

## Chapter 3

# HUMAN RIGHTS AND THE INDIAN CONSTITUTION

### 3.1 Introduction of Human Rights in India

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

The Indian concept perceives the individual, the society and the universe as an organic whole,. Everyone is a child of God and all fellow beings are related to one another and belong to a universal family. In this context, Mahatma Gandhi remarks, "I do

not want to think in terms of the whole world. My patriotism includes the good of mankind in general. Therefore my service to India includes the services of humanity.”<sup>10</sup>

### 3.1.1 Origin and Development of Human Rights in India

The Buddhist doctrine of non-violence in deed and thought says Nagendra Singh, ”is a humanitarian doctrine par excellence, dating back to the third century B.c.” Jainism too contained similar doctrines. According to the Gita, ”he who has no ill will to any being, who is friendly and compassionate, who is free from egoism and self sense and who is even-minded in pain and pleasure and patient” is dear to God. It also says that divinity in humans is represented by the virtues of non-violence, truth, freedom from anger, renunciation, aversion to fault-finding, compassion to living being;:, freedom from covetousness, gentleness, modesty and steadiness -the qualities that a good human being ought to have. The historical account of ancient Bharat proves beyond doubt that human rights were as muck manifest in the ancient Hindu and Islamic civilizations as in the European Christian civilizations. Ashoka, the prophet Mohammed and Aktbar cannot be excluded from the geneology of human rights.<sup>10</sup>

### 3.1.2 Ancient Hindu Law of Human Rights

Scholars who have spent long time in lucubration on the Hindu ”Dharmasastras” and the ”Arthasastras” and other legal treatises of the past have discovered an amazing system, which, interalia, regulates the duties of Kings, judges, subjects and judicial as well as legal procedures. The central concept is Dharma, the functional focus of which is social order. The message is ”Dharma” as the supreme value, which binds kings and citizens,

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<sup>10</sup>[http://shodhganga.inflibnet.ac.in:8080/jspui/bitstream/10603/6653/11/11\\_chapter203.pdf](http://shodhganga.inflibnet.ac.in:8080/jspui/bitstream/10603/6653/11/11_chapter203.pdf)

men and women. Human rights gain meaning only when there is an independent judiciary to enforce rights. Here, the Dharmasas-tras are clear and categoric.

The independence of the judiciary was one of the outstanding features of the Hindu judicial system. Even during the days of Hindu monarchy, the administration of justice always remained separate from the executive. It was, as a rule, independent both in form and spirit. It was the Hindu judicial system that first realized and recognized the importance of the separation of the judiciary from the executive and gave this fundamental principle a practical shape and form. The case of *Ananthapindika v. Jeta* reported in the *Vinaya-Pitaka*, is a shining illustration of this principle. According to it, a Prince and a private citizen submitted their cases before the law court and the court decided against the Prince. The Prince accepted the decision as a matter of course and as binding on him. The evolution of the principle of separation of the judiciary from the executive was largely the result of the Hindu conception of law as binding on the sovereign. Law in Hindu jurisprudence was above the sovereign. It was the "Dharma." The laws were then not regarded so much as a product of supreme Parliaments and Legislatures as at present. Certain laws were regarded as above all human authority. Such, for instance, were the natural laws, which no Parliament, however supreme, could abolish.<sup>10</sup>

"The State was not sacerdotal, nor even paternalistic; even the King was subject to the law, as any other citizen and the 'Divine Right' of Kings known to western political science was unknown to India. On the whole, the aim of the ancient Indian State may be said to have been less to introduce an improved social order, than to act in conformity with the established moral order". Duty is not a tyrant, but a symbol of dignity to be discharged with affirmative joy. The realization of this vast perspective is assured

in the Dharmasastras by the wonderful scheme or co-ordination of conduct adapted to different conditions, status and situations of life. The scope of dharma takes in its vast sweep human rights as well.<sup>10</sup>

As Nagendra Singh remarks:

The individual ancient India existed as a citizen of the State and in that capacity he had both rights and obligations. These rights and duties have largely been expressed in terms of duties (Dharma) - duties to oneself, to one's family, to other fellowmen, to the society and the world at large. The basis of ancient human rights jurisprudence was Dharma - the ideal of ancient Indian legal theory was the establishment of socio-legal order free from traces of conflicts, exploitations and miseries. Such a law of "Dharma" was a model for the universal legal order.<sup>10</sup>

There are many references in the Vedas, which throw light on the existence of human rights in ancient India. The Vedas proclaim liberty of body (Tan), dwelling house (Skridhi), and life (Jibase). In 1367 B.C. Bahmani and Vijayanayar Kings are stated to have entered into an agreement for the humane treatment of prisoners of war and the sparing of lives of the enemy's unarm'd subjects." Human rights have always occupied a place of paramount importance in India's rich legacy because India believed in the principle, "Vashudhaiva-kutumbakam, i.e. welfare of all. Justice Rama Jois eloquently sums up this legacy thus.

According to Rajadharma, the King was given the power only to enforce the law. Dharmasastras did not confer on or recognize any legislative power in the King. This is the most important distinction between Kingship in India and the concept of Kingship in the West. But under the Kingship as recognized and established under the Dharmasastras, the laws were those laid down by the Dharmasastras themselves. They did not authorize the King to

lay down new laws or amend provisions of the Dharmasastras. On the other hand, Dharmasastras also laid down the laws governing the conduct of the King himself (Rajadharma).<sup>10</sup>

Legal literature of the Hindu period owes much to the distinguished law givers of the times as well as to the two EPICS and the Arthasastra (Kautilya) and Sukranitisara. We are not concerned with the legal history of the India of those days, which was quite advanced but with the constellation of rights and duties, which constitute human rights. Kautilya's Arthasastra asserts that "in the happiness of the subjects lies the happiness of the King, and what is beneficial to the subjects is his own benefit". Kautilya also disapproved of the theory of royal absolutism and subordinated the King also to the law. Similarly, Shantiparva prescribes that a king may be punished if he does not follow the path of the Dharma.<sup>10</sup>

Kautilya, the author of the celebrated political treatise Arthasastra not only affirmed and elaborated the civil and legal rights first formulated by "Manu", but also added a number of economic rights. He categorically ordained that the King should also provide the orphan, the aged, the infirm, the afflicted and the helpless with maintenance. He shall provide subsistence to the helpless, the expectant mothers and the children they give birth to. To quote P.V. Kane in ancient Indian thought, "there were no acts of Parliament guaranteeing services to the people. The public opinion, the views of eminent writers and the practice of the best Kings created an atmosphere in which it was thought that it was imperative for the King representing the State to encourage learning and to give employment to the unemployed."

In the Post-Vedic period, the rise of Buddhism and Jainism were certainly a reaction against the deterioration of the moral order as against the rights of the privileged class. Life was more hu-

man and liberal in the Post-Vedic era. After Buddha, Emperor Ashoka protected and secured the most precious of human rights, particularly the right to equality, fraternity, liberty and happiness. Ashoka successfully established a welfare State and made provisions for securing basic freedoms. Ashoka, the champion of civil liberties, allowed even the forest folk in his domain to enjoy security of life, peace of mind and enjoy their life on par with other people in the society. Torture and inhuman treatment of prisoners were prohibited under Ashoka's benign dispensation.<sup>10</sup>

### 3.1.3 Human Rights in the Islamic Era

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

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

Akbar came to be reversed by Aurangzeb, though the Marathas and the Sikhs opposed and fought the fanaticism of Aurangzeb.<sup>10</sup>

### 3.1.4 Human Rights in British India

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

Under the British rule, human rights and democracy were suspect and socialism was an anathema. In the Indian cultural history, the British colonial period remains the Indian equivalent of the 'Dark Ages'. Lord Macaulay rejected the ancient Indian legal political system as 'dotages of brahminical superstition', and condemned ancient legal heritage and its inner core as an 'immense apparatus of cruel absurdities.'" Lord Wellesley condemned the Indians as vulgar, ignorant, rude and stupid and Lord Cornwallis described as an axiom that every native of Hindustan is corrupt. The English East India Company debarred Indians from high offices and deprived them of their political, social and economic rights. The impression created in the Indian minds was that their sacred inalienable human rights and vital interests had been ignored, denied, and trampled upon for the sake of England and the English rulers.<sup>10</sup>

Mahatma Gandhi organized the people of India under his leadership and launched his non-violent struggle to achieve self government and fundamental rights for themselves. Lokmanya Tilak advocated that "freedom was the birth right of Indians for which

they will have to fight. It was because of the stiff opposition from the people of India that the Charter Act of 1813 was enacted to promote the interest and happiness of the native inhabitants of India. Similarly, the Government of India Act, 1833 was passed to allow the Indians to enjoy some political rights. The proclamation of Queen Victoria on 1st November 1858 contained some principles of state policy, which were similar to fundamental rights in nature.<sup>10</sup>

The concrete demand for fundamental rights came logically in the wake of the nationalist movement, which coincided with the birth of the Indian National Congress in 1885. The Constitution of India Bill 1895 known as the "Home Rule Document" prepared by the Indian National Congress paved the way for a constitution guaranteeing everyone of the citizens the basic human rights like freedom of expression, inviolability of one's own house, right to property and equality before law.<sup>10</sup>

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

### **3.1.5 Motilal Nehru Committee**

In 1925 the Indian National Congress finalised the draft of Common Wealth of India by adopting a 'Declaration of Rights.' The Madras Session of the Congress held in the year 1927 - demanded incorporation of a 'Declaration of Fundamental Rights' in any future constitutional framework. A committee under Motilal Nehru was appointed by the National Congress to study the fundamental rights. It is interesting to note that the Constitution of the Republic of India, enacted in 1950, incorporated ten



of the nineteen rights enumerated in the Motilal Nehru Committee Report, 1928. The rights emphasized by the Motilal Nehru Committee Report were:

1. Personal liberty, inviolability of dwelling place and property
2. Freedom of conscience, and of profession and practice of religion
3. Expression of opinion and the right to assemble peaceably without arms and to form associations
4. Free elementary education
5. Equality for all before the law and rights
6. Right to the writ of Habeas Corpus
7. Protection from punishment under ex-post facto laws
8. Non-discrimination against any person on grounds of religion, caste or creed in the matter of public employment
9. Equality of right in the matter of access to and use of public roads, wells etc.
10. Freedom of combination and association for the maintenance and implementation of labor and economic factors
11. Right to keep and bear arms
12. Equality of rights to man and woman

The Simon Commission, appointed by the British Government in 1927, however, totally rejected the demands voiced by the Nehru Committee reports. In 1930 the Congress Working Committee gave the clarion call for the attainment of 'Purna Swaraj.' The Karachi Session of the Congress in 1931 adopted a detailed programme of fundamental rights. The Government of India Act,

1935 was passed without any bill of rights much to the disappointment of the Indian leaders. It was the 'Sapru Committee' of 1945 that subsequently stressed the need for a written code of fundamental rights and the Constituent Assembly raised a forceful demand for the inclusion of human rights in the Constitution.<sup>10</sup>

### 3.1.6 Constituent Assembly and Human Rights

The Indian Constitution was framed by the Constituent Assembly of India, which met for the first time on December 9, 1946. The Constitution of India gave primary importance to human rights. To quote Guha, "The demand for a declaration of fundamental rights arose from four factors."<sup>10</sup>

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

The Constituent Assembly incorporated in the Constitution of India the substance of the rights proclaimed and adopted by the General Assembly in the Universal Declaration of Human Rights. Further on 10th December 1948, when the Constitution of India was in the making, the General Assembly proclaimed and adopted the Universal Declaration of Human Rights, which surely influenced the framing of India's Constitution. Viewed from the Indian standpoint, human rights have been synthesized, as it were, not as an integrated fabric by the Preambular promises and various Constitutional clause of the National Charter of 1950<sup>10</sup>

## **3.2 Human Rights and The Indian Constitution**

The Constitution of the Republic of India which came into force on 26th January 1950 with 395 Articles and 8 Schedules, is one of the most elaborate fundamental laws ever adopted. The Preamble to the Constitution declares India to be a Sovereign, Socialist, Secular and Democratic Republic. The term 'democratic' denotes that the Government gets its authority from the will of the people. It gives a feeling that they all are equal "irrespective of the race, religion, language, sex and culture." The Preamble to the Constitution pledges justice, social, economic and political, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and fraternity assuring the dignity of the individual and the unity and integrity of the nation to all its citizens.<sup>10</sup>

### **3.2.1 India and the Universal Declaration**

India was a signatory to the Universal Declaration of Human Rights. A number of fundamental rights guaranteed to the individuals in Part III of the Indian Constitution are similar to the provisions of the Universal Declaration of Human Rights. The following chart makes it very clear.<sup>10</sup>

No	Name of Right	Universal Declaration	Indian Constitution
1	Equality before law	Article 07	Articles 14
2	Equality of opportunity in matters of public employment	Article 21(2)	Article 16(1)
3	Protection of certain rights regarding freedoms of speech, etc,	Article 19	Article 19(1) A
4	Protection in respect of conviction for offences	Article 11(2)	Article 20 (1)
5	Protection of life and personal liberty	Article 9	Article 21
6	Prohibition of trafficking in human beings and forced labor	Article 14	Article 23
7	Freedom of conscience and free Profession practice and propagation of religion	Article 18	Article 25 (1)
8	Protection of Interests of minorities	Article 22	Article 29 (1)
9	Right of minorities to establish and administer Educational Institutions	Article 20(3)	Article 30(1)
10	Right to property	Article 17 (2)	Not a fundamental rights after amendment 44, but now in Article 300A
11	Remedies for enforcement of rights conferred by this part	Article 8	Article 32

Table 3.1: Similarities between Universal Declarations of Human Rights and Indian Constitution

<b>Rights</b>	<b>Convention on Civil And Political Rights</b>	<b>Indian Constitution</b>
Prohibition of trafficking in human beings and forced labor	Article 8(3)	Article 23
Equality before law	Article 14(1)	Article 14
Prohibition of discrimination on ground of religion, race, caste, sex or place of birth	Article 26	Article 15
Equality of opportunity in matters of public employment	Article 25(c)	Article 16(1)
Protection of certain rights regarding freedom of speech	Article 19(1, 2)	Article 19
To assemble peaceably and without arms	Article 21	Article 19 (1b)
To form association or unions	Article 22(1)	Article 19(1c)
To move freely throughout the territory of India	Article 12 (1)	Article 19(1d,e,g)
Protection in respect of conviction for offences	Article 15(1) Article 14 (7)	Article 20(1)(2)
No person accused of any offence shall be compelled to be a witness against himself	Article 14(3g)	Article 20(3)
Protection of life and personal liberty	Article 6 (1), Article 9 (1)	Article 21
Protection against arrest and detention in certain cases	Article 9 (2,3,4)	Article 22
Freedom of conscience And free profession, practice and propagation of religion	Article 18(1)	Article 25

Table 3.2: Similarities between Covenant on Civil and Political Rights and Indian Constitution

The table below shows that most of the economic, social and cultural rights proclaimed in the Universal Declaration of Human Rights have been incorporated in part IV of the Indian Constitution

No	Name of Right	Convention on Civil And Political Rights	Indian Constitution
1	Equal pay for equal work	Article 7a (1)	Article 39d
2	Provision for just and humane conditions of work and maternity relief	Article 7b	Article 42
3	Right to work, to education and public assistance in certain cases	Article 6(1)	Article 41
4	Opportunity for children	Article 10 (3)	Article 41f
5	Compulsory education for children	Article 13 (2a)	Article 45
6	Living wage, etc, for workers	Article 7(a)(11) Article 7 (d)	Article 43
7	Nutrition and standard of living	Article 11	

Table 3.3: Similarities between Covenant on Economics, Social and Cultural Rights

In *Keshavananda Bharati v. State of Kerala*, the Supreme Court observed, "The Universal Declaration of Human Rights may not be a legally binding instrument but it shows how India understood the nature of human rights at the time the Constitution was adopted." In the case of *Jolly George Varghese v. Bank of Cochin* the point involved was whether a right incorporated in the Covenant on Civil and Political Rights, which is not recognized in the Indian Constitution, shall be available to the individuals in India. Justice Krishna Iyer reiterated dualism and asserted that the positive commitment of the State Parties ignites legislative action at home but does not automatically make the Covenant an enforceable part of the 'Corpus Juris' in India. Thus, although the Supreme Court has stated that the Universal Declaration cannot create a binding set of rules and that even international treaties may at best inform judicial institutions and inspire legislative action. Constitutional interpretation in India has been strongly influenced by the Declaration. In the judgement given in *Chairman, Railway Board and others v. Mrs. Chandrima*, the Supreme Court observed that the Declaration has the international recognition as the Moral Code of Conduct having

been adopted by the General Assembly of the United Nations. The applicability of the Universal Declaration of Human Rights and principles thereof may have to be read, if need be, into the domestic jurisprudence. In a number of cases the Declaration has been referred to in the decisions of the Supreme Court and State High Courts.<sup>10</sup>

India ratified the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights on March 27, 1979. The Optional Protocol to the International Covenant on Civil and Political Rights, 1989, however, was not ratified by India.<sup>10</sup>

### **3.3 Fundamental Rights and Human Rights**

The judicially enforceable fundamental rights which encompass all seminal civil and political rights and some of the rights of minorities are enshrined in part III of the Constitution (Articles 12 to 35). These include the right to equality, the right to freedom, the right against exploitation, the right to freedom of religion, cultural educational rights and the right to Constitutional remedies.<sup>10</sup>

Fundamental rights differ from ordinary rights in the sense that the former are inviolable. No law, ordinance, custom, usage, or administrative order can abridge or take them away. Any law, which is violative of any of the fundamental right, is void. In *ADM Jabalpur v. Shukla*, Justice Beg observed "the object of making certain general aspects of rights fundamental is to guarantee them against illegal invasion of these rights by executive, legislative, or judicial organ of the State." Earlier, Chief Justice Subba Rao in *Golak Nath v. State of Punjab* had rightly observed, "Fundamental rights are the modern name for what have

been traditionally known as natural rights.”

The Supreme Court of India recognizes these fundamental rights as 'Natural Rights' or 'Human Rights'. While referring to the fundamental rights contained in Part III of the Constitution, Sikri the then Chief Justice of the Supreme Court, in *Keshavananda Bharati v. State of Kerala*,” observed, ”I am unable to hold these provisions to show that rights are not natural or inalienable rights. As a matter of fact India was a party to the Universal Declaration of Rights . . . and that Declaration describes some fundamental rights as inalienable.” The Chief Justice Patanjali Shastri in *State of West Bengal v. Subodh Gopal Bose* observed referred to fundamental rights as those great and basic rights, which are recognized and guaranteed as the natural rights inherent in the status of a citizen of a free country.<sup>10</sup>

Article 14 of the Indian Constitution proclaims the general right of all persons to equality before the law, while Article 15 prohibits the State from discriminating against any citizen on grounds of religion, race, caste, sex or place of birth, and prohibits any restriction on any citizen's access to any public place, including wells and tanks. Equality of opportunity for all citizens in matters of public employment is guaranteed under Article 16. Article 17 abolishes untouchability and makes its practice an offense punishable under law. Both Articles 15 and 16 enable the State to make special provisions for the advancement of socially and educationally backward classes, for such castes and tribes as recognized in the Constitution (known as the Scheduled Castes and Scheduled Tribes) require very special treatment for their advancement. Article 18 abolishes all non-military or non-academic titles.<sup>10</sup>

The right to freedom guaranteed to all citizens under Article 19 encompasses the right to freedom of speech and expression, the right to assemble peaceably without arms, the right to form



associations or unions, the right to move freely throughout the territory of India, the right of residence, and the right to practice any profession, or to carry on any occupation, trade or business. The protection of a person in respect of conviction of offense under Article 20 includes protection against ex post facto criminal laws, the principle of *autre fois* convict and the right against self-incrimination. Article 21, the core of all fundamental rights provisions in the Indian Constitution, ordains: "No person shall be deprived of his life or personal liberty except according to procedure established by law." Article 21A was added to the Constitution by the Eighty Sixth Constitutional Amendment Act 2002. Article 21A proclaims "the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine." The rights of a person, arrested and detained by the State authorities, are provided in Article 22. These include the, right to be informed of the grounds of arrest, the right to legal advice and the right to be produced before a magistrate within 24 hours of arrest (except where one is arrested under a preventive detention law). The right against exploitation includes prohibition of trafficking in human beings and forced labour (Article 23), and prohibition of employment of children below 14 years of age "to work in any factory or mine or in any other hazardous employment."

Subject to public order and morality, all persons are equally entitled to freedom of conscience and the right to profess, practice and propagate religion (Article 25). Every religious denomination or section also has the right to establish and maintain religious institutions and manage their religious affairs (Article 26). No one may be compelled to pay any religious taxes (Article 27). The wholly State-funded educational institutions are barred from imparting religious instructions (Article 28).<sup>10</sup>

The rights of any section of citizens or a minority to promote

its distinct language, script or culture, to have access to State-funded educational institutions (Article 29), and to establish and maintain educational institutions of its choice (Article 30) are also guaranteed.<sup>10</sup>

The right to Constitutional remedies is essentially the right to move the Supreme Court of India for enforcement of the above rights (Article 32). The Supreme Court is vested with wide Constitutional powers in this regard.

They include the power to issue directions, orders or writs for the enforcement of the fundamental rights (Article 32(2)). State (i.e. provincial) High Courts too have identical powers (Article 226). As laws inconsistent with or in derogation of the rights conferred by part III of the Constitution are void (Article 13), the Courts have the power to adjudge the Constitutional validity of all laws. Furthermore, by virtue of Article 141, the law declared by the Supreme Court shall be binding on all courts in India.

Fundamental rights guaranteed under the Indian Constitution may be divided, for the sake of convenience, into two categories viz., specified fundamental rights and other fundamental rights (rights not specifically enumerated).

### **3.3.1 Specified Fundamental Rights**

Many rights enshrined in the Covenant on Civil and Political Rights have been recognized specially in the Indian Constitution as 'fundamental rights.' They may be referred to as "Specified" fundamental rights because they are mentioned in the Constitution by name. The following table shows the different Articles of the International Covenant on Civil and Political Rights and the Indian Constitution wherein identical rights are stipulated.<sup>10</sup>

### 3.3.2 Fundamental Rights for Citizens only

The Indian Constitution has classified fundamental rights into two categories:

1. Fundamental rights which are available to citizens only;
2. Fundamental rights available to all persons residing within the territory of India for the time being and subjected to its jurisdiction. The first of the category, which is available to the citizens includes:
  - (a) Article 15 relating to prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.
  - (b) Article 16 relating to equality of opportunity for all citizens in matters of public appointment
  - (c) Article 19 relating to protection of rights
    - i. freedom of speech and expression
    - ii. to assemble peaceably and without arms
    - iii. to form associations or unions
    - iv. to move freely throughout the territory of India
    - v. to reside and settle in any part of the territory of India and
    - vi. Article 19(1) (f) relating to the right to own and acquire property was deleted by the Constitution 42<sup>nd</sup> Amendment Act 1978 with effect from 20-06-1979
    - vii. To practice any profession or to carry on any occupation, trade or business.
  - (d) Article 29 relating to protection of interests of minorities

The second category of fundamental rights comprise the remaining fundamental rights which use the word 'Person.' In *Hans Muller of Nuremburg v. Superintendent Presidency Jail Calcutta* it was laid down in the judgment that Article 19 applies only

to citizens. Fundamental rights mentioned in Article 19, which contains the right to "basic freedoms", are available only to the citizens of the country. The word 'citizen' that occurs in the above Article has not been used in a sense different from that in which it has been used in part II of the Constitution dealing with citizenship. In *Anwar v. State of Jammu and Kashmir* it was held that non-citizens could not claim fundamental rights provided under Article 19.<sup>10</sup>

In *Chairman Railway Board and others v. Chandrima Das* the Supreme Court has observed that:

*Fundamental right: are available to all the persons of this country and those who are not citizens of this country and who come here as tourists or in any other capacity, are entitled to the protection of their lives in accordance with the Constitutional provisions. They also have a right to life in this country. Thus they also have the right to live with human dignity so long as they are here in India. Article 14 which guarantees equality before law and equal protection of laws within the territory of India is applicable to "person" who would also include both the "citizens" of this country and non-citizens. In this case, a Bangladeshi national Mrs. Khatoon was gang raped by the Railway employees in a room at the Yatri Niwas of the Howrah Railway Station in West Bengal. The Calcutta High Court allowed compensation of a sum of rupees 10 lacs to her for having been gang raped. Upholding the decision of the High Court, the Supreme Court held that as a national of another country, she could not be subjected to a treatment, which was below the dignity, nor could she be subjected to physical violence at the hands of Government employees who outraged her modesty. According to the tone and the tenor of the language used in Article 21, they are available not only to every citizen of this country but also to a person of another country. The Apex Court also held that since the word 'life' has been used in Article 21 of the Constitution as a basic human right in the*

*same sense as understood in the Universal Declaration of Human Rights of 1948, there is no reason why it should be given a narrow meaning.*<sup>10</sup>

Article 39(a) and Article 44 of the Directive Principles of State Policy contained in part IV of the constitution are for the citizens only.

### **3.3.3 Other Fundamental Rights(Unenumerated Fundamental Rights)**

A number of rights, which are stated in the Covenant, are not laid down in part III of the Constitution. The Indian Constitution has specifically enumerated all the fundamental rights. In *Birma v. State of Rajasthan* it was held that "treaties which are part of international law do not form part of the Law of the land, unless explicitly made so by the legislative authority." Further in *ShivKumar Sharma and others.Union of India* the Delhi High Court held that in India treaties do not have the force of law, and consequently obligations arising therefrom will not be enforceable in municipal courts unless backed by legislation. In *A. D.M . Jabalpur v.Shukla* Supreme Court by a majority of four to one, held that the Constitution of India did not recognize any natural or common law rights other than that expressly conferred in the Constitution.<sup>10</sup>

The attitude of the Supreme Court has changed especially after 1978. The courts on many occasions by accepting the rule of judicial construction have held that regard must be paid to International Conventions and norms for constructing domestic law. In *Maneka Gandhiv. Union of India*,Justice Bhagwati in the Special Bench for the Supreme Court observed that:

*The expression 'personal liberty' in article 21 is of the widest amplitude and it covers a variety of rights, which go to constitute the*

*persona liberty of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19. No person can be deprived of his right to go abroad unless there is a law made by the State prescribing the procedure for so depriving him, and the deprivation is effected strictly in accordance with such procedure.*<sup>10</sup>

The following are the rights contained in the Covenant on Civil and Political Rights. They are available to the citizens of India through judicial decisions, though they are not specifically mentioned in the Constitution.<sup>10</sup>

1. Right to travel abroad (Article 21)

The right to travel abroad is a guaranteed right under Article 12 paragraph (2) of the Covenant on Civil and Political Rights. In *Sathwant Singh Sawhney v. D. Ramanathan*, Assistant Passport Officer, New Delhi, the Court held that the right to go abroad is part of an individual's personal liberty within the meaning of Article 21.

2. Right to privacy (Articles 21 and 19 (1) (d))

This right is stipulated under Article 17 paragraph (1) of the Covenant on Civil and Political Rights. In *Kharak Singh v. State of Uttar Pradesh* it was held by the Supreme Court that the 'domiciliary visits' is an infringement of the right to privacy and is violative of the citizen's fundamental rights of personal liberty guaranteed under Article 21.

3. Right against solitary confinement

4. Right to human dignity

5. Right to free legal aid in a criminal trial

6. Right to speedy trial

7. Right against handcuffing

8. Right against delayed execution
9. Right against custodial violence
10. Right against public hanging
11. Right to health care or doctor's assistance
12. Right to shelter
13. Right to pollution free environment
14. Freedom of the press
15. Right to know
16. Right to compensation
17. Right to release and rehabilitation of bonded labour
18. Right of inmates of protection homes
19. Right of not to be imprisoned for inability to fulfill a contractual obligation. In *Jolly George Varghese v. Bank of cochin*<sup>40</sup> it was held by the Supreme Court that to cast a person in prison because of his poverty and consequent inability to meet his contractual liability is a violation of Article 21

### **3.3.4 Right to Child Education**

Right to Child Education (Article 21 A) is a new human right, which is included in the Constitution by the Eighty Sixth Constitution Amendment Act, 2002. In order to make the right to free and compulsory education to a child, the Constitution's Amendment Bill 1997 was introduced in Rajya Sabha to insert a new article 21 A in the Constitution. However, the Bill was withdrawn on November 27, 2001. The Constitution 93rd Amendment Bill 2001 was introduced and passed by unanimous vote in

the Lok Sabha on November 28, 2001 and the Rajya Sabha on May 14, 2002 with formal amendments as 86th Constitutional amendment. According to Article 21(A), the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine

Before the Constitutional process started for making the right to education a fundamental right, the Supreme Court in *J.P. Unnikrishnan and others v. The State of Andhra Pradesh* held that every citizen of this country has the right to free education until he completes the age of fourteen years.

### **3.4 Directive Principles of State Policy and Human Rights**

#### **(Judicially non-enforceable rights)**

Judicially non-enforceable rights in Part IV of the Constitution are chiefly those of economic and social character. However, Article 37 makes it clear that their judicial non-enforceability does not weaken the duty of the State to apply them in making laws, since they are nevertheless fundamental in the governance of the country. Additionally, the innovative jurisprudence of the Supreme Court has now read into Article 21 (the right to life and personal liberty) many of these principles and made them enforceable.

The duties of the State encompass securing a social order with justice, social, economic and political, striving to minimize and eliminate all inequalities (Article 38), securing for "the citizens, men and women equally" the right to an adequate means of livelihood (Article 39 (a)), distribution of ownership and control of community resources to subserve the common good (Article 39(b)), prevention of concentration of wealth and means of production



t2 the common detriment (Article 39(c)), securing equal pay for equal work for both men and women (Article 39(d)), preventing abuse of labor, including child labor (Article 39(e)), ensuring of child development (Article 39(f)), ensuring of equal justice and free legal aid (Article 39 A), organization of village democracies (Article 40), provision of the right to work, education and public assistance in case of unemployment, old age sickness and disability (Article 41), provision of humane conditions of work (Article 42), living wage and a decent standard of life (Article 43), securing participation of workers in the management of industries (Article 43A), provision of a uniform civil code for the whole country (Article 44), provision for early child care and education to children below the age of six years. The State shall endeavor to provide early childhood care and education for all children until they complete the age of six years (Article 45), promotion of educational and economic interest of the weaker sections of the people and their protection from injustice and all forms of exploitation (Article 46), raising the standard of living, improving the level of nutrition and public health and prohibition of intoxicating drinks and of drugs (Article 47), scientific reorganization of animal husbandry and agriculture (Article 48) conservation of environment, forests and wildlife (Article 48A), protection of monuments and things of artistic or historical importance (Article 49), separation of judiciary from the executive (Article 50) and promotion of international peace and security (Article 51 ).<sup>10</sup>

### 3.5 Fundamental Duties and Human Rights

Part IV(A) of the Constitution embodies the Eleven Fundamental Duties of every Indian citizen (Article 51-A). These are: the duties to respect the Constitution and its institutions, to live by the noble ideals of the freedom struggle, to protect the sovereignty and integrity of India, to defend the country, to pro-

mote communal harmony, to renounce practices derogatory to the dignity of women, to preserve the cultural heritage, to protect and improve the natural environment, to have compassion for living creatures, to develop the scientific temper, to safeguard public property and abjure violence and to strive towards excellence in all spheres of individual and collective activity. The Eighty sixth Constitutional Amendment 2002 inserted a new clause (k) in Article 51(A) instructing "a parent or guardian to provide opportunities for education to his child or as the case may be, ward between the ages of 6 and 14 years."

It would appear that parts III, IV and IV(a) of the Constitution heavily depend upon the judiciary for their interpretation and application. The various 'reasonable restrictions' clauses in Part III, Article 21, and the seldom-used Part IV-A have given the judiciary ample scope for the Judicial Review of administrative and legislative action. Indeed, Article 21 has allowed it to act as a catalyst in prodding the State to implement the directive principles in so far as they directly bear upon "life and personal liberty."<sup>10</sup>

### **3.6 Political Rights and Human Rights**

India is the largest representative democracy in the world, based on universal adult suffrage, providing every Indian of at least eighteen years of age the right to vote. The Constitution provides for direct elections to the House of the People of the Central Parliament, i.e. the Lok Sabha and the State (Provincial) Legislative Assemblies, once in every five years at the latest. The members of the State Legislatures do the elections to the Council of States, i.e. Rajya Sabha, which is the upper house of Parliament. The elected members of Parliament and State Legislative Assemblies elect the President. Both the Houses of Parliament

together elect the Vice-President.<sup>10</sup>

The right to vote, the right to contest elections, and the conduct of elections are all governed by the Constitution (Part XV) as well as special laws like the Representation of the People Act, 1951. The Constitution provides for an independent Election Commission (Article 324), which has in fact acquitted itself quite admirably in the recent elections, both provincial as well as parliamentary, and set an agenda for clean elections and elimination of the criminal - politician nexus<sup>10</sup>

### **3.7 Institutional Framework and Human Rights**

India is divided into twenty-eight States and seven Union (centrally administered) territories. The Constitution provides for division of legislative functions between Parliament and the State Legislatures. 97 items are placed under Parliament, 66 items are allocated for State Legislatures and 47 are made subject to concurrent jurisdiction of both, with the power of Parliament overriding in case of overlapping legislation (Article 246 and the seventh Schedule of the Constitution). Parliament has power to make laws, inter alia, on preventive detention (Item 9, Union List, and item 3, Concurrent list), offenses against laws in respect of any matter in the Union List (Item 93), and any matter not enumerated in any of the three lists (Item 97 and Article 248). Public order (Item 1) prisons and reformatories (Item 3), relief to the disabled and the unemployed (Item 9), and industries other than those declared by Parliament to be controlled by the Union (Item 24) are among the items in the State List. The Police is a State subject (Item 2), whereas deployment of any armed forces of the Union or any other force under the control of the Union is in the Union List (Item 2-A). Criminal law and procedure (Items 1 and 2), preventive detention for reasons connected with

the security of the State, the maintenance of public order, or the maintenance of essential supplies and services (Item 3), transfer of prisoners (Item 4), actionable wrongs, civil procedure (Item 13), economic and social planning (Item 20), labor matters (Items 22, 23 and 24), education (Item 25), and factories (Item 36) are in the Concurrent List. Further, Article 253 empowers parliament to make laws for implementation of any treaty, notwithstanding the above distribution of legislative powers.<sup>10</sup>

The executive power of the Union is invested with the Prime Minister and his 'Cabinet' who are responsible to the Parliament. The executive power of a State is vested with the Chief Minister and his Cabinet who are responsible ' to the State Legislative Assembly. The President of India on the advice of the Prime Minister appoints the Governor, the head of a State. There is a common civil service for the whole of India, whose officers head the Union administration and nonmilitary security forces, and also the State administrations and Police forces. There is mobility between the Union and State senior positions.<sup>10</sup>

The judiciary is presided over by the Supreme Court. The State judiciary is under the control of a High Court, which in certain respects enjoys even broader powers than the Supreme Court, although the law declared by the Supreme Court binds it. In the scheme of the Constitution, there exists a separation of powers among the legislature, the executive and the judiciary, with the judiciary being fiercely independent of the other two, charged with the task of enforcing the constitutional norms, including human rights, and adjudicating upon all inter-individual, inter-institutional disputes.

To monitor the implementation of the Constitutional objectives for the welfare of the weaker sections of the nation, the Central Government has appointed a National Commission for Minori-

ties, a National Commission for Scheduled Castes and Scheduled Tribes and a National Commission for Women. The National Human Rights Commission (N.H.R.C.) came into being in 1993 by virtue of the Protection of Human Rights Act. N.H.R.C. has become an agency to reckon with, and has carved out a place for itself in the mosaic of Indian national institutions for implementation of human rights. The freedom of the Press has been monitored chiefly by the Press Council of India since 1979.

### **3.8 Judiciary and Human Rights**

Of the three organs of Government, the judiciary has become a vanguard of human rights in India. It performs this function mainly by innovative interpretation and application of the human rights provisions of the Constitution. The Supreme Court of India has in the case *Ajay Hasia v. Khalid Mujib* declared that it has a special responsibility, "to enlarge the range and meaning of the fundamental rights and to advance the human rights jurisprudence."

As has already been pointed out the Supreme Court of India and the State High Courts have broad powers under the Constitution to enforce the fundamental rights and they have liberally interpreted these powers. The major contributions of the judiciary to the human rights jurisprudence have been two-fold:

- (a) the substantive expansion of the concept of human rights under Article 21 of the Constitution, and
- (b) the procedural innovation of Public Interest Litigation.<sup>10</sup>

#### **3.8.1 Expansion of Article 21**

Article 21 reads as follows, protection of life and personal liberty -"No person shall be deprived of his life or personal liberty except according to the procedure established by law." The

expansion of Article 21 of the Constitution has taken place in two respects:

1. The expression "the procedure established by law" received a new interpretation not intended by the founding fathers of the Constitution. In 1950, the very first year of the Constitution, the Supreme Court in the case *A.K. Gopalan v. State* of reflecting on the intentions of the Constitution-makers, held that "procedure established by law" only meant that a procedure had to be set by law enacted by a Legislature. This phrase was deliberately used in Article 21 in preference to the American "Due Process" clause. Three decades later, in *Maneka Gandhi v. Union of India* case, the Supreme Court noted that "the Supreme Court rejected its earlier interpretation and holds that the procedure contemplated under Article 21 is a right, just and fair procedure, not an arbitrary or oppressive procedure. The procedure, which is reasonable and fair, must now be in conformity with the test of article 14 - "in effect it has become a Due Process." There is no doubt that the experience of National Emergency (1975-1977) prompted the court to go all out for vindication of human rights. Since then every case of infringement of rights by the Legislature has undergone judicial scrutiny in terms of the new interpretation laid down in the *Maneka Gandhi's* case. Further, this approach has led to procedural due process innovations such as the right to claim legal aid for the poor and the right to expeditious trial.
2. The judiciary interprets 'the right to life and personal liberty' to encompass all basic conditions for a life with dignity and liberty. Such an approach allows it to come down heavily on the system of administration of criminal justice and law enforcement. It also brings into the fold of Article 21 all those directive principles of state policy that are essential for a "life with dignity."

Thus, the judiciary has interpreted "Life" to include the right to possession of each organ of one's body and a prohibition of torture or inhuman or degrading treatment by Police. In the *Francis Coralie Mullin v. The Administrator, Union territory of Delhi*, the Supreme Court held that "life" couldn't be restricted to mere animal existence, or physical survival. The right to life means the right to live with dignity and all that goes with it - the basic necessities of life such as adequate nutrition, clothing, shelter and facilities for reading, writing and expressing oneself. Many of the Article 21 cases that came before the High Courts and the Supreme Court often revealed "a shocking state of affairs and portray a complete lack of concern for human values." The *Hussainara Khatun v Home Secretary, Bihar* case:

*It has been held by the Supreme Court that though speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21, which deals with the 'right to life and liberty'. Justice Bhagwati held "if a person is deprived of his liberty under a procedure which is not 'reasonable', 'fair' or 'just', it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. It was also held by the Supreme Court that 'detention in jail for a period longer than what they would have been sentenced for, if convicted, is illegal as being a violation of their fundamental right under Article 21 of the Constitution.*

*Deoraj Khatri v. State of Bihar* case raised the case of Police brutality in which 80 suspected criminals were brutally blinded during Police investigation (*Bhagalpur Blinding case*). The Supreme Court condemned it as a "barbaric act and a crime against mankind." In *Sheela Barse v. The State of Maharashtra* case, the Court was confronted with the custodial violence against women and it laid down certain guidelines against torture and ill treatment of women in Police custody and jails.

The Supreme Court has also read into Article 21 a right to monetary compensation for deprivations of the right to life and liberty suffered at the hands of the State. This was highlighted in the Rudal Shah v. State of Bihar case. The emergence of the right to compensation has nullified one of the reservations made by India in its instrument of accession to the human rights Covenants, which stated that the Indian law did not recognize such a right in the event of right deprivation.

The health problems of workers in the asbestos industry led the Supreme Court in the case Paramanand Katra v. Union of India to rule that the right to life and liberty under Article 21 also encompasses the right of the workers to health and medical aid.<sup>5</sup> The right to life has been held to include the right to receive instant medical aid in case of injury and the right of a child to receive free education up to the age of fourteen.<sup>10</sup>

### 3.8.2 Public Interest Litigation and Human Rights

Public Interest Litigation - an expansion of class action under the common law - is a procedural innovation, which the Indian judiciary has by now fairly perfected on the basis of a concept borrowed from the United States. The rule of 'louis stand?' normally dictates that he who approaches the court must prove his legal standing vis-a-vis the claim he seeks to vindicate, usually in terms of a legal right or a legal obligation violated by the defendant/respondent causing thereby some injury or damage to him for which law provides a remedy. On the other hand, the public interest litigation is based on the principle that: *We cannot write off the weaker victims of injustices; the court's door when they knock shall open ... How can a bonded laborer working in a stone quarry ever know of moving the Supreme Court?, asks Justice Krishna lyer, a redoubtable public interest activist judge*



*of the Supreme Court of the seventies. He explains that public interest litigation, chiefly, in the realm of public law assists 'all people concerned with governmental lawlessness, negligence of the administration, environmental pollution, public health, product safety, consumer protection and social exploitation being served by professionals like lawyers and public interest lobbies working for 'reform of decision-making processes in Government and outside, affecting the public at large'. Public Interest Law offers new challenges and opportunities for the committed lawyers and social groups to serve the unequal segments of society better. This sensitive development is part of democracy (of the disabled) and of the movement to vindicate social justice through professions for the people. As a result, 'judges with a vision have new universes to behold, and mansions of people's justice to build.'*<sup>10</sup>

Justice Krishna Iyer realizes that the public interest litigation is likely to be abused. Hence he advised that the court should prima facie be satisfied that the information laid before it is of such a nature that it calls for examination. By looking at the credentials of the informant, the specific nature of the allegation, the gravity or seriousness of the complaint, and any other relevant circumstances should also be derived. It should also use its own wide investigative faculties as appropriate for the situation.

Ever since the public interest litigation came to be promoted by the Supreme Court, there has been an ongoing debate in the country between its supporters and opponents. In the *Sunil Batra v. Union of India* case, the Supreme Court entertained a letter from Batra, a prisoner, complaining about the treatment meted out to a fellow prisoner in a jail. The letter activated [the Court to deal with a wide variety of issues such as solitary confinement in jails, conditions of under-trial prisoners, sexual exploitation, sexual exploitation of blind girls in Schools, detention of mentally ill persons, minimum wages, illegal sale of babies, bonded labor, environmental protection, ill-treatment of freshers in Colleges, bet-

ter roads, land entitlement, conditions of children in children's homes, treatment of inmates of care homes, conditions of mental hospitals and deaths at alleged Police encounters. As the court opened its doors wide shedding procedure formalism, many of these issues repeatedly came before it as well as many others such as torture of young prisoners, Police brutality like blinding of suspects during investigation, custodial violence against women prisoners, deaths in Police custody, handcuffing of accused persons facing trials and fetters on incarcerated prisoners.<sup>10</sup>

As the legal procedure became deformalised, the court evolved new devices to assist it in dealing with public interest litigation, such as special inquiry, fact-finding commission, scheme remedies and post decisional monitoring. A nation-wide Legal Aid Scheme came to be established on the initiative of the Supreme Court.

In 1982 the Supreme Court promised to examine a range of relevant issues concerning the public interest litigation procedure. An examination of these issues; may be useful to streamline the public interest litigation law and practice with a view to discouraging abuses. As Justice Krishna Iyer remark it is "too late to burke PIL, but always welcome to reaffirm, and refine, eliminate the entropy and abuse of the process." It is quite possible that the burden of a backlog of cases awaiting adjudication is what worries the Court. But this is never a reason when 'we the People of India demand social justice,' reminds Justice Iyer.

The judiciary should never bite more than it can chew, Justice Sujata Manohar strikes a note of caution in the context of Article 21 of the Constitution. Article 21 embodies a judicially enforceable right. Therefore, it should essentially be a right capable of being protected by a judicial order. A right not capable such enforcement, if spelled out from Article 21. . . may result in the trivialization of court's pronouncements and may encourage

the habit of ignoring them . . . Every human right may not be capable of judicial enforcement. It points out the limits and limitations of judicial activism.

Taking into account the peculiar nature of public interest litigation, the Supreme Court of India in a public interest litigation, *D.K. Basu v. State of West Bengal*, issued guidelines to be followed in all cases for arrest and detention by the State interrogatory agencies till legal provisions are made on that behalf as preventive measures.

The Guidelines are:<sup>10</sup>

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

restee must be notified by the Police when the next friend or relative of the arrestee lives outside the District or town through the Legal Aid Organization in the District and the Police Station of the area concerned telegraphically within 8-12 hours of the arrest.

5. The person arrested must be made aware of his right to have some one informed of his arrest or detention as soon as he is put under arrest or is detained.
6. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the Police officials in whose custody the arrestee is.
7. The arrestee should, where he so requests, be also examined at the time of his arrest and the major and minor injuries if any present on his body and must be recorded at that time. The 'Inspection of memo must be signed by both the arrestee and the Police officer effecting the arrest and a copy shall be provided to the arrestee.
8. The arrestee should be subjected to medical examination every 48 hours during his detention in custody by a doctor from a panel of approved doctors appointed by the Director, Health Services of the State concerned or Union Territory. He should prepare such a panel for all talukas and Districts as well.
9. Copies of all the documents including the memo of arrest referred to above should be sent to the Magistrate for his record.
10. The arrestee may be permitted to meet his lawyer during interrogation though the later may not be present throughout interrogation

11. A Police control room should be provided at all District and State headquarters so that information regarding the arrest and the place of custody of the arrestee can be communicated by the Officer carrying out the arrest within 12 hours of effecting the arrest and at the Police control room it should be displayed on a conspicuous notice board.

The Supreme Court also insists that the requirements that flow from Articles 21 and 22 (1) of the Indian Constitution are to be strictly followed. These would apply with equal force to other Government agencies including the Directorate of Revenue Intelligence, Directorate of Enforcement, Coast Guard, Central Reserve Police Force (C.R.P.F), Border Security Force (B.S.F.) the Central Industrial Security Force (C.I.S.F), the State Armed Police, Intelligence Agencies, such as the Intelligence Bureau, RAW, Central Bureau of Investigation (C.B.I.) and C.I.D. These guidelines are only a few out of a large number of Judgments of the apex court in which the court upheld the human rights of the oppressed individuals.

### **3.9 Media and Human Rights**

The Information Media is an important arm of any modern democratic polity through which the people exercise their freedom of information. The freedom of information, the democratic right to know, is crucial in making all other human rights effective and providing an important safeguard for the enjoyment of all those rights. Traditionally, the vehicle of public information was the Press. Today it is called the media, which include the press, the radio, the television and the internet. The "Fourth Estate" plays a crucial role in a large democracy like India where about 1500 different types of newspapers are circulated.

The period of National Emergency saw, for the first time, the

gagging of the free press. Many then depended on the BBC for 'impartial' news about India. It is no wonder that the freedom of the Press or media became a watchword after emergency.

Disposing of a case of contempt of court against the editors of two newspapers, the Supreme Court remarked:

*It is the duty of a true and responsible journalist to provide the people with accurate and impartial presentation of news and his views after dispassionate evaluation of facts and information received by him and to be published as a news item. The editor of a newspaper or a journal, the court said, has a greater responsibility to guard against untruthful news and its publication. If the newspaper publishes what is improper, mischievously false or illegal and abuses its liberty, it must be punished by a court of law. While a free and healthy press is indispensable to the functioning of a true democracy, the court said, "the freedom of the press is subject to reasonable restraints."*<sup>10</sup>

Since the 1970's the media in India have played a central role in sensitizing people with information about governance, development, science and technology, foreign relations and so on. However, of late it has also come in for criticism, as highlighted by the above Supreme Court decision. There has been a decline in journalistic credibility, as noted by the Chairman of the Press Council of India himself in a seminar. Senior journalists feel that the media shies away from important 'people's issues' like tribal issues, that it is losing social content and becoming a consumer product with a manager overshadowing the editor. While the media is "a vital leverage to keep the rulers in check," it has failed "to educate people to assert their claim to the right to information," observes another senior journalist. The press also has come in for rough treatment by terrorists, insurgents, and some individual politicians. The Chairman of the Press Council condemned increasing commercialism and corrupt practices emphasizing the need to arrest them. The media also has a tendency to launch "trials by the

media,” even sentencing by the media, even while a court proceeding is underway.

Considering the totality of the impact of the media during the past two decades, despite the above pitfalls, one must recognize that the contribution of the media in revealing and highlighting human rights causes has been most impressive. A colonial law relating to official secrecy, the Official Secrets Act, 1923, however, remains an impediment in the effective exercise of the freedom of information.<sup>10</sup>

### **3.10 Some other measures of Protection of Human Rights under Indian Law**

1. The Protection of Civil Rights Act, 1955
2. Suppression of Immoral Traffic in Women and Girls Act, 1956
3. Maternity Benefit Act, 1961
4. Dowry Prohibition Act, 1961
5. Equal Remuneration Act, 1976
6. Bonded Labor (Abolition) Act, 1976
7. Employment of Children Act, 1938 (Amended in 1985)
8. The Child Labor (Prohibition and Regulation) Act, 1986
9. Juvenile Justice Act, 1986
10. Indecent Representation of Women (Prohibition) Act, 1986
11. Sati (Prevention) Act, 1987
12. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

13. The National Commission for Women Act, 1990
14. The National Commission for Minorities Act, 1992
15. The National Commission for Safari Karamcharis Act, 1993
16. The National Commission for Backward Classes Act, 1993
17. The Mental Health Act, 1993
18. The Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995.