

HUMAN RIGHTS IN 21st CENTURY AND ITS ENFORCEMENT AGENCIES

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ABSTRACT

In this research paper we will understand about Human Rights; its emergence in India and how it developed during the process of years; about what is the concept of Gandhi about Human Rights; to understand Vienna Declaration and Programmed of Action (VDPA) and its structure; to know about some other UN Conferences; to understand enforcement of rights through writs and different kinds of writs; to get the detail about the Public Interest Litigation; to understand what is Judicial Activism; to know about different enforcement agencies of human rights as National Human Rights Commission (NHRC), State Human Rights Commission (SHRC), Human Rights Courts, and the details about it all and to know the power, functions, and limitations of the courts in enforcement of fundamental rights.

INTRODUCTION

Human rights are a unique class of moral rights that apply to all people equally because of their human status, regardless of their nationality, ethnicity, or affiliation with any specific social organization. Human rights are also referred to as natural rights since they are directDependdiplomaent upon the ontological, or natural, state of being human. They are also natural in the sense that these rights are always naturally granted, therefore no authority, no matter how strong or superior, may grant them.

There are customs in India as well that emphasize the rights and responsibilities of both individual and collective citizens. We will study about these issues and conventions in the context of historical developments and various socioreligious cultures in this unit. Human rights and United Nations (UN) have been inextricably intertwined to each other. One of the primal objectives of the latter has been the maintenance of international peace and security.

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Modern international law has allocated to the state the responsibility of formulating and implementing human rights at both the national and global levels. The law hasn't envisioned the possibility of extending this function to para-state entities such as the international civil societies. Of late, the latter have assumed international significance of far-reaching implications. Most of the UN bodies have established linkages with them in order to advance the cause of human rights. Thanks to globalization, and its variety of derivatives such as the Information and Communication Technology, the role of civil societies has assumed global proportion to the extent that no state can afford to neglect them in the overall global landscape of human rights. Contemporary international law has to accommodate this reality in the structure of international organization so that the civil society obtains a formal, legal recognition. The end of Cold war has catapulted the promotion and protection of human rights and to the global agenda. Unless all the stakeholders are made to realize their importance and responsibilities, the optimistic scenario of human rights is difficult to obtain in the ensuing years.

There is also a socio-cultural aspect of globalization. The western society, which is essentially open, permissive and market driven, is spreading globally. As such western music, dress, language and culture are spreading globally. There however, are various contradictions. Imposition of liberal and market economy and western values in poor developing societies are causing various problems, putting pressures on states and increasing the gap between poor and rich. They do affect the state's capacities to protect human rights, especially economic, social and cultural and individual's ability to exercise these rights. There thus are both positive and negative effects of globalization as far as human rights are concerned.

THE HISTORY OF HUMAN RIGHTS IN INDIA

The history of human rights development in post-colonial India is inextricably linked to the fight against racist British imperialism. Below is a timeline that highlights some of the key moments in the Indian struggle for human rights during colonial control. You will read in-depth about the status and the fight for rights throughout the colonial era in the next unit.

1883-34

The Criminal Procedure Amendment Code Bill, submitted in the Central Legislative Council by

Sir Courtney Ilbert during the Lord Ripon government (1880–1884), is commonly referred to as the Ilbert Bill. In its original form, the Ilbert Bill suggested granting Indian magistrates the authority to try British nationals in criminal situations. The Indian Civil Discourse members regardless of race, caste, or religion, those holding the positions of District Magistrates and Sessions Judges had the authority to try both Indian and European criminals. The initial version of this measure was not passed due to resistance from the British and European community in India.

1925

A new declaration was adopted at the Kanpur Convention of the Indian National Congress that contained the rights to free primary education, the equality of the sexes, freedom of conscience and of religion. The list of rights was expanded to include social and cultural rights.

1928

Motilal Nehru was charged with reporting on the principles of a constitute independent India. The Nehru Report included the rights to freedom of conscience, profession and practice of religion, free primary education and the equality of sexes. The inclusion of the right to private property sparked off an interesting debate with the Socialist bloc in the Indian National Congress, which called it a bourgeois right.

Jawaharlal Nehru played a leading role in the establishment of the Indian Civil Liberties Union, whose objective was to create consciousness and to expand and extend the scope and content of the civil liberties. The ICLU whose branches were set up in Bombay, Calcutta, Madras and Punjab investigated cases of political imprisonment and harassment, police brutalities, bans and extensions on citizens' rights, not only by the British Raj but also by the rulers of the princely states. It brought out reports and lodged protests on the basis of these investigations. Making a strong opposition to feudalism and autocracy, Nehru asserted that the subjection and deprivation of human rights of many Indians could not be tolerated under any circumstances.

The ICLU was involved in attempts to spread the consciousness about civil rights within the Congress. When it came to power in some provincial governments, circulars were sent to all its ministries regarding the preservation of civil rights. The failure to successfully implement

the preservation of rights in these provinces led to divisions within the ICLU, which eventually led to the organization losing its momentum that had marked its initial stages.

GANDHIAN CONCEPT OF RIGHTS

Before we discuss Mohandas Gandhi's thoughts on human rights and duties, we must have an understanding of his conception of human nature. The Gandhi and conception of human nature was born out of a cosmopolitan world-view because he was open to all kinds of beliefs. It was predominantly influenced by Hindu, Jain and Christian traditions. The Mahatma believed that the mankind was part of the cosmos and that every human being was dependent on every other individual. The human nature was therefore interdependent.

The British-Indian scholar Chichi Parekh has elaborated on Gandhi's ideas of human interdependence. Human beings are interdependent in the sense that we have involuntarily inherited debts. We are indebted for having inherited a world to which our contribution is nil. Therefore, it is impossible to repay except by contributing to collective well-being of the entire humanity. For Gandhi then, human life was yajna, a life to be spent in service of others and this service was not only a duty but a right. Only if the duty of service was performed human beings could lead meaningful and dignified lives. To describe such a conception of duty, Gandhi used the word dharma.

Just as Gandhi discovered that human nature was interdependent, he also understood that each individual was unique. The singularity arose from the very particular psychological and moral constitution of each individual. Such a difference explained the need for personal autonomy, which was necessary to fulfill one's dharma. Thus, the Gandhi an idea of individual rights was characterized within the framework of human interdependence; or in other words, within a socially responsible framework. Although Gandhi had differences with the idea of rights in the European liberal tradition of his time, certain contemporary developments in the study of rights seem to have bridged the Western differences with the Gandhi a tradition.

VIENNA DECLARATION¹

On 25 June 1993, representatives of 171 SVD adored by consensus the Vienna Programmed Action (VPA) just declaration and observance of human rights, and the individual emphasis

on its emanate from human dignity of human digital worth of every human person. The latter is the central subject and fundamental human person consequently should be the principal beneficiary. The declaration participated the commitment contained in Article proper emphasis of the United Nations to take joint and separate action placing action of the basis on developing to take additional cooperation for the read out in Article 55, including universal respect for, and observance of human rights and fundamental freedoms for all. The Declaration took cognizance of and responsibilities of all States, and reaffirmed that the member states in the Charter of the United Nations. To develop and encourage respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion.

The Declaration reaffirmed the Preamble of the Charter of the UN to save succeeding generations from the scourge of war, to establish conditions under which justice and respect for obligations arising from treaties and other sources of international law can be maintained, to promote social progress and better standards of life in larger freedom, to practice tolerance and good neighborliness, and to employ international machinery for the promotion of the economic and social advancement of all peoples'. The Declaration referred to various forms of discrimination and violence that continue to victimize women all over the world. The Declaration reminded the UN of its primary responsibility to promote and protect human rights universally.

The Structure of the Declaration

Part I of the Declaration contains 39 Articles. The substance of these Articles does unmistakably point towards the holistic and integrated nature of human rights. They also Assert the inevitable fact that there exists no hierarchy of human rights, thereby emphasizing the equal weight given to all categories of rights. Another significant feature of this Conference has been the recognition of the universal character of human rights, thereby reemphasizing the so-called cultural relativist perspective of human rights. In this connection, it is necessary to highlight the substance of some important Articles contained in Part 1.

Article 1 entitles every human being with human rights and fundamental freedoms and makes the Governments accountable for their promotion and protection; Article 2 refers to people right to self-determination. Article 3 talks about the rights of people under foreign occupation.

In this connection, the Declaration makes reference to the Geneva Convention pertaining to the Protection of Civilian Persons in Time of War, and other applicable norms of humanitarian law. Article 8 establishes mutual linkages among democracy, development and human rights.

Article 10 reaffirms the Right to Development and emphasizes the need for extending the benefits of development-distributive justice- to all, thus obviating the possibility of the denial of human rights. This Article, in its extended form Articles 14 and 25. The latter makes note of extreme poverty and social exclusion. Article 11 establishes a relationship between development and environment, thus, bringing to the fore the notion of sustainable development, that takes care of the interest of the posterity.

¹Vienna Declaration, 1993

Article 15 aims at eliminating all forms of racism and racial discrimination, xenophobia and related intolerance.

Article 17 refers to terrorism in all its forms and manifestations including drug trafficking. It also refers to the potential of terrorism to threaten territorial integrity. State security and destabilize legitimately constituted Governments.

Article 18 refers to the rights of women, girl child, and persons belonging to national or ethnic, religious and linguistic minorities. Article 21 takes care of the rights of the child,

Article 20 makes reference to the rights of the indigenous people and the commitment of the international community to their economic, social and cultural well-being and their enjoyment of the fruits of sustainable development.

The rights of the disabled persons are recognized in Article 22. While Article 23 makes relevance the rights of the refugees and the displaced person.

The crimes of genocide, "ethnic cleansing", and rape of women in war situations have been condemned as abhorrent practices and the proportionate punishments thereto have been called in Article 28.

Article 31 prohibits the use of food as a tool for political pressure.

Article 33 recognizes and makes an appeal to the member-states to incorporate human rights education as part of their curriculum; Article 38 recognizes the role of the NGOs in the promotion and protection of human rights.

The role of the media has been recognized in terms of their freedom and protection in accordance with the requirement of national laws in Article 39.

OTHER IMPORTANT UN CONFERENCES

You have already read that involved in human rights, were also issues of consolidation of positions in terms of gender, children, indigenous people, minorities, social development, habitat, environment and others. Goals for meeting basic human needs were drawn from previous declarations and programmes of action. Various UN conferences have attempted to shape the global developmental agenda for the years to come. The UN conferences draw upon the experience of previous international conventions, and takes account of present

realities and future needs.

International Conference on Population and Development, Cairo, 1994. The International Conference on Population and Development (ICPD), Cairo, September 1994, witnessed the development of new strategies which focused on meeting the needs of individual men and women rather than only target groups. The ICPD was attended by representatives from 179 governments and over 1,500 NGOs from 113 countries. The ICPD decided on a Programmed of Action outlining the procedure guiding both national and international policies on population and development for the following twenty years. It looked at the population question from the perspective of its relationship with sustainable development and economic growth.

The Action Programmed offered an outline for all people to become aware of their own and their children's health and well-being. The Plan of Action takes account of the interplay between population and development and recognizes reproductive rights including family Planning practices and the size of the family. The three main goals set by the Programmed included:

- 1) making family planning universally available by 2015 in order to reduce infant and maternity mortality rates;
- 2) integrating population concerns into all policies within the realm of sustainable development; and
- 3) Making available to women and girls the opportunities for education, health, and employment services in order to provide them with more options.

The World Summit for Social Development Copenhagen, 1995

The World Summit for Social Development (WSSD) was held in Copenhagen, Denmark in March 1995 under the auspices of the UN. It exhorted the international community to formulate people-centric programmers of social development. The Summit was attended by 186 member-states, buttressed by 811 non-governmental organizations.

The WSSD was held as a result of the growing international concern with social development

problems, specifically dealing with poverty and social disintegration, con 1. Insecurity and the reduction of unemployment with the promotion of productive employment. These problems became evident to both rich and poor, and in turn promoted a great concern for solutions.

These solutions, being out of any single government's reach were not easily accessible and not usually socially and economically balanced. As a result, the WSSD had as one of its primary goals making evident, ways to do away with such imbalances by placing social development back on the international agenda.

Among the ground-breaking agreements made by the world's leaders in the Declaration are ten commitments to: eradicate absolute poverty by a target date to be set by each country; support full employment as a basic policy goal; promote social integration based on the enhancement and protection of all human rights; achieve equality and equity between women and men; accelerate the development of Africa and the least developed countries; ensure that structural adjustment programmers include social development goals; increase resources allocated to development, create "an economic, political, social, cultural and legal environment that will enable people to achieve social development"; universal and equitable Access to education and primary health care; and strengthen cooperation for the first conference on social development through the UN.

It is suggested by some observes that the social development consensus reached at the Summit reflects the predominance of Western economic paradigm following the collapse of the centrally planned economies of the USSR and Eastern Europe. Significantly, after the arguments about resource transfer between developed and developing nations, the most difficult issues to resolve were those concerning social and cultural differences, for example on the definition and role of the family or on reproductive health services, rather than about social and economic structures. The Summit did not meet the expectations of many developing countries which sought some movement on the international resource issues of the level of official development assistance (ODA) and debt relief despite the international declarations and World Summits the inequality between the first and third world still persists and indeed widens. There is an increase in absolute, as well as relative poverty in most of the

45 poorest developing countries

WRIT JURISDICTION AND ENFORCEMENT OF RIGHTS

Indian Constitution makers provided a machinery and procedure under Article 32 and 226² of the Constitution for the enforcement of fundamental rights.

Dr. Ambedkar explaining the significance of Article 32 said, "If I was asked to name any particular Article in this Constitution as the most important an article without which this constitution would be a nullity - I could not refer to any other Article except this one It is the very soul of the Constitution and the very heart of it.

Article 32 (1) guarantees the right to move the Supreme Court by appropriate proceedings for the enforcement of Fundamental Rights de Suspended by part III of the Constitution. Clause 2 of Article 32 confers powers on the Supreme Court to issue appropriate directions of orders or writs, including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo warrant and Certiorari. For the enforcement of fundamental rights, under clause 3 of Article 32 parliament may by law empower any other court to exercise within the local limits of its

Jurisdiction all or any of the powers exercisable by the supreme court under clause (2). Clause 4 says that the right guaranteed by Article 32 i.e., right to move the court, shall not be suspended except as otherwise provided. Article 32, thus, provides for a speedy remedy for the protection of the fundamental rights from legislative and executive interference Its power is widest when compared with other constitutions. Article 226 is substantially of the same effect as Article 32 (2).

The kinds of writs mentioned in Article 32 (2) can be invoked in different situations for different purposes, in case of violation of fundamental rights. A brief explanation of the meaning and purpose of each writ is necessary to understand their nature and significance about enforcement of fundamental rights

1. Habeas Corpus literally means have his body. By this writ, the court can cause any person who has been detained or imprisoned to be physically brought before the court. The court

than examines the reasons of his detention. If there is no legal justification, he is set free. The Supreme Court has laid down that production of the body of the prisoner before the court is not an essential feature of the writ.

The general rule is that the person who petitions for a writ must be the person whose right has been infringed. This does not apply to Habeas Corpus. The person detained in a prison is severely handicapped. The law understands this and allows a petition to be moved on behalf of the prisoner by his friend or a social worker or even a stranger.

² Constitution of India,1950.

Habeas Corpus would not lie where the return to the writ discloses that a person is in prison in execution of a sentence by a competent court. The writ is not issued when a person is put under physical restraint under a valid law. Where it is shown that the petitioner was arrested and imprisoned without the authority of law or with malicious intent the court may award suitable monetary compensation or exemplary costs.

1. Mandamus literally means a command or an order. It is a command directing a person, corporation, inferior court or government or any public authority to do the thing or perform the act specified in the writ. The thing or act must be in the nature of a public duty. This writ is awakening call. It tells the sleeping authority to wake up and perform its public duty. It is also used to order the authority, which refuses to perform a public duty. It is a writ, which demands activity. It sets the authority in motion.

2. Prohibition and Certiorari: Where an inferior court or a quasi-judicial tribunal proceeds to act under a law, which is alleged to be unconstitutional, the aggrieved party may apply for writ of prohibition to prohibit the tribunal from proceeding further. If the tribunal has already given its decision, the party may move for a writ of Certiorari to quash that decision. The writ of prohibition has much common with certiorari. Both the writs are issued with the object of restraining the inferior courts from exceeding their jurisdiction. The only difference is that the prohibition will stop the proceedings, while the writ of certiorari will be sought to quash the order of the lower court by the High Court or Supreme Court.

3. Quo Warren to: The word quo warren to means, 'what is your authority'. By this writ, a holder of an office is called upon to show to the court under what authority he holds the office....

The object of the writ of Quo Warren to is to prevent a person to hold an office, which he is not legally entitled.

The writs of Habeas Corpus and mandamus are the effective instruments to prevent the abuse of power and protect the Human rights from violation. It must be noted that the Indian Constitution provides exception to the concept that the rights are limitation on state power and rights are available against the state. In case of the violation of Article 15 (2), 17, 21 and 23 of the constitution writs can be issued against a private person also in case of

untouchability, social discrimination and employment of bonded labor. The aggrieved person can move the court on the above grounds as violation of his fundamental rights.

PUBLIC INTEREST LITIGATION

The democratic upsurge against the emergency, and the demand for democratization of the state institutions, and its accountability provided the court a space and strength to discharge its constitutional obligation and responsibility. Since 1980's the court actively turned in favor of the poor, evolved the technique of public interest litigation and heralded a new era of Human Rights jurisprudence. It is, therefore, necessary to know how the Supreme Court creatively interpreted the constitution and adopted the technique and strategies for the enforcement of Human rights.

The orthodox view that had been prevailing was that a person who sought to enforce his Fundamental Rights through a court must establish that he had been personally aggrieved or affected by the state act. This rule is known as the rule of locus stand or standing of the Petitioner before the court, who complains of a violation of his human right. While this rule still applies generally in all cases, an exception has been introduced in the case of laws that affect the public in general, or the persons who are directly affected are not likely to come to court to assert their rights. Because of this relaxation, an association or an individual has been allowed to fight for the public cause and challenge the unconstitutionality of the law or order. The petitioner need not show to the court that he has been directly injured or affected by it. He may move the court for enforcement of public right provided he is not a busy body but a bona-fide person having a 'reasonable concern with the matter' to which his application relates.

The principle behind the PIL was explained by the Indian Supreme Court in SP Gupta vs. Union of India,³ as: "Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened or such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public social action group can maintain an application for an appropriate direction, order

or writ in the High Court under Article 226 and in case of breach of any fundamental Rights of such person or determinate class of persons in this court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons.

It is because of liberalization of the principle of locus stand; the higher judiciary became accessible to the poor and disadvantaged. The public-spirited persons, civil rights activists and the voluntary organizations have filed a number of PIL petitions on behalf of the victims of Human Rights violations. In the initial stage of PIL, the courts entertained even letters as petitions in place of the ordinary process of a petition supported by affidavit. As to rules of evidence, again the orthodox rule was that the court in a proceeding under Article 32 and 226 would not enter into a disputed question of fact or take evidence beyond affidavits. However, in PIL case, the court may appoint a commission to gather evidence, where the poor and the Disadvantaged people who are directly affected are not in a position to place before the court the relevant materials.

The supreme court of India has interpreted the provision in Article 32 to impose on itself a constitutional obligation to protect the fundamental rights of the people. In realization of this constitutional obligation, the court has innovated new methods and rights, particularly in the case of the poor and the disadvantaged who are deprived of their basic Human Rights and to whom freedom and liberty have no meaning. Not only have the courts expanded the jurisdiction to enforce Human Rights by innovating the doctrine of 'public interest' as regards the petitioner, the category of the respondent has similarly been enlarged by applying the doctrine 'state action'. The essence of the doctrine of state action is that the state cannot get rid of constitutional limitations or restraints by simply delegating its powers and functions to some private individuals or groups. Persons or authorities who act as agents or instrumentality of the state must be subject to the limitations of fundamental Rights. Thus, no authority, instrumentality or agency of the state can abrogate the right of the persons while exercising power. Power must be exercised fairly, reasonably, legally and justly. The Supreme Court in India applying the doctrine of due process has significantly radicalized the criminal justice. The human rights of the convicts, under trial prisoners. Right against torture, rights against search and seizure, rights of the accused before and after the trial are

protected and enforced by the Supreme Court on the sound advice of the constitution and Human Rights philosophy. In effect, the court has actively implemented the covenant on civil and political rights

³ S. P. Gupta v/s Union of India, 1981

Further, the Indian Supreme Court has been indirectly enforcing non-justifiable Human Rights. In infusing dynamism into the non-justifiable human rights-directive principles in part IV of the constitution, (which are called "economic, social and cultural rights" in the International Covenant of 1966). The Supreme Court has been prompted by the philosophy of social justice and social rights, which are counter-parts of justifiable individual rights. The court had explained the context and the need for social justice perspective with regard to Human Rights in SP Gupta vs. Union of India,⁴ It said: "The task of national reconstruction has brought about enormous increase in development activities and law is being utilized for the purpose of Development, social and economic. It is creating more and more a new category of rights in favor of a large section of people and imposing a new category of duties on the state with a view to reaching social justice to the common man? This is not to say that individual rights have ceased to have a vital place in our society but it is recognized that these rights are meaningless in today's setting unless accompanied by the social rights necessary to make them effective and really accessible to all".

"The new social and economic rights which are sought to be created in pursuance of the Directive principles of state policy essentially require active intervention of the state. In these cases, the duty, which is breached giving rise to the injury, is owed by the state not to any specific or determinate class or group of persons, but to the public. Now if breach of such public duty were allowed to go unchecked because there is no one who has received a specific legal injury... the failure to perform such public duty would go unchecked. It would also make the new social collective rights and interests created for the benefit of the deprived sections of the community meaningless and ineffectual". The court thus added social justice - a new factor in the realm of enforceable human rights, which were, hitherto, unenforceable, i.e., Directive Principles of State policy. In a spate of decisions, the court came to the rescue of bonded labor, slum dwellers, hawkers, and pavement dwellers, victims of environment pollution, gas leakages, and workers in the hazardous and dangerous industries, who are deprived and marginalized because of poverty. The Supreme Court, perhaps, realized that poverty denies dignity and all human rights and it poses a threat to freedom, liberty and equality.

⁴ S. P. Gupta v/s Union of India, 1981.

JUDICIAL ACTIVISM

From the above discussion, it may be said that in India the public interest litigation has served as an engine for judicial activism. Now the court is being identified by justices as well as the people as the "last resort for the oppressed and the bewildered" Since the inauguration of PIL a number of issues from scams to slum dwellers, the intervention of the court for redressed was sought. With this extraordinary move. People in some quarter's doubt that the court hastaken on itself the task of cleaning the rot, which has set in the Indian polity. A popular perception about the judiciary is that it must take the reigns of power and govern the country i.e., Government through judiciary. However, critics ask: who will control and check this 'judicial despot' or 'judicial imperialism'.

One need not forget that the glory of judicial activism in India began with the evolution of the basic structure of the constitution and public interest litigation. They mark the birth of the conception that judges owe an obligation to the future generations to preserve constitutional values and vision. Judiciary's role is sculpted in terms of democratic India even as it vigorously attends to the vicissitudes of human rights at present. The democratization of access to the supreme court by the simple process of writing letters to the Justices (epistolary jurisdiction) drawing attention to the violation of other people's rights is a significant development in the administration of justice. All these have enabled the court to articulate new fundamental rights (right to dignity, privacy, shelter, and housing, health, education, environment) and forms of redress for violation of rights (compensation, damages, rehabilitation) and new forms of continuing judicial invigilation on governmental institutions (prisons, juvenile homes, women protective homes, asylums for psychiatric care, hospitals). Ideologically, the most abiding contribution of PIL has been to transform the classical liberal rights model enshrined in the constitution into a paradigm of people's rights. However, for judicial activism, the constitution remains a lifeless document.

Judicial activism is an assertion of judicial power in cases where in the judiciary comes face toface with legislative arbitrariness, executive abuses or its interference in the due course of legal proceedings. So, judicial activism is the role etched out for the judiciary in a democratic polity governed by a basic law to keep the horizons of liberty clear and give contents to all the pervasive concept of the rule of law, i.e., "be you ever so high, the law is above you". If the

judiciary fails in this, nothing can save the democracy and Human Rights.

THE NATIONAL HUMAN RIGHTS COMMISSION (NHRC)

The central government has constituted the National Human Rights Commission to exercise powers and perform assigned functions, regarding enforcement of human rights in India. It has been constituted under the Protection of Human Rights Act, 1993. [Section 3(1)]

Constitution of NHRC:

The NHRC consists of the following:

A Chairperson who has been a Chief Justice of the Supreme Court.

Members

- a) one member who is or has been, a Judge of the Supreme Court;
- b) one member who is, or has been, the Chief Justice of a High Court:
- c) Two members to be appointed from amongst persons having knowledge of or practical experience in matters relating to human rights. [Section 3 (2)].⁵

The term of office of chairperson is five years or till he attains the age of 70 years, whichever is earlier. The term of a member is also five years but every member is eligible for reappointment up to the age of 70 years. Both the chairperson and the members are ineligible for further employment under central or state government. In the absence of the chairperson and because of his inability to discharge his functions for any other reason, the president may authorize one of the members of the commission to act as chairperson.

STATE HUMAN RIGHTS COMMISSIONS

Like National Human Rights Commissions, under the Protection of Human Rights Act State governments are also required to establish State Human Rights Commissions to monitor the violation of Human Rights within the States boundaries.

Constitution:

Each State Commission consists 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.

d) A Secretary as the Chief Executive Officer of the Commission.

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. However, the Jammu and Kashmir State Human Rights Commission has such power of inquiry only with respect to the subjects covered by the entries in List III in the Seventh Schedule to the Constitution as applicable to that State.

Two or more State Governments may, appoint the same person as the chairperson of their respective State. Commissions with his consent. A member can also be so appointed simultaneously for another commission with his consent. [Section 21].⁶ HUMAN RIGHTS COURTS

For the purpose of providing speedy trial of offences arising out of violation of human rights, a state government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a court of session to be a Human Rights Court to try the said offences. However, if a Court of Session is already specified as a special court or a special court is already constituted, for such offences under any other law for the time being in force, then no such further specification is required. [Section 30]

The state government may for each human rights court specify a public prosecutor or appoint an advocate with not less than seven year experience as a Special Public Prosecutor to conduct cases in that Court. [Section 31].⁷

Constitution of special investigation teams

The Government may constitute one or more special investigation teams, consisting of such

police officers as it may think necessary for purposes of investigation and prosecution of offences arising out of violations of human rights. [Section 37].

⁵ Human Rights Act, 1993.

⁶ Human Rights Act,1993.

⁷ Human Rights Act,1993.

⁸ Human Rights Act,1993.

CONCLUSION

You have already read that a plethora of declarations, conventions, treaties. Resolutions-cumulatively conceived as legal regime-pertaining to human rights promulgated by the UN characterize the contemporary scenario on the subject. The legal regime of human rights has Acquired a standard that has been increasingly emulated by the members of the international community ever since they started crafting their constitutional, legal, and juridical systems. To this extent, the international legal regime served the functions of norm-setting on the subject, on a global scale.
