of the Commission including translation of Monthly News Letter and Annual Report. It has also introduced correspondence medium as Hindi in office premises. The Commission is an autonomous body and its autonomy scheme came into being in April, 1994. Under the autonomy scheme, various powers of the Ministries/departments of the Central Government have been delegated to the Chairperson. Financial power, general financial rules, fundamental and supplementary rules, Central services leave rules and such other rules as applicable to other Ministry/departments of the Government of India have also been delegated to the Commission.

A steering committee headed by the Chairperson has been set up to look after the

budget estimates, revised budget estimates, allocation of funds to various heads and sub heads, approval of accounts and provisions, directions on the audit report, and such other matters within the competence of the Chairperson as he may like to refer this committee.

The Information and Public Relation Division:

This Division publicizes the activities of the Commission through the Print and Electronic Media, headed by Information and Public Relation Officer who also acts as the Editor of the Monthly Human Rights News Letter, Annual Reports and other editorial matters of the Commission. This Division is also responsible for the production and distribution of pamphlets/brochures/ audio spots, video spots on Human Rights. As the spokesman of the Commission, the IPRO briefs the media persons, issues press releases and also organizes press conferences. Besides this, it also maintains a data base entitled News Paper Clipping Information System (NPCIS), concerning certain important features of press reacting to NHRC's work. It also looks after co-ordination with NGOs and maintains a Directory of NGOs in the computer system. It also keeps in touch with the representatives of international news agencies/Telecast/Broadcast, etc.

The Research Division:

In order to discharge the responsibility to undertake and promote research in the field of Human Rights, a Research Division has recently been set up for this purpose. This Division keeps contact with both private and official persons, prepares and participates in research missions, and monitors news reports on each item relating to Human Rights. The researchers from different schools and universities are also getting assistance from this Division. Headed by a Senior Research Officer, the Research Division works, in close cooperation with the Law Division, and is responsible for giving advice on research matters to the members of the Commission.

Presently, the Division is underway to prepare reports on various issues relating to Human Rights on the basis of press clippings. This includes custodial deaths, compensation to the victims of crime, child labour, bonded labour, and child prostitution which are some of the burning issues on Human Rights.

The Commission has also taken steps to set up a library- cum-documentation centre. Presently it maintains around 1900 books and other documents, such as UN Documents, AIR manuals, Supreme Court Reports, Government Report NGO

Bulletin, to name a few, which are of relevance to the Commission's work. The library also subscribes to a few journals. In order to make it more systematic and accessible one, it is computerized.

5.4 OBJECTIVE OF THE COMMISSION:

Fact-finding is the heart of Human Rights activity. The prescription or Human Rights norms imply an understanding of the needs to be addressed, which in turn requires an application of the factual conditions. Since the application and supervision of Human Rights norms do not take place in abstracts but in relation to Specific circumstances and situations, a Human Rights organization is supposed to handle with the tangled web of facts, circumstances, perceptions and the situation more realistically. Fact-finding itself and the conclusions/recommendations emanating from a Human Rights organization is more likely to find acceptance if it is done by an independent, competent and impartial authority without having any bias. As a result, the entire process will take care against any suppression or distortion to arrive at its findings.³⁸

Fact-finding and recommendations being the basis of a Human Rights organization, an analysis of the variety of issues needs to be undertaken by the NHRC as far as the promotion and protection if Human Right is concerned. Hence those provisions are to be taken into consideration.³⁹

Fact-finding in a vast and pluralistic country like India, is complex, tedious and costly process. In order to execute this process the NHRC has arranged its structural and functional 'framework. This framework provides the Commission with an efficiency to execute the diverse responsibilities entrusted to it. This presupposes the availability of adequate financial and human resources, which in turn, provides its operational efficiency.⁴⁰

Effectiveness of the Commission depends upon the range of function it is entrusted to perform, the powers conferred upon it to accomplish them, and ultimately the fate of its recommendations. This effectiveness in turn, will provide for the future growth and survival of the Commission.

Besides, its objectivity will make it more accountable and accessible to the public.⁴¹ Objectivity being the basis of the Commission, any deviance could be a

³⁸ Arvind Goswami, Civil and Political Rights: A Global issue, (1994) p-46.

³⁹ Virendra Dayal, Evolution of the National Human Rights Commission, 1993 – 2007: A Decennial Review (2007) at page 173

⁴⁰ Prabhakar Rastogi, National Human Rights Commission and Indian Perspective (2006) at pages 129-130

⁴¹ R.N. Tiwari, Human Rights and the Law (1995) at page 72

major shortcoming for it. On this; other hand, the complex process of achieving its objectives depends upon its effective projection of its existence on the public through various other institutions. This will provide an expression of the acceptance and credibility of the Commission.⁴²

In order to analyze and assess the role of the NHRC in the protection of Human Rights, the following points have been taken into consideration. The National Human Rights Commission came into existence with certain well-identified objectives. The primary and essential objective of the Commission is to create a culture of Human Rights throughout the country and amongst its people. Being an investigatory and recommendatory body with specific statutory powers, it acts as an adviser to the government and submits its reports /recommendations for the future based on the material available, and is not subject to indict or charge any person or group in the society. Hence, its procedure is basically investigatory and recommendatory rather than accusatory or judicial one.⁴³ The five important manifestations of NHRC's objectives are:

1. Inquiry into complaints;
2. Review of laws, implementation of treaties and other international instruments on Human Rights;
3. Improving jail conditions;
4. Promotion of Human Rights literacy and awareness among various sections of the society; and
5. Undertaking and promoting research in the field of Human Rights.

Steps after inquiry:

The Commission may take any of the following steps upon the completion of an inquiry held under Section 18 of this Act namely:

- (1) where the inquiry discloses, the commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant, it may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons;
- (2) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;

⁴² A.C. Vagle, The Protection of Human Rights Act, 1993 : Breaking New Ground for Human Rights Jurisprudence (2005) at page 61

⁴³ Vikram Raghwan, Sensitization of Human Rights: Issues and Concerns (2007) at page 175.

(3) Recommend to the concerned Government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;

(4) Subject to the provisions of clause (5), provide a copy of the inquiry report to the petitioner or his representative;

(5) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;

(6) The Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.

Annual and special reports of the Commission:

The Commission submits an annual report to the Central Government and to the State Government concerned and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report. These reports are laid before each House of Parliament or the State Legislature respectively, as the case may be, along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission.

Matters not subject to jurisdiction of the Commission:

(1) The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.

(2) The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed.

Power of Central Government to make rules:

According to the Section 40 of the Act, Central Government may make rules to carry out the provisions of this Act regarding;

(a) the salaries and allowances and other terms and conditions of service of the Members;

- (b) the conditions of administrative, technical and scientific staff appointed by the Commission and the salaries and allowances of officers and other staff;
- (c) the form in which the annual statement of accounts is to be prepared.

But Section 40(3) of the Act has also put a check on undue intervention by the Government. According to this clause any rule made by the government shall be laid before each House of the Parliament. If both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect.

Funding for the NHRC:

Budget proposals formulated by the NHRC and approved by a Committee headed by the Chairperson of the Commission are included in the overall budget proposals made to Parliament by the Ministry of Finance. Once the budget proposals are passed by Parliament, the grants are remitted to the NHRC. Once the budget is passed by Parliament, Section 32(2) of the PHRA lays down that the NHRC “may spend such sums as it thinks fit.” The NHRC has the power to appropriate funds from one head of expenditure to another, giving it the freedom to change its priorities, if need be, even after the budget has been passed. No percentage of the NHRC's budget is donor-funded.

5.5 STATE HUMAN RIGHTS COMMISSION:

The Protection of Human Rights Act under Chapter V also provides for the setting up of State Human Rights commission in States consisting of a Chairperson who has been a Chief Justice of a High Court, one member who is, or has been, a Judge of a High Court, one member who is, or has been a District Judge in that State and two members to be appointed from amongst persons having knowledge of or practical experience in matters relating to human rights. The Governor shall appoint the Chairperson and other members of the Commission.

The State Commission is empowered to perform all those functions, which have been entrusted to the National Human Rights Commission. However, paragraph C of Section 29 excludes the study of treaties and other International Instruments on human rights from the purview of SHRC. The study of such treaties and the eligibility to make recommendations for their effective implementation are the exclusive domain of the NHRC. The state Commission may inquire into violations of human rights only in respect of matters related to any of the entries enumerated in List II and III in the Seventh Schedule of the constitution. Section 36(1) of the

Act, however, states that the State Human Rights Commission shall not enquire into any matter which is pending before a National Commission or any other statutory Commission duly constituted under any law in force.

The Commission is required to submit its annual report to the State Government and it may submit at any time special reports on any matter, which in its opinion is of such urgency or importance that it cannot be deferred till the submission of the annual report. The State Government shall submit these reports before each House of State Legislature with a memorandum of action taken and the reasons for non-acceptance of the recommendations.

The States having their own SHRCs are Jammu and Kashmir, Himachal Pradesh, Punjab, Rajasthan, Madhya Pradesh, Chhatisgarh, Maharashtra, Kerala, Tamil Nadu, West Bengal, Assam and Manipur. Uttar Pradesh, from where the NHRC receives maximum number of complaints of human rights violations every year, set up an SHRC in October 2002. Similarly, Orissa and Bihar Governments have also issued Notifications for constituting SHRCs in their respective States. It is to be noted that certain State Governments have informed the NHRC of their difficulty in establishing the Commissions because of financial constraints or due to the non-availability of retired Chief Justice or Justices of the High Court whose presence is essential to the proper composition of the five member Commission envisaged under the provisions of Section 21(2) of the Protection of Human Rights Act of 1993.

The NHRC in its 1998-99 report has recommended that the State level Commissions be established as early as possible, where they do not yet exist. It is indeed desirable that every State should set up SHRC in view of the fact that the issue of promotion and protection of human rights of people in a civilized society is a matter of prime concern because in spite of various Constitutional and legal safeguards and institutional mechanism for upholding the fundamental rights of the people such rights are often violated. The Chairperson of the National Human Rights Commission has written to all Chief Ministers in respect of this matter and reminded them frequently of the necessity of constituting the SHRC. The National Human Rights Commission in its 1999-2000 report has observed that it is disappointed with the slow pace with which State Governments are acting to constitute SHRCs. The Commission has also noted that not all the State Human Rights Commissions, that have been established, are being appropriately supported through the provision of adequate financial, and manpower resources. Greater

political will is, therefore, required at the State level, combined with encouragement from the Central Government (and the major political parties to proceed conclusively in this direction. If State Human Rights Commission is established in the States and their work is coordinated with that of the NHRC much confusion and duplication could be averted.

As mentioned earlier the Protection of Human Rights Act, 1993 recommends the constitution of National Human Rights Commission along with State Human Rights Commission in States for better protection of Human Rights.

5.6 CONSTITUTION OF STATE HUMAN RIGHTS COMMISSIONS:

(1) A State Government may constitute a body to be known as them (name of the State) Human Rights Commission (e.g. Maharashtra Human rights Commission) to exercise the powers conferred upon, and to perform the functions assigned to, a State Commission under this chapter.

(2) The State Commission shall, with effect from such date as the State Government may by notification specify, consist of—

(a) A Chairperson who has been a Chief Justice of a High Court;

(b) one Member who is, or has been, a Judge of a High Court or District Judge in the State with a minimum of seven years experience as District Judge;

(c) one Member to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

(3) There shall be a Secretary who shall be the Chief Executive Officer of the State Commission and shall exercise such powers and discharge such functions of the State Commission as it may delegate to him.

(4) The headquarters of the State Commission shall be at such place as the State Government may, by notification, specify.

(5) A State Commission may inquire into violation of Human Rights only in respect of matters relatable to any of the entries enumerated in List II and List III in the Seventh Schedule to the Constitution: Provided that if any such matter is already being inquired into by the commission or any other Commission duly constituted under any law for the time being in force, the State Commission shall not inquire into the said matter:

Provided further that in relation to the Jammu and Kashmir Human Rights Commission, this sub-section shall have effect as if for the words and figures “List

II and List III in the Seventh Schedule to the Constitution”, the words and figures “List III in the Seventh Schedule to the Constitution as applicable to the State of Jammu and Kashmir and in respect of matters in relation to which the Legislature of that State has power to make laws” had been substituted.

(6) Two or more State Governments may, with the consent of a Chairperson or Member of a State Commission, appoint such Chairperson or, as the case may be, such Member of another State Commission simultaneously if such Chairperson or Member consents to such appointment:

Provided that every appointment made under this sub-section shall be made after obtaining the recommendations of the Committee referred to in sub-section (1) of Section 22 in respect of the State for which a common Chairperson or Member, or both, as the case may be, is to be appointed.

Appointment of Chairperson and Members of State Commission:

(1) The Chairperson and Members shall be appointed by the Governor by warrant under his hand and seal:

Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of

- (a) The Chief Minister — Chairperson
- (b) Speaker of the Legislative Assembly — Member
- (c) Home Minister of the State
- (d) Leader of the opposition in the Legislative Assembly

Term of office of Chairperson and Members of the State Commission:

(1) A person appointed as Chairperson shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier;

(2) A person appointed as a Member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment for another term of five years; Provided that no Member shall hold office after he has attained the age of seventy years.

(3) On ceasing to hold office, a Chairperson or a Member shall be ineligible for further employment under the Government of a State or under the Government of India.

Functions and Powers of the SHRC:

The functions and powers of the state commission are similar to those of National Human Rights Commission. The only difference is that the State commission cannot make a study of treaties. The state commission is empowered to study only those cases which are related to their particular state only. If a matter is with the State Commission then NHRC shall not deal with these matters.

The Present State Commissions:

So far 18 states have set up their respective State Human Rights Commissions. These are: Jammu & Kashmir, Andhra Pradesh, Madhya Pradesh, Tamil Nadu, Chhattisgarh, Assam, Orissa, Kerala, Maharashtra, Punjab, Uttar Pradesh, Gujarat, Himachal Pradesh, Karnataka, Manipur, Rajasthan, West Bengal, and Bihar.

5.7 TERMINAL QUESTIONS:

- By whom the Chairperson and Members of State Human Rights Commission shall be appointed?
 - a. Prime Minister
 - b. President
 - c. Governor
 - d. Home minister of India
- Who is the chairperson of State Human Right Commission?
 - a. Retired Chief Justice of a High Court
 - b. Home minister of the State
 - c. Governor
 - d. Chief Justice of High Court
- Who appoints Chairperson and members of the National Human Right Commission?
 - a. President of India
 - b. Prime minister of India
 - c. Speaker of Lok Sabha
 - d. Vice-president of India
- The Headquarter of the Commission shall be at _____.
 - a. Delhi
 - b. Kolkata
 - c. Chennai

- d. Mumbai
 - The Protection of Human Rights Act under _____ provides for the setting up of State Human Rights commission in the States.
 - a. Chapter IV
 - b. Chapter VI
 - c. Chapter V
 - d. Chapter III
 - Section 4 of the Protection of Human Right Act talks about:
 - a. Power of NHRC
 - b. Function of NHRC
 - c. Investing Authority
 - d. Appointing Authority
 - By whom the Administration Division of NHRC is headed?
 - a. Chairperson
 - b. Joint Secretary
 - c. Section Officer
 - d. Any member appointed by the President of India
 - Section 40 of the Protection of Human Right Act deals with:
 - a. Power of Central Government to make rules
 - b. Jurisdiction of the Commission
 - c. Procedure of Inquiry
 - d. All of the above
 - A person appointed as Chairperson of SHRC shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of _____ years, whichever is earlier.
 - a. 58
 - b. 60
 - c. 65
 - d. 70

5.8 ANSWER TO CHECK YOUR PROGRESS:

- c. Governor

- a. Retired Chief Justice of a High Court
- a. President of India
- a. Delhi
- c. Chapter V
- d. Appointing Authority
- b. Joint Secretary
- a. Power of Central Government to make rules
- d. 70

5.9 KEY WORDS:

- **Expression**- the act of making your thoughts, feelings, etc., known by speech, writing, or some other method:
- **Investigation- means** the act or process of investigating or the condition of being investigated or a searching inquiry for ascertaining facts; detailed or careful examination.
- **Accountable**- Accountability is generally the state of being liable, answerable, or accountable. When applied to a legal context, accountability means that some legal rule(s) exists under which a theory or claim can be made to find one liable in a civil law suit or culpable in a criminal matter. Under state laws, a person must reach a certain age before they can be held accountable in both civil and criminal matters. That minimum age is known as the age of majority.
- **Implementation** -Implementation is the carrying out and execution of a plan. Implementation is the action that must follow any preliminary thinking in order for something to actually happen.
- **Jurisdiction**- the power or right to make judgments about the law, to arrest and punish criminals, etc.

5.10 SUGGESTED READINGS:

- Awasthi, "Law relating to protection of Human Rights" New Delhi: Orient, 2009.
- Gautam, Ashwani Kant, "Human Rights and Justice System" New Delhi: APH Pub., 2001

- Basu, Durga Das, "Human Rights in Constitutional Law" New Delhi: Prentice-Hall of India, 1994
- Jagnoop kaur, 'Human rights in India' International Journal of Research in Education Methodology Council for Innovative Research Vol.1, No.2, August 2012
- Pawan Sinha, "National Human Rights Commission (NHRC)"

UNIT-VI

ROLE OF NATIONAL AND STATE HUMAN RIGHT COMMISSION FOR PROTECTION OF HUMAN RIGHTS

STRUCTURE:

- 6.1 Introduction
- 6.2 Strength of NHRC
- 6.3 Working System of NHRC
- 6.4 Suo Moto Powers
- 6.5 Complaint Redressal Mechanism
- 6.6 Terminal questions
- 6.7 Answer to check your progress
- 6.8 Key words
- 6.9 Suggested readings

OBJECTIVES:

After going through this Unit you should be able to understand:

- Working system of NHRC
- Role of NHRC in protecting Human Rights in India

6.1 INTRODUCTION:

Human Rights attach to all persons equally, by virtue of their humanity, irrespective of race, nationality, or membership of any particular social group. They specify the minimum conditions for human dignity and a tolerable life. Human Rights are those which are inherent to all human beings whatever be the nationality, place of residence, sex, national or ethnic origin, color, religion, language, or status in the society. Human Rights encompass a wide variety of rights. Human Rights are universal and moral. All individuals entitled to these rights without any discrimination on any ground. All these rights are interdependent, inter-related and indivisible. Human Rights are important to the stability and development of all the countries around the world. Great emphasis has

been placed on international conventions and their implementation in order to ensure obedience to a universal standard of acceptability. With the advent of globalization and the introduction of new technology, these principles gain importance in protecting human beings from the ill-effects of change. However the efficacy of the mechanisms in place today has been questioned in the light of blatant Human Rights violations and disregard for basic human dignity in nearly all countries in one or more forms. In many cases, those who are to blame cannot be brought to book because of political considerations, power equations etc. When such violations are allowed to go unchecked, they often increase in frequency and intensity usually because perpetrators feel that they enjoy immunity from punishment.

The Protection of Human Rights Act, 1993 sets out the legal framework of the NHRC. The composition of NHRC is high-powered as three out of its five members are judges. The Chairpersons of the National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes (SC, ST) and the National Commission for Women are all deemed (ex-officio) members of the commission. But as there is no coordination between the NHRC and these other national commissions opportunities to look into group complaints of minorities, SC, STs and women seems to have been lost.

6.2 STRENGTH OF NHRC:

1. The selection procedure of the members of NHRC is the main factor of its strength. The composition of the selection committee is such that it involves members of ruling as well as opposition party and both the Houses of Parliament. Also the composition of NHRC is such that it involves Legislative, Executives, Judiciary, academicians and NGOs. This gives the Commission a broad vision to deal with the issues of Human Rights.
2. Financial autonomy, though limited, has provided NHRC independence of Central Government. The Commission is free to make its own budget and spend it according to its own planning. The draft of the proposed budget is placed before both the Houses of Parliament and after the approval of the budget, Government, without making any amendment, has to provide finances to the Commission.
3. The Commission has the power to conduct suo-moto inquiry into the complaints of Human Rights violations.

4. Easy accessibility to the Commission has made it one of the most popular organizations. Anyone can approach NHRC through telephone, letter, application, mobile phone or even through internet. All the documents, reports, newsletters, speeches, etc. of the Commission are also available on this website. The status of the complaint too can be known through its website. The popularity and trust on NHRC is quite evident from the fact that while it had registered only 496 complaints in 1993-94, in 2004-05 the total number of cases were 74,4019.

5. NHRC has advised government a number of times on the issues of Human Rights. Be the cases of custodial deaths or suicide by the farmers or health issues or POTA, Child Marriage, trafficking of women and children etc. government has been taking suggestions from NHRC.

6. NHRC, in a true democratic fashion, has worked immensely to create awareness among public on Human Rights issues through seminars, workshops, lectures, literature, NGOs' participation, universities' collaborations, etc.

7. The Commission has extended its sphere time to time. Gujarat incident, support for right to information, health care issues, disables' rights, HIV/AIDS patients' rights etc. are some of the issues where NHRC has worked successfully.

This composition gives NHRC certain degree of legitimacy, solemnity and credibility as the Act disallows any person other than a former Chief Justice of the Supreme Court to be appointed to be the Chairperson of the Commission but at the same time it attracts criticism of being 'retired persons'. The risk of legal formalism is inherent in the way the Commission is constituted. Remaining two members are to be men and women 'who have knowledge and practical experience in matters relating to Human Rights.' Surprisingly, neither a Human Rights activist nor a woman has been selected under this category. Along with this, in the almost ten years of its existence, the Commission has only for the second time come to have a woman judge as a commissioner. In this context, one scholar has pertinently observed "NHRC's must manifest their commitment to equity and non-discrimination by ensuring gender balance at all levels of their own staff, especially at the level of commissioner." The NHRC's composition also does not reflect the country's 'sociological and political pluralism'- a requirement emphasized by both the UN handbook and the Paris principles. Now a day the Commission is handicapped as its strength is reduced to three only, with two members and chairperson .Two posts of members are lying vacant since January 1997. It is affecting its efficiency adversely as with a view to expediting the

disposal of the complaints, the regulations were amended empowering a single member to deal with the complaints instead of a bench of two members. The Advisory Committee set up by the NHRC to assess need of structural changes and amendments in the Human Rights Act suggested change in the composition of the NHRC with two judicial and three non-judicial members of whom one should be a woman.

6.3 WORKING SYSTEM OF NHRC:

India has been a nation where many of its people have been denied their rights and the exploitation of human life has desensitized many of us. In this context, NHRC should continue with its focus on educating our nation on the importance of Human Rights for Human Rights.

Globalization has also led to interesting yet formidable challenges in the area of Human Rights Jurisprudence. And in the era of globalization the NHRC has a key role to play in ensuring that the all sections of society can productively engage with the expansion of opportunities. Globalization does not further perpetuate the gross economic and social inequalities that exist in our country. By ensuring equal opportunities and protecting citizens against discrimination and inaction, the NHRC can provide a level playing field to all our citizens and help in shaping our country into a truly global leader. The NHRC and other institutions concerned with the development of good governance must also examine how the harnessing of technology can help in the promotion of good governance. Technology if harnessed well and universalized in access can be a great social leveler. For instance, the impact of the internet and related technologies in the promotion of good governance through better delivery of various Government services cannot be underscored. Thus, promotion of universal access of technology, in particular, of the internet and telecommunications would go a long way in strengthening the social fabric of our society and deepening democracy itself and as long as India as a country is unable to bridge the wide socioeconomic gap amongst its people, the challenge towards development of appropriate Human Rights Jurisprudence and its practice, protection and enforcement must remain a constant and rigorous effort.

Indian NHRC is 'federal system with a complex web of sub-national commissions'. As observed by Ian Brownlie, "There can be little doubt that federalism as a system provides a special capacity and flexibility in facing cultural diversity." But in the case of the NHRC this 'complex web' of national and several

state Human Rights commissions (SHRCs) creates a host of confusion regarding jurisdiction for the common man. This is because the Act does not delineate jurisdiction, between national and state Commissions clearly and no hierarchical relationship has been mandated. Any matter, which is already being inquired into by the Commission, or any other Commission, the State Commission shall not inquire into the said matter. In the same way the National Commission shall not inquire into any matter which is pending before a State Commission or any other Commission. It also results in competitiveness between national and state Commissions because of jurisdiction overlap. Besides, experience has shown that section 36 of the Act has lent itself to efforts to thwart the purposes of the Act. On occasion, this has been done by bringing a matter before a SHRC or some other Commission in similar or slightly modified manner, in order to seek to block the jurisdiction of the NHRC. This situation arose, for example, when the NHRC took up a complaint alleging that serious Human Rights violations had been committed in respect of the manner in which the state of Tamil Nadu police had arrested the former Tamil Nadu Chief Minister Mr. M. Karunanidhi, Union Ministers Mr. M. Maran and Mr. T.R. Balu and some others. In respect to a notice from the Commission, the State Government of Tamil Nadu contended, inter-alia, that since a Commission of Inquiry had been set up by the Government to look into the matter, the jurisdiction of the NHRC to inquire into the matter was barred by section 36 (1).

There is no cooperation and coordination between the National Commission and State Commissions. 'Neither of the Commissions utilize the other's potential or expertise, thus, losing the opportunity for a mutually beneficial relationship.' There can be ad-hoc coordination between the NHRC and the SHRCs. There is potential for cooperation in the areas of training in the investigative expertise of higher order and norms setting. To avoid the conflicts and increase the efficiency, complaints of that specific state should be mandated to be dealt at the state level and the state commission's orders and directions should be open to challenge before the Commission by way of revision. In this way state Commission shall be subject to the judicial control of the commission.

SHRCs cannot be established on the pro-rata basis because of inherent difficulties. For example- financial constraints, because of non- availability of retired chief justice or justices of the high court whose presence is essential for the composition under the act. In respect of the states in the Northeastern region, there is a single

high court in Guwahati. A formula may need to be specially devised for these states in respect of SHRCs.

Beside the State Human Rights Commissions there is a provision for the designation of a court of session in each district of India as a Human Rights Court. This is aimed at providing speedy trial of offences arising out of violations of Human Rights. A special public prosecutor is supposed to be assigned to each Human Rights Court. Such courts were notified in Andhra Pradesh, Assam, Sikkim, Tamil Nadu and Uttar Pradesh, but ambiguity remained as to the precise nature of the offences that should be tried in such courts and other details regarding the conduct of their procedure. Hence, at district level Human Rights dispensation is largely non functional.

By holding the Government accountable for existing or past violations of Human Rights the NHRCs plays a vital role in fulfillment of national and international Human Rights norms. The NHRC India has adopted various methods to carry out this task. It accepts complaints regarding Human Rights violations. After receiving the complaints, it asks for the explanation from the Government and if it is not satisfied with the reply, it starts independent investigation on its own. In the course of investigation, the Commission among other things can summon and force witnesses to appear before it and then examine them under oath. It can call for relevant documents. In its proceedings; the NHRC is endowed with all the powers of a civil court. Sometimes the NHRC initiates a general public inquiry also. Following investigation, the NHRC can award compensation or can issue the directions. The NHRC has been surprisingly successful, even according to its staunchest critics, in persuading the state to pay compensation to Human Rights victims. The NHRC may recommend the granting of 'immediate interim relief' to a victim of Human Rights abuse or his or her family. The NHRC has created its website on which it post it's Human Rights Newsletters and one can see the progress and status of one's complaint online. According to the NHRC, "the provision of an investigating mechanism of its own in the Commission gives it the advantage of not being required to rely on the state machinery for inquiring into complaints of violation of Human Rights when the allegation of violation is against the state machinery itself."

6.4 SUO MOTO POWERS:

The Commission can receive complaints or investigate on its own about 'violation of Human Rights or abetment thereof or negligence in the prevention of Human Rights violations by public servants'. "These powers have helped the NHRC to work in preventive and penetrative way." These suo moto powers of Commission to initiate suo moto inquiries are an important aspect of its protective functions that can be fully utilized. This is particularly relevant in those situations, which involve individuals or groups belonging to the marginalized sections of the society who do not have the financial or social resources to lodge individual complaints. It is the same vulnerable groups, which are the ones most likely to be unaware of their rights and of the mechanisms, which protect these rights. "A national institution with the capacity to initiate its own investigations can make a significant contribution to ensuring that vulnerable groups are given a public voice and Human Rights violations, wherever they occur, become a matter of general knowledge and concern."

The Commission has taken cognizance of many journalistic items, news reports and reports by foreign news agencies. It focused on some key Human Rights issues such as custodial deaths, fake encounters, police atrocities including torture, crude methods of laparoscopy, disappearances in Kashmir valley and violence against women, etc. Still some observers feel that most of the time the NHRC takes suo moto cognizance in high profile cases and that is if there is lots of NGOs pressure. Sometimes it takes cognizance and then tends to pass it over after initial report. As one observer rightly commented that "it has to meet the ends of justice."

As pointed out by John Hucker NHRC has conciliation powers and this fact in the context of the NHRC is reflected by the Gujarat case. To illustrate this point, it is relevant to focus on Gujarat case where NHRC took suo moto cognizance of the riots in the state, started proceedings and is still doing a serious follow up. The NHRC called for a report from the state government and it was followed by a visit of a high level team of the Commission to the state, headed by its chairperson. It had some 'blaming effect' on the minority population of the state. While commenting on the State Government's report the Commission observed, "It is the responsibility of the state to ensure that such rights are not violated either through overt acts, or through abetment or negligence. It is a clear and emerging principle of Human Rights jurisprudence that the state is responsible not only for the acts of its own agents, but also for the acts of non- state players acting within its

jurisdiction. The State is, in addition, responsible for any inaction that may cause or facilitate the violation of Human Rights.”

In its further proceedings on this matter the Commission had set out its Preliminary Comments and detailed recommendations on relief camps, rehabilitation of the families affected by the violence and on police reform. It sent a copy of those Proceedings to the Government of Gujarat and to the Government of India for their response. After getting the response from the State Government the NHRC made the detailed comments and recommendations in the ‘Proper Implementation of Existing Statutory Provisions, Circulars and Guidelines’. In its concluding observations, the Commission stated “there was a comprehensive failure on the part of the State Government to control the persistent violation of the rights to life, liberty, equality and dignity of the people of the State. That is why it remains of fundamental importance that the measures that require to be taken to bring the violators of Human Rights to book are indeed taken and the integrity of the administration must be restored and sustained if those who have suffered are to be fully restored in their rights and dignity.” After this the NHRC constantly monitored the situation and in view of the reported imminent plans of the Gujarat Government to hold a series of Gaurav Yatras and Jagannath Rath Yatras in Gujarat, the Commission considered it necessary to caution Gujarat Government against that, because of the reported widespread apprehension that this could reignite communal violence in the State.

The Commission took suo motu action on communal riot which took place in Gujarat in early 2002; the decision to take action was based of media reports, both print and electronic. The Commission also received an e-mail communication requesting the Commission to intervene. A team of the Commission had visited Gujarat between 19 March to 22 March 2002 and prepared a confidential report, which is later made to the public. The release of the confidential report was initially withheld to provide an opportunity to the Gujarat Government to comment on its contents, given the sensitivity of the allegations contained in it. The Commission observed that the State has failed to discharge its primary and inescapable responsibility to protect the rights to life, liberty, equality and dignity of all of those who constitute it. The principle of *res ipsa loquitur* (the affair speaking for itself) applies in this case in assessing the degree of State responsibility in the failure to protect the Constitutional rights of the people of Gujarat. The responsibility of the State extended not only to the acts of its own

agents, but also to those of non-State players within its jurisdiction and to any action that may cause or facilitate the violation of Human Rights. Recently the US government has revoked visa to Chief Minister Narendra Modi because of the Commission's report on Gujarat.

6.5 COMPLAINT REDRESSAL MECHANISM:

Receiving and investigating complaints about rights a violation remains the commission's most important function. Members of public do not readily understand what constitutes a Human Rights issue particularly in a country like India where literacy rate is 57.2% and 287.0 million people are illiterate. Complaints redressal mechanism has brought the Commission closer to the Indian masses and has provided visibility to the Commission to a certain extent. Types of complaints handled by the NHRC are following - a majority of the complaints that the Commission received in the 'public sphere' were abuse by state officials, ministries, public service organs, the judicial maladministration (13%) and abuse by the police, prison guards, security forces, military, torture and ill – treatment (41 %). These make up the highest number of complaints and "a reflection on the state of the penal system in the country." In 'public/private sphere' major complaints were relating to discrimination based on gender, race, disability, age, nationality, marital status and sex (5 %). In 'private' sphere 5% complaints are related to family law: inheritance and 37% are related to other various violations.

While the Commission's case load in its first year was a mere 500 complaints, it has received more than 60,000 complaints during the year 2000-2001. Justice S. B. Sinha has contributed this increase in number to the commission's effectiveness, "As NHRC receives huge complaints, and it can be taken as an indicator of its effectiveness." However, the Commission has an acute pendency problem for which some satisfactory solution yet to be found.

In the mid – 1990s, a report was submitted by the Kerala High Court. It submitted a draft of the NHRC's (Procedure) Amendment Regulations to deal with the complaints received and the suo moto action taken by the Commission but few, if any, of the extensive recommendations made in this report have been implemented. Another excellent report on the NHRC, produced by McKinsey & Co entitled 'Preparing for a Fresh Start' in 1997 met the same fate. This report highlighted what it believed to be the NHRC's main problem: the backlog of pending cases. The report pointed out that not only will the commission's grievance redress

function be affected as the time taken for redress multiplies, but so will other functions assigned by Section 12 of the Act because the members will not have enough time to pursue them vigorously. It is not proper on the part of the institution to dismiss the complaints on frivolous grounds or acting as if having no empathy with the common man. Sometimes plea of dismissal is 'relief not specified in complaints'. Along with that reason of dismissal is not communicated to the complainant. To tackle with the heavy backlog of the complaints the Commission has dismissed 64% cases *in limini* in the period October 1993-31 March 2002.

The NHRC India has been intervening in various cases to realize the Constitutional obligation of the State to provide education without discrimination. In a case of a young girl student, who has been suffering from paralysis in her lower limbs since childhood and, who is totally dependent on a wheel chair for every movement, had been facing difficulties in attending classes, as her mother had to take her wheel chair to the classroom located on the first floor of the building of the school every day. Taking cognizance of the issue, the Commission directed the District authorities to look into the matter and submit their comments. The matter is still under consideration of the Commission. Similarly, the Commission has intervened in the case of discrimination against a visually impaired person who had been refused admission, as he was blind. Taking cognizance, the Commission directed the Department of Education, Government of Andhra Pradesh, to look into the matter and send his comments. The matter is still under consideration.

The National Human Rights Commission of India was shocked to learn that blind students routinely receive their Braille textbooks towards the fag end of the academic session or worse still; majorities do not have access to these books at all. Upon delving deep into the matter, it was found that many States and UT administrations have not even set up a single Braille press. Recognizing that children with disability have a right to receive an education in an appropriate environment, the Hon'ble Chairperson, NHRC requested to the Chief Ministers of all the States and Union Territories stated that there is a need to ensure that the printing of books in Braille go simultaneously with the printing of regular books. In order to ensure timely availability of Braille textbooks, the services of high speed computerized Braille presses could be utilized. This would ensure education in an appropriate environment for blind students, in accordance with Section 26 of

the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

About NHRC in *Paramjit Kaur v. State of Punjab and Ors*,⁴⁴ court held: "The Commission headed by a former Chief Justice of India is a unique expert body in itself. The Fundamental Rights, contained in Part III of the Constitution of India, represent the basic Human Rights possessed by every human being in this world inhabited by people of different continents, countries, castes, colors and religions. The country, the colour and the religion may have divided them into different groups but as human beings, they are all one and possess the same rights." The Chairman of the Commission, in his capacity as a Judge of the High Court and then as a Judge of this Court and also as the Chief Justice of India, and so also two other members who have held high judicial offices as Chief Justices of the High Courts, have throughout their tenure, considered, expounded and enforced the Fundamental Rights and are, in their own way, experts in the field. The Commission, therefore, is truly an expert body to which a reference has been made by this Court in the instant case."

After the aforesaid observations Court decided that when in exercise of its power under Article 32, this Court gives any directions to NHRC, then like all other authorities in this country, NHRC is bound by such directions. In such situations, NHRC acts 'sui-generis'.

6.6 TERMINAL QUESTIONS:

- A victim can approach NHRC through:
 - a. Telephone or mobile phone
 - b. Letter
 - c. Application
 - d. All of the above

Who observed "There can be little doubt that federalism as a system provides a special capacity and flexibility in facing cultural diversity."

- a. Ian Brownlie
- b. Austin
- c. John Hucker
- d. A.P.J. Abdul Kalam

What is meant by "res ipsa loquitur"?

⁴⁴ (1999) 2 SCC 131

- a. The affair speaking for itself
- b. Equity follows the law
- c. Equality is equity
- d. Guilty mind

Human Rights are

- a. Only for undeveloped country
- b. Only for developing country
- c. Only for developed country
- d. Universal

_____ sets out the legal framework of the NHRC.

- a. Indian Contract Act
- b. Consumer Protection Act
- c. The Protection of Human Rights Act
- d. Indian Penal Code

The composition of NHRC is high-powered as _____ out of its five members are judges.

- a. One
- b. Two
- c. Three
- d. Four

In the course of investigation, the National Commission can

- a. Summon and force witnesses to appear before it
- b. Examine under oath
- c. Call for relevant documents
- d. All of the above

6.7 ANSWER TO CHECK YOUR PROGRESS:

- d. All of the above
- a. Ian Brownlie
- a. The affair speaking for itself
- d. Universal
- c. The Protection of Human Rights Act
- c. Three
- d. All of the above

6.8 KEY WORDS:

- **Humanity**- the quality or state of being humane.
- **Amendment**- means to alter or change by adding, subtracting, or substituting. One can amend a statute, a contract or a written pleading filed in a law suit. The change is usually called an amendment. The legislature will amend a statute, the parties to a contract can amend it, and a party to a lawsuit can amend his or her own pleading.
- **Suo-moto** - is a Latin term meaning "on its own motion". It is used in situations where a government or court official acts of its own initiative.
- **Interdependence**- is a relationship in which each member is mutually dependent on the others. This concept differs from a dependence relationship, where some members are dependent and some are not.
- **Solemnity**- the state or quality of being serious and dignified.
- **Globalization**- the process by which businesses or other organizations develop international influence or start operating on an international scale
- **Public Prosecutor** - a law officer who conducts criminal proceedings on behalf of the state or in the public interest.

6.9 SUGGESTED READINGS:

- Justice Y. K. Sabharwal, "Role of Human Rights Commissions in Democracy"
- Syed Tazkir Inam, "Role of National Human Rights Commission in Upholding Human Rights in India"
- G.P. Joshi, "National Human Rights Commission-Need for Review"
- Reenu Paul, "National Human Rights Commission of India: A Human Rights Evaluation"
- Journal of the National Human Rights Commission, India, Vol. 6, 2007

UNIT-VII

ROLE OF WOMEN AND CHILD COMMISSION IN PROTECTION OF HUMAN RIGHTS

STRUCTURE:

- 7.1 Introduction
 - 7.2 Violation of Women Human Rights in Past
 - 7.3 Violation of Human Rights in General
 - 7.4 National Commission for Women
 - 7.5 Children Rights
 - 7.6 Legal and Judicial Trends
 - 7.7 Terminal questions
 - 7.8 Answer to check your progress
 - 7.9 Key words
 - 7.10 Suggested readings
-

OBJECTIVES:

After going through this Unit you should be able to understand:

- Various rights of women and children
 - Role of National Commission for Women for protection Human Rights in India
 - Legal and Judicial Trend
-

7.1 INTRODUCTION:

Human Rights are universal. They apply equally to men and women, girls and boys. Women, for example, are entitled to the same rights to life, education and political participation as men. However, in practice, these rights are violated every day in multiple ways – in virtually every country in the world. Gender equality and women's rights are key elements in the Universal Declaration of Human Rights. Yet it was later recognized that certain rights are specific to women, or need to be emphasized in the case of women. These rights are outlined in subsequent

international and regional instruments, the most important of which is the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW).

CEDAW was adopted in 1979 and entered into force two years later. It defines the right of women to be free from all forms of discrimination and sets out core principles to protect this right. It also establishes an agenda for national action to end discrimination and provides the basis for achieving equality between men and women. It does so by affirming women's equal access to – and equal opportunities in – political and public life as well as education, health and employment. CEDAW is the only Human Rights treaty that affirms the reproductive rights of women.

By February 2010, CEDAW had been ratified by 186 States – more than most other international treaties. The Optional Protocol to CEDAW, which entered into force in December 2000, lays out procedures for individual complaints on alleged violations of the Convention by States parties. It also establishes a procedure that allows the Committee that monitors implementation of the Convention to conduct inquiries into serious and systematic abuses of women's Human Rights in countries. By February 2010, the Protocol had been ratified by 99 States.

The Constitution of India has granted equal rights to the men and women. According to article 14– “The State shall not deny to any person equality before law or the equal protection of laws within the territory of India”. And Article 15 states – “State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. But today, it seems that there is a wide gulf between theory and practice. The women in India have always been considered subordinate to men. Though the Articles contained in the Constitution mandates equality and non – discrimination on the grounds of sex, women is always discriminated and dishonored in Indian society. Although various efforts have been taken to improve the status of women in India, the constitutional dream of gender equality is miles away from becoming a reality. Though, Human Rights are the minimum rights which are compulsorily obtainable by every individual as he/she is a member of human society. But it has been found that each and every right of the women is being violated in one or another way. The crimes against women in India are increasing at a very fast pace. The National Crime Records Bureau (NCRB) had predicted that growth rate of crime against women would be higher than the population growth by 2010, which was found to be true.

It has been repeatedly said these days that women in India are enjoying the rights equal to men. But in reality, the women in India have been the sufferers from past. Not only in earlier times but even now days also, women have to face discrimination, injustice and dishonor. The crimes done against the women continue violation of Human Rights of women in India.

7.2 VIOLATION OF WOMEN HUMAN RIGHTS IN PAST:

The Indian women exploitation is not the present phenomenon. Rather she is being exploited from the early times. The women in Indian society never stood for a fair status. The following crimes were done against the women in the past times.

- **DEVADASIS:**

Devadasis was a religious practice in some parts of southern India, in which women were married to a deity or temple. In the later period, the illegitimate sexual exploitation of the devadasi's became a norm in some part of the country.

- **JAUHAR:**

Jauhar refers to practice of the voluntary immolation of all wives and daughters of defeated warriors in order to avoid capture and consequent molestation by the enemy. The practice was followed by the wives of Rajput rulers, who are known to place a high premium on honor.

- **PURDAH:**

Purdah is a practice among some communities of requiring women to cover their bodies so as to cover their skin and conceal their form. It curtails their right to interact freely and it is a symbol of the subordination of women.

- **SATI:**

Sati is an old custom in Indian society in which widows were immolated alive on her husband's funeral pyre. Although the act was supposed to be voluntary on the widow's part, it is believed to have been sometimes forced on the widow.

7.3 VIOLATION OF HUMAN RIGHTS IN GENERAL:

- **Violation of "Right to Equality" and "Right to Protection against Gender Discrimination":**

Discrimination against the girl child starts the moment she enters into the mother's womb. The child is exposed to gender differences since birth and in recent times even before birth, in the form of sex – determination tests leading to foeticide and female infanticide. The home, which is supposed to be the most secure place, is where women are most exposed to violence. If a girl child opens her eyes in any way, she is killed after her birth by different cruel methods in some parts of the country. Thus, the very important “right to life” is denied to women. In India, men are always assumed to be superior to women and are given more preference. The “World Human Rights Conference in Vienna” first recognized gender – based violence as a Human Rights violation in 1993. The same was declared by “United Nations Declaration” in 1993.

- **Violation of “Right to Education”:**

Education is considered as means of development of personality and awareness. Education is one of the most important Human Rights but the position of women's education in India is not at all satisfactory. Young girls may be brought up to believe that they are suited only to certain professions or in some cases to serve as wives and mothers.

Despite in the improvement in the literacy rate after independence, there continues to be large gap between the literacy levels of men and women. Almost half the women population is even unable to recognize language characters. At least 60 million girls lack access to primary education in India. Due to large percentage of uneducated women in India, they are not even aware of their basic Human Rights and can never fight for them.

- **Violation of “Political Right”:**

The political status of women in India is very unsatisfactory, particularly their representation in higher political institutions – Parliament and provincial Legislation which is of great under – representation which hampers their effective role in influencing the government initiatives and policies regarding women's welfare and development. Their representation has been unable to reach even 10% in Lok Sabha. Thus it is clear that:

- a) There is male domination in Indian politics and almost all the parties give very little support to women in election despite their vocal support for 33% reservation of seats for women in Parliament and Provincial Legislation.

b) Women have made initiatives in political participation but they have not been accepted in politics.

- **Violation of “Right to Property”:**

In most of the Indian families, women do not own property in their own names and do not get share of parental property. Due to weak enforcement of laws protecting them, women continue to have little access to land and property. In fact, some of the laws discriminate against women, when it comes to land and property rights. Though, women have been given rights to inheritance, but the son had an independent share in the ancestral property, while the daughter’s shares were based on the share received by the father. Hence, father could anytime disinherit daughter by renouncing his share but the son will continue to have a share in his own right. The married daughters facing harassment have no rights in ancestral home.

- **Violation of “Right to Protection of Health”:**

According to the World Bank report, malnutrition is the major cause of female infertility. The presence of excessive malnutrition among female children as compared to male children is basically due to differences in the intra-family allocation of food between the male and female children. Normally, the male members are fed before the female members of the family. According to Human Development Report, in rural Punjab, 21% of girls in low income families suffer from severe malnutrition as compared with 3% of boys in the same family. Even the low income boys are far better than upper income girls. Girl babies are less breast – fed than boy babies. 60% of girl babies are born with low birth weight. Sometimes due to economic distress and natural calamities like floods, droughts or earthquakes, the discrimination against the female child increases. Moreover it has been confirmed by various studies that the girl’s diet is inferior to the boy’s diet both in quality and quantity. Boys are given more nutritive foods like milk, eggs, butter, ghee, fruits, and vegetables as compared to girls. Due to this inferior quality diet, girls are more vulnerable to infections and diseases. The reason again is that families spend less on medication for girls than for boys.

- **Violation of “Right to Equal Opportunity for Employment” and “Right to Get Equal Wages for Equal Work”:**

The employment of the women in agriculture, traditional industries and in sizeable section of new industries is declining at a very fast rate. The reason is that the adoption of new technological changes requires new skill, knowledge and training.

And women in India, who constitute a large share of world's illiterate lacks such skills and knowledge. The studies have also showed that for the same task, women are paid less than the males. Technological changes in agriculture and industry are throwing out women from the production process. The women workers are concentrated only for certain jobs which require so – called female skills. Thus, Indian labour market is adverse to women workers. It shows that, the role of women in large scale industries and technology based businesses is very limited. But even in the small- scale industries their participation is very low. Only 10.11% of the micro and small enterprises are owned by women today. Statistics show that only 15% of the senior management posts are held by the women. In agriculture where women comprise of the majority of agricultural labourers, the average wage of women on an average is 30 – 50 % less than that of men.

- **Violation of “Right to Live with Dignity”: Eve Teasing and Sexual Abuse:**

Eve teasing is an act of terror that violates a woman's body, space and self – respect. It is one of the many ways through which a woman is systematically made to feel inferior, weak and afraid. Whether it is an obscene word whispered into a woman's ear; offensive remarks on her appearance; any intrusive way of touching any part of woman's body; a gesture which is perceived and intended to be vulgar: all these acts represent a violation of woman's person and her bodily integrity. Thus, eve teasing denies a woman's fundamental right to move freely and carry herself with dignity, solely on the basis of her sex. There is no particular places where eve-teasers congregate. No place is really 'safe' for women. Roads, buses, train, cinema halls, parks, beaches, even a woman's house and neighbourhood may be sites where her self – worth is abused.

- **Violation of Right from Society, State and Family System:**

1) Child Marriage

Child marriage has been traditionally prevalent in India and continues to this date. Discrimination against the girl begins even before their birth and continues as they grow. According to the law, a girl cannot be married until she has reached the age of 18 at least. But the girl in India is taken as a burden on the family. Sometimes the marriages are settled even before the birth of the child. In south India, marriages between cousins is common as they believe that a girl is secured as she has been married within the clan. Parents also believe that it is easy for the child –

bride to adapt to new environment as well as it is easy for others to mould the child to suit their family environment. Some believe that they marry girls at an early age so as to avoid the risk of their unmarried daughters getting pregnant. This shows that the reasons for child marriages in India are so baseless. Basically, this phenomenon of child marriage is linked to poverty, illiteracy, dowry, landlessness and other social evils. The impact of child marriage is widowhood, inadequate socialization, education deprivation, lack of independence to select the life partner, lack of economic independence, low health/nutritional levels as a result of early/frequent pregnancies in an unprepared psychological state of young bride. However, the Indian boys have to suffer less due to male dominated society. Around 40% child marriages occur in India. A study conducted by "Family Planning Foundation" showed that the mortality rates were higher among babies born to women under 18. Another study showed that around 56% girls from poorer families are married underage and became mothers. So, all this indicated that immediate steps should be taken to stop the evil of Child Marriage.

2) Dowry Harassment and Bride Burning:

The demand of dowry by the husband and his family and then killing of the bride because of not bringing enough dowry to the in-laws has become a very common crime these days. In spite of the Dowry prohibition Act passed by the government, which has made dowry demands in wedding illegal, the dowry incidents are increasing day by day. According to survey, around 5000 women die each year due to dowry deaths and at least a dozen die each day in "kitchen fires".

3) Rape:

Young girls in India often are the victims of rape. Almost 255 of rapes are of girls under 16 years of age. The law against rape is unchanged from 120 years. In rape cases, it is very torturing that the victim has to prove that she has been raped. The victim finds it difficult to undergo medical examination immediately after the trauma of assault. Besides this, the family too is reluctant to bring in prosecution due to family prestige and hard police procedures.

4) Domestic Violence:

Wife beating, abuse by alcoholic husbands are the violence done against women which are never publicly acknowledged. The cause is mainly the man demanding

the hard earned money of the wife for his drinking. But an Indian woman always tries to conceal it as they are ashamed of talking about it. Interference of in – laws and extra marital affairs of the husbands are another cause of such violence. The pity women are unwilling to go to court because of lack of alternative support system.

7.4 NATIONAL COMMISSION FOR WOMEN:

The National Commission for Women is a statutory body constituted on 31st January, 1992 as a statutory body at the national level, under the National Commission for Women Act, 1990 to protect and promote the interests and safeguard the Human Rights of women and ensure equality in every sphere of life.

It has a wide mandate covering almost all aspects of women’s development, viz., to investigate and examine the legal safeguards provided for women under the Constitution and other laws and recommend to Government measures for their effective implementation; review the existing provisions of the Constitution and other laws affecting women and recommend amendments to meet any lacunae, inadequacies or shortcomings in such laws; look into complaints and take suo-moto notice of matters relating to deprivation of women’s rights, etc. and take up the issues with appropriate authorities; take up studies/research on issues of relevance to women, participate and advise in the planning process for socio-economic development of women, evaluate the progress made thereof; inspect jails, remand homes etc. where women are kept under custody and seek remedial action wherever necessary.

Role of National Commission for Women:

The Commission received a large number of complaints and also took suo-moto cognizance in several cases to provide speedy justice. The Commission sponsored gender awareness programmes, Parivarik Mahila Lok Adalats, and organized Seminars/ Workshops / consultations and took up publicity against female foeticide, violence against women, child marriages, etc. in order to generate awareness in the society against these social evils. The NGOs played a significant role in organizing these programmes. Following initiatives taken by the National Women Commission

1. Maternity Benefit:

The Commission approved the grant of three months Maternity Leave to contractual and daily wage lady staff of NCW keeping in view the provisions of

Maternity Benefit Act, 1961, and the Judgment of Hon'ble High Court of Delhi in the case of Ms. Bharti Gupta vs .RITES. Considering that the State Governments of Haryana and Himachal Pradesh have also extended the maternity benefit to employees engaged on contract basis, it was decided that NCW which is the premier body for safeguarding of women's rights, must also take a sympathetic view and grant this benefit to its lady employees. Accordingly, it was decided that lady employees of NCW (contractual/ daily wage basis) may be allowed maternity leave for a period of 12 weeks (i.e. 3 months).

2. Thrust on Public Awareness:

To increase public awareness regarding laws and schemes relating to women, the Commission decided to introduce radio and TV jungles and short documentaries based on research for which the process of empanelment of agencies through DAVP was started. Two drama troupes were also selected and some scrips approved. A new compilation of laws, provisions dealing with crimes against women and the prescribed penalties was also distributed widely.

3. National Helpline to be run by National Commission for Women:

In order to mitigate the challenges and realize the mandate of National Commission for Women to safeguard rights of women in a holistic way, it is right time to embark upon multiple channels to support the women in distress apart from the traditional ways in vogue. The Commission proposed a toll free voice communication 24X7 Call Centre facility to support women in distress based on the concept of "anytime, anywhere and by anybody". The advantage of the Call Centre is that telephone facilities are present across the country and comparatively convenient for women to file complaints and receive the support, counseling and guidance on a right time. Call Centre may phenomenally improve the outreach of the NCW.

4. Complaints And Investigation Cell:

The Complaints and Investigation Cell (C&I Cell) is an important component of the Commission. It deals with the complaints received from all over the country including those relating to deprivation of women's rights and those involving injustice to women. The C&I Cell processes the complaints received orally, in writing or on line through its website i.e. www.ncw.nic.in. In addition Commission also takes suo-moto cognizance of incidence related to commission of heinous

crime against women under Section 10 (1) 7 (4) of National Commission for Women Act, 1990.

5. Online Complaint Registration System:

The Online Complaint Registration System is a facility incorporated in the year 2005 for the speedy and easy registering of complaints through the Commission's website i.e., www.ncw.nic.in and also through the e-mail of the Commission i.e., ncw@nic.in. Anyone can log in to the said site from any part of India / World and register his / her complaint. The said complaint is given a Registration No. and allotted to a particular counselor. The complaint is then disposed of in the same manner as those received through post/by hand, etc. If the complainant wants to know about the progress of the case, he /she may simply log in to the site and after typing their case no. and relevant password, gets the details of the Action Taken in the matter and also the progress of the case.

6. NRI Cell:

National Commission for Woman was nominated as the Coordinating agency at the National level for dealing with issues pertaining to NRI marriages by Government of India vide Ministry of Overseas Indian Affairs order dated 28th April 2009, based on the recommendation of the Parliamentary Committee on Empowerment of Woman (14th Lok Sabha) on the subject "Plight of Indian Woman Deserted by NRI husbands" which was discussed and deliberated upon in the Inter Ministerial Committee meeting held on 7th July, 2008. In furtherance of this, the NRI Cell was formally inaugurated on the 24th of September, 2009. NRI Cell deals with complaints received from India and abroad in respect of cross country marriages culminating in deprivation of women's rights or any issue involving grave injustice to women. A lot of Indian women are being deserted by their husbands Non- Residents Indians (NRIs) and People of Indian Origin (PIOs). The unsuspecting wives are either left in India with a fake promise of being taken later or taken to the country of the husband and in several cases subjected to various types of cruelty and harassment. In many cases, the husband is found to be already married. In absence of any local support, the wives in foreign land find themselves helpless.

7. Legal Cell:

In accordance with the mandate of the Commission, under Section 10 of the National Commission for Women Act, 1990, the Commission during the year 2010-11 reviewed various laws.

The Hon'ble Supreme Court in Delhi Domestic Working Women's Forum vs. Union of India and others writ petition (CRL) No.362/93 had directed the National Commission for Women to evolve a "scheme so as to wipe out the tears of unfortunate victims of rape". The Supreme Court observed that with regard to the Directive principles contained in the Article 38(1) of the Constitution, it was necessary to set up Criminal Injuries Compensation Board, as rape victims, besides suffering mental anguish, frequently incur substantial financial loss and in some cases, are too traumatized to continue in employment. The Court further directed that compensation for victims shall be awarded by the Court on conviction of the offender and by the Criminal Injuries Compensation board whether or not a conviction has taken place. The Board shall take into account the pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth, if this occurs as a result of rape. Accordingly, to give effect to the aforesaid direction of the Hon'ble Court, the National Commission for Women sent a draft scheme to the Ministry of Women and Child development for finalization.

The National Commission for Women organized a meet with lady Member of Parliaments at Parliament Annex to discuss various draft bills relating to women recommended by the Commission and awaiting approval of the Government/Parliament.

8. Research And Studies Cell:

Under Section 10 (1) (h) of the National Commission for Women Act, 1990, the Commission is required to undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement. In this regard, the Commission has promoted several seminars, public hearings, workshops and research studies in order to obtain relevant inputs on subjects considered of highest priority on issues related to gender equality and empowerment.

7.5 CHILDREN RIGHTS:

The legal rights of children were recognized in the late 19th and early 20th centuries, when the first legislation concerning children was drawn up. Child-labour and compulsory-education laws were established to protect children. And as

the concept of welfare developed, the needs of children became an important agenda for the State.

The end of World War I drew attention to the suffering of children as innocent victims in the face of violence. One prominent child advocate, who organized emergency relief for children affected by the Allied blockade following the war, formed the foundation of what has become the International Save the Children Alliance. She also advanced the notion that children must be the first to receive relief in times of distress. The adoption of the Universal Declaration of Human Rights in 1948 – which stated that “All human beings are born free and equal in dignity and rights” – was a turning point in the recognition of children as rights holders. The International Bill of Rights further cemented this view and became the fundamental, legally binding instruments through which effective advocacy and implementation of Human Rights – including children’s rights – were based. The first binding international instrument specifically focused on children’s rights was the *Convention on the Rights of the Child*, which was the product of 10 years of negotiation (1979-1989) among government delegations, intergovernmental and non-governmental organizations.

India is home to the largest child population in the world. The Constitution of India guarantees Fundamental Rights to all children in the country and empowers the State to make special provisions for children. The Directive Principles of State Policy specifically guide the State in securing the tender age of children from abuse and ensuring that children are given opportunities and facilities to develop in a healthy manner in conditions of freedom and dignity. The State is responsible for ensuring that childhood is protected from exploitation and moral and material abandonment.

Declaring its children as the nation’s “supremely important asset” in the National Policy for Children, 1974, the Government of India reiterated its commitment to secure the rights of its children by ratifying related international conventions and treaties. These include the Declaration of the Rights of the Child, Universal Declaration of Human Rights and its Covenants, the Convention on the Rights of the Child and its two Optional Protocols, the United Nations Convention on the Rights of Persons with Disabilities, the United Nations Convention against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Women and Children, the Hague Convention on Protection of

Children and Cooperation in respect of Inter-Country Adoption, and the Convention on the Elimination of All Forms of Discrimination against Women.

The National Policy for Children, as adopted on 22nd August, 1974, stands as the basis of several national policies and programmes initiated in the last few decades to address the varied needs of children, and is the policy frame for this plan. The policy laid down that the State shall provide adequate services towards children, both before and after birth and during the growing stages for their full physical, mental and social development. The policy emphasized the need for the measures of the balanced growth of children; children shall be protected against neglect, cruelty and exploitation. The Policy also laid emphasis on equal opportunities for the development of all children during the period of growth.

A *National Charter for Children, 2003* emphasizes Government of India's commitment to children's right to survival, health and nutrition, standard of living, play and leisure, early childhood care, education, protection of the girl child, equality, life and liberty, name and nationality, freedom of expression, freedom of association and peaceful assembly, the right to a family and the right to be protected from economic exploitation. This policy underlined the intent to secure for every child its inherent right to be a child and enjoy a healthy and happy childhood, to address the root causes that negate the healthy growth and development of children, and to awaken the conscience of the community in the wider societal context to protect children from all forms of abuse, while strengthening the family, society and the Nation.

The *National Plan of Action for Children, 2005* emphasizes the role of Government to ensure all measures and an enabling environment for survival, growth, development and protection of all children, so that each child can realize his or her inherent potential and grow up to be a healthy and productive citizen.

The Convention on the Rights of the Child:

The Human Rights of children and the standards to which all governments must aspire in realising these rights for all children, are most concisely and fully articulated in one international Human Rights treaty: the Convention on the Rights of the Child. The convention is the most universally accepted Human Rights instrument in history – it was ratified by India in 1992 – and uniquely places children centre-stage in the quest for the universal actualisation of Human Rights. By ratifying this instrument, national governments have committed themselves to

protecting and ensuring children's rights, and they have agreed to hold themselves accountable for this commitment before the international community.

The Convention on the Rights of the Child is a universally agreed set of non-negotiable standards and obligations. It spells out the basic Human Rights of children. Every right in the convention is inherent to the human dignity and harmonious development of every child. The convention protects children's rights by setting standards for both parents and the state in health care, education and legal, civil and social services. These standards are benchmarks against which progress can be assessed and which states must regularly report both their successes and their failures to the international community at large. States that are party to the convention are obliged to develop and undertake all actions and policies in the light of the best interests of the child.

The Convention on the Rights of the Child is the first legally binding international instrument to incorporate the full range of Human Rights – civil and political rights as well as economic, social and cultural rights.

7.6 LEGAL AND JUDICIAL TRENDS:

India's commitment to children is clearly manifested in its Constitution wherein several articles are incorporated dedicated to children, viz.:-

- Article 14—The State shall not deny to any person equality before the law or the equal protection of laws within the territory of India.
- Article 15—The State shall not discriminate against any citizen.....Nothing in this Article shall prevent the State from making any special provisions for women and children.
- Article 21—No person shall be deprived of his life or personal liberty except according to procedure established by law.
- Article 21 A—The State shall provide free and compulsory education to all children of the age of 6-14 years in such manner as the State may, by law, determine.
- Article 23—Traffic in human beings and *begar* and other forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with the law.
- Article 24—No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

- Article 45— The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.
- Article 243G read with Schedule 11 – provide for institutionalization of child care by seeking to entrust programmes of Women and Child Development to Panchayat, apart from education, family welfare, health and sanitation and other items with a bearing on the welfare of children.

The Factories Act, 1948 prohibits the employment of child under 14 years of age in factories (Section- 67). A child who has completed the age of 14 years is not permitted to work in a factory for more than 4 hours in any day (Section- 71(1) (a)). They should not work at night i.e. twelve consecutive hours including the period from 10 P.M. to 6 A.M. (Section- 71(1) (b)). The period of work is to be limited to two shifts which should not overlap and spread over more than five hours (Section- 71(2)). They should not be employed in two separate factories on the same day (Section- 71(4))

Minimum Wages Act, 1948 provides for the fixation of minimum rates of wages in certain employments which have been specified by appropriate Government in the schedule of the Act. The Act made provisions for fixing minimum rates of wages for adults, adolescents and children (Section- 3).

According to *the Plantation Labour Act, 1951*, a child (below 14 years) or an adolescent between 15-18 years cannot be employed for work unless he is certified fit for work by a surgeon (Section- 26). The certificate of fitness is given by a certifying surgeon who certified that the person being examined by him is fit to work as a child or as an adolescent. This Act makes the provisions for education as the responsibility of the employer (Section- 14) and so is for housing (Section- 15) and medical (Section-10) and recreational facilities (Section- 13)

The Mines Act, 1952 provides for some more stringent provisions. The Act prohibits employment of persons (below 18 years) in any mine or part thereof (Section-40) and also their presence in any part of the mine above ground where any operation connected with or incidental to any mining operation is being carried out (Section- 45). The Act prescribes punishment of fine up to Rs. 500 in case of employment of persons below 18 years (Section- 68). For contravention of any other provision of the Act, there is provision of imprisonment up to three months or fine up to Rs. 1000 or both (Section- 73).

The Merchant Shipping Act, 1958 prohibits employment of children under 15 years in a ship, except in a school ship or training ship; or in ship governed by family members, or in a home trade ship of less than two hundred tons gross; or in a home trade ship of less than two hundred tons gross; or where such person to be employed on nominal wages and will be in the charge of his father or other adult near male relatives (Section 109).

The Motor Transport Workers Act, 1961 covers every motor transport undertaking employing 5 or more persons. The Act prohibits employment of persons under 14 years of age in any capacity in the motor transport undertaking (Section 21).

The Beedi and Cigar Workers (Conditions of Employment) Act, 1966 covers all industrial premises wherein any manufacturing process connected with making of beedi or cigar or both is being, or is ordinarily carried on with or without the aid of power. The Act prohibits the employment of children below 14 years in any such premises (Section 24). The employments of young persons between 14 to 18 years are prohibited between 7 P.M. to 6 A.M.

The Right to Education Act enacted in 2009. The RTE Act is historic as it makes it a State obligation to provide for free and compulsory education to every child of the age of 6-14 years in a neighborhood - a welcome step. This would enable millions of out of school children who have been drawn into harmful and illegal nexuses of labour, trafficking and work in domestic as well as informal sector join schools. In *Sheela Barse Vs Secretary, Children Aid Society and Others, 1987*, the Supreme Court held, "If there be no proper growth of children of today, the future of the country will be dark. It is the obligation of every generation to bring up children who will be citizens of tomorrow in a proper way. Today's children will be leaders of tomorrow who will hold the country's banner high and maintain the prestige of the nation."

In *M. C. Metha Vs State of Tamil Nadu, 1991*, the Supreme Court has not allowed children to work in a prohibited occupation. According to the judges, "the provisions of Article 45 in the Directive Principles of State Policy has still remained a far cry and through according to this provision all children up to the age of 14 years are sponsored to be in school, economic necessity forces grown up children to seek employment. Children can, therefore, be employed in the process of packing but packing should be done in an area away from the place of manufacture to avoid exposure to accident."

An important judicial intervention in the action against child labour in India was the M.C. Mehta case (1996) in which The Supreme Court, directed the Union and state governments to identify all children working in hazardous processes and occupations, to withdraw them from work, and to provide them with quality education. The Court also directed that a Child Labour Rehabilitation-cum-Welfare Fund be set up using contributions from employers who contravene the Child Labour Act.

In 1993, the Supreme Court in Unnikrishnan v. State of Andhra Pradesh ruled that each child has the right to free education until he or she completes the age of 14 years. Article 21-A which was incorporated into the Constitution, reflects this standard. In 2005, the M.V. Foundation, an NGO working on child rights brought a public interest litigation petition which argues that child labour up to the age of compulsory education is unconstitutional and is a negation of rights under Article 21-A which provides for compulsory education up to the age of 14. This case is still pending before the Supreme Court. Notably however, under this case the Court has asked the Government to file a status report on the implementation of Sarva Shiksha Abhiyan, a government programme providing free and compulsory education to all children.

7.7 TERMINAL QUESTIONS:

1. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted in _____
 - a. 1968
 - b. 1975
 - c. 1979
 - d. 1982
2. The National Commission for Women is a statutory body constituted on:
 - a. 31st January, 1992
 - b. 31st March, 1992
 - c. 31st July, 1992
 - d. 28th February, 1992
3. A practice of the voluntary immolation of all wives and daughters of defeated warriors in order to avoid capture and consequent molestation by the enemy, is called:
 - a. Devadasis

- b. Jauhar
 - c. Purdah
 - d. Sati
4. A widows is immolated alive on her husband's funeral pyre, is called
- a. Devadasis
 - b. Jauhar
 - c. Purdah
 - d. Sati
5. A girl cannot be married until she has reached the age of ____ at least.
- a. 16
 - b. 21
 - c. 18
 - d. 20
6. Under which Section 10 (1) (h) of the National Commission for Women Act, 1990, the National Commission for women, is required to undertake promotional and educational research.
- a. 12 (1)
 - b. 10 (2)
 - c. 10 (1)(h)
 - d. 10 (1)(g)
7. When was the 'National Policy for Children' declared?
- a. 1973
 - b. 1974
 - c. 1971
 - d. 1975
8. 'The Convention on the Rights of the Child' was ratified by India in _____.
- a. 1996
 - b. 1994
 - c. 1990
 - d. 1992
9. Under Section 67 of The Factories Act, 1948, the employment of child less than _____ years of age is prohibited in factories.
- a. 12
 - b. 14

- c. 16
- d. 18

7.8 ANSWER TO CHECK YOUR PROGRESS:

- 1. c. 1979
- 2. a. 31st January, 1992
- 3. b. JAUHAR
- 4. d. Sati
- 5. c. 18
- 6. c. 10 (1)(h)
- 7. b. 1974
- 8. d. 1992
- 9. b. 14

7.9 KEY WORDS:

- **Ratify** - to confirm and adopt the act of another even though it was not approved beforehand.
- **Exploitation**- Exploitation generally means to take unfair advantage of a person. State laws on the subject vary.
- **Custom**- A usage or practice of the people, which, by common adoption and acquiescence, and by long and unvarying habit, has become compulsory, and has acquired the force of a law with respect to the place or subject-matter to which it relates.
- **Female foeticide** -is the act of aborting a foetus because it is female.
- **Harassment**- means an act of systematic and/or continued unwanted and annoying actions of one party or a group, including threats and demands.
- **Domestic Violence**- **Any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality.**

7.10 SUGGESTED READINGS:

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UNIT-VIII

ROLE OF MINORITIES AND SC & ST COMMISSION IN PROTECTION IN HUMAN RIGHTS

STRUCTURE:

- 8.1 Introduction
- 8.2 The National Commission for Scheduled Castes and Scheduled Tribes
- 8.3 Functions and Duties of the National Commission for Scheduled Caste
- 8.4 The National Commission for Scheduled Tribes
- 8.5 Powers of the National Commission for Scheduled Tribes
- 8.6 Functions of the National Commission for Scheduled Tribes
- 8.7 Committee on the Welfare of Scheduled Castes and Scheduled Tribes
- 8.8 The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989
- 8.9 Terminal questions
- 8.10 Answer to check your progress
- 8.11 Key words
- 8.12 Suggested readings

OBJECTIVES:

After going through this Unit you should be able to understand:

- Status of SCs and STs in India
- Role of The National Commission for Scheduled Castes and Scheduled Tribes
- **Provision of** The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

8.1 INTRODUCTION:

The Constitution of India provides for the protection and promotion of the social, economic, educational, cultural and political rights of Dalits (termed 'Scheduled Castes' in India). The Constitution emphasizes 'safe-guards' for Scheduled Castes (SCs) under the 'Special Provisions Relating to Certain Classes' in Part XVI of the Indian Constitution. In addition, many articles in Part III (Fundamental Rights), IV (Directive Principles of State Policy), IX, IX A and in the fifth schedule include constitutional provisions for Scheduled Castes.⁷ Although the Constitution of India prohibits any forms of discrimination based on caste, the problem is the non-implementation of these provisions as explained below.

The 1950 Indian Constitution abolished the practice of "untouchability" in all its forms, and a number of laws and special measures have since been adopted to address caste discrimination and abuses. While these laws and policies are welcome, they have been implemented sporadically and often not at all. Although the Indian Constitution provides legal measures to advance the enjoyment of rights by members of scheduled castes and scheduled tribes (SC/ST), the Dalits of India still suffer various forms of de facto segregation and discrimination.

According to a report prepared by the National Commission of Scheduled Castes and Scheduled Tribes in India, the Protection of Civil Rights Act 1955, the Indian Penal Code and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989 have proved inadequate in curbing the atrocities on the members of Scheduled Castes (SCs) and Scheduled Tribes (STs) in spite of their deterrent penal provisions, especially offences committed on the grounds of caste.⁹ There are in all 23 acts which constitute atrocities and are punishable under the Prevention of Atrocities Act (POA Act). It is the responsibility of the Central Government to place annual reports before the Parliament on the progress of the implementation of the POA Act. However, even though the POA Act came into force on 30th January 1990, the Ministry of Social Justice and Empowerment have placed only five annual reports on the table of Parliament so far.

The SCs constitute 16.23% of India's population. In the past, they have been socially ostracized, economically exploited and denied human dignity and a sense of self-worth. The socio-economic development and protection of SCs from discrimination and exploitation has been a high priority from the very start of the planning process. People belonging to SC communities are spread all over the country, with 80% of them living in the rural areas. They constitute more than a

fifth of the population of Uttar Pradesh, Punjab, Himachal Pradesh and West Bengal. Punjab has the highest proportion of SCs to the State population.

The framers of the Constitution took note of the fact that certain communities in the country were suffering from extreme social, educational and economic backwardness arising out of age-old practice of untouchability and certain others on account of the primitive agricultural practices, lack of infrastructure facilities and geographical isolation, and who need special consideration for safeguarding their interests and for their accelerated socio-economic development. These communities were notified as Scheduled Castes and Scheduled Tribes as per provisions contained in Clause 1 of Articles 341 and 342 of the Constitution respectively.

With a view to provide safeguards against the exploitation of SCs & STs and to promote and protect their social, educational, economic and cultural interests, special provisions were made in the Constitution. Due to their social disability and economic backwardness, they were grossly handicapped in getting reasonable share in elected offices, government jobs and educational institutions and, therefore, it was considered necessary to follow a policy of reservations in their favor to ensure their equitable participation in governance. For effective implementation of various safeguards provided in the Constitution for the SCs & STs and various other protective legislations, the Constitution provided for appointment of a Special Officer under Article 338 of the Constitution. The Special Officer who was designated as Commissioner for SCs & STs was assigned 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. The first Commissioner for SCs & STs was appointed on 18 November, 1950. In order to facilitate effective functioning of the office of the Commissioner for SCs & STs in accordance with the needs of the time, 17 regional offices of the Commissioner were set up in different parts of the country, which were headed by Assistant Commissioners for SCs & STs who were, in July, 1965 re-designated as Deputy Commissioners. In June, 1967, the 17 Regional Offices were re-organized into five Zonal Offices and placed under the control of a new created Directorate General of Backward Classes Welfare in the Department of Social Welfare. Each Zonal Office was headed by a Zonal Director, Backward Classes Welfare (a newly created post) and the post of Deputy Commissioner for SCs & STs was re-designated as Deputy Director, Backward Classes Welfare and placed under the

control of a Zonal Director located at Chandigarh (Northern Zone), Bhopal (Central Zone), Patna (Eastern Zone), Baroda (Western Zone) and Madras (Southern Zone).

8.2 THE NATIONAL COMMISSION FOR SCHEDULED CASTES AND SCHEDULED TRIBES:

The National Commission for Scheduled Castes and Scheduled Tribes with Constitutional status came into being consequent upon passing of the Constitution (Sixty- fifth Amendment) Bill, 1990 which was notified on 8-6-1990 (Annex-I) and the Rules thereunder were notified on 3-11-1990. The first statutory Commission under the Constitution (Sixty-fifth Amendment) Act was constituted on 12-3-1992 and from the same date the Office of Commissioner for Scheduled Castes and Scheduled Tribes was abolished. Article 338 as amended by the Constitution (Sixty- fifth Amendment) Act, 1990, inter-alia, provided that the Commission would consist of a Chairperson, Vice-Chairperson and five other Members and that their conditions of service and tenure of Office will be such as the President may, by rule, determine. The Act further provided that the Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal and that the Commission will have the power to regulate its own procedure.

The first National Commission for SCs & STs (statutory) consisted of Shri Ram Dhan as the Chairman, Shri Bandi Oraon as the Vice-Chairman and Shri B. Sammaiah, Dr. Sarojini Mahishi, Choudhary Hari Singh, Shri N. Brahma and Shri Jina Bhai Darjee as Members.

The second National Commission for SCs & STs was constituted on 5-10-1995 with Shri H. Hanumanthappa as Chairman and Smt. Omem Moyong Deori as Vice-Chairperson. The Members of the Commission were Shri N.C. Chaturvedi, Shri Anand Mohan Biswas, Ven. Lama Lobzang, Shri Nar Singh Baitha and Shri B. Yadaiah.

The third National Commission for SCs & STs was constituted in December, 1998 vide Ministry of Social Justice and Empowerment's Notification No.5035(E) dated 27 January,1999 consisting of Shri Dileep Singh Bhuria as the Chairman, Shri Kameshwar Paswan as the Vice-Chairman and Shri Harinder Singh Khalsa, Ven. Lama Lobzang, Shri Chhotray Majhi and Shri M. Kannan as Members. Smt. Veena Nayyar, was also appointed as a Member vide Ministry of Social Justice &

Empowerment's Notification No. S.O. 529 (E) dated 30 June, 1999. On the resignation of Shri M. Kannan, Shri C. Chellappan was appointed as Member vide Ministry of Social Justice & Empowerment's Notification No. S.O. 722 (E) dated 3-7-2000.

The fourth National Commission for SCs & STs was constituted in March, 2002 vide Ministry of Social Justice and Empowerment's Notification No. S.O. 351 (E) dated 21-3-2002 consisting of Dr. Bijay Sonkar Shastri as the Chairperson, Ven. Lama Chosphele Zotpa, Vice-Chairperson and Shri Vijay Kumar Choudhary, Shri Narayan Singh Kesari and Shri Tapir Gao as Members. Smt. Veena Premkumar Sharma also assumed office on 23-8-2002 as Member. Shri C. Chellappan completed his tenure as Member on 2 July, 2003. Shri Sampath Kumar assumed office on 30-9-2003 in place of Sh. C. Chellappan.

8.3 FUNCTIONS AND DUTIES OF THE NATIONAL COMMISSION FOR SCHEDULED CASTE:

The functions, duties and power of the Commission have been laid down in clauses (5), (8) and (9) of the Article 338 of the Constitution.

Clause (5): It shall be the duty of the Commission: -

1. to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;
2. to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes;
3. to participate and advise on the planning process of socio-economic development of the Scheduled Castes and to evaluate the progress of their development under the Union and any State;
4. to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;
5. to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes; and

6. to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes as the President may, subject to the provisions of any law made by Parliament, by the rule specify.

Clause (8) - The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- (b) requiring the discovery and production of any documents;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any court or office;
- (e) issuing commissions for the examination of witnesses and documents;
- (f) any other matter which the President may by rule, determine;

Clause (9) - The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Castes

8.4 THE NATIONAL COMMISSION FOR SCHEDULED TRIBES:

The National Commission for Scheduled Tribes was first formed by the Government of India in 1978 as a Non-statutory Multi-Member Commission. Initially, the Commission was set up through a resolution for both the Schedule Castes and Schedule Tribes. In the year 1987, the Government of India re-structured the duties of the Commission by authorizing it to advice on the Broad Policy Issues and Levels of Development of SCs and STs. The formation of Statutory National Commission took place in the year 1992 and it was followed by the 2nd Commission in 1995. On December 1998, the 3rd Commission was formed which was again followed by the 4th Commission in 2002. However, as per Article 338A of the 89th Amendment of the Constitution in 2004, a separate National Commission for Scheduled Tribes came into existence. The prime aim of this Commission for Scheduled Tribes is to develop the socio-economic status of the backward classes of STs in all parts of India.

8.5 POWERS OF THE NATIONAL COMMISSION FOR SCHEDULED TRIBES:

The National Commission of Scheduled Tribes is authorized to exercise the powers of a Civil Court. On various other matters and issues, the Commission has the following powers-

1. Evidence on affidavits can be received
2. Examining any person on oath by summoning and enforcing his attendance from any corner of India.
3. Summons/communications can be issued by the Commission to verify documents and witnesses.
4. Calling for the production and discovery of any documents.
5. Investigating any other issue as per the instructions of the President.
6. Any public record or a copy from any court of India can be demanded by the Commission.

Apart from the above mentioned ones, the National Commission for Scheduled Tribes has the power to monitor the following-

1. Safeguarding of the language, culture or script of the district as per Article 29(i).
2. Ruling out child labour with respect to STs under Article 24 of the Constitution.
3. Working of 5th and 6th schedules, economic safeguards under Article 244 and approval of grants for improving administrative scenario in tribal pockets.
4. Working of service safeguards under Articles 16 (4), 16 (4A), 16 (4B) and 335 to ensure proper representation of ST communities in various posts
5. Supervising the enforcement of several laws such as
 - (a) Bonded Labor System (Abolition) Act, 1976
 - (b) Forest Conservation Act, 1980
 - (c) The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989
 - (d) Minimum Wages Act, 1948
 - (e) The Child Labor (Prohibition and Regulation) Act, 1986
 - (f) The Panchayat (Extension to the Scheduled Areas) Act, 1996
 - (g) State Acts and Regulations relating to the alienation and restoration of land which belong to the STs

With the basic aim of uplifting socio-economic condition of the Scheduled Tribes, the Commission is approached by all State Governments and the Union to decide

upon various policy matters concerning the STs. Such consultation has been allowed by Clause 9 of Article 338A of the Indian Constitution.

8.6 FUNCTIONS OF THE NATIONAL COMMISSION FOR SCHEDULED TRIBES:

The main focus of the National Commission for Scheduled Tribes is on the all-round development of the backward classes of India. From education and agriculture to business opportunity and cultural enrichment, the Commission strives to work in all significant areas intertwined with the lives of STs. The major functions assigned to the Commission by the Constitution of India under Article 338-A of Clause (5) are as follows:

1. Safeguards relating to education as per Article 15 (4) to reserve seats for STs in various educational institutions and centers
2. Advising and participating in socio-economic developmental processes of STs, thereby evaluating the progress under any State or Union of India
3. Taking steps for the welfare, protection, advancement and development of the STs as per the instructions of the President, followed by the provisions of any law passed by the Parliament
4. Investigating and supervising all issues related to the safeguard of the Scheduled Tribes provided by the Constitution or as per any law
5. Submitting regular reports to the President about the progress and implementation of various safeguards offered to the STs
6. Investigate and act upon all complaints related to the deprivation of rights and safeguards of the STs
7. Making reports and recommendations for the Union that would encompass the overall development of the Scheduled Tribes through various safeguards

Some of the other functions performed by the Commission for the development, welfare and protection of Scheduled Tribes are listed below:

1. Taking measures to offer practical strategies for the development of the living standards of STs
2. Working on initiatives to confer rights of ownership of minor forest produce to the people of ST communities who are living in the forest regions

3. Preventing alienation of the STs from land and offering rehabilitation facilities to those who have been removed from their lands due to developmental projects
4. Safeguarding the rights of STs in context of water resources, mineral resources and so on according to the law
5. Striving to incorporate the Provisions of Panchayats (Extension to the Scheduled Areas) Act, 1996 (40 of 1996)
6. Taking initiatives to reduce and ban the shifting cultivation process by tribal groups since it leads to degradation of environment and disempowerment of the land.
7. Securing cooperation of the Scheduled Tribes and protection of forest lands through various important measures.

8.7 COMMITTEE ON THE WELFARE OF SCHEDULED CASTES AND SCHEDULED TRIBES:

Constitution and Functions

The Committee on the Welfare of Scheduled Castes and Scheduled Tribes consists of 30 Members-20 elected by Lok Sabha from amongst its Members in accordance with the system of proportional representation by means of single transferable vote and 10 nominated by Rajya Sabha from amongst its Members. The Chairman of the Committee is appointed by the Speaker from amongst the Members of the Committee.

A Minister is not eligible for election to the Committee. If a Member after his election to the Committee is appointed a Minister, he ceases to be a Member of the Committee from the date of such appointment. The term of the Committee does not exceed one year.

The functions of the Committee on the Welfare of Scheduled Castes and Scheduled Tribes are:

- to consider the reports submitted by the 'National Commission for the Scheduled Castes and the National Commission for the Scheduled Tribes under Articles 338(5)(d) and 338A(5) (d) , respectively, of the Constitution and to report as to the measures that should be taken by the Union Government in respect of matters within the purview of the Union Government, including the Administration of the Union Territories;

- to report on the action taken by the Union Government and the Administration of the Union Territories on the measures proposed by the Committee;
- to examine the measures taken by the Union Government to secure due representation of the Scheduled Castes and Scheduled Tribes in services and posts under its control (including appointments in the Public Sector Undertakings, Nationalized Banks, Statutory and Semi-Government Bodies and in the Union Territories) having regard to the provisions of Article 335;
- to report on the working of the welfare programmes for the Scheduled Castes and Scheduled Tribes in the Union Territories; and
- to examine such other matters as may deem fit to the Committee or are specifically referred to it by the House or the Speaker.

This Committee, like other Parliamentary Committees, has all the powers to call for the detailed information from the Ministries of the Government, Public Undertakings, Nationalized Banks and various organizations in respect of subjects taken up by the Committee for examination and to examine official and non-official witnesses. The Committee also takes the assistance of the National Commission for Scheduled Castes and the National Commission for the Scheduled Tribes in pursuing matters raised in its Reports in regard to the subjects under examination by the Committee.

Procedure of Work of the Committee:

From time to time, the Committee selects such subjects pertaining to the welfare of Scheduled Castes and Scheduled Tribes as may deem fit to the Committee.

The Committee may also examine matters of special interest relating to the welfare of Scheduled Castes and Scheduled Tribes which may arise, or come to light, in the course of its working or which may be specifically referred to it by the House or by the Speaker.

The Committee asks for preliminary material from the Ministry/Department/Public Undertaking/Nationalized Bank or other Statutory or Government Body connected with the subject-matter under examination for use of the Members of the Committee.

The Committee may, from time to time, appoint one or more Sub-Committees/Study Groups for carrying out detailed examination of various subjects.

If it appears to the Committee that it is necessary for the purpose of its examination that an "on-the-spot," study should be made, the Committee divides itself into Study Groups consisting of a few members to undertake tours to make a study of the problems of the Scheduled Castes and Scheduled Tribes and the measures taken or being taken for the welfare of Scheduled Castes and Scheduled Tribes, and prepare Study Reports.

When the Committee or its Study Group is on study tour, only informal discussions are held at the places of visit. During such discussions, no formal evidence is recorded nor any decision taken. Later, in the light of these informal discussions and the memoranda and other information received, official and, where considered necessary, non-official witnesses are invited to tender evidence at formal sittings of the Committee held in Parliament House or Parliament House Annex or Parliament Library Building in New Delhi.

The procedure for examination of the official/ non-official witnesses, as laid down by the Committee, is as follows:—

- (i) The programme for taking the evidence of the officials and non-officials on various subjects under examination by the Committee is drawn up and the witnesses are invited to appear before the Committee on the appointed dates to tender evidence. As a rule, examination of non-officials precedes that of the officials on the subjects concerned.
- (ii) The purpose in examining the witnesses is to obtain information on (a) the working of the organizations, and (b) subjects concerned which are examined by the Committee. If it is necessary to enquire into certain deals regarding the personnel employed by the Ministry/Public Undertaking/Nationalized Bank/Statutory or Government organization concerned, the questions should not, as far as possible, name particular individuals.
- (iii) (iii) In the case of the Official witnesses, generally the Secretary of the Ministry is the principal spokesman. The Chairman or the Convener first welcomes the principal spokesman and then asks him to introduce his colleagues to the Committee.
- (iv) The Chairman or the Convener then asks questions one by one.

(v) After the Chairman or the Convener has put his question, he gives a chance to other members who desire to ask questions for clarification or elucidation of the point under discussion.

Disposal of Complaints/Representations

The Committee has laid down the following procedure for dealing with representations/complaints:—

(i) Representations from Government employees in regard to their service matters are not entertained by the Committee as per direction from the Speaker. Government servants have a prescribed hierarchy of Appellate and Reviewing Authorities with the President at the top. Such representations, when received are forwarded to the Ministry/Department/Organization concerned for appropriate action.

(ii) Memoranda/representations on matters which are within the purview of the State Governments are forwarded to the Chief Secretaries of the State Governments concerned for disposal and the petitioner is informed of the action taken.

(iii) Memoranda/representations which make general suggestions for the welfare and improvement of the conditions of Scheduled Castes and Scheduled Tribes are considered by the Committee on merit while dealing with the subjects referred to in those suggestions.

(iv) Anonymous representations, representations couched in intemperate and indecorous language or on matters which are *sub-judice* are filed on receipt in the Secretariat of the Committee.

8.8 THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989:

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was enacted to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto.

Offences and Punishments under the Act:

Punishments for offences of atrocities.—

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—

- (i) forces a member of a Scheduled Caste or a Scheduled Tribe to drink or eat any inedible or obnoxious substance;
- (ii) acts with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighborhood;
- (iii) forcibly removes clothes from the person of a member of a Scheduled Caste or a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity;
- (iv) wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred;
- (v) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water;
- (vi) compels or entices a member of a Scheduled Caste or a Scheduled Tribe to do 'begar' or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government;
- (vii) forces or intimidates a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law;
- (viii) Institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;
- (ix) gives, any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;
- (x) Intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;
- (xi) assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonor or outrage her modesty
- (xii) being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed;
- (xiii) corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or the Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used;

(xiv) denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any section thereof have a right to use or access to;

(xv) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—

(i) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with death;

(ii) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is not capital but punishable with imprisonment for a term of seven years or upwards, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years or upwards and with fine;

(iii) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause damage to any property belonging to a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(iv) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause destruction of any building which is ordinarily used as a place of worship or as a place for human dwelling or as a place & custody of the property by a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for life and with fine;

(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled

Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;

(vi) knowingly or having reason to believe that an offence has been committed under this Chapter, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall be punishable with the punishment provided for that offence; or

(vii) being a public servant, commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

Punishment for neglect of duties

Whoever, being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe, willfully neglects his duties required to be performed by him under this Act, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year.

8.9 TERMINAL QUESTIONS:

1. The Prevention of Atrocities Act came into force on:
 - a. 30th January 1990
 - b. 31st January 1990
 - c. 30th January 1991
 - d. 31st January 1991
2. Clauses (5), (8) and (9) of the Article 338 of the Constitution is related to:
 - a. The functions, duties and power of the National Commission for Scheduled Caste
 - b. Composition of National Commission for Scheduled Caste
 - c. Penal provision
 - d. None of the above
3. When was the National Commission for Scheduled Tribes, formed in India.
 - a. 1996
 - b. 1997
 - c. 1978
 - d. 1977

4. The National Commission of Scheduled Tribes is authorized to exercise the powers of a _____.
 - a. Criminal Court
 - b. Civil Court
 - c. Marshal Court
 - d. All of the above
5. The major functions assigned to the Commission by the Constitution of India under Article _____.
 - a. 337
 - b. 338-A
 - c. 339
 - d. 332
6. The Committee on the Welfare of Scheduled Castes and Scheduled Tribes consists of _____.
 - a. 20 Members
 - b. 25 Members
 - c. 35 Members
 - d. 30 Members
7. The Chairman of the 'Committee on the Welfare of Scheduled Castes and Scheduled Tribes' is appointed by the _____ from amongst the Members of the Committee.
 - a. President
 - b. Vice-president
 - c. Speaker
 - d. Prime Minister
8. The Constitution emphasizes 'safe-guards' for Scheduled Castes (SCs) under the 'Special Provisions Relating to Certain Classes' in _____ of the Indian Constitution.
 - a. Part XV
 - b. Part XIV
 - c. Part XVII
 - d. Part XVI
9. The 1950 Indian Constitution abolished the practice of "untouchability" under Article:
 - a. 16

- b. 17
- c. 18
- d. 19

8.10 ANSWER TO CHECK YOUR PROGRESS:

- 1. a. 30th January 1990
- 2. a. The functions, duties and power of the National Commission for Scheduled Caste
- 3. c. 1978
- 4. b. Civil Court
- 5. b. 338-A
- 6. d. 30 Members
- 7. c. Speaker
- 8. d. Part XVI
- 9. b. 17

8.11 KEY WORDS:

- **Dalit** is a designation for a group of people traditionally regarded as untouchable.
- **Untouchability-** is a direct product of the caste system. It is not merely the inability to touch a human being of a certain caste or sub-caste. It is an attitude on the part of a whole group of people that relates to a deeper psychological process of thought and belief, invisible to the naked eye, translated into various physical acts and behaviours, norms and practices.
- **Legal Representative-** In its broadest sense, one who stands in place of, and represents the interests of, another. A person who oversees the legal affairs of another. Examples include the executor or administrator of an estate and a court appointed guardian of a minor or incompetent person. This term is almost always held to be synonymous with the term personal representative. In accident cases, the member of the family entitled to benefits under a Wrongful Death statute.
- **De facto-** This phrase is used to characterize an officer, a government, a past action, or a state of affairs that must be accepted for all practical purposes, but is illegal or illegitimate. Thus, an office, position, or status existing under a claim or color of right, such as a de facto corporation. In this sense it is the contrary of de jure, which means rightful, legitimate, just, or constitutional.

- **Cause of Action** -is the heart of the complaint, which is the Pleading that initiates a lawsuit. Without an adequately stated cause of action the plaintiff's case can be dismissed at the outset. It is not sufficient merely to state that certain events occurred that entitle the plaintiff to relief. All the elements of each cause of action must be detailed in the complaint. The claims must be supported by the facts, the law, and a conclusion that flows from the application of the law to those facts.

8.12 SUGGESTED READINGS:

- Devasia, V.V., "Women, Social justice and Human Rights" New Delhi: APH, 2009
- Thomas, Jhon K., "Human Rights of Tribals" New Delhi: Isha Book, 2005
- Thiagaraj, "Human Rights from the Dalit Perspective", New Delhi: Gyan Publishing, 2007
- G.S. Bhargava, "Human Rights of Dalits: Social Violation", New Delhi: Gyan, 2001
- Shinde, Prem K., "Dalits and Human Rights", Delhi: Isha Books, 2005
- Singh, Ram Gopal & Ravindra D. Gadkar (eds.), "Restoration of Human Rights and Dignity to Dalits" New Delhi: Manak Publications, 2004

UNIT - IX

ROLE OF NGOs AT NATIONAL LEVEL IN PROTECTION OF HUMAN RIGHTS

STRUCTURE:

9.1 Introduction

9.2 Major International NGOs

9.3 **Role of NGOs at National Level**

9.4 Role of NGOs in Protecting Human Right through Judiciary

9.5 Terminal questions

9.6 Answer to check your progress

9.7 Key words

9.8 Suggested readings

OBJECTIVES:

After going through this Unit you should be able to understand:

- Various International NGOs for the Protection of Human Rights
- Various National NGOs for the Protection of Human Rights
- **Contribution of NGOs to develop the Human Rights**

9.1 INTRODUCTION:

Many organizations around the world dedicate their efforts to protecting Human Rights and ending Human Rights abuses. Public support and condemnation of abuses is important to their success, as Human Rights organizations are most effective when their calls for reform are backed by strong public advocacy. Non Governmental Organization is one of the examples of such groups. In every part of the globe, there are Non-Governmental Organizations' (NGOs) working every hour of the day to document the injustices heaped upon women, children and the under-class, standing beneath the bottom rung of the society. By their active campaigning, they remind Governments to keep their promise in order to give practical shape to goals set by various national and international conventions on Human Rights. The NGO are a necessary corollary to the democratic machinery of the government, they are means of democratic empowerment of those who are less

powerful and less advantaged as the Government machinery and its authorized institution are not always sufficient to guarantee the protection of Human Right. The number of internationally operating NGOs is estimated at 40,000, National numbers are even higher: Russia has 277,000 NGOs India is estimated to have between 1 million and 2 million NGOs.

NGOs have the ability to experiment freely with innovative approaches and, if necessary, to take risks. They are flexible in adapting to local situations and responding to local needs and therefore can do projects in any place. They have a good understanding with people and therefore cater their needs. NGOs which enable an environment that particularly fosters local innovations and solutions to local problems would incorporate some of the following features.

- Building the innovative capacity of local leaders and organizations
- Supporting Experimentation.
- Identifying and document innovative approaches
- Disseminating innovative approaches in target areas
- “Celebrating” and publicizing innovations internationally
- Creating opportunity for peer-to-peer exchange
- Creating a forum for policy makers to learn about the innovations and consider opportunities for up scaling them or incorporating them into policy.
- Bringing together multi sectoral groups around common problems or points of collaboration so that they may collectively generate, implement or replicate innovations.
- Creating recognition for the adapter so that he/she can feel motivation similar to that experienced by the original innovator.

Among the wide variety of roles that NGOs play, the following are important:

- **The Social Welfare Role-** where relief and charity are key actions. NGOs in this role can be seen as initiating internal programs and projects.
- **The Mediatory Role-** where communication as a skill is important for development and social action. NGOs in this role can be seen as participating or taking up external programs and projects.
- **The Consultative Role-** where support documentation and dissemination of information and expertise is critical. NGOs in this role can be seen as working in

collaborative programs. Local experts/professionals/resource persons play major secondary roles.

- **Development and Operation of Infrastructure:** Community- based organizations and cooperatives can acquire, subdivide and develop land, construct housing, provide infrastructure and operate and maintain infrastructure such as wells or public toilets and solid waste collection services.
- **Supporting Innovation, Demonstration and Pilot Projects:** NGO have the advantage of selecting particular places for innovative projects and specify in advance the length of time which they will be supporting the project - overcoming some of the shortcomings that governments face in this respect.
- **Facilitating Communication:** The significance of this role to the government is that NGOs can communicate to the policy-making levels of government, information about the lives, capabilities, attitudes and cultural characteristics of people at the local level. NGOs can facilitate communication upward from people to the government and downward from the government to the people.
- **Technical Assistance and Training:** Training institutions and NGOs can develop a technical assistance and training capacity and use this to assist both CBOs and governments.
- **Research, Monitoring and Evaluation:** Innovative activities need to be carefully documented and shared - effective participatory monitoring would permit the sharing of results with the people themselves as well as with the project staff.

9.2 MAJOR INTERNATIONAL NGOS:

Many organizations around the world dedicate their efforts to protecting Human Rights and ending Human Rights abuses. Public support and condemnation of abuses is important to their success, as Human Rights organizations are most effective when their calls for reform are backed by strong public advocacy. Non Governmental Organization is one of the examples of such groups. In every part of the globe, there are Non-Governmental Organizations' (NGOs) working every hour of the day to document the injustices heaped upon women, children and the under-class, standing beneath the bottom rung of the society. By their active campaigning, they remind Governments to keep their promise in order to give

practical shape to goals set by various national and international conventions on Human Rights. India is estimated to have between 1 million and 2 million NGOs. The NGO are a necessary corollary to the democratic machinery of the government, they are means of democratic empowerment of those who are less powerful and less advantaged as the government machinery and its authorized institution are not always sufficient to guarantee the protection of Human Right. The following are some major international NGOs:-

Amnesty International:

Amnesty International is a worldwide movement of people who campaign for internationally recognized Human Rights for all. With more than 2.2 million members and subscribers in more than 150 countries, they conduct research and generate action to prevent and end grave abuses of Human Rights and to demand justice for those whose rights have been violated.

Children’s Defense Fund (CDF):

The CDF is a child advocacy organization that works to ensure a level playing field for all children. CDF champions policies and programs that lift children out of poverty, protect them from abuse and neglect and ensure their right to equal care and education.

Human Rights Action Center:

The Human Rights Action Center is a nonprofit organization based in Washington, DC, headed by Jack Healey, world-renowned Human Rights activist and pioneer. The Center works on issues of the Universal Declaration of Human Rights and uses the arts and technologies to innovate, create and develop new strategies to stop Human Rights abuses. They also support growing Human Rights groups all over the world.

Human Rights Watch:

Human Rights Watch is dedicated to protecting the Human Rights of people around the world. They investigate and expose Human Rights violations, hold abusers accountable, and challenge governments and those who hold power to end abusive practices and respect international Human Rights law.

Human Rights without Frontiers (HRWF):

HRWF focuses on monitoring, research and analysis in the field of Human Rights, as well as promotion of democracy and the rule of law on the national and international level.

National Association for the Advancement of Colored People (NAACP):

The mission of the NAACP is to ensure the political, educational, social and economic quality of rights of all persons and to eliminate racial hatred and racial discrimination.

Simon Wiesenthal Center:

This prestigious international Jewish Human Rights organization is dedicated to repairing the world one step at a time. The Center generates changes by confronting anti-Semitism, hate and terrorism, promoting Human Rights and dignity, standing with Israel, defending the safety of Jews worldwide, and teaching the lessons of the Holocaust for future generations.

Office of the United Nations High Commissioner for Human Rights:

The Office of the United Nations High Commissioner for Human Rights' mission is to work for the protection of Human Rights for all people; to help empower people to realize their rights; and to assist those responsible for upholding such rights in ensuring that they are implemented.

Human Rights Council:

An intergovernmental body with membership encompassing forty-seven states, the Human Rights Council has the task of promoting and protecting Human Rights internationally. Its mechanisms to forward these ends include a Universal Periodic Review which assesses situations in all 192 UN Member States, an Advisory Committee which provides expertise on Human Rights issues, and a Complaints Procedure for individuals and organizations to bring Human Rights violations to the attention of the Council.

United Nations Educational, Scientific and Cultural Organization (UNESCO):

UNESCO's goal is to build peace in the minds of men. Its work in the field of Human Rights aims to strengthen awareness and acts as a catalyst for regional, national and international action in Human Rights.

Office of the United Nations High Commissioner for Refugees:

This office directs and coordinates international action to protect refugees and resolve refugee problems worldwide. Its primary purpose is to safeguard the rights and well-being of refugees. It strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another state, with the option to return home voluntarily, integrate locally or to resettle in a third country.

US State Department Bureau of Democracy, Human Rights and Labor:

The US State Department's Bureau of Democracy, Human Rights and Labor strives to learn the truth and state the facts in all of its Human Rights investigations, annual reports on country conditions, etc. The bureau takes action to stop ongoing abuses and maintains partnerships with organizations committed to Human Rights.

Office of Democratic Institutions and Human Rights of the Organization for Security and Co-Operation in Europe (OSCE):

The Office for Democratic Institutions and Human Rights of the OSCE, comprised of fifty-six participating states from Europe, Central Asia and North America, is engaged in Human Rights activities focusing on freedom of movement and religion and preventing torture and trafficking in persons.

Commission for Human Rights, Council of Europe:

The Commission is an independent institution within the Council of Europe mandated to promote the awareness of and respect for Human Rights in forty-seven Council of Europe Member States. The Commission's work thus focuses on encouraging reform measures to achieve tangible improvement in the area of Human Rights promotion and protection. Being a non judicial institution, the Commissioner's Office cannot act upon individual complaints, but the Commission can draw conclusions and take wider initiatives on the basis of reliable information regarding Human Rights violations suffered by individuals.

European Union Ombudsman:

The European Union Ombudsman investigates complaints about maladministration in the institutions and bodies of the European Union. The Ombudsman is completely independent and impartial.

European Commission Directorate for Employment, Social Affairs and Equal Opportunities:

The European Commission's Directorate-General for Employment, Social Affairs and Equal Opportunities works toward the creation of more and better jobs, an inclusive society and equal opportunities for all.

African Commission on Human and Peoples' Rights:

This Commission is officially charged with three major functions: the protection of human and peoples' rights, the promotion of these rights, and the interpretation of the African Charter on Human and Peoples' Rights.

The Asian Human Rights Commission:

Asian Human Rights Commission works to achieve the following priorities, among others: to protect and promote Human Rights by monitoring, investigation, advocating and taking solidarity actions.

The Fred Hollows Foundation:

It is a non-profit, community-based, non-government development aid organization that focuses on treating and preventing blindness and other vision problems. It operates in Australia, The Pacific, South and South East Asia, and Africa.

Legal Resources Centre:

The Legal Resources Centre (LRC) is a Human Rights organization based in South Africa with offices in Johannesburg (including a Constitutional Litigation Unit), Cape Town, Durban and Grahams Town. The LRC employs over 65 lawyers specializing in public-interest law.

Cool Earth:

It is a UK based international non-governmental organization that protects endangered rainforest to combat global warming, protect ecosystems and provide sustainable jobs for local people. Cool Earth also refers to a Japanese program generally called the "Cool Earth Partnership," inaugurated in 2007. Cool Earth protects and secures rainforest under imminent threat of destruction, working with other NGOs.

9.3 ROLE OF NGOs AT NATIONAL LEVEL:

NGO's having played the role of development factor has been crucial as service providers. In the development sector, many NGO's have moved ahead or gap filling initiatives to capacity building activities. Some example as follow:

Sulabh Movement:

It is a major social movement in the country for the betterment and welfare of Dalits, in a generic sense, and in particular for the liberation and social mainstreaming of scavengers.

Child Relief and You (CRY):

It is a voluntary organization committed to the upliftment of millions of children who have been deprived of their childhood due to various reasons.

Campaign against Child Labour (CACL):

The campaign against child labour is a joint initiative of Youth for Voluntary Action (YUVA), Pune and Tere des Hommes (Germany) India Programme. The Campaign is currently supported by ILO and is actively working for progressive eradication of child labour through provision of education, organization of awareness programmes, promotion of legislative changes and rescuing children in bondage or victims of abuse.

Organizations like Saheli and Chetna are actively involved in the protection of Women's Rights. They provide free legal aid to women to fight for their rights against gender bias and discrimination.

Butterflies are an NGO with a programme for street and working children. It was started in 1988 and its activities include non-formal education, saving schemes for children, vocational training, holding Bal Sabhas, and creating awareness for children's rights, Bal Mazdoor Union, networking with other NGOs and research and documentation. The researcher is going to look in to some important national level NGOs in India.

Ramakrishna Mission Home of Service:

It is an Indian non-governmental organization established in Varanasi, established in 1900 and became a branch of Ramakrishna Mission in 1902. It manages an education program on essential health problems in schools, slums and villages of Uttar Pradesh (India) thanks to auto produced multimedia educational films.

People's Union for Civil Liberties:

It is a prominent civil rights organization in India. It was formed in 1976 by veteran socialist and campaign leader Jay Prakash Narayan, who launched it as the People's Union for Civil Liberties and Democratic Rights (PUCLDR), it Was originally intended to be an organization free from political ideologies, bringing those concerned about defending civil liberties and Human Rights from different backgrounds onto a common platform.

People's Union for Democratic Rights:

It came into existence in 1976-77 as the Delhi unit of a larger national forum, and became PUDR on 1 February, 1981. In the last two and a half decades of its existence the organization has taken up hundreds of instances of violations of democratic rights, covering most parts of the country and involving the rights of many sections of society. PUDR conducts investigations, issues statements,

distributes leaflets, organizes public meetings, demonstrations and dharmas, and fights legal cases to highlight the violation of people's rights, and to help towards their redressal. PUDR also takes up issues of general importance that affect the rights of people through general campaigns, publications and legal interventions. These include: gender equality; rights of forest-dwellers and forest policy; working class rights; agrarian conflict; caste oppression; deaths, rapes and torture in police custody; and undemocratic legislation, in particular the various incarnations of the 'terrorist act' (TADA and POTA) etc.

Child Rights and You:

Child Rights and You (formerly Child Relief and You, till 2005), commonly abbreviated as CRY, is a non-profit organization in India that aims to restore children's rights in India. The organization was established in 1979. The organization partners with grass-roots Nongovernmental organizations to uplift thousands of Indian children denied basic children's rights. In 2007, its media campaign showing "smiling kids" and asking citizens to partner instead of simply donate, was seen as a departure from stereotypical NGO sector advertising in India.

Sewa Asharam:

This 'NGO' is located in Sudarashananagar, Bikaner registered under Societies Registration Act 1958. The working area of Sewa Asharam is whole of the Rajasthan for disabled persons. The total disabled livings in this institution are fifty two in number. The three types of disabled admitted to the institution are: (a) visually impaired and (ii) mentally retarded and (iii) locomotor disabilities. Before admitting a disabled child to the institution the Director or Manager uses a Performa named as Individualized Training programme shortly known as (ITP).

Bandhua Mukti Morcha:

Bandhua Mukti Morcha (BMM) or Bonded Labour Liberation Front (BLLF) is a non-governmental organization in India working to end bonded labour. Based in New Delhi, it was founded in 1981 by Swami Agnivesh who continues as its chairman. Bonded labour was legally abolished in India in 1976 but it remains prevalent, with weak enforcement of the law by state governments. Estimates of the problem vary. Official figures include a 1993 estimate of only 251,000 bonded labourers while BMM says there are 65 million bonded child labourers, and a larger number of adults. A 2003 project by Human Rights Watch has reported a major problem with bonded child labour in the silk industry; BMM's efforts are

credited with the passing of legislation to abolish child labour in India (Child Labour (Prohibition and Regulation) Act 1986).

9.4 ROLE OF NGOs IN PROTECTING HUMAN RIGHT THROUGH JUDICIARY:

NGOs have played an important role in the protection of Human Rights. They cannot succeed in their role unless there is help from the judiciary. The NGOs help the victim of Human Right violation by providing them assistance and advice. The NGOs have filed cases, writ petitions and Public Interest Litigation on behalf of victims and public at large for protection of Human Rights. The NGOs have fought against the system of bonded labour, fake encounters by police, protection of women children's rights, custodial violence and custodial death, prevention of torture and other inhuman practices. The judiciary has passed appropriate order and given compensation to the victims on a petition by the NGOs. The NHRC encourages NGOs in the Human Rights. The NGOs also take up cases of violation to the NHRC and state Human Rights commissions.

In *People's Union for Democratic Rights vs. Union of India*,⁴⁵ came forward with a public interest petition for the redress of bonded labours. The Court gave an active interpretation to Art. 23 of the Constitution and held that it is not merely a 'begar' which is prohibited by Art. 23 but forced labour also comes in the category of begar and is violative of Article 23 of the Constitution. It was held that whenever any fundamental right which is enforceable against a private individual such as a fundamental right enacted in Art, 17 or 23 or 24 is being violated, it is the Constitutional obligation of the State to take necessary steps interdicting such violations and ensure observance of fundamental rights by private individual who is transgressing the same. Any person aggrieved or any other person can always come forward to espouse the cause compelling the Government for enforcement of such rights against the individuals who are violating the guarantees contemplated by Articles 17, 23 and 24 of the Constitution.

In a petition by Consumer Education & Research Centre and others,⁴⁶ Justice K. Ramaswamy speaking for the Court interpreting Article 21 of the Constitution, held that the right to life with human dignity encompasses within its fold, some of finer facets of human civilization which makes life worth living. The expanded

⁴⁵ (1982)3 S.C.C.235

⁴⁶ JT 1995 (1) S.C. 637

connotation of life would mean the tradition and cultural heritage of the persons concerned. In this petition, the plight of the workmen working in Asbestos Industry was brought to the notice of the Court. The Court held that the right to life and health, medical aid and to protect the health and vigor to a worker while in service or post retirement is a fundamental right under Article 21 read with Articles 39 (e), 41, 43, 48A and fundamental Human Right to make the life of workmen meaningful and purposeful with dignity of persons. The Factories were directed to compulsorily ensure health coverage of every worker, review of exposure to permissible limits and so on.

In *Neerja Chowdhry vs. State of H.P.*,⁴⁷ a journalist addressed a letter to a Judge of the Supreme Court complaining about 135 bonded labourers, who had been released from bondage in pursuance of an order of the Supreme Court and had been brought back to their respective villages in Madhya Pradesh with a promise of rehabilitation by the Chief Minister of the State but had not been rehabilitated even after six months since their release, as a result they were living almost the verge of starvation. The Supreme Court directed that the plain requirement of Articles 21 and 23 is that bonded labourers must be identified and released and on release they must be suitably rehabilitated.

In *Sheela Barse vs. State of Maharashtra*,⁴⁸ the petitioner complained about state of affairs in an Observation Home for children. There had been delay in restoring the children to their parents despite orders of the Court. The Court directed restoration of these children. The Court held that since India was party to International Covenant on Civil and Political Rights of 1976, a child must be provided with the protections as are required by Article 24 of the aforesaid Covenant. The Court expanded the construction of Article 21 and held that permission to interview the prisoners should be granted for ensuring the rights guaranteed to the prisoners. The Court also held that Article 10 of the Covenant on Economic, Social and Equal Rights, lays down that the children must be protected from economic and social exploitation from employment in harmful occupation below prescribed age. All these rights were held to be guaranteed to the children of this country also. This was not merely a reference to an International Convention but it was held to be of the binding nature of its obligations.

⁴⁷ (1984)3 S.C.C. 243

⁴⁸ (1987)4 S.C.C. 273

In *D.K. Basu v. State of W.B.*⁴⁹ the Supreme Court has laid down detailed guidelines to be followed by the Central and State investigating and security agencies in all cases of arrest and detention. The matter was brought before the Court by Dr. D.K. Basu, Executive Chairman of the Legal Aid Services, a non-political organization, West Bengal through a Public Interest Litigation. He addressed a letter to the Chief Justice drawing his attention to certain news items published in the Telegraph and Statesman and Indian Express regarding death in police lock ups and custody. This letter was treated as a writ petition by the Court.

“Custodial death is perhaps one of the worst crimes in a civilized society governed by the rule of law” Dr. Justice Anand who delivered the said judgment on behalf of the Court held that, any form of torture or cruel, inhuman or degrading treatment, would fall within the inhibition of Article 21 of the Constitution whether it occurs during investigation, interrogation or otherwise.

The Court held that the precious right guaranteed under Article 21 of the Constitution could not be denied to convicts, under trials, detainees and other prisoners in custody, except according to the procedure established by law.

Following guidelines have been laid down by the Court to be followed in all cases of arrest or detention till legislative measures are taken.

1. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such personnel who handle interrogation of the arrestee must be recorded in a register.
2. The police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.
3. A person who has been arrested or detained and is being held in custody in a police station or interrogation center or other lock-up shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

⁴⁹ (1997) 2 SCC 416

4. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organization in the District and the Police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
5. The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
6. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
7. The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any person on his/her body, must be recorded at that time. The 'Inspection Memo' must be signed both by the arrestee and the police officer affecting the arrest and its copy provided to the arrestee.
8. The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a panel for all Tehsil's and Districts as well.
9. Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa/Area Magistrate for his record.
10. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
11. A Police control room should be provided at all district and State head quarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

In *Vishaka & Ors v. State of Rajasthan & Ors*, the Supreme Court held that it shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts, of sexual harassment by taking all steps required. For this purpose, sexual harassment

includes such unwelcome sexually determined behavior (whether directly or by implication) as:

- a) Physical contact and advances;
- b) A demand or request for sexual favors;
- c) Sexually colored remarks;
- d) Showing pornography;
- e) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature

Where any of these acts is committed in circumstances where-under the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

Thus, The NGOs play important role to become a concrete expression of international, national and regional and local level voice to assist and stand up for those who can't speak themselves. Every human being is entitled to certain basic Human Rights which are available to them without discrimination of any sort Human Rights are protected by the United Nations and its specialized agencies. In India Human Rights are protected by the judiciary, Human Rights Commissions, apart from these organizations the Non Governmental organizations also have an important role in protection of Human Rights. The Non Governmental Organizations work from grass roots level to the national and international level in the protection of Human Rights.

Contribution of NGOs to develop the Human Rights:

- They mobilize public opinion.
- They contribute a lot to the society.
- They pressurize the government on certain issues, such as protection of prisoners rights, torture etc.

- They approach the judiciary on behalf of poor people who otherwise have no access to justice.
- They ask for submission of certain reports.
- They play a special role especially in the developing countries for the development of Human Rights.

9.5 TERMINAL QUESTIONS:

1. The feature of the NGOs is:
 - a. Building the innovative capacity of local leaders and organizations
 - b. Supporting Experimentation
 - c. Creating opportunity for peer-to-peer exchange
 - d. All of the above
2. People's Union for Democratic Rights vs. Union of India, case is related to:
 - a. Child labour
 - b. Women labour
 - c. Cyber crime
 - d. Environmental Protection
3. Vishaka & Ors v. State of Rajasthan & Ors, case is related to:
 - a. Child labour
 - b. Sexual harassment
 - c. Environmental Protection
 - d. Rights of Prisoners
4. Sulabh Movement is a major social movement in the country for the betterment and welfare of
 - a. Women
 - b. Dalits
 - c. Children
 - d. Prisoners
5. When was **People's Union for Civil Liberties** formed?
 - a. 1977
 - b. 1978
 - c. 1976
 - d. 1974
6. Article 24 of the Indian Constitution deals with:
 - a. Right to Equality

- b. Right to Life
- c. Freedom of Press
- d. Child Labour

9.6 ANSWER TO CHECK YOUR PROGRESS:

- 1. d. All of the above
 - 2. a. Child labour
 - 3. b. Sexual harassment
 - 4. b. Dalits
 - 5. c. 1976
 - 6. d. Child Labour
-

9.7 KEY WORDS:

- **Social Welfare**- The well-being of the entire society. Social welfare is not the same as standard of living but is more concerned with the quality of life that includes factors such as the quality of the environment (air, soil, water), level of crime, extent of drug abuse, availability of essential social services, as well as religious and spiritual aspects of life.
 - **Mediator**- a person who conducts mediation. A mediator is usually a lawyer, or retired judge, but can be a non-attorney specialist in the subject matter (like child custody) who tries to bring people and their disputes to early resolution through a conference.
 - **Ombudsman**- A public official who acts as an impartial intermediary between the public and government or bureaucracy, or an employee of an organization who mediates disputes between employees and management.
 - **Loco motor disability**- means disability of the bones, joints muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy;
 - **Territorial jurisdiction**- refers to a court's power over events and persons within the bounds of a particular geographic territory. If a court does not have territorial jurisdiction over the events or persons within it, then the court cannot bind the defendant to an obligation or adjudicate any rights involving them.
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9.8 SUGGESTED READINGS:

- Janusz Symonides, "Human rights: international protection, monitoring, enforcement", New Delhi: Rawat Publications, 2005
- Mujawar, Wasiyoddin R., "Social and political movements for Human Rights", Delhi: Manglam Pub., 2009
- Srivastava, Deep Kumar, "Human rights in India" Allahabad: Anubhav Pub., 2009.
- Tandon , M.P. & V.K. Anand (ed.), "International Law & Human Rights", Faridabad: Allahabad Law Agency,2003.

Unit- X

STATE AGENCIES AND HUMAN RIGHTS VIOLATIONS

STRUCTURE:

- 10.1 Introduction
- 10.2 National Human Rights Commission
- 10.3 State Human Rights Commission
- 10.4 National Commission for Scheduled Castes
- 10.5 National Commission for Scheduled Tribes
- 10.6 National Commission for Women
- 10.7 United Nations' Organs for the Protection of Human Rights
- 10.8 Role of Press and the Media
- 10.9 Terminal questions
- 10.10 Answer to check your progress
- 10.11 Key words
- 10.12 Suggested readings

OBJECTIVES:

After studying this lesson you will get the information about:

- The various commissions that are working for the protection of human rights.
- Powers and functioning of these commissions
- The provision for safeguarding the rights of scheduled castes and scheduled tribes
- The agencies working for protecting the human rights at international level

10.1 INTRODUCTION:

Being human we are entitled to certain rights which are called as human rights. These rights belong to everyone irrespective of one's cast, class, race, age, gender, religion etc. In democratic societies fundamental human rights and freedom are put under the guarantee of law and therefore, their protection becomes an obligation of government authorities. It is the responsibility of every state that the people living there should be able to enjoy their freedom, they should not be deprived of their basic human rights. These rights are broadly classified into civil and political rights on the one hand and economic, social and cultural rights on the other. If these rights are protected then only the progress and development will become possible. All these human rights are meaningless if they are not protected. Their protection requires certain mechanism which will promote these rights. In this chapter we are going to study the prescribed mechanism for protection and promotion of human rights in India. For this purpose various commissions have been established in our country which we are going to study. According to Justice T.K. Thommen, the National Human Rights Commission was meant to highlight the pressing problem that endangers human rights. Its main function is to be the watchdog of human rights.

The object of both sets of rights is, to make an individual an effective participant in the affairs of the society. Universal Declaration of Human Rights adopted by the General Assembly on 10th December, 1948, was followed by two Covenants – International Convention on Economic, Social and Cultural Rights (ICESCR) and International Convention on Civil and Political Rights (ICCPR) in 1966. India signed both these International Conventions in 1979.

10.2 NATIONAL HUMAN RIGHTS COMMISSION:

The National Human Rights Commission was established on 12th October, 1993 under the legislative mandate of the Protection of Human Rights Act, 1993. This act also recommended for the setting up of State Human Right Commission at State level and Human Right courts along with NHRC.

Functions of the commission

The commission will perform all or any of the following functions under Section 12 of the act namely

- Enquiry: the commission shall inquire suo motu or on a petition presented to it by a victim or any person on his behalf.
- The commission may intervene in any proceeding involving any allegation of violation of human rights pending before a court.
- The Commission is allowed to visit any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates and make recommendations
- The commission may review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation
- The Commission shall review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures
- The Commission shall study treaties and other international instruments on human rights and make recommendations for their effective implementation
- The Commission shall undertake and promote research in the field of human rights.
- The Commission shall spread literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means.
- The Commission shall encourage the efforts of NGOs and institutions working in the field of human rights.
- The commission may perform any such other functions as it may consider necessary for the protection of human rights.

Powers of NHRC:

(1) The Commission shall, while inquiring into complaints under this Act, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and in particular in respect of the following matters, namely :

- (a) Summoning and enforcing the attendance of witnesses and examining them on oath;
- (b) Discovery and production of any document;

- (c) Receiving evidence on affidavits;
- (d) Requisitioning any public record or copy thereof from any court or office;
- (e) Issuing commissions for the examination of witnesses or documents;
- (f) Any other matter which may be prescribed.

(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code.

(3) The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorized in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies there from subject to the provisions of section 100 of the Code of Criminal Procedure, 1973, in so far as it may be applicable.

(4) The Commission shall be deemed to be a civil court and when any offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973.

(5) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code, and the Commission shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

(6) Where the Commission considers it necessary or expedient so to do, it may, by order, transfer any complaint filed or pending before it to the State Commission of the State from which the complaint arises, for disposal in accordance with the provisions of this Act; Provided that no such complaint shall be transferred unless

the same is one respecting which the State Commission has jurisdiction to entertain the same.

(7) Every complaint transferred under sub-section (6) shall be dealt with and disposed of by the State Commission as if it were a complaint initially filed before it.

10.3 STATE HUMAN RIGHTS COMMISSION –SHRC:

As mentioned earlier the Protection of Human Rights Act, 1993 recommends the constitution of National Human Rights Commission along with State Human Rights Commission in States for better protection of human rights.

Functions and powers of the SHRC

The functions and powers of the state commission are similar to those of National Human Rights Commission. The only difference is that the State commission cannot make a study of treaties. The state commission is empowered to study only those cases which are related to their particular state only. If a matter is with the State Commission then NHRC shall not deal with these matters.

The present state commissions

So far 18 states have set up their respective State Human Rights Commissions. These are: Jammu & Kashmir, Andhra Pradesh, Madhya Pradesh, Tamil Nadu, Chhattisgarh, Assam, Orissa, Kerala, Maharashtra, Punjab, Uttar Pradesh, Gujarat, Himachal Pradesh, Karnataka, Manipur, Rajasthan, West Bengal, and Bihar.

10.4 NATIONAL COMMISSION FOR SCHEDULED CASTES (NCSC):

In our country due to some historical reasons i.e. the age old practice of untouchability some of the castes have been deprived of the opportunities for their development, they remained underprivileged and socially and economically backward. For many years these classes were exploited by others. As identified in a schedule to the constitution of India, these classes are known as scheduled castes, dalits or Harijans.

Article 338 provided for the Appointment of commissioners for schedule caste & schedule Tribes by President. By the constitution's 65th amendment bill 1990 the commission was replaced with the commission for schedule caste & schedule Tribes commission. Later 89th amendment Act, 2003 separated this commission

and now we have National Commission for Scheduled Caste (NCSC) and National Commission for Scheduled Tribes (NCST).

Duties – Clause (5) Article 338 lays down the duties of the commission

- (a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;
- (b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes
- (c) to participate and advise on the planning process of socioeconomic development of the Scheduled Castes and to evaluate the progress of their development under the Union and any State;
- (d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;
- (e) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

Powers

clause (8) of article 338 states The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any court or office;
- (e) issuing commissions for the examination of witnesses and documents;
- (f) any other matter which the President may, by rule, determine.

338 -(9) states that Union and State government shall consult commission on all major policy matters affecting for schedule castes.

10.5 NATIONAL COMMISSION FOR SCHEDULED TRIBES (NCST):

The National Commission for Scheduled Tribes came into force on 19th February 2004. The Rules of the National Commission for Scheduled Tribes were notified on 20th February 2004, by the Ministry of Tribal Affairs (Annex-IV). The tenure of Chairperson, Vice-Chairperson and Members of the Commission is three years from the date of assumption of the charge by each of them. The C.P, V. CP & members shall be appointed from amongst persons of ability, integrity & standing who have had a record of selfless service to the cause of justice for STS. At least one member has to be lady.

The tenure of the first Commission constituted in February, 2004 was over in March, 2007. At present, Smt. Urmila Singh is the Chairperson of the Commission and Shri Tsering Samphel is Member of the Commission. Both of them joined in the month of June, 2007. The posts of Vice-Chairperson and two Members are vacant as on date. The National Commission for Scheduled Tribes functions from its Headquarters at New Delhi and from the Regional Offices of the Commission located in six States. The powers of this commission are as same as that of National Commission for SCS.

FUNCTIONS:

The functions, duties and power of the National Commission for Scheduled Tribes have been laid down in clauses(5), (8) and (9) of the Article 338A of the Constitution, as amended by Constitution [Eighty-ninth Amendment] Act, 2003. Clause (5) states that it shall be the duty of the Commission:

- to investigate and monitor all matters relating to the safeguards provided for the Scheduled Tribes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards.
- to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes.
- to participate and advise on the planning process of socio-economic development of the Scheduled Tribes and to evaluate the progress of their development under the Union and any State.
- to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards.
- to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those

safeguards and other measures for the protection, welfare and socioeconomic development of the Scheduled Tribes

- to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Tribes as the President may, subject to the provisions of any law made by Parliament, by rule, specify.
- The commission would also discharge the following other functions;
- Measures that need to be taken over conferring ownership rights in respect of minor forest produce to the ST's living in forest area.
- Measures to be taken safeguard rights to tribal communities over mineral resources water resources etc.
- Measures to be taken for the development of tribal & to work for more viable livelihood strategies.
- Measures to be taken to improve the efficiency of relief & rehabilitation measures for tribal groups displaced by development project.
- Measures to be taken to prevent alienation of tribal people from land & effectively rehabilitate such people in whose case alienation has already taken place.
- Measures to be taken to elicit maximum. Co-operation & involvement of tribal communities for protecting forests & undertaking social afforestation.
- Measures to be taken to ensure full implementation of the provisions of panchayats (extensions to the schedule areas act (40) of 1996.
- Measures to be taken to reduce and ultimately eliminate the practice of shifting cultivation by tribal that leads to their continuous disempowerment & degradation of land & the environment.

10.6 NATIONAL COMMISSION FOR WOMEN (NCW):

In our country there is largely a patriarchal structure of a society. In this set up women have been considered as inferior and given a secondary status. They have been subject to various legal and social discriminations. There is a need to remove such inequalities and to make a provision for solving her problems. 'The need was felt for structure to uphold the rights and implement the provisions of beneficial legislations, in an organized and institutionalized manner'. So with this view

National Commission for Women (NCW), was set up as statutory body in Jan. 1992 under new act 1990.

Purpose of the NCW is -

- To review constitutional & legal safeguards for women
- To recommend remedial legislative measures.
- To facilitate redressal of grievances &
- To advice government on all policy matter affecting women.

Functions:

The function of the National Commission for women is as under-:

- Shall be the coordinating agency to receive and process all the complaints related to Indian Women deserted by their Overseas Indian husbands.
- Shall render all possible assistance to the complaints including conciliation, mediation between the parties and advising the complainant on related issues.
- Associating, networking with NGO's, community organizations in India and abroad and State women Commissions for wider area coverage, so as to facilitate easy reach and provide support services.
- Shall endeavor towards a coordinated response amongst various Government agencies/organizations such as State Governments, The National Human Rights Commission, Indian Embassies and Mission, concerned Ministries etc.
- Providing assistance to the aggrieved woman in litigation and other issues pertaining to the complainant/case.
- Shall maintain a data bank record of cases registered.
- Seek reports from the State Government and other authorities on the complaints filed and action taken thereon.
- Shall advice and recommend the government on any policy or issue relating to the NRI marriages.
- Analyze various legal treaties on the issue and advice the Government on the subject, wherever required.

- Shall constitute a Advisory Committee panel of reputed advocates/NGOs, both in India as well as abroad, which shall periodically review the functioning of the cell, cases filed and policy issues.
- Shall constitute a panel of experts (All India) to assist the aggrieved wife and rendering legal services and other assistance , including mediation and conciliation
- Planning of training modules & carrying out training on sensitization on the subject to the various agencies entrusted with the task of providing justice, vig. Judiciary, police, administration, etc.
- Shall carry out awareness campaigns for the masses on the issue. For this, all the available media services would be utilized by the cell.
- Shall encourage /support research and study in the related field like issues of grievances associated with dual citizenship, enactment of new legislation or signing of international treaties, marriage laws of other countries, etc.
- Shall look into complaints and take suo-moto notice on any issue brought to the notice of the NRI Cell in accordance with Section 10 (1)(f) of the National Commission for Women Act , 1990 read with sub-section 4 of Section 10 and Section 8 of the Act.
- The cell shall regulate its own procedures in accordance with the National Commission for Women Act 1990
- Perform any other function as assigned to it by the Commission/Central Government

10.7 UNITED NATIONS' ORGANS FOR THE PROTECTION OF HUMAN RIGHTS:

The charter of the U.N. vests responsibility for the guarantee of human rights in the General Assembly and, under the General Assembly authority, in the Economic and Social Council (ECOSOC).

These Covenants are binding as legal obligations for the states who are party to them. These have been adopted by more than 100 states and ratified by 96 (as of 27 July, 1990). Each state, party to Covenants, undertakes necessary steps in accordance with its constitutional processes and legislative and other measures as may be necessary to give effect to the rights recognized in the Covenants. Each

state party undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenants without any distinction of race, colour, sex, language, religion, political or other opinion, national or social origin or place of birth or other status.

State parties are supposed to report on measures which they have adopted and the progress made in the observance of these rights. Thus the Covenants have created the important right of communication and petition against the violation of human rights.

The emphasis in both these covenants appears to be on progressive realization of these rights rather than implementation in the judicial sense of the term. The states can ratify the covenants without accepting the implementation provisions.

The International Labour Organization:

The International Labour Organization (ILO) deals with the whole range of labour issues. It attaches particular importance to basic economic and social as well as civil and political rights, as an essential element to improve the conditions of workers. It endeavours to implement these principles by adopting standards on subjects of concern. These ILO standards take the form of international labour conventions and recommendations.

ILO's Conventions are international treaties, subject to ratification by ILO Member States, whereas recommendations are non-binding. Until January 2010, 188 conventions have been adopted by the ILO. The application of international labour standards is subject to constant supervision by the ILO. Due to its long-standing experience but also because of its unique tripartite structure (bodies are composed according to the 2+1+1 formula: two government representatives and one representative each of employers' and of workers' associations), the procedures of adopting and implementing ILO conventions form part of a most effective mechanism for the protection of human rights within the UN system.

According to the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, all ILO Member States have an obligation to respect, to promote and to realize, in good faith and in accordance with the Constitution, four categories of principles and rights at work, even if they have not ratified the ILO Conventions to which they refer.

The United Nations International Children's Fund (UNICEF):

The United Nations International Children's Fund (UNICEF) is specifically mandated to protect and promote children's rights. UNICEF supports states in the ratification and implementation of the Convention on the Rights of the Child (CRC), and its protocols, i.e. the UN human rights instrument especially dedicated to children.

The CRC specifically refers to UNICEF as regards its implementation. UNICEF supports the work of the Committee on the Rights of the Child by contributing to CRC monitoring. UNICEF participates in the Committee's review of submitted reports, including working with the states to identify implementation strategies in response to the Committee's recommendations. In an earlier stage, UNICEF Field Offices facilitate broad consultations within the states to maximize the accuracy and impact of reports to the Committee. They often assist the states in organizing major consultations prior to drafting their reports.

UNICEF considers human rights as a foundation for its own and the general development work. The organization is committed to support girls' and boys' education for so-called "life skills", i.e. HIV/AIDS prevention; health education; violence prevention; peace building education; education for development; and to provide information about the correlations between human rights and social issues. Teaching human rights as life skills means that young people around the world learn about their rights and demonstrate their commitment to ensure that these rights are met.

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 to 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. 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 the Court.

10.8 ROLE OF PRESS AND THE MEDIA:

Campaigning is always the first step to a noble cause and aims at building awareness among the masses. In a great country like ours, the largest democracy of the world, campaign is the authentic way to social change. The mass media can be

an instrument for educators, educational institutions and Governmental and Non-Governmental Organizations for the emancipation of Human Rights.

Information systems are increasingly becoming important in the dissemination of knowledge. Electronic media like Radio and TV have impact on young people, and, as such have the ability to shape values, attitudes and perceptions of issues pertaining to human rights. For example, in 1994, UNICEF made an effective use of media to advocate the human rights of the victims of war and natural calamities at global level. It organised Press Conferences and media briefs, issued press releases, kept National Committees informed of the latest developments, arranged media interviews and provided strong local information. UNICEF efforts in mass communications and social mobilization during 1994 have led to a popular demand of raising the age limit from 15 to 18 years for military recruitment. Effective use of the media has also shown encouraging results in tackling issues related to women and child health, in general and HIV/AIDS prevention in particular. In India, between 5% and 30% of the 340 million children under the age of sixteen are estimated to fall under the definition of child labour.

For the last two decades media and various NGOs had been pressing the government to protect the child against such exploitation through enactment of new laws or by enforcing the existing laws more effectively. Following media exposure, Asian carpets in European countries are being boycotted by consumers. A child labour free trademark — RUGMARK) should soon be appearing on the carpets produced by Indian manufacturers. So far 25 manufacturers have been licensed to use the label and another 35 are finalizing their applications. The Ministry of Textiles and Carpets Exports Promotion Council (CEPC) have recently announced a plan to introduce a similar certificate system more widely in the industry.

Burning issues like dowry deaths, where so many women have been sacrificed on the altar of greed of their in-laws and some evil practices like human sacrifice, Sati Pratha with special reference to Roop Kanwar Case; dilemma of Muslim Personal Law with special reference to Shah Bano Case have been highlighted so strongly by the media that government has been forced to take corrective measures.

10.9 TERMINAL QUESTIONS:

1. Under which Section of Protection of Human Rights Act, 1993 function of NHRC is described?

- (a) 10
 - (b) 11
 - (c) 12
 - (d) 13
2. Which of the following is not power of NHRC?
- (g) Discovery and production of any document
 - (h) Receiving evidence on affidavits
 - (i) Requisitioning any public record or copy thereof from any court or office
 - (j) None of the above
3. Under which Section of Protection of Human Rights Act, 1993 the State Human Rights Commission is constituted?
- (a) 21
 - (b) 22
 - (c) 23
 - (d) 24
4. Which Article of the Constitution of India provides provisions for the Appointment of commissioners for schedule caste & schedule Tribes by President?
- (a) 21
 - (b) 368
 - (c) 338
 - (d) 245
5. The National Commission for Scheduled Tribes came into force on
- (a) 18th July 2003
 - (b) 19th February 2004
 - (c) 18th January 2002
 - (d) 20th March 2005
6. What is full form of NCW?
- (a) National Commission for Women
 - (b) National Council for Workers
 - (c) National Council for Women
 - (d) National Commissioner for workers
7. The International Labour Organization (ILO) deals with:-
- (a) Economic issues of labour
 - (b) Social issues of labour
 - (c) civil and political rights of labour

- (d) All of the above
8. Purpose of the NCW is -
- (a) To review constitutional & legal safeguards for women
- (b) To recommend remedial legislative measures
- (c) To facilitate redressal of grievances
- (d) All of the above
9. The State Human Rights Commission is empowered to study only those cases which are related:-
- (a) to their particular State only
- (b) to any State of India
- (c) to any State of India except Jammu and Kashmir
- (d) to any State of India and National level

10.10 ANSWER TO CHECK YOUR PROGRESS:

1. (c) 12
2. (d) None of the above
3. (a) 21
4. (c) 338
5. (b) 19th February 2004
6. (a) National Commission for Women
7. (d) All of the above
8. (d) All of the above
9. (a) to their particular State only

10.11 KEY WORDS:

- **Social Welfare**- The well-being of the entire society. Social welfare is not the same as standard of living but is more concerned with the quality of life that includes factors such as the quality of the environment (air, soil, and water), level of crime, extent of drug abuse, availability of essential social services, as well as religious and spiritual aspects of life.
- **Mediator**- a person who conducts mediation. A mediator is usually a lawyer, or retired judge, but can be a non-attorney specialist in the subject matter (like child custody) who tries to bring people and their disputes to early resolution through a conference.

- **Ombudsman**- A public official who acts as an impartial intermediary between the public and government or bureaucracy, or an employee of an organization who mediates disputes between employees and management.
- **Loco motor disability**- means disability of the bones, joints muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy;
- **Territorial jurisdiction**- refers to a court's power over events and persons within the bounds of a particular geographic territory. If a court does not have territorial jurisdiction over the events or persons within it, then the court cannot bind the defendant to an obligation or adjudicate any rights involving them.

10.12 SUGGESTED READINGS:

- Janusz Symonides, "Human rights: international protection, monitoring, enforcement", New Delhi: Rawat Publications, 2005
- Mujawar, Wasiyoddin R., "Social and political movements for Human Rights", Delhi: Manglam Pub., 2009
- Srivastava, Deep Kumar, "Human rights in India" Allahabad: Anubhav Pub., 2009.
- Tandon , M.P. & V.K. Anand (ed.), "International Law & Human Rights", Faridabad: Allahabad Law Agency,2003.