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Lesson 1 **Unit I**

CASTE, GENDER, ETHNICITY AND CLASS AS DISTINCT CATEGORIES AND THEIR INTERCONNECTIONS

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Indian society, like most of other societies in the world, is a complex entity consisting of a number of, what Charles Wright Mills calls, 'sociological imaginations' (Mills, 1970, 26) such as caste, gender, ethnicity and class. Existing as formidable sociological constructs, they tend to afford distinct analytical framework in discerning the inherent complexities of social structure in particular as well as general milieus. Unique to only a particular social context, for instance, caste, as a sociological construct appears to be relevant only in deconstructing the underlying features of Indian society, as the phenomenon of caste does not exist as a powerful component of the social structure of other civilizations. On the contrary, however, gender, as the omnipresent phenomenon having a strong bearing on the societal formations in terms of interactions between the people of two different sexes, happens to be a common factor in exploring the issues of equality in all the societies, irrespective of their socio-economic or politico-cultural orientations and levels of development. Thus, it becomes quite compelling to have a fairly good understanding of the notions of caste, gender, ethnicity and class in order to be able to discern the factors that shape and determine the societal characteristics of various human civilizations.

Interestingly, a comprehensive understanding of the major sociological constructs like caste, gender, ethnicity and class seem to be incomplete without having a deep analysis of the mutual interactions and interconnectedness of these concepts. Indeed, as vital analytical tools in comprehending the complex realities of the various components of society, such notions are found to interact with each other or amongst themselves in such a way they either facilitate or hinder the independent functioning of various sections of society in numerous subtle ways. For instance, the ideas of caste and gender are so intertwined in the Indian social structure that one cannot sufficiently understand the status and position of women in Indian society without reference to the category of caste as overbearing factor impacting on almost all sorts of social interactions in Indian social order.

The chapter, therefore, aims at providing a comprehensive analysis of the major categories of the social structure in terms of caste, gender, ethnicity and class, with drawing examples mainly from Indian contexts. At the same time, some sort of indicative, if not exhaustive, discussion is also attempted at finding out the fundamental contours of mutual interactions amongst such categories, besides looking at the main strands of their interconnectedness.

Caste

Caste is said to be the fundamental characteristic of the Indian social organization. Permeating almost all aspects of the social life of the people, and to certain extent economic, political and cultural aspects of life as well, the caste system is a unique institution of India. Such is the influence of caste system on the life of the people in India, that it is said that it is caste which guides the march of human life cradle to grave, in most, if not all, cases. Indeed, Caste has remained as one of the predominant paradigms of the Indian social system. Emerging out as the perverted off-shoot of the classical and puritan *varna-system* of the ancient times, it has introduced a variety of cleavages in the Indian society which in the course of time turned out to be the most cruel and inhuman traits of glorious Indian civilization. For the last many centuries, the Indian society is fragmented into hundreds of castes and sub-castes neatly ordered into a hierarchical pyramidal form.

Broadly, three distinct levels of hierarchy in the caste system can be discerned: (a) the so-called forward castes people occupying not only the superior echelon of the social hierarchy but also the power, privileges and false ego, (b) the middle order of the caste system consists of those people who own a part of the parameters of position and distinguished by their profession and vocational acumen. This category of people is generally termed as other backward castes (OBCs). (c) The lowest rung of the social order is occupied by the people who have neither social status nor economic powers and properties. Known as dalits in the contemporary political discourses and badly bereft of necessary resources and rights, these people have been suffering from various despised social stigmas like slavery, indenture and the curse of untouchability. In sum, thus, the idea of caste has turned out to be some sort of negative notion whose mention evokes inherent traits of inequality and subjugation of one section of society by the other.

Understanding Caste

Conceptually, the idea of caste has been understood by various people in accordance with their perspectives on the subject. For instance, the scholars like Anthony Giddens, whose understanding of the concept of caste relates to only as a form of social stratification, caste is understood as, 'a form of stratification in which an individual's social position is fixed at birth and cannot be changed. There is virtually no intermarriage between the members of different caste groups.' (Giddens, 2004:684) However, such a definition of caste appears to be more schematic than substantive owing to the fact that it does not bring out in black and white the deeper implications of the caste system for various sections of society. Moreover, this definition of caste also fails to provide the modern contexts in which caste emerged as the formidable denomination of soci0-political mobilization in post-colonial Indian society. Hence, as Nicholas Dirks asserts, 'Caste is, in fact, not some unchanged survival of ancient India, not some single system that reflects a core civilizational value, not a basic expression of Indian tradition. It is a modern phenomenon that is specifically the product of an historical encounter between India and Western colonial rule'. (Dirks, 2001:5)

While many Indian scholars have tried to study and define caste as the significant factor in conceptualizing Indian social order, the ideas of M.N. Srinivas merit special mention in this regard. Defining caste by way of identifying its fundamental characteristics, Srinivas succinctly points out caste is a '…hereditary, endogamous, usually localized group, having an association with a hereditary occupation, and a particular position in the local hierarchy of castes.' (Srinivas, 1962:3) Thus, what is distinct about the definition given by Srinivas is that it tries to bring out the basic traits which continue to underpin the caste system in India. However, given the exploitative characteristics of the caste system in its perverted form, it becomes imperative to understand caste in such a way that in addition to bringing out the inherent features of the phenomenon, its deeper interplay with other factors of social life as well as its implications for the various sections of the society need to be spelt out clearly.

Implications of Caste for certain sections of Indian society

Caste system has been so overbearing factor in Indian society that no section of the Hindu society remains immune form the subtle implications of the same. As is said earlier, caste system distinguishes Indian society amongst various social formations, the two poles of which happens to be the upper castes in the form of the Brahmans and the Kshatriyas occupying the top position, and the dalits, lying at the bottom of the caste hierarchy. The influence of caste system becomes most formidable in the life of the people belonging to these two categories of castes for exactly opposite reason that while the former enjoys the undue advantages of the caste system, the latter becomes the most significant section bearing the burnt of prejudices and exploitations borne out of the caste system. Thus, it would be interesting to examine the implications of caste system on these two sections of the Indian society. Apart from these, the women seems to be a distinct category who have witnessed the distinctively varying influence of the caste system on their status and position in society despite having the common denominator of being members of the fair sex. It would, therefore, be pertinent that these three distinct sections of society may be discerned as the analytical categories to examine the influence of caste system on their status and position in the social organization in India.

First, the caste system has been found to be a very convenient tool in the hands of the upper caste people to perpetuate their preponderance in the social set up of the country. Drawing their sense of superiority from the primordial factors like their in an upper caste family, such groups of people continue to command a very high socio-cultural status in the social echelons of the society. The caste system has, more or less, ensured for them to be respected and sometimes adored in the society by the people of the lower castes, even without having any perceptible positive characteristics in their personality. What is however, more shocking is the misconstruing of the caste system by these people to be giving them some sort of hereditary license to perpetrate various kinds of atrocities on the dalits. Thus, in nutshell, the caste system has brought a kind of, in certain cases undeserving, status and position for the upper castes people even without acquiring certain rational traits of excellence and superior knowledge, thereby repositing them with a false sense of superior social status.

Second, the impact of caste system has been horribly demeaning the idea of a graceful and dignified life for dalits in Indian society. Just by being born in a particular caste, the dalits are placed in a far inferior and degrading position in the social order. Moreover, owing to the pollution and purity praxis, the Indian social set-up permitted the recognition and acceptance of untouchability which is probably the greatest crime against the humanity. Disallowed any sort of perceptible social upward mobility, the dalits appear to be cursed to live a life of perpetual subjugation and humiliation in society. The occupational identity of the dalits has also been one of the traits of the caste system whereby certain menial and distasteful occupations like scavenging, tanning, sweeping and likewise functions remain reserved for these people. The social exclusion of these people becomes complete with the spatial confinement of the dalits in a secluded part of the village or locality. With no scope for interaction with the so-called higher castes people in terms of marriages or dining, the plight of the dalits in the Indian social system appears to be so unbearable and suffocating that the caste system, sometimes, seems to inflict unbridgeable cleavage in the Hindu social order whose final culmination appears to lie in leaving the fold of Hinduism itself.

Finally, the position and status of women have been influenced in a complex way by the caste system in India. While, it has acted as a system of bondage for the women belonging to the so called upper castes by imposing a number of taboos on them, it has become a sort of liberating force for the dalit women, though on the basis of the wrong assumptions. In other words, as the dalit women are ordinarily not considered to be respectful and having higher social status, they are kept outside the purview of the various taboos being placed on the personality of the women belonging to the upper castes. The scope of such taboos happens to be so wide and confining that a upper caste woman turns out to be a captive of her male members of her family and society, including her husband by remaining confined within the four walls of the house and bereft of any sort of socio-economic or political powers in comparison to the male members of the family. On the contrary, the dalit women are allowed to go to the fields to work and gain some sort of economic autonomy by virtue of generating income for the family. However, on the whole, the caste system has been a debilitating factor for the status and position of women in the Indian society for at least two reasons. First, socio-cultural taboos put on the women, ostensibly for the purpose of safeguarding and retaining the caste-related superiority of the upper castes, tend to perpetuate the age-old system of placing women in a subservient position in relation to the men of the upper castes. Second, even in the case of the dalit women being allowed to move out to earn the livelihood of the family does not turn out to be some sort of a model of women empowerment due to the fact that such a permission is more in the nature of demeaning the life and personality of such women rather than affording an opportunity to ameliorate their miserable conditions in society. Moreover, while venturing out sometimes robs them the sanctity of their body and soul, their overall status and position in society in terms of social, political and cultural empowerment, are not permitted any kind of upward movement by the fetters put by the caste system. In substance, therefore, the dynamics of caste system has helped in perpetuating, in certain cases, strengthening the age old subordination and dependence of the women on the male domination in society.

Gender

Amongst the significant sociological constructs having a strong bearing on the socio-cultural standing of almost half the population of the world happens to the idea of gender. It has, in fact, become the tool in the hands of the feminist thinkers to expose the age old socio-economic and politico-cultural domination of one section of people in the society (women) by the other (men). Rooted in the theoretical framework of culture, the idea of gender is used as the analytical context in which the biological idea of female is gradually converted into the sociological construct called women. Thus, gender as a distinct category of explaining the social organization over the years, serves the useful purpose of identifying and examining the issues and perspectives which impact on the life of a vast majority of the people belonging to the so called fair sex. Exemplified by the electrifying slogans like 'one is not born a woman but becomes one' (Simon de' Beauvoir), the gender perspective of understanding the socio-economic and politico-cultural standing of women in society has helped in unraveling the advertent or inadvertent acts of omissions and commissions of the men that have led to the virtual subordination, and in certain cases subjugation of women in the almost all the societies in the world.

Gender as a theoretical construct

As a concept, gender is understood as the 'social expectations about behaviour regarded as appropriate for the members of each sex. Gender does not refer to the physical attributes in terms of which men and women differ, but to socially formed traits of masculinity and femininity.' (Giddens, 2004: 689) Thus, gender must not be taken as something identical to sex. Standing on two different pedestals, sex and gender differs with each other in a number of ways. For instance, sex is ordinarily conceptualized as the anatomical and physiological differences which characterize the bodies of males and females. On the contrary, gender refers to the psychological, social and cultural differences between the males and females. As Giddens points out, ‘Gender is linked to socially constructed notions of masculinity and femininity; it is not necessarily a direct product of an individual’s biological sex. The distinction between the sex and gender is a fundamental one, since many differences between males and females are not biological in origin.’ (Giddens, 2004:107) Thus, what become obvious is that the biological differences between males and females happen to be only the beginning of the story. The later widening of the gulf between the so called notions of masculinity and femininity is solely the creation of the socio-cultural attribution of various constructed features, conditions and role perceptions amongst the males and females in society.

The utility of gender as a theoretical tool in identifying and explaining the inherent social cleavages in society having a reneging impact on the status and position of women has been proved beyond doubt. Significantly, the conceptual vitality of the notion of gender has been so forceful and invigorating that it led to the evolution of a new ideological movement in social sciences known as feminist ideology. Moreover, even amongst the feminist theorists, the urge to unravel the hidden and obvious discomfitures of women in society, ostensibly due to various gender-induced differentiated and institutionalized role perceptions, has been so intense that it has given birth to a number of sub-units of the broad feminist movement in various parts of the world. However, the vigorous pursuits of the feminist activists to ameliorate the status and position of women in various societies have met with only partial success.

Gender Issues in India

In this regard, the issue of political empowerment of women in India appears to be an appropriate example of how things have been messed up despite proper diagnosis of the problem and evolution of thoughtful strategy to overcome the same. For instance, the long drawn subservience of the women in Indian society, apparently due to the unfavourable circumstances owing to the changing patterns of government in India in the course of history, could not be unshackled totally even in the wake of independence for obvious reasons. Given the euphoria accompanying the attainment of independence and concomitant socio-economic reconstruction of the country, the other significant issues like that of ensuring an adequate and dignified representation to women in the processes and institutions of politics and governance in the country could not gain that degree of salience which might have been due to them. More importantly, the absence of a concerted and assertive women’s movement, focusing precisely at the ascertainment of equitable political representation of women in all segments of the political life in the country, proved congenial for the custodians of Indian politics, immediately after independence, to gloss over the gender perspective of the government and politics in the country without being held accountable for this act of omission. Nevertheless, the dawn of independence, along with the suitable constitutional provisions for the safeguarding of the interests of women in various walks of life, heralded the move towards democratic and electoral politics one of whose meaningful repercussions appears to be the rethinking on the gender perspective in Indian politics. (Chakrabarty and Pandey, 2008: 316)

In final analysis, it may be argued that the emergence of the idea of gender as a distinct category of theoretical construct to examine and explain the issues of women’s development in terms of uplifting the status and position of women in society, has been able to put the such issues on the centre stage of intellectual discourses in the contemporary times. With the exposure of the male domination on female in the socio-economic and politico-cultural domains appearing almost infallibly complete, the focus of attention now needs to be shifted to the action part of the story. As shown by a number of socio-economic and political movements on the issues of environmental protection, prohibition, struggle for right to information etc., the critical role of women is sustaining and guiding the societal moorings for a better tomorrow has proved beyond doubt. The need, therefore, seems to be for reinventing the gender discourse in present times in order to take the struggle for women's emancipation and empowerment to its logical conclusion in all parts of the world with a global platform of women activist providing leadership to the micro level women's movements.

Ethnicity

In the countries like India, in face of renewed focus being placed on the notions like caste and gender as distinct categories in understanding the complexity of societal dynamics impacting on the life of a vast segment of society, the idea of ethnicity does not appear to command the same degree of salience for obvious reasons. However, such a situation cannot be generalized for a number of countries like Canada where the ethnic issues happen to be the core issue facing the sanctity of national unity and integrity of the country. In other words, the conceptualization of various sociological imaginations like caste, gender, ethnicity and class as distinct categories in deciphering the broad contours of various societies may not be applicable to all the societies in the same order and salience. For instance, caste being a typical characteristic of Indian society and acting as the most significant sole determinant of the socio-cultural status and position of people to a great extent, it is obvious that any analysis of the broad features of the Indian society begins with the idea of caste. But in other societies where the phenomenon of caste is either unknown or not a remarkable feature of social organization, it may not turn out to be a powerful theoretical tool in unraveling the underlying characteristics of the social life of the people. Thus, with other sociological constructs such as caste and gender being taken as the mainstream categories in understanding and explaining the various issues confronting the socio-economic and politico-cultural dynamics of the Indian society and polity, ethnicity remains a peripheral idea. However, given the existence of vast diversity underpinning the idea of India itself, it would not be impertinent to look into the issues which appear to hover around the concept of ethnicity and have the potential of impacting on the Indian society and polity in a big way.

Ethnicity as explained by Giddens

Theoretically, ethnicity is understood as cultural values and norms which distinguish the members of a given group from others. An ethnic group is one whose members share a distinct awareness of a common cultural identity, separating them from other groups around them. In virtually all societies ethnic differences are associated with variations in power and material wealth. Where ethnic differences are also regarded as racial, such divisions are sometimes especially pronounced. (Giddens, 2004: 688) In other words, as Giddens succinctly clarifies, ethnicity refers to the cultural practices and outlooks of a given community of people that set them apart from others. Members of ethnic groups see themselves as culturally distinct from other groups in a society, and are seen by those other groups to be so in return. Different characteristics may serve to distinguish ethnic groups from one another, but the most usual are language, history or ancestry (real of imagined), religion and styles of dress or adornment. Ethnic differences are wholly learned, a point that seems self-evident until we remember how often some groups have been regarded as 'born to rule' or 'shiftless', 'unintelligent', and so forth. In fact, there is nothing innate about ethnicity; it is purely social phenomenon that is produced and reproduced over time. (Giddens, 2004: 246-47)

Applying the theoretical characteristics of ethnicity to India, it may be argued that ethnic diversity of the county might be understood in terms of the basic notions of religion, region, language and caste. Despite having a number of sub-divisions even amongst these identities, it would not be imprudent to argue that they constitute the basic conceptual constructs to examine the ethnic landscape of India. Religion is undoubtedly the most significant primordial affinity which separates the different sections of Indian society into various ethnic groups. Given the preponderance of the followers of the Hindu religion, it is quite obvious for the followers of other religions such as Islam, Christianity, in particular to assert their ethnic identities which sometimes put them in conflict with the extremist elements of the Hindu religion. The current phase of anti-Christian upsurge in the Kandhamal district of Orissa and the frequent Hindu-Muslim clashes in various parts of the country signify the assertion and counter-assertion of the ethnic identities of the followers of these religions. Similarly, the ethnicity based on region, language and caste are also prominent in certain parts of the country.

Ethnicity in India

Diversity of India happens to be the den of fostering ethnic identities amongst various groups of people in the country. As explained earlier, the assertion of religion based ethnic identities has been the most widespread and has also been responsible for instigating a number of violent communal riots in various parts of the county for a long period of time. But the ethnic movements rooted in the regional aspirations of the people have, despite being numerous and widespread, by and large, remained peaceful, barring occasional flare ups in the regions like Darjeeling, parts of North-Eastern India, Telangana etc. The root cause of most of such movements seems to lie in the problem of underdevelopment in comparison to the surrounding regions of these areas. While the creation of the states like Uttaranchal, Chhatisgarh and Jharkhand in recent past appears to be efforts on the part of the Central government to assuage the feelings of the people to gain and assert their region based ethnic identities, such has not been the response in the other cases. Thus, the region based ethnic aspirations of the people remain an issue in the unity and integrity of the country.

Language does not appear to be a significant dimension of the ethnicity in India in contemporary times. However, this needn't give an impression in the minds of the readers that language had never been an issue in India. In fact, in the post independent times, after religion, linguistic aspirations of the people, mostly in southern states of the country, became the most formidable challenge threatening the unity and integrity of the nation. The demand for the creation of linguistic states became so compelling that the government had to appoint the States Reorganization Commission which recommended the creation of linguistic states. Consequently, the various states were reorganized on the linguistic basis in almost all parts of the county. Another aspect of the linguistic problem relates to the opposition to Hindi language in southern states, particularly Tamil Nadu, on the basis of a seeming threat to the Tamil language and literature. However, with the wise and prudent decisions of the leaders to introduce the tri-language formula, consisting of Hindi, English and one's own vernacular language, the linguistic problem seems to have disappeared in the country.

The notion of caste acting as some sort of ethnic identity of the people in India has been established beyond doubt. What, however, is significant in this context is the reassertion of caste identities by the people in the wake of the electoral politics in the country, on the one hand, and growing urge amongst the people to have a share in the pie of job reservations on the other. Indeed, by the time, the euphoria of national movement was over and the band leaders having faith in sacrifice and national well-being no remaining in the reckoning, the caste based electoral politics became the norm of the electoral politics in the country. Thus, even those people who no longer needed the caste affinity to have the proper status and position in society also started reasserting their caste affiliations in order to gain mileage over the others in the prospective electoral battle. For instance, a number western educated and flamboyant sons of yesteryears politicians, who otherwise would not have bothered about their caste affinities, turned out to be the foremost champion of the interests of their particular castes ostensibly for the purpose of securing the votes of the co-caste people. Similarly, the recent agitation by the Gurjars in certain parts of the country demanding the Scheduled Tribe status in order to have better opportunities in garnering the benefits of job reservations is a case in point on how new found primordial affinities are impressing upon the people to gain economic and political gains in the short run.

Class

The idea which has been lying at the core of modern capitalist societies in the western countries but has not been able to gain so much of salience in the developing countries like India seems to be the idea of class. Indeed, it was on the basis of his invention of the idea of class that Marx had been able to evolve his theory of class-struggle which lies at the heart of the Marxian critique of the capitalist mode of production and the ultimate demise of the capitalist societies. However, the other sociologists have tried to understand the idea of class more as a sociological concept aimed at understanding the stratification in society rather than mere economic notion as in the case of the Marxian discourse.

In the strict, Marxian parlance, class is understood as a group of people standing in a common relationship to the means of production. Ordinarily, the ownership of wealth along with the particular type of occupation seem to be the two major components on which the various classes in the society are differentiated. Applying this notion of class in the historical perspective, Lenin defines classes 'as large groups of people which differ from each other (i) by the place they occupy in a historically determined system of social production,; (ii) by their relation to the means of production; (iii) by their role in the social organization of labour, and consequently, (iv) by the dimensions and mode of acquiring the share of social wealth.' (Quoted in Arora and Awasthi, 2007: 49) Thus, what comes out from an analysis of the Marxian perspective on the idea of class is that class is defined absolutely in terms of its relation to the economic parameters prevailing in the society, to the total exclusion of the social dimensions of the concept.

However, as a distinct idea in the discoursed on social inquiry, other scholars have conceptualized the idea of class in a broader perspective to include its social characteristics, in addition to the economic ones, as emphasized by the Marxist theoreticians. Max Weber, for instance, adopting a more complex and multidimensional view of society, conceptualized class as not merely product of the economic relations in society but also being conditioned by the factors like 'status' and 'party' in society. In this context, while 'status' stands for the differences between social groups in the social honour or prestige they are accorded by others, 'party' refers to a group of individuals who work together due to the fact that they have common backgrounds, aims or interests. Thus, the complex conceptualization of the idea of class in Weberian formulations produce a huge number of probable positions in society, i.e. a diverse set of classes in the social set up in contrast to the more inflexible bipolar model proposed by the Marxian theorists in terms of the classes like workers and the capitalists. Yet, it needs to be emphasized that in the social science discoursed, it is the Marxian understanding of the idea of class which holds the sway to a large extent.

The Marxian notion of class gets further clarified when it is put to use in explaining the theory of historical materialism. While trying to reason out the evolution of human civilization over the various stages of history, Marx attempted to discern the basic contours of the class structure of society, rooted in the bipolar nature of the class configuration in all such societies. In this context, thus, Marx identified class as a group of people who stand in a common relationship to the means of production or the means through which one gains one's livelihood. Marx noted that before the advent of the modern industrial societies, the means of production consisted primarily of land and the ancillary tools and instruments used to carry out farming and animal husbanding. In such societies, therefore, the two major classes used to be the class which owned the land and the class which did not own the land. While the former classes were mainly aristocrats, landlords or masters, the latter class consisted of the serfs, tenants or the slaves. This class configuration underwent a subtle transformation in the modern industrial societies with the change in the means of production. With the setting up of factories, industries, offices and the use of machinery, the previous land owning classes got themselves transformed into the industrial class, owing the establishments critical in carrying out the function of mass production in society. Similarly, the formerly serfs, landless or the tenant class changed their nature to become the working class, earning their livelihood by working in the establishments set up by the capitalists.

Marxian analysis of the existing relationship between the haves and the have not classes over the ages was unmistaken in revealing the exploitative character of such relationships. In the pre-industrial societies, while such exploitation ordinarily took the direct form in which the transfer of produce was direct to the land owners, in the capitalist societies such exploitation became indirect in the form of the surplus value which the workers created. In other words, the quantum of production in the capitalist societies became disproportionate to the need of the capitalist to support his enterprise as well himself. He was thus placed in such a situation that he could earn huge profit by selling the additional produce which turns out to be surplus value. Marx asserted that it is this surplus value which lies at the core of the exploitative character of the capitalist mode of production.

In twentieth century, the Marxian discourse on class character of the capitalist society was instrumental in bringing about socialist revolutions in a number of countries in the world. However, the pure analytical formulations of Marx in terms of the class character of the capitalist societies could not be applied to the Afro-Asian societies which had been still become the capitalist ones in the sense of mechanized mass production of goods. In fact, such societies still remained predominantly peasant societies where the feudal mode of production existed and the idea of capitalist and the working class still remained alien to such societies. Therefore, carrying out certain modifications in the Marxian notion of class, thinkers like Mao argued that the concepts of class-struggle and socialist revolution need not be understood in terms of only the capitalist and the workers axes. He indeed steered a historical socialist revolution in China in 1949 by raising the army of peasants to work as the harbinger of socialist ideas in the non-western societies. Moreover, in the countries like where the socio-economic transition seems to be gradual and complex, it becomes difficult to identify the class configuration of the society in the strict theoretical format presented by Marx.

Interconnection amongst various Categories

The idea of interconnectedness amongst the various categories of social understanding relates mainly to finding out the mutual interactions between two or more than two such notions. Given the complexity of social set up and the intertwinedness of various components of social interactions, it becomes quite essential to grasp the social reality in a multidimensional and multi axes rather than understanding them in one-dimensional or unilinear format. For instance, in order to have the proper understanding of the status and position of women in Indian society, it is very important to identify and factor the various aspects of socio-economic and politico-cultural contexts which might have some bearing on the subject. Hence, the discussion on the interconnectedness of certain distinct categories of social organization help us in sharpening our analytical faculties to locate things in the proper perspective and draw such conclusions which may go to provide for the holistic solution to the problems. What follows, therefore, is an attempt to bring out the subtle features of the interconnectedness amongst the categories of caste, gender, ethnicity and class.

In the Indian context, the category of caste happens to be a category which encompasses almost all other categories of social organization of people in more or less degree. However, it is interesting to note despite having its presence to some degree, the notion of caste does not hold same level of significance as it holds in the BIMARU (Bihar, Madhya Pradesh, Rajasthan and Uttar Pradesh) states. In other words, in the northern Hindi speaking states of the country, no other category of social set up could be understood in perspective unless conceptualized in the frame of caste configuration of the state. Hence, the category of gender, for instance, must be conceptualized in the theoretical perspective having the due recognition of the factor of caste in order to get the reality of the issue. In the Hindi speaking states, the subservient position of women in society must be attributed to a large extent on the caste-related male chauvinism which forbids the women to venture out of the four walls of their household in order to preserve the caste superiority of few upper caste people. Hence, despite being well qualified and having modern outlook towards life, the female members of the upper caste societies are allowed any sort of autonomy or independence to them over and above the permitted limits of the family tradition.

The notion of interconnectedness amongst the various categories of social organization ordinarily boils down to figuring out the patterns of interaction and intertwinedness of two related concepts. Such patterns of interaction naturally have a number of diverse parameters but two obvious patterns appear to be based on discerning the positive and negative influences that one category of social organization has upon the others. For instance, the pattern of interaction between the categories of caste and gender may be so that, on its part, caste would have some positive as well negative impacts on the idea of gender in society. Similarly, on reversal of roles, gender may also have some sort of positive as well negative influences on the play of caste factor in the over all social setting. Still, it may be pointed out that the positive-negative axes present only a simplified version of understanding the interconnectedness amongst the various categories of social organization which in reality may be much more complex and deep rooted than discerned by a perceptible researcher.

Thus, applying the above mentioned analytical framework, it may be noted that if caste is found to have deep and multifarious influences on the category of gender in society, the latter also has its share of moderating influence on the former. With the growing realization in the society that the physiological difference on the basis of sex does not lay at the root of conceptualizing the idea of gender, numerous sorts of women movements have been initiated in the country to provide for empowerment and emancipation of women. Consequently, massive efforts have been mounted on the part of both governmental as well as non-governmental agencies to ingrain in the women, specially the young women, the values of autonomy and independence. Thus, being empowered, a number of women even from the upper castes are gathering courage to enter into marital relations with the men of other castes, sometimes even of lower castes, which seems to be a revolutionary action in the caste ridden societies like India. Moreover, such women do not allow themselves to be shackled by the fetters of the caste system and feel free to break the limits of caste system to lead a life of their own volition that proves to be a moderating factor for the tight structure of the caste system in the country.

Gender as a distinct category of social formation in India does not seem to have much formidable interconnectedness with the categories like class and ethnicity. As the women does not constitute a substantive number of work force in the country, the classical notion of class having its membership rooted in the working class of the country does not carry much weightage, thereby negating any formidable interconnectedness between the categories of gender and class. On the other hand, as explained earlier, gender does have a much deeper and subtle interconnectedness with the notion of caste as it influences the caste in a number of ways and gets influenced by the same in turn. However, gender again does not seem to have much interconnectedness with the idea of ethnicity barring a few encouraging instances drawn from the north-eastern states of the country where the existence of matriarchical social order brings about formidable transformations in the standing of women in such societies. Such kinds of linkages between the ethnic roots of the people and the issue of gender also find reflection in the status and position of women in the regions like Garhwal where the socio-economic circumstances of the people force the women to venture out of their houses to gather food, arrange for fodder and fuel for carrying out with their daily chorus of life. In such societies, the women appear to be poised for a more autonomous and self dependent life as compared to the women of the northern Hindi speaking states.

As mentioned earlier, class as a distinct category of social understanding does not appear to be a powerful notion. Though under the influence of the socialist ideas drawn from the communist revolution in Russia, the class consciousness amongst the educated and trade unionist people was quite strong even before the country became independent, the slow rate of industrialization in the country in the after math of independence does not allow the rapid emergence of working class to occupy the centre stage of the socio-economic and political life of the people. In the contemporary times, with the rapid integration of the Indian economy with the other economies of the world in the wake of globalization, it is expected that the working class people would gain a new sort of enlightenment and class consciousness amongst them would grow leading to the emergence of class as a formidable category in conceptualization of the social realities in India. Therefore, the interconnectedness of class with other such categories of social organization remains feeble without having any powerful impact on other categories of people.

Finally, it may be argued that the category of ethnicity remains a valuable notion in understanding the diversity and plurality in the socio-economic and cultural systems of the country. The ethnic issues in the country started gaining significance immediately after independence with the demand being raised for the linguistic reorganization of states. Once this demand was met with the redrawing the political map of the country on the basis of the linguistic limits of various regions, other ethnic dimensions rooted in the notions like religion, region etc. started being raised. However, in so far as the interconnectedness of ethnicity with other categories of social understanding is concerned, the issue does not appear to be strong enough to merit attention of the policy makers or the social scientists. The occasional demands such as the creation of certain states based on the regional aspirations of the people are met by the political leadership of the country, thereby nullifying the issue at once. As gender and class do not seem to have substantive interconnectedness with the notion of ethnicity, the sporadic issues implying some sort of interconnectedness between the two fail to evoke much public reaction, keeping the issue of ethnicity as some kind of non-issue in the country.

Concluding Observations

In conclusion, it may be argued that the comprehensive understanding of the socio-economic and politico-cultural systems of the country could be facilitated only with the clear conceptualization of the distinct concepts or categories like caste, gender, ethnicity and class that lay at the root of constituting what is called India. For instance, if one is not able to appreciate the notion of caste and its implications for various sections of Indian society, it would be almost impossible for that person to grasp the complexities that surround the proper understanding of the idea of India. However, it would be pertinent to point out mere crystal understanding of the various components as distinct categories only might not suffice to appreciate the diverse dimensions of the socio-economic and politico-cultural realities apparent in various parts of the country. Hence, what becomes imperative in understanding the stark realities prevalent in India is that the interconnectedness amongst such categories must be adequately understood and appreciated so that the complexities involved in understanding an issue may be sorted out in a fine manner.

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Suggested Questions

1. How does caste influence the status and position of women in India? Discuss with examples.
2. Critically examine the idea of social inequality with reference to class/caste and gender and their interconnections.
3. Explain the utility of understanding the interconnectedness amongst various categories of social organization in India.

Lesson 2

GLOBALIZATIONAND ITS IMPACT ON WORKERS, PEASANTS, DALITS, ADIVASIS AND WOMEN

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In the contemporary times, the idea of globalization has emerged as one of the most contested yet unavoidable process impacting almost every walk of life of the people in all parts of the world. Understood essentially as the process of growing interdependence amongst different peoples, regions and countries in the world, it entails numerous unpredictable and, in some cases, turbulent transformations in the political, economic and socio-cultural spheres of lives of the people. Ordinarily, the process of globalization results into the growing interconnectedness of the global and the local processes with the free and rapid flows of information, commercial activities, finance, people, technology and culture as well. The obvious consequences of such interconnectedness appear to be fraught with dangerous portents for those societies and even within a given society, those people who apparently do not possess the required level of money, technological know-how and mental preparedness to be equal and willing partner in such a process. Such societies and peoples are, therefore, finding themselves in increasingly uncomfortable and transitional positions in the wake of rapid and large scale restructuring of their socio-economic and cultural systems.

In general parlance, the discourses on causes and effects of the process of globalization usually hovers around the ideas with overwhelming economic connotations such as international flow of capital, growing influence of market forces in guiding the broad contours of the system in a country, economic factors outweighing the political factors in shaping the bilateral relation between two countries, so on and so forth. What, therefore, appears to be the missing link in the whole debate on the processes and products of globalization, is a critical examination of the effects of the wave of globalization on the specific social categories and regions of various continents. In other words, while deliberating upon the causes and consequences of the globalization, many a times, and the scholars tend to interplay, if not totally ignore, the socio-cultural and political implications of the process of globalization for various sections of the society in different continents of the world. In this chapter, the attempt, therefore, is made to not only examine and explain the concept of globalization, its impact on certain sections of Indian society such as workers, peasants, dalits, adivasis and women is also analyzed to find out the ways in which globalization has influenced the lives of the people in a comprehensive manner.

Understanding Globalization

The notion of globalization, despite being omnipresent in the social science discourses in the current times, remains one of the hotly debated concepts amongst the scholars. Given the comprehensive ways in which the process of globalization is impacting the lives of the people worldwide, it is quite obvious that various sets of understanding have been offered on the probable pros and cons of the process in spite of the fact that the idea of globalization is no longer understood in a restricted or parochial sense of the term. There was, no doubt a time, when the concept of globalization was defined as 'the increasing importance of the world level of analysis in economic, as the scope of economic activities expands worldwide. Globalization encompasses many aspects, including expanded international trade, telecommunications, monetary coordination, multinational corporations, technical and scientific cooperation, cultural exchanges of new types and scales, migration and refugee flows, and relations between the world's rich and the poor countries.' (Goldstein, 2004:306-7) However, as is evident, the thrust of such conceptualizations of globalizations is primarily on the economic aspect of the concept to the marginalization, if not total neglect, of the issues of social, political and cultural aspects of the same. Hence, generally, the notion of globalization is defined as the growing interconnectedness and interdependence amongst various countries of the world encompassing almost all aspects of life. Thus, as a perceptible scholar explains, conceptually, globalization refers to the amalgam of the economic, political and cultural process through which the world is becoming more interconnected and interdependent, leading to the creation of a single 'world space' or system. (Axford, 2002, 524)

The conceptualization of the idea of globalization has been further facilitated by the different schools of thought trying to grasp the reality of globalization in their own typical discursive framework. As David Held et al. point out, such schools may be classified into three categories of skeptics, hyperglobalizers and transformationalists. (Held et al., 1999:78) The strand of skeptics consists of those scholars who denounce the overrating of the notion of globalization in such a way so as to show that it is something which is unprecedented and mammoth. They claim that one or other form of interconnectedness and interdependence have been in existence amongst the various countries of the world from the very beginning and it would be wrong to say that such a thing is totally new or unconventional in the dealings between various peoples, regions or the cultures. They accede that the only thing new in this regard appears to be degree of such interconnectedness and interdependence which has been remarkable owing to the rapid advancements in the field in the computers and information technology that has reduced the distance of space and time amongst the various countries of the world.

In contrast to the stand taken by the skeptics, the hyperglobalizers argue for the formidability of the idea of globalization. Claiming that globalization is something which is very real and having its impact in almost all walks of life and all regions of the world, this school of thought believes in the inevitability of the process of globalization owing to the rapid changes taking place in various dimensions of peoples life enabled by the advancements in the field of science and technology. The hyperglobalizers appear to be so nostalgic about the process of globalization that they visualize the dawn of a 'borderless world' as the globalization would result into the growing irrelevance of the idea of nation-state and the geographical boundaries of various countries no longer able to hold on to provide any sort of immunity to the life of the people of a particular country. They held that powered by the rapid interconnectedness and interdependence of various economies of the world, the concept of globalization is bound to touch upon almost all sectors of the life of the people in very subtle ways. Growing economic interactions would give way to free movements of peoples, cultures, technologies and value systems whose obvious consequences would lie in globalization stretching to every nook and corner of the world. Such transformations would eventually result into what is called as the 'global age' whereby the spatial and cultural differences of the counties and peoples are supposed to loose much of their meaning. Thus, globalization would increasingly reduce the importance and influence of the nation states and the governments in regulating the life of the people which would supposedly get increasingly shaped by the moves and changing characteristics of the market forces which lie at the heart of the process of globalization.

In comparison to the two apparently extreme views taken by the schools of skeptics and the hyperglobalizers on the phenomenon and the probable consequences of the notion of globalization, the tranformationalists take somewhat a middle path on the issue. They do believe that, on the whole, a lot of transformations are taking place in the world in the root of which lies primarily, if not totally, the process of globalization. But the tranformationalists also acknowledge the vitality and sustainability of a number of convention institutions and conventions of the various societies in various countries of the world. In other words, while accepting the formidability of the process of globalization which seems to lie at the basis of numerous radical and innovative transformations taking occurring in various parts of the world, the tranformationalists also assert the limits of the changes being brought about by the process of globalization. For instance, given the rapid economic integration of the various economies of the world with one another, it is sure that the free flow of goods, technology, people, finance etc. would take place. But, despite all such things, the economic regulatory mechanism of various would crumble and there would not be any sort of domestic institutional mechanism to regulate the economy of a country is very improbable. The tranformationalists, therefore, tend to believe in the concept of globalization as an open and dynamic process which if brings about subtle transformations in various socio-economic and politico-cultural systems of a country, also get influenced by the same which results in a various innovations being viewed in the process of globalization.

In final analysis, of the three views, the perspective of the tranformationalists appears to be quite balanced and acceptable regarding the conceptualization of the various aspects of the process of globalization. There is no denying the fact that the contemporary phase of the political and economic interactions among the various countries of the world is marked by the move towards globalization resulting into both apprehensions and expectations in the minds of the common people in general and the vulnerable sections of the society in particular.

Impact of Globalization on Workers

Of the various sections of society being affected by the process the globalization, the working class people stand out prominently. As globalization, in the main, is understood as a process of greater economic integration amongst various countries of the world, the first and foremost target of globalization process seems to be the dismantling of the comprehensive legal framework provided for the safety, security and welfare of the workers in the face of any exploitative policy or action on the part of the industrialists or the capitalists. Thus, by striking at the root of the whole body of labour laws, the process of globalization reduces the workers as the hapless lot remaining on the mercy of the capitalists to hire or fire them, with adverse terms of contract being thrust on the workers.

As a matter of fact, the whole edifice of labour laws has been erected to provide for the protective, ameliorative and cooperative measures to guarantee an ambience of what International Labour Organization (ILO) calls as ‘decent work’ for the workers. However, “the economic restructuring as a part of the process of the present phase of globalization has far reaching impact on the world of work and worker’s world. The market driven flexible model of organizing production and work has been aggravating inequalities, unemployment and insecurity all over the globe. The ‘hollowing out of state’ has been at the root of work becoming less decent.” (Reddy, 2005: 2)

In regard to its effect on the labour, globalization is characterized by both apprehensions and expectations, with the former outweighing the latter quite often. While dislocation, unemployment and reduced social protection are apprehended to be the short term consequences, the widening and diversification of employment opportunities, rising real earnings and betterment in the working conditions of the labourers are considered to be the advantages which may accrue from globalization in the medium and long term. However, there have been widespread perceptions that the labour would be the most important loser, at least in the initial phase of the current move towards globalization.

The apprehensions of being losers in the process of globalization are harboured by the workers and their organizations in both developed and developing countries. In developed countries, concerns have been expressed about relocation of jobs in developing countries through outsourcing and shifts of capital. Besides, the consequent increase in unemployment, which is already high in most of these countries, fears are raised about the possibility of what is often described as 'social dumping' in exports of goods produced under the sub-standard labour conditions from developing to the developed countries and the danger of a 'race to the bottom' resulting from the competition between producers from developed and developing countries to lower labour standards. In developing countries like India, on the other hand, globalizations if often seen to endanger jobs in existing enterprises in so far as the competition from imported goods would lead to technological changes resulting in redundancies or even closure of the relatively less efficient enterprises. Also, the need to adjust to changing market conditions and also to attract largest investments, particularly, foreign direct investment, would lead to pressures for greater flexibility in the employment and utilization of labour, resulting in reduction in employment security and social protection and an overall deterioration in quality of employment. (Papola, 2004: 541)

Thus, the most significant dislocation brought about by globalization is in the employment scenario. Not only has unemployment increased in most of the countries in all parts of the world, where employment has increased, it is mostly in the informal and unorganized sector and in its most flexible form such as casual, contract and temporary. Consequently, the challenges of decent work in the globalized world have multiplied, and the coverage of social protection to workers has declined. Assuming that the expectation of faster expansion opportunities is realized through market based faster economic growth and greater flexibility in the use of labour, lack of social protection is likely to emerge as a major problem which can only be tackled by state and social action. (Papola, 2004: 541)

The available evidence in regard to the impact of globalization on employment generation exposes the fallacy of boastful promises of expansion in employment opportunities. However, the employment generation in the wake of globalization has overwhelmingly been in the non-agricultural sector and that too in its unorganized segments. Consequently, domination of the unorganized sector with irregular and insecure jobs, low productivity and earnings and no social protection, has been a well-known feature of the Indian employment scene. Recent evidences of the changes in the structure of employment point towards a move on the part of many large, small and very small enterprises to go for employing casual and contract labour to the tune of even seventy percent. It may be discerned from these findings that the small enterprises employing up to nine workers, may be using contract labour to avoid application of Factories Act while the large ones do not employ more regular workers due to the restrictions on retrenchment imposed by provisions of the Industrial Disputes Act.

The evidence like the above has often been used to argue that since the legislative provisions regulating conditions of work and job security tend to make employers either reluctant to expand employment or then employ workers in a manner that leaves them out of legislative protection, it is advisable to remove those provisions. The argument, however, ignores two points, one relating to minimum labour standards and the other, to the factual situations as reflected in the past experience. Legislation regulating conditions or work, such as Factories Act, lay down certain minimum conditions of safety, sanitation, space, hours of work etc. to be observed by employers at the workplace. If these are being evaded by surreptitious means like not recognizing workers as employees of the enterprise, there is a case for stricter enforcement of legislative provisions, not for their repeal. Restrictions on retrenchment, lay off and closures imposed in the Industrial Disputes Act, no-doubt appear irrational in so far as they do not allow enterprises to reduce workforce for efficient functioning and close down unprofitable and unviable business. But the argument that these provisions have, in fact, restricted scaling down of employment or discouraged increase in employment where found necessary, is not borne out by the factual experience. Employers have been able to reduce workforce when required, despite the restrictive legal provisions and have increased employment when needed, without fear of these provisions coming in the way of making adjustment of workforce in future. At the same time, it is doubtful if these provisions have served the interest of workers as expected in principle. In fact, long delays and prolonged disputed, particularly in the cased of permission for closure, have rendered the workers jobless without getting terminal benefits and blocked utilization of assets of enterprise. The need to review them and evolve a more rational, efficient and equitable framework for labour flexibility is obvious, which may consist of an exit policy that makes exits easier but costlier to employer and effectively more beneficial to the worker. (Papola, 2004: 546)

Peasants in the era of globalization

The process of globalization has brought about far reaching transformations in the various institutions and processes which seem to be crucial in the life a peasant. The obvious results of such transformations appear to be negative in nature in so far as most of these have been unwanted changes in the life pattern of the farmers in the countries like India. The basic issue in analyzing the impact of globalization on the peasants in the county remains the appropriate degree of compatibility between the dynamics of the processes and products of globalization on the one hand, and the aspirations and expectations of the peasants from the changes that are taking place in the wake of globalization. It may be argued that in the developing countries like the life of a peasant remains deeply embedded in his prized possession in the form of land. By working on his land, a farmer does not only make arrangement to earn his livelihood. He also get involved in the land in such a way as a person get involved with his dear child, finding the reflection of his hopes in the same. Thus, to the peasantry in India, the land is not just a means of survival but also a means of getting engaged with it in a very intimate fashion in order to get his social position, economic prosperity, cultural festivities drawn from the produces of the land, and also a medium of getting attached to something. The impact of the process of globalization on the peasants needs to be analysed in this context. Since, the basic thrust of the process of globalization lies in integrating the whole socio-economic and politico-cultural life processes of the people with the same things in other parts of the world also, the peasants in the developing countries are not able to digest their alienation from their land and get to become part of the global village.

It may be argued that the impact of globalization in the sphere of agriculture ordinarily boils down to the essential commercialization of agricultural processes and products. Given the trade mark of globalization as being regulated and shaped by the dynamics of market, it is quite obvious that the agricultural sector would be required to produce the same things which the market requires in the main. Moreover, the imperatives of cost effectiveness and keeping in mind the affordability of the products by the prospective buyers, it also becomes important to use scientific and advanced technology to cut cost of production of the agricultural produces In such a scenario, the process of globalization impacts the peasants in two substantive ways through the process of commercialization of the agriculture. First, given the subsistence level of agriculture in most of the developing countries, the commercialization of agriculture resulting into the production of commercial crops carry the potential of inflicting the fear of starvation and famine type situation for the peasants. In other words, when the production of food crops are being replaced by the production of cash crops in the wake of the dynamics of globalization, the availability of food to the peasants would be minimal, creating a sort of food shortage for them. Second, the process of introduction of advanced technology and scientific tools in the farming would bring a kind of disparity amongst the various farmers as all the farmers would not be able to buy or hire such tools and technologies. This is assumed to create some sort of disequilibrium in the social set up of the rural India whose repercussions are not expected to be good for the peasantry in general and the small and marginal farmers in particular.

As is evident in the form of instances like Singur and Nandigram, the process of globalization is also found to drive a wedge between the farming and industrial sectors of the economy whose negative impacts are quite obvious for the peasants. Indeed, the growing needs of Special Economic Zones (SEZs) in the wake of the strengthening of the wave of globalization, the peasants are facing the threat of the alienation with their land. As the economic activities in the wake of globalization need more and more land, such a demand can be fulfilled only by acquiring more agricultural land from the peasants. Barring a few cases where the farmers have willingly given up their claim on the land and opted for taking cash compensation for the same, the majority of cases of land acquisition have given birth to one or other type of dispute between the farmers and the government. In such a scenario, neither the interests of the industrialists nor those of the farmers are found to be served in long run as the short run dispute lingers on to very protracted time. The case of the TATA facility to manufacture the NANO small car in the Singur of West Bengal happens to be the classic case where neither the TATA could ultimately get his things done despite investing huge amount of money nor the farmers of Singur may probably get the same quality and vigour in restarting the cultivation on the patch of land vacated by the TATA.

Finally, strengthening of the process of globalization has been able to claim a substantive portion of the agricultural land despite the unwillingness of the majority of farmers to give up their land in return for some amount of compensation. Moreover, given the penchant of a number of state governments to invite and extend red carpet welcome to the industrialists and capitalists in their states, the farmers are found to be either coerced or lured by the state machinery to give up their ownership of the land. In such circumstances, having gained some amount of money, the peasants in general are forced to migrate from their native place to seek refuge at places where they are able to find some sort of sustained means of livelihood for their families. Thus, the process of globalization is argued to turn the permanent settlers of the country into some sort of unwilling migrant in their own country to satisfy the greed of more profit of the multinational corporations. Once displaced from their permanent place, the peasants are believed to be cursed to become migrant workers in the towns and cities without any permanence in their life. As the current phase of global economic depression caused by the recession in the American economy, even their life in the cities and towns also does not become any better owing to the persistent threat to their employment due to the probable closure of the units from which they earn livelihood. In nutshell, thus, the process of globalization is found to herald miseries and troubles for the average peasants, with only a minuscule number of big and enterprising farmers drawing mileage from the opportunities thrown by the wave of globalization.

Impact of globalization on Dalits

Dalits constitute one of the most vulnerable sections of Indian society due to the age old exploitative restrictions placed on them. Getting themselves placed on the margins of the Indian social order which have had ominous portents for almost all aspects of their life, the dalits are argued to be one of those sections of the society which may find the wave of globalization a mixed bag opportunities and discomfitures. Keeping in mind the innate capabilities of the process of globalization to bring about some sort of decimation of the primordial affinities of the people owing to the dynamics of economic activities, it is also assumed to herald a new and unchartered vista in the lives of the dalits. Thus, an analysis of the impact of globalization on the dalits appears to be a complex idea due to the fact while it may help in loosening the shackles of the caste system which has been the bane of the dalits, it might result into a greater economic disparity and social incohesion in society in the face of the exposure of the life of dalits to other sets of social systems as is found in other parts of the world.

The proponents of the idea of globalization untiringly claim that the process of globalization would undoubtedly result into the amelioration of the conditions of the people who have remained socially marginalized and exploited for a long period of time. The crux of their argument lies in the fact that increased avenues for economic interactions of the people of different castes, class, sex or region might produce integrative tendencies amongst the people so that one is able to find a respectful and gracious place in the socio-cultural domain of the other. For instance, the arrival of a number of Business Process Outsourcing (BPO) companies in the country has resulted in the creation of a lot of employment opportunities for the people. Once employed in these companies, the employees are supposed to work in longer shifts during which they are provided with food, shelter, transportation and other likewise facilities that have the potential of mitigating the caste or such other irrational stigmas from the mind of the people leading to more social cohesion in the society.

However, such a perspective on the socio-economic conditions of the dalits seems to be quite far from reality due to number of factors. First, the creation of more and more employment avenues in the wake of the process of globalization does not necessarily lead to the enhanced employment opportunities for the dalits keeping in mind the educational status of the majority of such people. Moreover, even if few members of the dalit community become qualified enough to avail of the employment opportunities offered by the multinational companies, it is more probable that the social status of the person might come in the way of his joining the job and continuing with the same for the longer times due to the probable social stigmas likely to haunt him amongst the company of the upper castes people. Thus, instead of acting as the means of alleviating the miseries of the dalits caused by the socially hostile environment to them, the processes and the products of globalization might lead to reemphasizing the age old social cleavages of whose victims the dalits have been for ages.

The wave of globalization may be argued to adversely impact the life of the people keeping in mind the inequitable economic circumstances being created by the same. As a matter of fact, the processes of globalization have inherent tendency of bringing about a number of dislocations of in the socio-economic and politico-cultural ambience of the people. In order to be able to cope up with these upheavals, the people need to have a particular level of resilience in different aspects of life so that any untoward or undesirable repercussion of the globalization might be warded off by clinging to the traditional moorings of ones own life. On these counts, while the other sections of society appear to have some of their strengths by way of economic viability and social status and position, the dalits are found to be wanting on these factors. Barring a few, majority of dalits in the country live a life of abject poverty whereby they merely survive by working on the land or as the migrant labourers, along with the inappropriate social status being bestowed on them. Such a situation does not seem to permit the dalits to brave the challenges being thrown by the dislocations coming in the wake of the processes and products of globalization.

In India, the state sponsored welfare policies and programmes, in addition to the policy of reservation have been the most significant measures through which the miserable socio-economic and political conditions of the dalits are being sought to be alleviated. However, the inherent characteristics of the process of globalization do not seem to augur well for the strengthening of these things in either short of long run. On the contrary, there appears to be every possibility that the processes and products of globalization would result into the erosion of the state intervention in the socio-economic life of the people on the one hand, and its ability to sustain and enhance the growing need of monetary support for the welfare policies of the dalits and other marginalized sections of society. Moreover, the persistent resistance of the private sector to the introduction of the measures like reservations in jobs and bearing some sort of social responsibility by the corporate houses are not going to do any favour to the amelioration of the socio-economic conditions of the dalits.

In final analysis, thus, the process of globalization appears to have potential of doing more harm than good for the cause of upliftment in the socio-economic conditions of the dalits. With the idea of open competition visiting every field of life for the people, it would be the dalits who may turn out to be the losers in their competition with the other affluent and socially influential sections of the society. Moreover, the infusion of the ideas like 'grab the offer' might go to accentuate the existing chasm in the social fabric of the country. It, therefore, become imperative for both the dalits as well as the state and civil society organizations to keep a strict vigil on the repercussions which the wave of globalization brings about in the lives of the dalits. Any dereliction of duty in this regard would not only go to bring about enormous amount of miseries for the dalits but also threaten the delicate socio-economic and politico-cultural balance of the Indian society. The obvious deception of the process of globalization needs to be perceived, studied and obviated comprehensively before it is able to widen the chasm of the Indian society and put one section of society against the other.

Globalization and Adivasis

As in the case of dalits, the process of globalization seems to have ominous portents for the tribal population, also called Adivasis, scattered in the hilly, mountainous or forest regions of the country. The basic argument in this regard hinges on the fact that the process of globalization is quite unpredictable and turbulent whose natural corollary is that its repercussions would be fraught with dangers. In such circumstances, at the receiving end of the process of globalization seems to lie those sections of society which have remained vulnerable even in normal times. Their vulnerability gets magnified in the wake of such processes which do not have a categorical and straight forward trajectory whose results could have been anticipated and remedial measures could have been evolved in advance. Within this conceptual format, therefore, the adivasi population of the country seems to be placed in a sticky position with the probability that the growing wave of globalization would intrude into the traditional life pattern of these people and would probably create havoc with them.

A distinct feature of the life of the Adivasis has been their aloofness from the so-called plain or modernized people which afforded the former the right to preserve their ethnic-cultural characteristics, to carry on with their traditional socio-economic and political formations and to share a symbiotic relationship with the natural environment, particularly the forests. However, with the establishment and consolidation of the colonial rule in the country, the Adivasis were sought to be politically, economically and administratively integrated with the rest of the society.

This integration resulted not only into the disturbance of the quite and autonomous life-style of the Adivasi people but also introduced the perennial problems of the so-called modern people like poverty and indebtedness, unemployment and exploitation into the life of the tribals. These problems led to the erosion of the traditional life style of the Adivasis and infringed upon the human rights of the Adivasi communities which might get further accentuated in the process of globalization.

The starting point to analyze the impact of globalization on the lives of the Adivasis is the notion of land alienation. Owing to the factors like opening up of the tribal areas and their acquisition by the government and other institutions for the purposes of communication and development, coupled with the lacunae in the land laws, the native people lost their prized possession resulting into land alienation. Moreover, the modern system of land ownership fundamentally transformed the socio-economic system of the Adivasis and led to the infiltration of non-tribals in the tribal regions. With the growing thrust of the governments in various parts of the country to get lands acquired for setting up of SEZs, technology parks or industrial estates to meet the imperatives of globalization, the adivasis are the worst to suffer on this count.

Another significant issue of the adivasis threatened in the wake of the process of globalization is their symbiotic relationship with the forests. Traditionally, the forests have been, along with the land, the basis of sustenance and prosperity of the tribal people. Gradually, with the government taking up the management of the forests as the natural resources, there has come up a constant tension between the Adivasis and the government. It has been of little concern to the government that the forests are central to the social customs and rituals of the Adivasis. In the wake of globalization, if the forests are being destroyed to page way for setting up of industries and other developmental project, it may well ring the death bell for the culture and social life of the adivasis.

Among other issues that cause concern to the lives of the Adivasis vis-à-vis the process of globalization are poverty, indebtedness and unemployment. Bereft of the ownership over land and forests, the Adivasis lost their means of livelihood and were forced into poverty in course of time. Due to their frequent need for money in adverse times and famines, the Adivasis were compelled to borrow money from the unscrupulous moneylenders. The transformation of subsistence agriculture into a cash crop economy also led to their indebtedness, as the Adivasis became more and more dependent on the market for their food requirements. Above all, industrialization has not been of much help to these people because, although, new job opportunities were created, the native people could not fit themselves into these jobs due to the lack of necessary skills and education. (Sinha: 2002, 259) In the face of these bottlenecks supposedly coming in the wake of the process of globalization, the pursuits of both the governmental and the non-governmental organizations should not only be to restore the traditional rights of these people but also to modernize them in such a way that they are not cut from their roots in the name of their socio-economic development by integrating them with the process of globalization.

Women in the era of globalization

The strengthening of the process of globalization has impacted the status and position of women in the Indian society in a variety of ways. As has been argued in some other context, the globalization as a process generally unleashes a number of forces in society in the wake its taking roots in society as a result of which numerous desirable as well as undesirable consequences follow. The nature of such consequences are usually value neutral and goes to ameliorate or accentuate the conditions of the recipient groups depending on the groups ability to be part of the process of globalization. For instance, the vast economic opportunities opened up in the wake of the process of globalization may be argued to ameliorate the conditions of certain sections of the society and accentuate others at the same time. The sections of society which are well qualified, skilled in the trades required by the establishments coming up in the wake of globalization, having high degree of mobilization and open to imbibe the values and cultural baggage of the countries which are at the centre of the process of globalization are naturally found to benefit immensely from the fruits of globalization. However, those sections of society which remain illiterate, socially immobile, closed to any sort of arrival of values and cultures from outside their social perspective and having a hostile attitude towards things which are not known to them beforehand might definitely loose out on the process of globalization. Above all, the process of globalization appears to be such a double edged weapon that those who utilizes it for their benefit may be argued to gain substantially from the processes and products of it, and those who remain either indifferent or hostile to it might be subjected to various side-effects of the process which may go to harm the interests of such sections of people in a big way.

In the case of women, the process of globalization, undoubtedly, seems to have opened a number of avenues through which they could improve their socio-economic conditions in society. In economic terms, the creation of the vast opportunities of employment and the need for skilled and sophisticated women to manage certain kinds of jobs have been able to provide ample opportunities to the women to come out of the four walls of their household and become part of the economic boom in the country. Similarly, the adoption of the western systems of economic organization and procedures, advertently or inadvertently carries with it the value of treating the men and women at par in so far as providing employment is concerned. In such circumstances, some sort of subtle transformation is witnessed in the social status and position of the women as they are now treated on equal footing as men in terms of their venturing out of the house to join office or factory and be an independent personality in her own weight. Thus, the positive spin offs of the process of globalization on the socio-economic status and position of women in society appear to be significant despite the fact that India remains a traditional society.

Despite certain ameliorative effects of the process of globalization on the status of women in Indian society, the impact of globalization has been found to be negative in a number of ways on the position of women. In this regard, the most obvious impact seems to be the commoditification of the idea of women to serve the interest of the multinational companies. As is quite often seen in the market economies, the bodies are put to enormous use in order to enhance the sale of the goods and services to the customers. Women are use like just other means of promoting the marketing of certain things. Under such circumstances, the dignity and human rights of the women as a respectful human being in society get eroded. These things become more deplorable in the societies like India where the body of a woman is as pious as anything. Thus, commercialization and commoditification of the women body in the wake of the strengthening of the process of globalization appears to be an obvious side effect which needs to be regulated by the state regulatory bodies or the bodies of the advertisers and broadcasters themselves.

Women in India constitute the nucleus of the family system. With the changing status of women, the character of the family system is also witnessing subtle changes in the process of globalization. As an expert explores, '[T]he impact of globalization on the Indian family can be viewed in two ways. One may argue that in the era of economic restructuring through World Bank, WTO and IMF led policies of liberalization, privatization and globalization, the family is emerging as a much stronger institution than ever before. The alternative point of view is that as a result of globalization, institution of family is becoming progressively weaker as individualism grows. The rapid increase in the mobility of a younger generation as they search of new employment and educational opportunities weakens the family structure…In India, men, women and children, irrespective of caste, creed, religion and/ or class look to the family for assistance during troubled times, when they are sick or need some rest. Under the economic conditions fostered by liberalized markets, the socio-cultural relationships within the family are also undergoing a dramatic change.' (Somayaji, 2006: 336-37) What is, however, quite pertinent to note in this context is that in the eventuality of the break up in the socio-cultural relationships within the family, the major component to bear the burnt of this break up has invariably been the women.

Finally, the wave of globalization necessarily brings in is wake the cultural baggage of the countries who are at the helm of the whole process of globalization. Such cultural intrusion exposes the cultural and value systems of the developing countries to the alien cultural ethos. As a consequence, the erosion in the value system sets into motion leading to some sort of imbalance in socio-economic value system of the globalizing country. In such a scenario, the moral bonds that tie the men in the social set up with the women gets loosened and in many cases, the women happen to be the sufferer on this count. For instance, the erosion in the value system of taking care of ones old age parents or taking the solemn responsibility of taking care of ones wife has been the cultural moorings of the Indian society. With the loosening of such moral bonding, the men feel free to get themselves absolved of the responsibility of taking care of their parents or wife which reduces the lives of such people to a miserable one with no other alternative refuge in sight.

Concluding Observations

The idea of Globalization seems to have become the stark reality of life for all the people in almost all parts of the world irrespective of the fact some people might like it or not. With the crumbling of the cold war in the wake of the demise of Soviet Union as the competing super power in the world during early 1990s, the capitalist system successfully tried to expand the domain the economic operations of the multinational countries. However, very soon, the nascent idea of globalization was aided by the rapid innovations and advancements in the field of science and technology giving birth to the hitherto unknown techniques like information technology which reduced the spatial distance between the nation in terms of time and space. The process of globalization, therefore, underwent a subtle transformation in that it no longer remained confined to the domains of economic activities only and encompassed within its ambit the entire spectrum of human life including social, cultural and political as well. Thus what was considered to be only economic interactions amongst nations originally became interactions amongst various societies, cultures and political systems. In such a situation, the various sections of society started feeling exposed to the vagaries of globalization. Consequently, while very few sections of people felt the positive impacts of the process of globalizations, the majority of people, belonging to the vulnerable sections of society witnessed the negative repercussions of the globalizations which are getting reflected in the numerous anti-globalizations protests, movements and campaigns being organized in various parts of the world from time to time.

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Suggested Questions

1. What do you understand by globalization? Analyze its impact on workers and peasants in India.
2. Analyze the impact of globalization on the marginalized sections of society with reference to unorganized workers.
3. Examine the ways in which the process of globalization has impacted the dalits, adivasis and women in India.

Lesson 1 Unit II

HUMAN RIGHTS: VARIOUS MEANINGS

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The theory and practice of human rights have emerged as one of the most profound issues in the discipline of political science in contemporary times. The issue has acquired added significance in the wake of the sweeping transformations taking place in the socio-economic, political and cultural systems of the developing countries owing to, among other things, the wave of liberalization and globalization. The discourse of human rights has been taken to be one way of putting people first in place of the hitherto prevalent norm of state level analysis of things in face of growing inequality and wide spread poverty that characterized the era of neo-liberal movement coupled with the uneven distribution of the benefits of the processes of globalization. The present chapter seeks to explore the various meanings of the concept of human rights as it is understood by different people owing to their particular perspectives on the idea of human rights. Defining the concept in terms of both its etymological as well as elemental connotations, the chapter focuses on the various theoretical propositions in which the different meanings of the concept are supposed to be rooted.

Context of Various Meanings

As an elusive concept, the idea of human rights defies the possibility of a unanimous core and content. The definitional difficulty of the concept arises mainly from the complexity involved in sorting out the competing moral justifications advanced by various philosophical viewpoints on the issue. As an authority on the subject points out, '[A]nd part of the complexity is that in defining (the concept) we must confront the conflicts between utilitarian and anti-utilitarian philosophy, between values of equality and liberty, between absolute and relativist conceptions of rights, all issues of moral justification.' (Shestack: 2002, 34) Besides, the ideological contradistinctions between the liberal and the Marxist perspectives on the issue pose serious problems in sorting out the operational dynamics of human rights in terms of the nature and content of the human rights, degree of protection available, the institutional mechanism to ensure the protection of human rights etc.

The basic philosophical debate on the concept of human rights remains rooted in the competing arguments of absolutism or universalism and cultural relativism. The fundamental argument of the proponents of universalism, drawing its philosophical inspiration from the ideology of liberalism, goes that the human rights are the entitlements of treatment which people enjoy simply by virtue of being the human beings. Hence, such rights are universal as their possession does not become contingent upon fulfillment of any pre-condition including belonging to a particular state of culture. This line of argument gained much currency with the adoption of the Universal Declaration of Human Rights by the United Nations in 1948 and widespread ratification of the Declaration by various states.

However, the universalist perspective on human rights has been criticized by the proponents of the cultural relativism by highlighting the temporal as well as the spatial parochialism of the notion of universal human rights. Temporally, they contend that the origin of human rights in the post eighteenth century enlightenment era attributes a restrictive notion to the concept as in the urge to secure and assert the 'rights of man' as against the rights of state. In their zeal to accord a somewhat incontrovertible status to the idea of rights, the theoreticians of the age failed to appreciate the holistic nature of the human rights encompassing the requirements of both the state and the individuals at the same time.

Further, spatially, the concept of human rights is said to have emerged in a particular cultural milieu centered in the Western Europe. The argument of cultural parochialism of human rights goes on to impress upon the inherent differences in the cultural moorings of different people inhabiting various parts of the world. Hence a particular idea or notion that emerged in a particular and localized cultural setting could not be imposed upon the people with a different set of cultural attributes. Any effort at the imposition of such an idea on the people of other cultures is alleged to amount to some sort of cultural imperialism. Thus, the charge of temporal and spatial parochialism of the human rights remains the formidable attack mounted by the supporters of the idea of cultural relativism drawn mainly from the socialist as well as the developing countries of the world to counter the claim of universality of human rights in the post second world war times.

In addition to the critique of cultural parochialism, emanating from the people of cultures other than the western European, the notion of universal human rights has not been unanimously accepted as an infallible guarantor of human dignity even by some people in the place of its origin itself. Two specific charges have been leveled against the notion of human rights as is understood in the liberal traditions. First, the proponents of the idea of human rights are accused of elevating individualism above collectivism is such a way that the former stands in a detrimental manner to the fulfillment of the values of latter which in the long run goes to undermine the concept and value of what is known as the collective or group rights.

Second, the idea of human rights is also criticized for emphasizing the negative rights like right to be left alone over the value of the positive rights such as the attainment of a particular level of resources which would provide the socio-economic conditions for the negative rights. The critiques argue that inviolability of the individualistic negative rights, as asserted by the proponents of the universal human rights, becomes untenable in the face of growing complexity of life and concomitant requirements of state intervention in such issues of human survival. Hence, the necessity of development may necessitate the setting aside of certain fundamental negative rights in certain cases. For instance, in order to control the unbridled urban growth in a ecologically fragile area and to protect its ecosystem from degraded by increasing inhabitation, the society may seek to control the freedom of movement and choice of occupation and settlement of the individuals which may be taken to be an affront to the negative rights of the people. But such an action would be well appreciated in view of its ameliorating impact on the people and other species inhabiting in that particular ecosystem.

The liberal interpretation of the concept of human rights has also met with an indomitable critique emanating from the ideology of Marxism. Indeed, before the articulation of the third world perspective on the notion of human rights, two major ideologies encompassing ideas on human rights, with inherent antitheticality to each other to a substantial degree, had been those of Liberalism and Marxism. While the liberal perspective on the issue was represented by the humanistic philosophy of the eighteenth century enlightenment, the Marxist thought on the subject came in the writings of Lenin, Mao etc. With the proponents of each ideology sure of the truth and ultimate universal acceptance of their doctrines, there remained almost no meeting ground between the basic postulates of the two ideologies. Moreover, their seemingly unbridgeable differences in views on property, class struggle, individualism, equality and role of the state ensured that there is no common ground is available to arrive at mutually agreeable percepts of human rights which could have become the norm for the other countries of the world to adhere to.

The basic disagreement between the two ideologies encompassed not only differences on the meaning of the terms like ‘democracy’ and ‘freedom’ but also what is to constitute the core of human rights. Thus, while the liberals emphasize upon the value of the civil and political rights as the backbone of any universal declaration of human rights, the communists insist on giving place of prominence to the social and economic rights in any such scheme of universal declaration of human rights. Thus, the universalist notion of human rights as proposed by the liberal theorists does not go well with the ideology of communism.

Finally, the arrival at a universally acceptable meaning of human rights is muddled by the etymological roots of the concept. Consisting of the two terms – ‘human’ and ‘rights’- the concept gets the clarity of understanding only when the precise connotations of these terms are acceptably spelt out. Explaining the issues involved in defining the term ‘human’, an expert notes, ‘[T]o speak of ‘human’ rights requires a conception of what rights one possesses by virtue of being human. Of course, we are not speaking here of human rights in the self evident sense that those who have them are human, but in the sense that, in order to have them, one need only be human. Put another way, are there rights that human beings have simply because they are human beings and independent of their varying social circumstances and degrees of merit? The answers which individuals and states provide to this question have great bearing on their attitudes on their vigour with respect to protecting human rights.’(Shestack: 2002, 33)

As Shestack continues,‘[T]he definitional process does not become easier when we examine the second word in the term human ‘rights’. Certainly, ‘rights’ is a chameleon-like term which can describe a variety of legal relationships. Sometimes, ‘right’ is used in its strict sense of the right-holder being entitled to something with a correlative duty in another. Sometimes, ‘right’ is used to indicate an immunity from having a legal status altered. Sometimes it indicates a privilege to do something. Sometimes, it refers to a power to create a legal relationship. Although all of these terms have been identified as rights, each involves different protections and produces variant results.’ (Shestack: 2002, 33) Thus, the answers to the questions of etymological connotations to the terms involved in human rights would require some sort of moral judgment rooted in philosophical perspectives of the thinkers which in turn would go to clarify the various meanings of the concept.

Understanding Human Rights

Having analyzed the issues and contexts which facilitate the defiance of a universally accepted meaning of human rights, it now becomes to easier to have a broader understanding, if not definition, of the concept of human rights. While attempting an understanding of the concept, it needs to be kept in mind that the authors have tried to delineate the broad contours of the concept based on the emphasis they would like to dovetail to the concept. Thus, at the very rudimentary level, the concept has been defined by Subhash Kashyap as such, 'human rights are those fundamental rights to which every man and woman inhabiting any part of the world should be deemed entitled by virtue of having born as human beings.' (Kashyap: 1978, 2)

Such an understanding of the concept of human rights appears to be quite sweeping and all encompassing as it places neither places any precondition nor any fetters on the entitlement of the fundamental rights which are found essential for bare survival of the person as human beings. Similar sentiments have been echoed by the statement that 'human rights pertain to all persons and are possessed by everybody in the world because they are human beings. They are not earned, bought or inherited, nor are they created by any contractual undertaking.' Thus, such perspectives on human rights provide an absolute position to the idea by making it free from any man-made qualification and making it contingent upon only the birth of people as human beings.

At another level, human rights have been conceptualized as some sort of relationship which a person carries with his or her fellow individuals as well as the state which in turn ensures a kind of protection to the freedom and basic attributes of humanity of that person. As Bennett points out succinctly, '[T]he question of human rights is concerned with interpersonal relationships and with the relationships of the individual to governmental authorities at all levels from local to international. Human rights include those areas of individual or group freedom that are immune from governmental interference or that, because of their basic contribution to human dignity or welfare, are subject to governmental guarantee, protection or promotion.' (Bennett: 1988, 260)

However, such a conceptualization of human rights places the concept in a perilous position as the focus of attention in it remains centered on the community or governmental structures. In such a scenario, the danger is that once the human rights are started being contextualized with reference to the time or place, its absolute character might be decimated to equate the human rights with some sorts of citizenship rights. This situation may warrant the inhabitation of an individual in a particular state in order to be able to secure his or her human rights, endangering the life and liberty of the people like Taslima Nasreen who has not only been declared a sort of unwanted person in her own country but also in India where she took refuge after being forcibly driven out of her country. A more plausible manner of conceptualizing human rights, therefore, would be to take them as some kind of entitlement to humane treatment that a person may enjoy by dint of being a human being only. Moreover, the universality of human rights need to be emphasized in order to make their enjoyment absolute and without any precondition in terms of either inhabitation in a particular state and culture or fulfilling any positivist condition set by any state.

Given the sweep of positive liberalism in the post second world war times, a number of scholars have tried to define the human rights in terms of the Laskian discourse by emphasizing upon the innate developmental value of human rights to secure a dignified and accomplished life for the people. As an expert notes, '[T]he concept of human rights is closely connected with the protection of individuals from the exercise of state, government or authority in certain areas of their lives. It is also directed towards the creation of social conditions by the state in which individuals are to develop their fullest potential.' Similarly, another exponent of the developmental notion of human rights asserts that human rights are those rights which are considered to be absolutely essential for the survival, existence and personality development of a human being.

These conceptualizations of human beings have been at the forefront to elevate the position of human beings from those of negative rights whose enjoyment was ensured by leaving an individual alone and not interference in his or her life on the part of the state to that of imposing positive obligations on the state to ensure the minimum standards of living conditions for the people so that they may be able to not only live a life but live a dignified life with the adequate facilities to develop his or her self as per their volition. This has become quite a gratifying idea for the people in those countries of the world where the socio-economic conditions of the people are quite miserable and the responsibility must be dovetailed on the shoulders of the government to ensure the minimum avenues of life to the people so that they are able to live a meaningful and productive life in the society.

In final analysis, the concept of human rights has been subject to varied definitions owing to the differing perspectives of the thinkers on the content and value of human rights as an inalienable aspect of human life. Despite the variations in conceptualization of the idea, the final word in this regard seems to have come from the United Nations Centre of Human Rights which defined the concept as consisting of those rights which are inherent in our nature and without which we cannot live as human beings. Conceived thus, the human rights are supposed to be made up of two inseparable categories of rights – rights that are essential for the dignified human existence, and rights which are essential for the adequate development of human personality. (Guha Roy: 2004, 2) Though these rights do not have the force of law as they do not fall into the category of fundamental rights guaranteed in the constitutions of various countries, they have become, in varying degrees, fundamental in the governance of these countries.

The United Declaration of Human Rights has gone a long way in securing a graceful place to the human rights in the legal system of several, if not all, countries of the world. Consequently, a number of countries are in a position to elevate the status of certain human rights to the level of legal rights in their constitutional systems guaranteeing a common standard of behaviour by the government towards both its own citizens and foreigners alike. Above all, the setting up of the national human rights commissions in most countries to act as the watchdog of the formulation of standards and implementation of the human rights have secured the long deserved position of respect and legal backing to the human rights in such countries. However, there are still a number of countries in the world that differ with the rest of the world on the notion and operationalization of the human rights owing to their distinct perspectives on the subject.

Human Rights: An Evolutionary Framework

The idea of human rights seems to be a product of a long process of evolution. Beginning in the form of the natural rights, as conceptualized by the social contract theorists, in its present state, human rights have become the sine quo non of the humanity at large. Virtually, in all the times and in all forms of human organization, there has been a tendency on the part of the rulers to suppress the urge of the masses to enjoy the basic prerequisites of human life, leading to the emergence of a formidable crusade for the restoration and protection of human rights. The concept of human rights, therefore, is with a history, an idea that changes in both content and social function. (Kamenka et al.:1978, vi)

The conceptual understanding of the notion of human rights has been facilitated by a number of western scholars like Cess Flinterman, Peter Baehr and Karek Vasak who have tried to delineate the evolution of human rights into various generations. Such a categorization of the human rights appear to have been motivated not only by the changing times within the states and constantly varying conditions in the life of the people but also by subtle transformations taking place in the broad contours of the international political system. For instance, while the civil and political rights have been at the core of the liberal societies for long, the clamour for the social and economic rights started taking shape in the wake of the new deal policies in the United States and the dawn of welfare oriented labour regimes in various countries of Europe. But the most significant impetus for the evolution of new generations of human rights came presumably with the formidable entry of the socialist as well as the newly independent countries in the arena of international political system in the post-second world war times.

The advent of the very idea of human rights has been argued to have taken place with the establishment of the liberal democratic systems in the western countries. Rooted essentially in the civil and political rights, the first generation human rights are in the nature of negative rights of the people whereby the state has been barred to interfere in the individual matters of the citizens. Hence, the first generation human rights included within its rubric both the personal rights such as the rights to life, liberty and security of the person, prohibition of slavery and torture, procedural guarantees in civil and criminal trials, freedom of movement and protection against arbitrary expulsion, rights to privacy, marriage, family life and rights of children, as well as the political freedoms and political rights which seek to secure to the people a respectful space in the public and political life of the country. A significant aspect of these rights, also known as classical human rights, is that they impose the least possible obligations on the individuals as well as the state toward each other. These have primarily been rights whose protection and enjoyment could have been facilitated by the scrupulous observance of the doctrine of laissez-faire in the affairs of both the people and the state, without any substantive positive responsibilities of the two.

In the aftermath of the independence of a number of Afro-Asian countries, the second generation human rights started taking shape with the idea that socio-economic and cultural rights were a prerequisite for the enjoyment of the civil and political rights. In other words, for the enjoyment of rights like right to freedom and speech and expression, right to freedom of movement etc. one has to have the right to work, shelter, food, social security, healthcare, education, right against exploitation and right to freedom of cultural and religious rights. Such human rights are essentially rooted in the thinking of the socialist countries who took the western idea of civil and political rights as nothing but hollow promises to give the false consciousness to the people that they are living an empowered and dignified life. On the contrary, the second generation of human rights emerged as the provisions of positive obligations on the part of the state to secure for the people the basic social and economic facilities and requirements which form the basis of a contended, delightful and autonomous life to the common people.

The third generation of human rights seems to be based on the realization of the formidability of their collective demands as against their individual demands for the attainment of cherished values amongst those countries of the world who would feel vulnerable and weak enough to seek any sort of rights and privileges for them. Hence, the genesis of this generation of human rights was led by scholars and thinkers of the socialist and the third world countries who conceived human rights as collective rights of a nation such as the right to development, the right to peace, the right to one's own natural resources and the right to one's own cultural heritage.

More importantly, in the context of the contemporary trends towards globalization and liberalization, the collective right of nation especially the right to protect environment and natural resources appear to be the most significant for the survival of the developing countries against the economic imperialism of the multinational corporations having their roots in the developed countries. The third generation of human rights also emphasized on the 'group rights' such as the rights of the weaker sections of the society. It argues for special provisions for the protection and promotion of the interest of the vulnerable groups in the society such as women, children, refugees, displaced persons, minorities, tribals, landless and bonded labour, unorganized labour, peasants, under trials, prisoners of war and people with disability.

Theoretical perspectives on Human Rights

An understanding of the concept of human rights could also be attempted with reference to the basic theoretical perspectives on the subject. Consisting of both the classical as well as the contemporary theoretical formulations, such an analysis of the concept of human rights not only affords a clearer exposition of ideas on the issue from a particular ideological angle but also provides a critique of the dominant theoretical perspectives underpinning the discourses of human rights for long.

Liberal Perspective on Human Rights

Despite being the basic ideological standpoint from which the notion of human rights has been conceptualized, liberalism does not come out as some sort of homogenous theoretical enterprise to produce a universally acceptable concept of human rights. Since the times of the social contract theorists like Locke whose theorization on natural rights of human beings turned out to be the bed rock upon which the liberal democratic systems of government were founded, a number of other intellectual streams pioneered by people like Jeremy Bentham, John Rawls etc. have argued for newer conceptualization of the idea of rights. Yet, the fundamental philosophical core of liberal conception of human rights remain the concept of natural rights of individuals which were to be upheld against other individuals and in most cases against the state itself. Ordinarily, the subtle attributes of the nature of human beings are characteristically seen as underwriting basic claims on behalf of the individual, notwithstanding the accidental interplay of social and economic life.

Contesting the arguments of the natural rights theorists, the utilitarian thinkers advocated a theory of rights based on the value of utility. Rooted in the classical utilitarianism doctrines, as propounded by Bentham, that every human decision was motivated by some calculation of pleasure and pain, it conceptualizes the rights not with reference to abstract individual rights but in terms of what tends to promote the greatest happiness of the greatest number. Thus this theory appears in contrast to natural rights theory which is a distributive and individualizing principle that assigns priority to the specific basic interests of each individual entity. However, despite its egalitarian appearances, the utilitarian formulations met with scathing critique on the point that it sacrifices the well being of the individuals for what are claimed to be the aggregate interests of society.

In recent times, the liberal intellectual scene is dominated by the theory of rights based on justice drawing on the philosophical foundations provided by John Rawls. In brief, Rawls articulates his framework of justice, contextualized in the mode of social contract tradition, in which two principles take central position with the first getting priority over the second. The first principle states that each person in society is to have a right to as much freedom as is compatible with freedom for others. As per the second principle, social and economic inequalities are to be so arranged that they are to the greatest advantage of the least advantaged, and attached to offices and positions open to all under the fair conditions of equal opportunity. In Rawls's formulation, human rights appear to be the end of justice. In other words, the role of justice is critical in have a proper understanding of human rights. Hence, the principles of justice, as propounded by Rawls afford a way of assigning rights and duties in the basic institutions of society and define the appropriate distribution of the benefits and burdens of social cooperation. Impliedly, thus, human rights gain the crucial position in the liberal order emerging out of his theory of justice as Rawls maintains that in this order each person possesses 'an inviolability founded on justice' which cannot be overridden even the requirements of the welfare society. Though Rawls's theory has been subjected to various criticisms, it is still considered to be a powerful theoretical intervention to support the institutions of modern democracy including the human rights in the liberal societies.

Marxian Perspective of Human Rights

The Marxian formulations on human rights appear to be more a critique of the prevailing liberal theories of human rights than propounding of a distinct Marxian theory on the subject. Mounting a scathing attack on the natural rights theory, which forms the essence of the liberal thought, Marx regarded it as idealistic and ahistorical and found nothing natural or inalienable in such rights. He asserted that in liberal societies where the capitalists monopolize the means of production, the notion of individual human rights happen to be nothing but a bourgeois illusion. The rights of man, to Marx, are nothing but the rights of egoist man, of man separated from other men, and form the community. In liberal societies, since each individual seems to be attached with the other persons primarily by the ties of private property and unconscious natural necessity, the recognition of the individual rights of man by such state amounts to nothing than the slavery of the ancient times. Hence, Marxism not only discards the liberal notion of human rights but goes to the extent of blaming it for demeaning and alienating the whole personality of people in the garb of individual rights.

Seeing the essence of an individual in his potential to use his abilities to the fullest and to satisfy his needs, Marxism believes that such a condition can never be afforded by the capitalist societies where the production is controlled by a few for sheer selfish gains. On the contrary, the socialist societies, devoid of class interest, guarantee the actualization of one's potential as they facilitate the return of the men and women to themselves as social rather than economic beings. Such a return is not possible in the non-communist societies as the relationship in them is not between one individual to the other but between classes. But, till the arrival of the stage of communist society, the state remains more or less a social collectivity acting as the instrument for the transformation of society. In such a conceptualization of the nature of society, the existence of individual rights rooted in the state of nature is ruled out for obvious reasons. Hence, in the non-communist societies, only rights which are granted by the state could exist and their enjoyment becomes conditional on the fulfillment of the obligations to society and the state as desired from time to time.

The Marxian view of human rights essentially revolves around the idea of social rights in contrast to the liberal idea of individual rights. Viewed as the product of a distorted vision of human nature and social life of the individuals, the Marxian formulations on human rights have been subjected to many and severe criticisms. It has been termed as 'parental' due the fact that the authoritarian political mass provides the sole guidance in the value choice of such societies. It has also been labeled as monopolizing in view of the fact that no matter what the actual wishes of men and women may be, their true choice it to choose the goals set by the state. The creation of such a 'specie being' is a type of paternalism which not only ignores transcendental reason but negates individuality. In practice, pursuit of the prior claims of society as reflected by the interests of the communist state has resulted in systematic suppression of individual civil and political rights. (Shestack: 2002, 40-41)

Feminist Perspective on Human Rights

As an ideological framework to look at things, feminism has turned out to be a powerful intellectual intervention in the discourses on human rights. Tracing its genesis to the views of writers like Mary Wollstonecraft during the eighteenth century, feminism has primarily been a post-materialist ideology in its focus upon the style and quality of life. Articulating its central argument to extend the reach and scope of politics to the spheres of hitherto left out domain of private life of the people also, the feminists coined their powerful slogan - the personal is political – in order to seek the extension of political analysis and contestations to personal realms like relationships, childcare and household responsibilities. As an expert has noted, '[F]eminism has questioned one of the central pillars of liberalism and the liberal state: the divide between the public and private. This divide has been challenged from both sides, in that feminists have argued that the public world is devalued by its exclusion of women and private concerns from its private purview, and that the private world has suffered by the exclusion of men from domestic duties and child-rearing.' (Browning: 2002, 282) Thus, the feminist formulations on human rights have been advanced to denounce the point that human rights are gender neutral.

The basic concern of the feminists has been to put the gender related concerns of the human rights on the forefront of the international framework for the protection and promotion of human rights. They were vehement in exposing the state centeredness and individualistic content of the international human rights law. The feminists critique of the international body of human rights hover around two fundamental arguments. First, such a body of human rights law does not emphasize, if not ignore altogether, the typicality of human rights for the women owing to the distinctiveness of their physiological anatomy, social and economic conditions of life and lack of formidability in the sphere of political participation. Hence, the existing body of human rights law becomes absolutely irrelevant for the women in the society and serves the interests of powerful lobby of men only in the main. Second, by bracketing out the internal practices of the states and the private domain of the life of the people, the body of human rights law minimizes its reach to such an extent that it becomes more or less meaningless for the majority of people in the world. Given the exercise of the human rights within the internal framework of various countries, the clause of domestic jurisdiction tends to rule out any scrutiny of the practices followed by various states in protecting and promoting human rights in their societies. More disappointing from the feminist perspective has been the exclusion of the private domain from the ambit of human rights as for centuries it is within this domain that the woman has been subjected to confinement for centuries.

The feminist theorists, therefore, seek a restatement of the whole concept of human rights in such a way that it becomes gender sensitive on the one hand and extends the analytical framework of the human rights to the private sphere of social life on the other. However, on the issues of constituting the core of feminist human rights, the different writers in the field do not agree as the pressing demands of a particular section of women activists may differ from the demands of another section of such activists. Hence, while the humanitarian women's group seeks to address the problem of violence against women in armed conflict, the groups from the traditional societies appear to be keener on the health problems and customary practices that are violent against women. A common malaise which most of the women's groups seek to put in a more formidable manner on the agenda of human rights framework relates to the issues of domestic violence, rape and sexual harassment of women. Moreover, a very forceful argument has been put forward by the feminist thinkers against the problem of trafficking and forced prostitution in many countries of the world. In recent times, the feminist formulations on human rights also encompass the case of women living under the Islamic laws with a plea to protect the women's rights from the violations emanating from the religious extremism. In sum, thus, the feminist formulations on human rights have gone to break new grounds for the gender sensitization of existing human rights laws at both national as well as international levels. By elevating the argument of gender equality to the level of politicizing the private domain of the people, the feminists have sought to shatter the whole edifice of male chauvinism and liberate the women from the confines of four walls of the house to help them enjoy a free and fruitful life.

Third World Perspective on Human Rights

The third world perspective of human rights is advanced by those opposed to the argument that the western concept of human rights as evolved in the various international treaties and declarations should have universal applicability in all the countries of the world irrespective of their unique and complex socio-economic, cultural and political characteristics. Quite often termed as the doctrine of 'cultural relativism', the third world perspective has presumably been evolved by two distinct sets of theorists. First category of proponents of the third world perspective of human rights consists of the people arguing against the use of the universal notion of human rights or the western concept of human rights as an instrument of browbeating the track record of the developing countries in protection and promotion of human rights. China stands out prominently amongst the countries taking this line argument to advance the concept of third world perspective of human rights. The second school of thought supporting the espousal of third world perspective of human rights come from the fraternity of those scholars who argue for typicality of the socio-cultural factors in conceptualizing the idea of human rights. To them, therefore, there is nothing called the universal notion of human rights uniformly applicable in all parts of the world.

Conceptually, the idea of third world perspective of human rights is rooted in contextualizing the notion of human rights in the typical cultural milieus of different countries. The basic argument of the third world perspective runs as follows: 'Values have to be understood as part of a complex whole; that complex whole is 'culture'. When discussing the universal applicability of 'human rights' we must take into account the impact that they will have on particular cultures. For some cultures those rights express central values, for others they may, with some revision, be compatible with that culture, for others they may be wholly inappropriate and damaging.' (Hoffman and Graham, 2006: 447) Thus, the basic tenets of the third world perspective on human rights lie in what is called as 'cultural relativism'. In simple terms, cultural relativism in human rights refers to the fact that the human rights cannot be understood in terms of their universal applicability.

In the narrative of third world perspective on human rights the essential point is that an understanding of human rights must be relative to the cultural milieu in which the idea is to be conceptualized or understood. For instance, when a child works in a developed country to augment the earnings of his or her parents, this phenomenon is refereed as an example of child labour. This is so due to the fact that in that country the level of economic development is such that the parents of the child must be in a position to meet at least the basic minimum requirements of the child. Hence, contextual dynamics of that country does not permit a child extend any sort of helping hand to his or her parents in such a way which may be branded as child labour. However, the things take a sort of U-turn in the third world countries keeping in mind the socio-economic and cultural circumstances of these countries. For instance, when the family earnings in many of these countries are so meager that even the basic minimum needs of the family members including the children are not met, it becomes necessary for the child also to do some worthwhile work to augment the earnings of the family. Such types of part time activities of the children are considered as a minor support to the family and that activity needn't be branded as an example of child labour. Therefore, the proponents of the third world perspective on human rights argue that similar yardsticks could not be applied to all the countries uniformly as the underlying conditions differ in each of them.

This, however, is not to argue that the proponents of the third world perspective on human rights totally reject the moralistic dimensions of the human rights as advanced by the western countries. Though endorsing the point that morality of the notion of universal human rights may be valid, considerations must also be given to the distinct socio-economic and cultural circumstances of different countries while arguing for the universal applicability of such human rights. In other words, the fundamental objection of the third world theorists on human rights lie in the somewhat coercive universal application of the human rights as argued by the supporters of the universal human rights theory. Thus, there exists some type of grey area in the notion of human rights as advanced by the proponents of the third world perspective. For instance, though they accept the moral weight of the theory of universal human rights, their duality becomes apparent when it comes to operationalize the universal human rights in all the countries of the world notwithstanding the fact that there exists a vast variation in the socio-economic and cultural contexts of various countries.

The third world perspective on human rights appears to have come into being as result of the game of one-upmanship being played between the western countries on the one hand and vast number of third world countries, on the other, on the issue of evolving a propitious theory of human rights. With most, if not all, of the western countries having social homogeneity, economic prosperity, political democracy and cultural uniformity, it became prudent for them to evolve a system of human rights suited to the unique circumstances prevailing over there. However, in the course of time, when the same yardsticks of human rights were sought to be applied to the developing countries having their own unique socio-economic, cultural and political systems, it became difficult for them to observe the same canons of human rights as prevalent in the western countries. Hence, many of the developing countries started questioning the notion of western concept of human rights in order to find a way out to evolve an alternative system of human rights which would be propitious to their own typical circumstances. The third world perspective on human rights is, thus, rooted more in the practical difficult in applying the notion of human rights as prevalent in the western countries than in intellectual disagreement with the western notion of human rights.

CONCLUDING OBSERVATIONS

The idea of human rights has become one of the most powerful concepts in the political theory in the contemporary times. However, owing to certain obvious reasons, there does not seem to be unanimity amongst the scholars on the meaning and characteristics of the concept of human rights. Despite the adoption of the United Nations Universal Declaration of Human Rights, the scholars in various parts of the world continue to view the subject with their own ideological perspectives. Hence, we come across the problem of various meanings of the idea of human rights. However, it must be noted that the diversity of opinion on what constitutes human rights has gone to enrich the subject matter of human rights. It seems to be so in the sense that critical appreciation of various perspectives might lead to the crystallization of the idea of human rights in a quite holistic and acceptable way. In that case, it would probably be possible for all the countries in the world to agree on a standard definition of the concept so that some sort of universal protocol or convention may be developed which can secure the concurrence of all the countries to evolve a common framework of human rights in the twenty first century.

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Suggested Questions

1. Why are there 'various meanings' of human rights? Explain your understanding of the notion of human rights.
2. Trace the evolution of the concept of human rights with special reference to the anti-colonial struggles.
3. Examine the important theoretical perspectives on the concept of human rights.

Lesson 2

UNITED NATIONS DECLARATIONS AND COVENANTS

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The notion of Human Rights is as old as the human civilization. Human rights are described as basic rights and freedoms to which all humans are entitled. The civil and political rights (like right to life, liberty, freedom of expression and equality before the law) Examples of rights and freedoms which are often thought of as human rights include civil and political rights, such as the right to life and liberty, freedom of expression, and equality before the law; and social, cultural and economic rights, including the right to participate in culture, the right to work, and the right to education.

The *Magna Carta* or "Great Charter" was one of England's first documents containing commitments by a sovereign to his people to respect certain legal rights.

In democratic societies fundamental human rights and freedoms are provided under the assurance of the law of land and thus, their protection becomes a responsibility of those who are assigned with the task of their protection. These rights are largely classified into a). civil and political rights and b). economic, social and cultural rights. While the former rights are more in the nature of restriction against the authority of the State from infringement upon the undeniable freedoms of an individual, the later demands the State to assure positive circumstances to make individual capable enough to exercise the former. The main objective of both sets of rights is to empower an individual for his/her effective participation in the affairs of the society.

Theories of Human Rights:

There are two basic schools of thought in the debates on human rights[i], they read:

a) relative and b) universal.

Relativist thinkers believe that while human rights are necessary however they may vary according to culture. Usually, a standard of human rights can be adapted to fit into a given culture, at the same time, the basic principle of this paradigm is that all cultural practices have a purpose in the culture and therefore fulfill some purpose and should be accepted on face value.

On the other side, the *Universalist* thinkers support that an international paradigm on human rights needs to be applied uniformly across the world. Followers of this school of thought strongly support the efforts of the UN in developing international covenants and treaties that work to develop an international dialogue and consensus.

Except this there are some other theoretical approaches which explain how and why human rights become part of social expectations. One of the oldest Western philosophies on human rights is that they are a product of a natural law, stemming from different philosophical or religious grounds. Other theories analyze that human rights codify moral behavior which is a human social product developed by a process of biological and social evolution (by Hume). Human rights are also explained as a sociological pattern of rule setting (the sociological theory of law and the work of Weber). These theories include the belief that individuals in a society accept rules from legitimate authority in exchange for security and economic advantage (as in Rawls).

Natural rights

The theories of natural law place human rights on a natural moral, religious or even biological order which is independent of transitory human traditions or laws.

The main philosophers of natural justice or natural rights are Socrates and his philosophic heirs, Plato and Aristotle. Saint Thomas Aquinas, in his interpretation on Aristotle's work, projects him to be the father of natural law. The development of this tradition of natural justice into one of natural law is usually attributed to the Stoics.

Natural law theories have been analyzed greatly in the philosophies of Thomas Aquinas, Francisco Suárez, Richard Hooker, Thomas Hobbes, Hugo Grotius, Samuel von Pufendorf, and John Locke.

The 17th century philosopher Thomas Hobbes provided a contractualist theory of legal positivism on what all men could agree upon. The main subject of contention was the concept of happiness, but a broad consensus could form around what they feared (violent death at the hands of another). Thus the natural law suggested, "how a rational human being, who was seeking to survive and prosper, would act". It was revealed by considering the natural rights of humankinds, whereas previously the natural rights were discovered by considering the natural law. The only way, as Hobbes says, natural law could prevail, when men submit to the commands of the sovereign. In this, he laid the foundations of the theory of a social contract between the governed and the sovereign authority**.**

Hugo Grotius described his philosophy of international law on natural law. He said that "even the will of an omnipotent being cannot change or abrogate" natural law, which "would maintain its objective validity even if we should assume the impossible, that there is no God or that he does not care for human affairs.**"** It is this famous argument which made natural law no longer dependent on theology.

John Locke included natural law into many of his theories and philosophy, especially in *Two Treatises of Government*. Locke turned Hobbes' description around by analyzing that if the ruler went against natural law and failed to protect "life, liberty, and property of the people," they could justifiably overthrow the existing state and create a new one**.**

In popularity, the term "natural rights has been replaced by "human rights, because the rights are less and less frequently seen as requiring the natural law for their existence.

Social contract Theory of Human Rights

Jean-Jacques Rousseau, a Swiss-French philosopher, illustrated the existence of a hypothetical social contract, in this contract a group of free individuals is in agreement to establish institutions for the sake of the common good to govern themselves. This reverberated the earlier notion of Thomas Hobbes that there is a contract between the government and the governed and led to John Locke's argument that a failure of the government to secure rights is a failure which justifies the elimination of the government.

Reciprocity

The Golden Rule or the *ethic of reciprocity* argues that one must do unto others as one would be treated themselves; the logic being that reciprocal recognition and respect of rights guarantees that one's own rights will be protected. This principle of reciprocity can be found in all the major religions but in only slightly differing forms, and was protected in the "Declaration Toward a Global Ethic" by the Parliament of the World's Religions in 1993.

History of Human Rights:

The history of human rights covers thousands of years and draws upon religious, cultural, philosophical and legal developments throughout recorded history. Several ancient documents and later religions and philosophies contained a variety of notions and ideas that may be considered to be human rights, for example, the Cyrus cylinder of 539 BC, (a declaration of intentions by the Persian emperor Cyrus the Great after his conquest of the Neo-Babylonian Empire), the Edicts of Ashoka declared by Ashoka the Great between 272-231 BC; and the Constitution of Medina of 622 AD, drafted by Muhammad to mark a formal agreement between all of the significant tribes and families of Yathrib (later known as Medina), including Muslims, Jews and Pagans. The English Magna Carta of 1215 is predominantly noteworthy in the history of western law, and is therefore significant in international law and constitutional law today. The establishment of the International Committee of the Red Cross, the 1864 Lieber Code and the first of the Geneva Conventions in 1864 laid the foundations of International humanitarian law, which was further developed after the Two Worlds Wars.

Much of contemporary human rights law and the basis of most modern interpretations of human rights can be traced back to relatively recent history. Two major revolutions of the 18th century, like, the United States (1776) and France (1789), led to the implementation of the 'United States Declaration of Independence' and the 'French Declaration of the Rights of Man' and of the Citizen respectively, caused the establishment of certain rights. Furthermore, the Virginia Declaration of Rights (1776) arranged a number of fundamental rights and freedoms.

These were followed by development in philosophy of human rights by Thomas Paine, John Stuart Mill and Hegel during the 18th and 19th centuries. The term human rights probably came into exercise sometime between Paine's *The Rights of Man* and William Lloyd Garrison's *The Liberator* (1831).

In the arena of human rights, many groups and movements achieved intense social changes over the course of the 20th century. In Western Europe and North America, movements of labour unions caused the development of laws which granted workers the right to strike, established minimum work conditions and regulated child labour. The women's rights movement achieved the right to vote. National freedom movements in many countries succeeded in ousting colonial powers. Movements by long-oppressed racial and religious minorities gained success in many parts of the world, like the civil rights movement of minorities and women in United States.

The Two World Wars and the huge losses of life and gross abuses of human rights due to them were a driving force behind the development of modern human rights laws. The League of Nations (which was established in 1919 at the negotiations over the Treaty of Versailles after the end of World War I), included disarmament, preventing war through collective security, settling disputes between countries through negotiation, diplomacy and improving global welfare as its main goal. Some of the rights which were enshrined in its Charter, later included in the Universal Declaration of Human Rights.

At the 1945 Yalta Conference, the Allied Powers agreed to create a new body to succeed the League's role. This body today is known as United Nations. Since its formation the United Nations has been playing an important role in international human rights law. Following the World Wars the United Nations and its members developed much of the instruments and the institutions of law which now make up international humanitarian law and international human rights law.[ii]

The United Nations and the Question of Human Rights

The United Nations Charter provides the "inherent dignity" and the "equal and immutable rights of all members of the human family." Keeping these human rights principles as "the foundation of freedom, justice, and peace in the world", is fundamental to every undertaking of the United Nations. The promotion and protection of human rights has been a major concern for the United Nations since its birth in 1945, when the Organization's founding nations determined that the horrors of The Second World War should never be allowed to re-emerge. Therefore three years later, the UN General Assembly declares that 'respect for human rights and human dignity is the foundation of freedom, justice and peace in the world', through Universal Declaration of Human Rights. Over the years, a whole instruments and mechanism of human rights has been developed to guarantee the primacy of human rights and to deal with human rights violations wherever they transpire.

The UN General Assembly

The United Nations currently consists of 185 *member states*. The General Assembly controls the UN's finances, makes non-binding recommendations, and oversees and elects members of other UN organs. The General Assembly is equipped with power of votes to adopt human rights declarations and conventions, which are also known as treaties or covenants. For example, in 1948 when the UN Commission on Human Rights drafted the Universal Declaration of Human Rights, the General Assembly voted to implement the document. The General Assembly is the major deliberative body of the United Nations, it reviews and takes appropriate action/s on human rights matters referred to it by its Third Committee and by the Economic and Social Council.

The Economic and Social Council

The Economic and Social Council, consists 54 member Governments. It makes recommendations to the General Assembly on the matters of human rights and reviews reports and resolutions of the Commission on Human Rights to convey them with amendments to the General Assembly. The Commission on Human Rights, the Commission on the Status of Women and the Commission on Crime Prevention and Criminal Justice is created to assist the ECOSOC. It also works closely with organizations of the United Nations system which have a special interest in the matters of human rights.[iii]

The Commission on Human Rights is the main policy-making body which deals with the issues of human right. It is composed of 53 member Governments, and prepares studies, makes suggestions and prepare drafts on international human rights conventions and declarations. It also examines allegations of human rights violations and also handles communications relating to them. The Economic and Social Council supervises the work of many intergovernmental organizations (IGOs) and other UN commissions, such as the UN Commission on Human Rights.

The UN Commission on Human Rights

It consists of fifty-three member states elected by ECOSOC. The UN Commission on Human Rights instigates studies and fact-finding missions and confers specific human rights issues. It has empowered with the responsibility to initiate and draft human rights declarations and conventions. *ECOSOC* also oversees intergovernmental organizations (IGOs), which are specialized agencies that function independently with their own charter, budget, and staff but are affiliated with the UN.[iv]

The Commission has also established some subsidiary bodies, including the Sub-Commission[v] on Prevention of Discrimination and Protection of Minorities. The Sub-Commission is the chief subsidiary body of the Commission on Human Rights. It was established by the Commission at its first session in 1947 under the authority of the Economic and Social Council (ECOSOC). In 1999 the Economic and Social Council changed its title from Sub-Commission on Prevention of Discrimination and Protection of Minorities to Sub-Commission on the Promotion and Protection of Human Rights. Its main functions include to commence studies, particularly in the field of the Universal Declaration of Human Rights, and to make suggestions or recommendations to the Commission which concern the prevention of discrimination of any kind and the protection of racial, national, religious and linguistic minorities and to execute any other functions, this may be delegated to it by the Council or the Commission.

The Sub-Commission is made of 26 experts who act in their personal capacity and are elected by the Commission with due regard to impartial geographical distribution. The present membership of the sub-commission mainly consists of seven experts from African States, five from Asian States, five from Latin American States, three from Eastern European States and six from Western European and other States. Each member has one alternate. Half the members and their alternates are elected every two years and each serves for a term of four years.

The Sub-Commission organizes its annual session in Geneva, which ran for four weeks until 1999 and since 2000, it has been reduced to three weeks. Except its members and alternates, the meeting is attended by observers from some selected states, United Nations bodies and specialized agencies, other intergovernmental organizations and non-governmental organizations which are in consultative status with the Economic and Social Council.

Currently the Sub-Commission has six working groups, like the Working Group on Communications; the Working Group on Contemporary Forms of Slavery; the Working Group on Indigenous Populations; the Working Group on Minorities; the Working Group on Administration of Justice; and the Working Group on Transnational Corporations. It has the responsibility to carry out studies and makes suggestions to the Commission concerning the prevention of discrimination against racial, religious and linguistic minorities. It has also set up some working groups and established Special Rapporteurs to support it in certain tasks.

The Commission on the Status of Women

It composed of 32 members, who prepares the recommendations and reports to the Economic and Social Council for the promotion of women's rights in political, economic, social and educational arena. It also gives recommendations to the Council on problems which require attention for the protection of women's rights.

The Commission on Crime Prevention and Criminal Justice

As the main United Nations policy-making body on criminal justice, it composed of 40 members. It builds up and observes the United Nations programme on crime prevention.

The Security Council

The UN Security Council, which comprises of fifteen member states, is accountable for making decisions regarding international peace and security. It can recommend about the decisions for action, including providing humanitarian assistance, imposing economic sanctions, and recommending peacekeeping operations. It is the only body of the UN that can authorize the use of force (including in the issues of peace-keeping operations), or override member nations sovereignty by issuing Security Council resolutions. It has been responsible for establishing international tribunals to take legal action against serious violations of humanitarian law. For example, special tribunals were set up to prosecute war crimes in the former Yugoslavia and acts of genocide in Rwanda.[vi]

Created by the UN Charter, it is regarded as a Charter Body of the United Nations. The UN Charter gives the Security Council the power to, investigate any situation threatening international peace and recommend procedures for peaceful resolution of a dispute. It can call upon other member nations to completely or partially interrupt economic relations as well as sea, air, postal, and radio communications, or to sever diplomatic relations and if necessary, it can enforce its decisions militarily.

The Security Council pays attention on reports from all organs of the United Nations, and can take action over any issue which it feels threatens peace and security, which also includes the issues of human rights abuses. It has been criticized for failing to take unsatisfactory action on human rights abuses, including the Darfur crisis, the Srebrenica massacre and the Rwandan Genocide.The Secretariat is the administrative body of the UN, which is responsible for managing the programs and policies established by the other UN organs.

The United Nations Commission on Human Rights

The United Nations Commission on Human Rights (UNCHR) was a functional commission within the framework of United Nations provisions. It was a subsidiary body of the UN Economic and Social Council (ECOSOC), and was also provided assistance in its work by the Office of the United Nations High Commissioner for Human Rights (UNHCHR). It was the UN's principal instrument and an international forum which concerned with the promotion and protection of human rights.

History

The UNCHR was established on 10 December 1946 at the first meeting of ECOSOC, and was one of the first two "Functional Commissions" which were set up within the early UN instruments (the other being the Commission on the Status of Women). It was created as a body under the terms of the United Nations Charter (specifically, under *Article 68*).

The body went through two different phases. The first phase (from 1947 to 1967) followed the policy of absenteeism, which states that the Commission would concentrate on promoting human rights and would help the states elaborate treaties, but not on investigating or condemning violators. It was a period of strict observance of the sovereignty principle. In 1967, the Commission accepted 'interventionism' as its policy. This decade was witnessing the decolonization of Africa and Asia, and many countries of this continent pressurized for a more active UN policy on the issues of human rights, especially in light of large scale human rights violations in apartheid South Africa. This new policy meant that the Commission would also investigate and produce reports on the incidents and cases of human rights violations and the second phase devoted for a better fulfillment of this new policy, some geographically-oriented workgroups were created during 1970s. These groups investigate the incidents of violation of human rights on a given region or even a single nation. During the period of 1980s some theme-oriented workgroups were created, which specialize in some specific types of human rights abuses.

But, none of these measures were able to make the Commission as effective as was desired and expected, primarily due to the presence of human rights violators and the politicization of the body. During the following years until its extinction, the UNCHR became increasingly discredited among activists and governments alike.

Functions and organization

Mandate

The mandate of the Office of the United Nations High Commissioner for Human Rights is enshrined in Articles 1, 13 and 55 of the Charter of the United Nations. The Vienna Declaration and Programme of Action and General Assembly resolution no. 48/141 of 20 December 1993, established the post of United Nations High Commissioner for Human Rights. The Office of the United Nations High Commissioner for Human Rights and the Centre for Human Rights were merged into a single 'Office of the United Nations High Commissioner for Human Rights' on 15 September 1997, through a reform of United Nations (A/51/950, para. 79). The seat of High Commissioner is located in Geneva and the United Nations High Commissioner for Human Rights is accountable to the Secretary-General.

The High Commissioner has the responsibility for all the activities of the Office of the United Nations High Commissioner for Human Rights, and for its administration. The High Commissioner carries out the functions which are specifically assigned to him/her by the General Assembly in its resolution 48/141 and later resolutions of policy-making bodies; advises the Secretary-General on the policies of the United Nations on the issues of human rights; ensures the substantive and administrative support to the projects, activities, organs and bodies of the human rights programme; represents the Secretary-General at meetings of human rights organs and at other human rights events; and carries out special assignment as par the decisions by the Secretary-General.

The Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948, is a non-binding declaration. It came into existence partly due to the barbarian acts of World War II. Although the UDHR is a non-binding resolution, it is now recognized to be a central element of international customary law which may be invoked under suitable circumstances by national and other judiciaries. The UDHR expects member nations to promote a number of human, civil, economic and social rights, by asserting that these rights are part of the "foundation of freedom, justice and peace in the world." This declaration was known to be the first international legal effort to check the behavior of states and press upon them duties to their citizens following the model of the rights-duty duality. Its preamble says that…….recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.[vii]

The UDHR was framed by members of the Human Rights Commission and Eleanor Roosevelt chaired it. Roosevelt started the discussion on International Bill of Rights in 1947 but the other members of the Commission did not immediately agree on the form of such a bill of rights, and whether, or how, it should be enforced. The Commission started to frame the UDHR and accompanying treaties. Canadian Professor of law John Humprey and the French lawyer René Cassin are credited for much of the cross-national research and the structure of the document respectively, where the articles of the declaration were interpretative of the general principle of the preamble. The document was structured by Prof. Cassin who included the basic principles of dignity, liberty, equality and brotherhood in the first two articles, followed successively by rights pertaining to individuals; rights of individuals in relation to each other and to groups; spiritual, public and political rights; and economic, social and cultural rights. According to Cassin, the final three articles of UDHR place human rights in the context of limits, duties, and the social and political order in which they are to be realized. Humphrey and Cassin both wanted the rights in the UDHR to be legally enforceable through some means, as is reflected in the third clause of the preamble. It reads, "Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law." (Preamble of the UDHR, 1948).

A committee of international expert on human rights (representatives from all continents and all major religions) wrote some of the articles in UDHR. The inclusion of both civil and political rights and economic, social and cultural rights in UDHR was predicated on the hypothesis that basic human rights are indivisible and that the different types of rights listed are inextricably linked. This principle was not then opposed by any member states and UDHR was accepted unanimously, with the abstention of the Eastern Bloc, Apartheid South Africa and Saudi Arabia, but later this principle faced some criticism and to some extent opposition.

Some Important Articles of the Declaration

Firstly there is provision of some *General Principle* in Article 1 and 2. General Principle includes the Freedom, Egalitarianism, Dignity and Brotherhood and Universality of rights. Article 3 to 21 covers civil and political rights, important among them are, right to life, liberty and security of person, freedom from slavery, freedom from torture, and cruel, unusual punishment, equality before the law, freedom from arbitrary arrest, detention, and exile, right to marriage and family life, freedom of thought, conscience, and religion, freedom of opinion and expression, and the right to universal suffrage. Article 22 to 27 covers social, cultural and economic rights important among them are, right to social security, right to work,(it includes right to equal pay for equal work, right to just remuneration and right to join a trade union), right to special care and assistance for mothers and children, right to an adequate standard of living, right to education, and the right to intellectual property

Article 28 to 30 defines the context, limitations and duties. Important among them are the supremacy of the purposes and principles of the United Nations. It also notes that nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.[viii]

Evaluation of UDHR

Positive points of UDHR

Taken as a whole, the Delegation of the United States believes that this is a good document, even a great document, and we propose to give it our full support. In giving our approval to the Declaration today it is of primary importance that we keep clearly in mind the basic character of the document. It is not a treaty; it is not an international agreement. It is not and does not purport to be a statement of law or of legal obligation. It is a Declaration of basic principles of human rights and freedoms. This Universal Declaration of Human Rights may well become the international Magna Carta of all men everywhere." (said by Eleanor Roosevelt, first chairwoman of the Commission on Human Rights that drafted the Declaration, 10 December 1948). Ronald Regan on March 1989 said that 'for people of good will around the world, that document is more than just words: It's a global testament of humanity, a standard by which any humble person on Earth can stand in judgment of any government on Earth.' In his speech on 5 October 1995, Pope John Paul II praised the UDHR to be one of the highest expressions of the human conscience of our time. Marcello Spatafora's statement on behalf of the European Union on 10 December 2003 said that over the past 55 years, humanity has made extraordinary progress in the promotion and protection of human rights thanks to the creative force generated by the Universal Declaration of Human Rights, undoubtedly one of the most influential documents in history. It is a remarkable document, full of idealism but also of determination to learn lessons from the past and not to repeat the same mistakes. Most importantly, it placed human rights at the centre of the framework of principles and obligations shaping relations within the international community.

Criticism of the UDHR

Islamic criticism

The predominant Islamic countries (like Sudan, Pakistan, Iran, and Saudi Arabia) criticized the Universal Declaration of Human Rights for its apparent failure to consider the cultural and religious context of non-Western countries. In 1981, the Iranian representative to the United Nations, Said Rajaie-Khorassani, presented the position of his country regarding the Universal Declaration of Human Rights by calling the UDHR to be a secular understanding of the Judeo-Christian tradition which could not be implemented by Muslims without trespassing the Islamic law. In opposition to this some Muslim nations formed the Organization of the Islamic Conference (OIC). On 30 June 2000, the OIC officially declared to support the Cairo Declaration on Human Rights in Islam, an alternative document which explains that people have "freedom and right to a dignified life in accordance with the Islamic Shari'ah.

Other criticism

Some conservative and libertarian thinkers argued that economic rights must be guaranteed by others through forceful extraction, for example taxation. In reference to a right to medical care (Article 25 of the declaration), Andrew Bissell argued, "Health care doesn't simply grow on trees; if it is to be made a right for some, the means to provide that right must be confiscated from others...no one will want to enter the medical profession when the reward for years of careful schooling and study is not fair remuneration, but rather, patients who feel entitled to one's efforts, and a government that enslaves the very minds upon which patients' lives depend." Jeane Kirkpatrick, (the U.S. Ambassador to the United Nations) said that certain economic rights cannot be human rights, he called the Declaration "a letter to Santa Claus", by saying that "neither nature, experience, nor probability informs these lists of 'entitlements', which are subject to no constraints except those of the mind and appetite of their authors."[ix]

At the same time, in practice, most of the rights do not give equal weight to the different types of rights. For example, western cultures have often given priority to civil and political rights, sometimes at the cost of economic and social rights (such as the right to work, education, health and housing). One can see the case of United States, where there is no free universal access to healthcare.[1]

Likewise, the ex-Soviet bloc countries and Asian countries have given priority to economic, social and cultural rights, but sometimes have ignored to provide civil and political rights.

Critiques of the indivisibility of human rights have argued that economic, social and cultural rights are fundamentally different from civil and political rights and they require different approaches.

Economic, social and cultural rights are argued to be positive, (it means that they require active provision of entitlements by the state), resource-intensive (this means that they are expensive and thus difficult to provide), progressive (means that they will take significant time to be implemented), vague (means that they cannot be quantitatively measured, and it is difficult to judge whether they are adequately provided or not), ideologically divisive/political (this means that there is no consensus on what should and shouldn't be provided as a right), socialist (it is defined as opposed to capitalist), non-justiciable (means that the provision enshrined in it, or the breach of them, cannot be judged in a court of law), and aspirations or goals (it is defined as opposed to real 'legal' rights)

Similarly civil and political rights are categorized as negative (this means that the state can safeguard them simply by taking no action), cost-free, immediate (it means if the state decides, these rights can be immediately provided), and precise (this means that their provision is easy to judge and measure)

Structure and legal implications.

Thus, the Universal Declaration was bifurcated into two different covenants, one being, Covenants on Civil and Political Rights and another Covenant on Economic, Social and Cultural Rights. The developed states questioned the relevance and propriety of such provisions in covenants on human rights, both begin with the right of people to self-determination and to sovereignty over their natural resources. Thus the two covenants go different ways.[x] The drafters of the Covenants initially intended to declare only one instrument. The original drafts of the covenant included only political and civil rights, but economic and social rights were added early. Due to this, the Western States insisted that economic and social rights were fundamentally aspirations or plans, not rights, since their realization depended on availability of resources and on controversial economic theory and ideology. These, they said, were not suitable

[1] This is not to say that Western cultures have ignored these rights entirely, the welfare states that exist in Western Europe are evidence of this.

subjects for binding obligations and should not be allowed to weaken the legal character of the provisions. There was wide consensus and clear recognition that the means required to enforce the compliance with socio-economic undertakings were different from the means required for civil-political rights.[xi]

Therefore due to the divisions and controversy over which rights to include, and because some states denied to ratify any treaties including certain specific interpretations of human rights, and at the same time, the Soviet bloc and a number of developing countries argued strongly for the inclusion of all rights in their joint effort commonly known as the *Unity Resolution*. This led the rights which were enshrined in the UDHR to split into two separate covenants, allowing states to adopt some rights and derogate others. The ICESCR and the ICCPR came into existence with the same process that led to the Universal Declaration of Human Rights. As the UDHR was not implemented to impose binding obligations, the United Nations Commission on Human Rights drafted a pair of binding Covenants on human rights intended to impose concrete obligations on their parties. These two covenants are known as *The International Covenant on Economic, Cultural and Social Relations* (ICESCR) and *The International Covenants on Cultural and Political Rights* (ICCPR). These two covenants were presented to the UN General Assembly in 1954, and adopted in 1966.

The UN Covenants

The International Covenants on Cultural and Political Rights. (ICCPR)

The International Covenant on Civil and Political Rights is a United Nations treaty which is based on the Universal Declaration of Human Rights. It was created in 1966 and came into force on 23 March 1976. Nations that have signed this treaty are bound by it.

The ICCPR is monitored by the Committee, now superseded by the Human Rights Council, to consider periodic reports submitted by member States on their compliance with the treaty. The members of the Human Rights Committee are elected by member states, but they do not represent any State. The Covenant contains two Optional Protocols. The first optional protocol provides individual complaints mechanism whereby individuals in member States can submit complaints, which is known as communications, to be reviewed by the Human Rights Committee. The second optional protocol abolishes the death penalty, but at the same time, the countries were permitted to make a reservation which allows them the use of death penalty for the most serious crimes of a military nature, committed during wartime.

The International Covenant on Economic, Cultural and Social Relations. (ICESCR)

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is a multilateral treaty which was adopted by the United Nations General Assembly on December 16, 1966, and came into force on January 3, 1976. It commits states parties to work toward the granting of economic, social, and cultural rights (ESCR) to individuals.

It was introduced as a second generation human rights treaty which develops some of the issues listed in the Universal Declaration of Human Rights and at the same time as the International Covenant on Civil and Political Rights (ICCPR). The Committee on Economic, Social and Cultural Rights regards legislation as a vital means to realize the rights which is unlikely to be limited by resource constraints. The enacting of anti-discrimination provisions and the establishment of enforceable rights with judicial remedies within national legal systems are considered to be appropriate means for the implementation of these rights.

Human Rights Instruments

Convention on the Prevention and Punishment of the Crime of Genocide (adopted 1948, came into force 1951).

Convention on the Elimination of All Forms of Racial Discrimination (CERD) (adopted 1966, came into force: 1969).

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (came into force: 1981).

United Nations Convention Against Torture (CAT) (adopted 1984, came into force: 1984).

Convention on the Rights of the Child (CRC) (adopted 1989, came into force: 1989).

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) (adopted 1990)

Rome Statute of the International Criminal Court (ICC) (came into force: 2002)

Human Rights Committee

The World Conference on Human Rights in 1993 adopted the Vienna Declaration and Programme of Action. The UN has set up a number of *treaty-based* bodies to observe and study the issue of human rights, under the leadership of the UN High Commissioner for Human Rights (UNHCHR). The bodies are the committees of independent experts that watch implementation of the core international human rights treaties. The International Human Rights Machinery contains two broad cluster- *international human rights treaties* (treaty bodies) and the provisions set up by the UN Human Rights Council on Human Rights- *Special Procedures*- to address the human rights issue/s either in a specific country (geographic mandates) or thematic issues (thematic mandates). The Human Rights Committee (HRC) observes the effective implementation of the International Covenant on Civil and Political Rights (1966) and its optional protocols.

The following are some of the main human rights committees which deal with the issue of human rights.

The *Human Rights Committee* (established in 1976) endorse the effective participation as par the standards of the ICCPR. The eighteen members of the committee communicate opinions on member countries and make judgments on individual complaint/s against countries which have ratified the treaty. The judgments are not legally binding.

The *Committee on Economic, Cultural and Social Rights* observes the ICESCR and issues general comments on ratifying countries performance. It does not have the power to receive complaints.

The *Committee on the Elimination of Racial Discrimination* observes the CERD and carries out regular reviews of the performance of different countries. It can make judgments on complaints, but these are not legally binding. It issues warnings to attempt to prevent serious contraventions of the convention.

The *Committee on the Elimination of Discrimination against Women* observes the CEDAW. It receives the reports of state/s on their performance and comments on them, and can make judgments on complaints against countries which are the part of 1999 Optional Protocol.

The *Committee Against Torture* observes CAT and accepts the reports on the issue/s of abuses of rights by state/s every four years and comments on them. It may visit and examine individual countries with their consent.

The *Committee on the Rights of the Child* observes the CRC and issues comments on reports submitted by state/s every five years. It does not have the power to receive complaints.

The *Committee on Migrant Workers* was established in 2004 and monitors the ICRMW and issues comments on reports submitted by state/s every five years. Each treaty body gets secretariat support from the Treaties and Commission Branch of Office of the High Commissioner on Human Rights (OHCHR) in Geneva excluding the CEDAW, which is supported by the Division for the Advancement of Women (DAW). CEDAW organizes its meetings at United Nations headquarters in New York; but the other treaty bodies generally meet at the United Nations Office in Geneva. The Human Rights Committee usually conducts its March session in New York City.

Except them, two new conventions have recently been presented, first being the Convention on the Rights of Persons with Disabilities and its Optional Protocol were opened for signature on 30 March 2007. Eighty one countries and the EC signed the Convention and 44 countries signed the Optional Protocol and the second one is the International Convention for the Protection of All Persons from Enforced Disappearance. It was adopted by the General Assembly on 20 December 2006.

State's obligations to treaty bodies

If a state willingly endorses an international treaty, it presumes the commitment to implement the provisions of the treaty at the national level. It also assumes the obligation to put forward an initial report and then to report periodically to the Treaty Bodies on the measures it has taken to ensure the enjoyment of the rights provided in the treaties. Reports of States parties are scrutinized by the Treaty Bodies, along with information from a variety of sources, including from UN agencies, National Human Rights Institutions, and civil society, in the presence of a delegation from the reporting State. The examination of a report leads to a discussion with the State party and concludes in the adoption of concluding "observations/comments", in which the Treaty Bodies makes particular recommendations to the State party for future action, including seeking help from specific UN Agencies and international organizations, where appropriate. The State party is expected to carry out the necessary procedures to implement the recommendations of the Treaty Bodies and to report on how it has followed up on those recommendations as part of its ongoing work on implementation and periodic reporting.

Human Rights Council

On 15 March 2006, the General Assembly established a new Human Rights Council. The higher level Council substitutes the Human Rights Commission, and reveals the current importance and centrality of human rights to the UN.

Functions of the Human Rights Council

The Council works as the main United Nations forum for discussion and collaboration and cooperation on human rights. It focuses on to assist member states to meet their human rights obligations through dialogue, capacity building, and technical assistance. The Council also makes recommendations to the General Assembly for further development of international law in the area of human rights. It comprises of 47 members, who are elected by the General Assembly by absolute majority (96 votes). The Council meets at least three times a year for a minimum of ten weeks. It can assemble to address urgent situations and can hold special sessions. The new feature of the HRC is that it will carry out a universal periodic review (UPR) of each UN member state's fulfilment of its human rights requirements. The first meeting of the Council was held for two weeks from 19-30 June 2006.

Special Procedures

Special procedures" is the general name given to the instruments established by the Human Rights Council to address either specific country situations or thematic issues. The special procedures are a means for the Council to be persistently engaged on an issue of concern throughout the year. Although they may be formed in any manner, special procedures normally are either an individual, called a Special Rapporteur or representative or an independent expert, or a group of individuals, called a Working Group. Special Procedures are assigned with the mandate (through resolutions of the Human Rights Council) to examine, monitor, advise and publicly report on human rights conditions in particular countries or on major human rights themes and phenomena worldwide.

Regional System for the Protection of Human Rights

There are some regional systems introduced for the better protection of the human rights[xii], some of them are:

The European System for the Protection of Human Rights

The European Convention for the Protection of Human Rights (ratified by 30 countries) and Fundamental Freedoms (the Convention), the Council of Europe's most important success, is its entrance into one of the most important phases in its growth. The Convention's control mechanism has recently witnessed its most drastic reform with the adoption of Protocol No. 9, which establishes the right to individual action before the Court and of Protocol No. 11 which merge the European Commission and Court of Human Rights into a single judicial authority.

It was opened for signature on November 4, 1950 and the Convention came into existence on September 3, 1953. Since that time, some nine Protocols have been introduced and among them, four provide further rights and liberties to individuals.

Inter-American Commission on Human Rights

The Inter-American Commission on Human Rights is an autonomous organ of the Organization of American States (OAS). Along with the Inter-American Court of Human Rights, the OAS is one of the bodies that contain the inter-American system for the promotion and protection of human rights. The IACHR is a permanent body, with its headquarters in Washington D.C. (United States). It organizes its meetings in regular and special sessions several times a year to inspect the allegations of human rights violations in the hemisphere.

Composition of the Inter-American Commission

The IACHR's ranking officers contain seven commissioners. The commissioners are elected by the OAS General Assembly, for four-year terms. They may be re-elected on one occasion, for a maximum period in office of eight years. They serve the office in a personal capacity and are not supposed to represent their countries of origin but rather "all the member countries of the Organization" (Art. 43 of the Convention). **The** Convention (Art. 42) says that they must "be persons of high moral character and recognized competence in the field of human rights". No two nationals of the same member state may be commissioners simultaneously (Art. 37), and commissioners are required to abstain from participation in the discussion/s of cases which involves their home countries

African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights (also known as the Banjul Charter) is an international human rights mechanism which seeks to promote and protect human rights and basic freedoms in the African continent.

It came into force under the aegis of the Organization of African Unity (since replaced by the African Union) which, at its 1979 Assembly of Heads of State and Government, approved a resolution calling for the creation of a committee of experts to draft a continent-wide human rights instrument, similar to Europe (European Convention on Human Rights) and America (American Convention on Human Rights). This committee presented a draft which was unanimously approved at the OAU's 1981 Assembly. The African Charter on Human and Peoples' Rights came into effect on 21 October 1986, in honour of which 21 October was declared as African Human Rights Day.

Management and the interpretation of the African Charter is the task of the African Commission on Human and Peoples' Rights. It was established in 1987 and now its headquarter is in Banjul, Gambia. A protocol to the Charter was then adopted in 1998 whereby an African Court on Human and Peoples' Rights was to be created. The protocol came into existence on 25 January 2005.

In July 2004 the AU Assembly decided that the ACHP would be integrated into the African Court of Justice. In July 2005, the AU Assembly then decided that the ACHP should be operationalized. Thus, the Eighth Ordinary Session of the Executive Council of the African Union, in its meeting in Khartoum, Sudan, on 22 January 2006, elected the first judges of the African Court on Human and Peoples' Rights.

The role of United Nations and its affiliated Organizations in the field of human rights

The Human Rights Committee has measured over 800 reports with respect to 56 countries and published 270 decisions. While the views and recommendations of the different committees' are not legally binding to the state/s, they contain a significant weight. States have often followed their decisions, and introduced constitutional changes or adjusted their policies on the basis of their recommendations. Three human rights treaties allow for interactions from individual/s. The Human Rights Committee, the Committee against Torture and the Committee on the Elimination of Racial Discrimination are endorsed to admit individual complaints from citizens of States who have accepted the respective provisions concerning individual communications. Two specialized agencies, the United Nations Educational, Scientific and

Cultural Organization (UNESCO) and the International Labour Organization (ILO), also look at alleged discrimination in their authorized fields of competence. In 1967, the Economic and Social Council adopted resolution 1235 (XLII), which authorized the Commission on Human Rights and its Sub-commission on Prevention of Discrimination and Protection of Minorities, to examine information significant to the gross violations of human rights and fundamental freedoms. In 1970, the Council implemented resolution no. 1503 (XLVIII), which established an apparatus to respond to the complaints by individuals, which is now commonly known as the '1503 procedure'. The accusations are summarized in secret documents sent to the Commission on Human Rights for review. If a regular pattern of verified and serious human rights violation is evident, the Commission can inspect the situation through its system of known as "special procedures".

Special procedures

The United Nations human rights program depends, though not solely, on an independent system of fact-finding outside the treaty framework, which allows a more flexible approach to individual human rights violations. This system of extra-conventional mechanisms generally recognized as special procedures of the Commission on Human Rights. The Commission can appoint an independent experts of international stature to evaluate, examine and can publicly report either on the condition of human rights in particular country/s or, in the case of a thematic mandate, on serious human rights violations which is related to certain phenomenon in different parts of the world. These experts, acting in their personal capacity, are designated and commonly recognized as special rapporteurs, representatives, independent experts or, working groups (when several experts share a mandate).

The special rapporteurs are free to use all trustworthy sources, which are available to them for preparing their respective reports. Their research is done in the field, where they carry out interviews with concerned authorities, NGOs and victims of human rights violation, collecting on-site proof/s whenever possible. In 1997, some fact-finding missions visited 14 countries to look into the situation of human rights; and inquires of more than 5,000 cases were conveyed to the concerned Governments. The special rapporteurs report annually to the Commission on condition of Human Rights and also provide recommendations for action. Their findings are also used by the treaty-bodies, especially in evaluating States' reports.

During mid-1998, there were more than 20 country mandates on the human rights condition in specific regions. Country rapporteurs generally examine the complex human rights situation in regions where immense violations have occurred, generally in the aftermath of large-scale violence or conflict, as in Cambodia, Rwanda and the former Yugoslavia. The Commission on Human Rights appointed a Special Rapporteur on issue of the human rights violations in Rwanda in May 1994, to observe all human rights aspects of the situation, including root causes and responsibilities for the atrocities and abuse of human rights. In 1997, the Commission appointed a Special Representative to assist the creation and effective functioning of an independent national human rights commission in Rwanda. At the same time, the General Assembly also requested the Secretary-General to look into the systematic rape and abuse of basic human rights of women and children during the armed conflict in the former Yugoslavia, more particularly in the Republic of Bosnia and Herzegovina.[xiii]

The experts assigned with thematic mandates, which cover a range of specific human rights questions of worldwide significance. For example, the right to life is accepted as the most fundamental right, and its violation by States is a matter of international concern. The Working Group on Enforced and Involuntary Disappearances, which was established in 1980, was the first group which takes up individual complaints and visit States. In 1995, one of the experts of the Working Group began to examine the problem of missing persons in the former Yugoslavia. In his final report of 1997, the expert reported that in Bosnia and Herzegovina, some 20,000 persons were still missing, the majority of whom were Bosnian men of Muslim origin, who were the victims of organized ethnic cleansing operations, carried out by Bosnian Serb forces between 1992 and 1995.

In 1997, the Special Rapporteur visited Rwanda to study the issue of violence against women in wartime and the incidents of their human rights violations. It also met and conducted interviews with numerous women survivors.

Since 1982, the Special Rapporteur has been assigned with the inquiry of violations of the right to life committed by State authorities and/or armed groups. Working closely with Governments, United Nations instruments on human rights and NGOs, the Special Rapporteur makes appeals to Governments to prevent executions, more particularly when the right to a reasonable trial seems to have been violated.

Human rights and the transition to peace

The 1993 World Conference on Human Rights acknowledged the vital connection between international peace and security on the one hand and the rule of law and human rights on the other. It highlighted the need to reinforce these essential links due to the sharp increase in bloody conflicts and man-made calamities.

By recognizing that the violations of human rights are the root causes of conflict and humanitarian crises, the United Nations is making an attempt towards the strengthening its early warning capacity. It tries to enhance its ability to deal with the allegations of the violations of human rights, by integrating human rights monitoring into peacekeeping operations. The Office of the High Commissioner for Human Rights is making a close contacts with the United Nations departments, offices and programmes, which are responsible for peacekeeping and for humanitarian assistance, for example, the Department of Peacekeeping Operations (DPKO), the Office for the Coordination of Humanitarian Affairs (OCHA) and the Office of the United Nations High Commissioner for Refugees (UNHCR).

In recent years, a number of peacekeeping and other political operations have incorporated a human rights component, for example, Cambodia, El Salvador, Guatemala and Haiti contained the issue of human rights with the peace keeping processes. The International Civilian Mission in Haiti, has been committed to validate the respect for human rights since its commencement in February 1993. During the period of October 1994, the Mission expanded its work to include the promotion of human rights, civic education, electoral assistance and institution-building. It supports the National Truth and Justice Commission and helps out in the strengthening of the Haitian judicial and penal system.

The human rights missions in El Salvador and Guatemala display the decisive role of human rights in rebuilding trust and promoting a climate of reconciliation after the armed conflict. In Guatemala, the Human Rights Verification Mission (MINUGUA) was organized in 1994, two years in advance of the final peace agreement signed by the Government and the opposition front. The largest United Nations human rights verification mission ever escalated, with 13 regional and sub-regional offices and 245 international staff, MINUGUA's field presence is more wide-ranging than that of many national institutions in Guatemala. In the recent years, the Mission has successively reported dramatic declines in diverse complaints of torture, forced disappearances and arbitrary detention.

The High Commissioner for Human Rights has set up many human rights field operations, for example in Burundi, Rwanda, the former Yugoslavia and the Democratic Republic of the Congo (formerly known as Zaire). In every case, where the incidents or allegations of violations of human rights are reported, it established a framework of respect for human rights to create an atmosphere of trust in a post-conflict situation. This has been a crucial lesson for the United Nations during 1990s.

International Criminal Tribunal for the former Yugoslavia

In 1993, encountered with the widespread atrocities which was done under the policy of "ethnic cleansing" during the Yugoslav conflict between the Muslim, Serb and Croatian communities, the United Nations took action by setting up an international tribunal to bring the perpetrators of the crimes to justice. In May 1993, the Security Council, on the basis of Chapter VII of the United Nations Charter, establsihed the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (ICTY).The Tribunal suggested the need for a permanent International Criminal Court to handle such abuses of human rights quickly and effectively.

International Criminal Tribunal for Rwanda

In Rwanda, civil war and internal hostility led to genocide on a large scale. From April to July 1994, a systematically planned and well organized genocide by radical Hutu militia claimed the lives of between 500,000 and 1 million persons. The main sufferers of this massacre were the members of the Tutsi minority and moderate Hutus. The civil war forced many of Rwanda citizens to flee to neighbouring countries. By mid-July, more than 2 million Rwandan refugees were bound to live in camps in Burundi, Tanzania and Zaire. Thousands of Rwandans were displaced internally within the territory of Rwanda.

In November 1994, the Security Council formed the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda (ICTR). The Tribunal also put on trial Rwandan citizens, who were responsible for genocide, crimes against humanity and war crimes committed in the territory of neighbouring States between 1 January 1994 and 31 December 1994.

As proved in Cambodia, El Salvador, Haiti, Rwanda and former Yugoslavia, the United Nations human rights experts helped in building an independent judiciary and in training police and security personnel in human rights standards for the enforcement of law. They also provided some guidance to draft press freedom laws, minority legislation or laws securing women's equality.

In October 2005, the U.N. Human Rights Committee, held a meeting Geneva with some non-governmental organizations (NGOs) to evaluate any available proof/s of human rights abuses by the United States, more particularly in the aftermath of its global war on terrorism.

Conclusion

In democratic societies fundamental human rights and freedoms are placed under the guarantee of law and thus, their protection becomes an obligation of those who are assigned with the task of their protection. These rights can be classified into civil and political rights on the one hand and economic, social and cultural rights on the other. While the former are more in the nature of restriction against the authority of the State from impinging upon the inalienable freedoms of an individual, the latter are regarded as the demands on the State to supply positive conditions to capacitate the individual to exercise the former. The objective of both sets of rights is to make individual/s an efficient participant in the affairs of the society. Unless both sets of rights are available to individuals, neither development of the human personality can be achieved nor true democracy can be said to exist. The promotion and protection of both sets of human rights has been a major concern for the United Nations since 1945, when the Organization's founding nations determined that the horrors of The Second World War should never be allowed to reappear. The General Assembly declared three years later in the Universal Declaration of Human Rights that respect for human rights and human dignity "is the foundation of freedom, justice and peace in the world". Over the years, a whole network of human rights mechanism has been developed to guarantee the primacy of human rights and to deal with the incidents of human rights violations wherever they occur.

End Notes

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[i] for more see, Biswal Tapan et.al (2006), "UN Declarations and Covenants", in Tapan Biswal (ed) *Human Rights, Gender and Environment* (New Delhi: Viva Books), pp. 59-65.

[ii] History of Human Rights may also be called as Three Generation Theory of Human Rights, for a detailed account on this aspect, see, Biswal, Tapan (2006), *Ibid*, pp. 64-65.

[iii] See, Symondi, Janusz (ed.) (2003), *Human Rights: International Protection, Monitoring and Enforcement* (UNESCO Publishing House, Ashgate Publishing Ltd, England). pp. 9-10, see also Biswal Tapan, (2006), *Ibid,* pp. 68-69.

[iv] for more see, Biswal, Tapan, (2006), *Ibid*, pp. 69-70.

[v] *Ibid,* pp. 70-71.

[vi] Symondi, Janusz (ed.) (2003), *Human Rights: International Protection, Monitoring and Enforcement, IBID,* pp. 8-9, see also, Biswal Tapan, (2006), *opp.cite,* pp.68.

[vii] for more information see, Biswal, Tapan, (2006), *opp.cite,* pp. 72-75 and Abdulrahim, P. Vijaypur, *The Uniited Nations at Fifty: Studies in Human Rights*, (South Asian Publish Pvt.Ltd, New Delhi.1996), pp. 42, 44, 51. see also *Basic Facts about United Nations* (1994), Department of Public Information, United Nations, New York, pp. 151-153.

see, Biswal, Tapan, (2006), *opp.cite,* pp. 73-74.

[viii] see, Biswal, Tapan, (2006), *opp.cite,* pp. 73-74.

[ix] Accessed Via, http://www.humaninfo.org/aviva/ch65.htm

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[x]see, Bernhardt, Rudolf and John Anthony Jolowicz,(eds) (1987). *International Enforcement of Human Rights.* Springer-Verlag, Berlin.

[xi] See Louis Henkin, (ed.) (1981). *The International Bill of Rights: The Covenant on Civil and Political Rights,* Columbia University Press, New York, pp.9-10

[xii] See, Biswal, Tapan, (2006), *opp.cite,* pp. 82-83.

[xiii]*Sexual Violence and Armed Conflict: United Nations Response*, United Nations Division for the Advancement of Women, Department of Economic and Social Affairs, April 1998

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Lesson 3

HUMAN RIGHTS AND CITIZENSHIP RIGHTS

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In the contemporary globalizing world, both human rights as well as citizenship rights have become critical in understanding and explaining the quest of the human being for a dignified and respectful place in the other parts of the world while retaining his right of full fledged participation in the activities of his mother country. Thus, while conceptually the notions of human rights and citizenship rights may seem to have contradictory overtones, in reality, the two tend to play some sort of complementary role in providing for a holistic development of the personality of a human being in the era of globalization. The chapter, therefore, seeks to provide a comprehensive analysis of the notions of human rights and citizenship rights, with special treatment being given to the contemporary theories of citizenship. Moreover, the basic contours of the mutual interactions of the two notions have been dovetailed by way of discerning the interlinkages, convergences as well as differences between the two.

Understanding Human Rights

Put simply, a human right is considered as a genre of the idea of right. However, an understanding of the idea of right is not so simple. Conceptually, right denotes a sort of 'advantage' to the right-holder in relation to the other people. It may also be argued to be a kind of 'due' which the right-holder is entitled in relation to the other people. Further, in legal theorist Hohfeld's postulations, right may be understood in terms of claim-duty dialectics. Under this scheme, right is taken to be the claim of the right-holder which in turn is reckoned as the duty of the other people to recognize and accept the claim of the right-holder. Thus, in simple terms, right differs from the ideas of privilege, powers and immunities in the sense that it binds the other people only in a mutually value-neutral relationship without placing the other people in any adverse relationship with the right-holder. A right is thus a claim of an individual which has been accepted by the others in society with concomitant acceptance of dutifulness by the latter.

Next, while attempting an understanding of the concept of human rights, it needs to be kept in mind that the scholars have tried to delineate the broad contours of the concept based on the emphasis they would like to dovetail to the concept. Thus, at the very rudimentary level, the concept has been defined by Subhash Kashyap as such, 'human rights are those fundamental rights to which every man and woman inhabiting any part of the world should be deemed entitled by virtue of having born as human beings.' (Kashyap: 1978, 2)

However, such an understanding of the concept of human rights appears to be quite sweeping and all encompassing as it neither places any precondition nor any fetters on the entitlement of the fundamental rights which are found essential for bare survival of the person as human beings. Similar sentiments have been echoed by the statement that 'human rights pertain to all persons and are possessed by everybody in the world because they are human beings. They are not earned, bought or inherited, nor are they created by any contractual undertaking.' Thus, such perspectives on human rights provide an absolute position to the idea by making it free from any man-made qualification and making it contingent upon only the birth of people as human beings.

At another level, human rights have been conceptualized as some sort of relationship which a person carries with his or her fellow individuals as well as the state which in turn ensures a kind of protection to the freedom and basic attributes of humanity of that person. As Bennett points out succinctly, '[T]he question of human rights is concerned with interpersonal relationships and with the relationships of the individual to governmental authorities at all levels from local to international. Human rights include those areas of individual or group freedom that are immune from governmental interference or that, because of their basic contribution to human dignity or welfare, are subject to governmental guarantee, protection or promotion.' (Bennett: 1988, 260)

However, such a conceptualization of human rights places the concept in a perilous position as the focus of attention in it remains centered on the community or governmental structures. In such a scenario, the danger is that once the human rights are started being contextualized with reference to the time or place, its absolute character might be decimated to equate the human rights with some sorts of citizenship rights. This situation may warrant the inhabitation of an individual in a particular state in order to be able to secure his or her human rights, endangering the life and liberty of the people like Taslima Nasreen who has not only been declared a sort of unwanted person in her own country but also in India where she took refuge after being forcibly driven out of her country. A more plausible manner of conceptualizing human rights, therefore, would be to take them as some kind of entitlement to humane treatment that a person may enjoy by dint of being a human being only. Moreover, the universality of human rights need to be emphasized in order to make their enjoyment absolute and without any precondition in terms of either inhabitation in a particular state and culture or fulfilling any positivist condition set by any state.

Given the sweep of positive liberalism in the post second world war times, a number of scholars have tried to define the human rights in terms of the Laskian discourse by emphasizing upon the innate developmental value of human rights to secure a dignified and accomplished life for the people. As an expert notes, '[T]he concept of human rights is closely connected with the protection of individuals from the exercise of state, government or authority in certain areas of their lives. It is also directed towards the creation of social conditions by the state in which individuals are to develop their fullest potential.' Similarly, another exponent of the developmental notion of human rights asserts that human rights are those rights which are considered to be absolutely essential for the survival, existence and personality development of a human being.

These conceptualizations of human beings have been at the forefront to elevate the position of human beings from those of negative rights whose enjoyment was ensured by leaving an individual alone and not interference in his or her life on the part of the state to that of imposing positive obligations on the state to ensure the minimum standards of living conditions for the people so that they may be able to not only live a life but live a dignified life with the adequate facilities to develop his or her self as per their volition. This has become quite a gratifying idea for the people in those countries of the world where the socio-economic conditions of the people are quite miserable and the responsibility must be dovetailed on the shoulders of the government to ensure the minimum avenues of life to the people so that they are able to live a meaningful and productive life in the society.

In final analysis, the concept of human rights has been subject to varied definitions owing to the differing perspectives of the thinkers on the content and value of human rights as an inalienable aspect of human life. Despite the variations in conceptualization of the idea, the final word in this regard seems to have come from the United Nations Centre of Human Rights which defined the concept as consisting of those rights which are inherent in our nature and without which we cannot live as human beings. Conceived thus, the human rights are supposed to be made up of two inseparable categories of rights – rights that are essential for the dignified human existence, and rights which are essential for the adequate development of human personality. (Guha Roy: 2004, 2) Though these rights do not have the force of law as they do not fall into the category of fundamental rights guaranteed in the constitutions of various countries, they have become, in varying degrees, fundamental in the governance of these countries.

The United Declaration of Human Rights has gone a long way in securing a graceful place to the human rights in the legal system of several, if not all, countries of the world. Consequently, a number of countries are in a position to elevate the status of certain human rights to the level of legal rights in their constitutional systems guaranteeing a common standard of behaviour by the government towards both its own citizens and foreigners alike. Above all, the setting up of the national human rights commissions in most countries to act as the watchdog of the formulation of standards and implementation of the human rights have secured the long deserved position of respect and legal backing to the human rights in such countries. However, there are still a number of countries in the world that differ with the rest of the world on the notion and operationalization of the human rights owing to their distinct perspectives on the subject.

Meaning of Citizenship

Despite being the craving of the human beings since as early as the Greek city-states, the idea of citizenship has remained elusive defying an agreed definition of the concept. Previously, understood as it was in a very crude fashion, citizenship denoted a sort of formal relationship between the people and the state in which the former was supposed to receive the protection from the latter in return for the allegiance they promised to the former. However, such medieval formulations on the idea of a significant concept like citizenship no longer held good. Over the years, with the strengthening of the liberal values in various societies, citizenship started being considered to be full and responsible membership of the state. Thus, the concept of citizenship, as Brogan pointed out, is understood in a two dimensional way: First, being full and responsible member of the society, every citizen becomes entitled to the right of consultation in the conduct of the affairs of state, with the concomitant duty to contribute his or her bit to the general consultation and good of the society. Second, every citizen is supposed to participate in the general consultation of in the affairs of the state, he or she is also supposed to be bound with the final outcome of the said consultation. Such an understanding of the idea of citizenship lies at the root of the liberal democratic societies in the western countries where the consultative rights of the citizens were supposed to be guaranteed through the method of periodic elections. And, once the results of the elections are declared, every citizen of the country becomes duty bound to respect and follow the consequences of the same.

Following the conventional wisdom yet rooting it is the sociological theory, Marshall defines citizenship in terms of the status attached to the full membership of a community and those who possess this status are equal with respect to the rights and duties associates with it. But Marshall immediately adds that given that different societies would attach different rights and duties to the status of citizens in the absence of the universal principle determining necessary rights and duties of citizenship in general, it would not be possible to provide for universal rights and duties attached with the status of citizenship. However, Marshall appears to be sure of one thing, that the idea of citizenship must not be confined to the domain of only political membership of the community. While retaining the centrality of the political dimension of citizenship intact, Marshall, goes on to add certain other significant aspects which provide for the substantive and comprehensive nature of human existence. Thus, drawing upon the input provided by Marshall, Bryan Turner seeks to define the idea of citizenship by implying three distinct yet interrelated dimensions of the status which comes with the entitlement of citizenship, namely, civil citizenship, political citizenship and social citizenship. In this context, while civil citizenship relates to the issues like right to life, liberty and equality, personal liberty, freedom of speech, the right to property etc., the political citizenship refers to the rights of the individuals to both gain as well exercise control over the political institutions of the country. What appears to be new, however, in this conceptualization of citizenship is the idea of social citizenship which entails the basic guarantee of the bare minimum level of social and economic sustenance of the citizens in the society. Thus, the theoretical intervention of Marshall has led to conceptualization of citizenship in the modern times in such a way that the basic issues of livelihood has also been accorded high priority in the face of understanding citizenship only as entitlement to some sort of political or civil rights only.

A newer dimension to the understanding of the idea of citizenship was added by Derek Heater when he talked about the issues of civic bond and civic welfare as the essential ingredients of the idea of citizenship. He emphasized that in order to have the substantive enjoyment of the status of citizenship, an individual must carry the sense and feeling of civic bond with his fellow citizenships. He should also have the feeling of some sort of responsibility for civil welfare in the society if he is to be true to his legal status as the citizen of a country. Thus, Heater clarifies that the essence of citizenship does not lie in just getting the legal entitlement to be a citizen of a country, rather, it must be complemented with the social and political ties with his fellow citizens which is has been the cementing factor in holding a community together. Hence, in contemporary times, the instances of social and political non-cohesion in certain societies become obvious mainly due to the fact that the citizens, despite having the legal status of being a citizen of the country, do not share the civic and political bonding with their fellows in that society.

Marshall's Theory of Citizenship

During the twentieth century, the publication of the *Citizenship and Social Class* by British sociologist Thomas Humphrey Marshall in 1950 marked a beginning in conceptualization of the idea of citizenship more as an instrument of bringing about socio-economic equality amongst the individuals of the society than taken a means of reposition the political rights to the people. Trying to evolve a new theory of citizenship, Marshall tried to focus his attention on analyzing the relationship between the advances in the class system with the changing nature of citizenship. His theorization seeks to unravel the complexities involved in the explanation of the rise of citizenship in the modern times vis-à-vis the historical development of the capitalist society as experienced in Britain. As a discerning scholar points out succinctly, 'Marshall argues that as capitalism evolves as a social system, and as the class structure develops within it, so modern citizenship changes from being a system of rights which arise out of and support market relations to being a system of rights which exist in an antagonistic relationship with the market and class systems. Marshall is able to advance this case by distinguishing between parts or elements of citizenship, and in doing so he offers a new characterization of citizenship which lends itself to an analysis of the relations between citizenship and society which is absent in other approaches.' (Barbalet, 1997: 5)

Thus, it is obvious that Marshall does not turn out to be a critic of capitalism. His basic objective seems to be arguing for a fundamental human equality which remains consistent with the inequalities prevalent at various levels in a capitalist society. Though he argues that the developments in the capitalist system might have come in tension with the changing nature of citizenship, he does not appear to foresee the two coming at war with each other at any given time. Rather, he even goes to the extent of emphasizing that citizenship has turned out be the maker of legitimate social inequality in capitalist societies. In a way, therefore, the formulations of Marshall try to analyze the inherent inequitable tendencies at the various stages of development of capitalism on the one hand and portray the potentiality of the idea of citizenship to bring about a certain level of equality in the social class of the capitalist societies, on the other.

Defining the concept of citizenship, Marshall explains it as a status attached to full membership of a community and those who possess such a status are equal in regard to the rights and duties attached with it. However, Marshall was quick enough to acknowledge the absence of universal principle which may govern the guarantee of such rights and duties to all the individuals accorded the status of citizenship by a community or state. He, therefore, accepts that despite the concomitant rights and duties being inseparable package coming in the wake of citizenship, there cannot be unanimity or universality on the form or nature of rights and duties accompanying the enjoyment of the status of citizenship. It is at this point that providing an analytical framework to have a broader and critical understanding of the concept of citizenship that Marshall enumerates three distinct parts or elements to constitute the soul of any conceptualization of citizenship in contemporary times. Of the three, while the civil and political elements of citizenship may be traced back to the emergence of citizenship over the years in the previous times, the novel aspect of the concept of citizenship happens to be the element of social part which appears to be the innovation of Marshall to enrich the conceptualization of citizenship in modern times.

Barbalet points out a very significant aspect of the elements of citizenship as provided by Marshall by explaining that,' [T]he elements of citizenship distinguished by Marshall are defined in terms of specific sets of rights and the social institutions through which such rights are exercised. The explicit acknowledgment of the requirement to understand citizenship in terms of rights and the institutional context though which rights are expressed is a genuine improvement on the idea that rights intrinsically attach to persons, and that the concept of 'human rights' in this sense can inform an understanding of the rights of citizens. Marshall's approach, on the other hand, indicates that rights are only meaningful in particular institutional context and are thus realizable under specified material conditions.' (Barbalet, 1997: 6) Ordained to be realized, thus, under variously particular contexts, the three elements, according to Marshall, have had independent histories, ranging from the feudal order to the march of capitalism through various stages till the stage of welfare state when the idea of citizenship appeared in context of the social class.

The most significant contribution of Marshall to the theory of citizenship appears to be his conceptualization of social class to be the mainstay of citizenship in the post second world war times. It is argued that in the previous times, the idea of citizenship reflected the search of the capitalist class for securing greater representation in the affairs of state in relation to the aristocratic class. Thus, the civil elements of citizenship came into being with the acceptance of the capitalist class as a distinct participant in the activities of the state. Later, with the growing democratization of the institutions of government, on the one hand, and the rapid rise in the number of the urban working class, on the other, the provision of political rights became an easy tool in the hands of the ruling capitalist caucus to blunt the feeling of inequality amongst the working class of the society. However, the high point in the development of the idea of citizenship came in the middle of the twentieth century when the working class in the capitalist societies was able to extract a number of concessions form the capitalist class in order to elevate the social and economic status of the working class. Thus, to Marshall, the full fledged participation of the working class in the functions of the capitalist societies eventually included the social rights, in addition to the civil and political rights.

In conclusion, it may be argued that Marshall's theory of citizenship appears to be an attempt at finding a pragmatic compromise between the capitalism and citizenship, notwithstanding the fact that the two seem to be inherently contradictory and irreconcilable a the hindsight. The irreconcilability of the two is apparent born out of the fact that while citizenship is equalizing by nature, the basic trait of the competitive market led capitalist society is obviously inequitable. However, with the advancements in the capitalist system taking newer shapes, the rise of citizenship seemed to have imposed certain modifications on the capitalist class system on the basis of the reference to the citizenship rights to defy the contents of the contract. Thus, as has pointed out, '[I]n place of the incentive to personal gain is the incentive of public duty- an incentive that corresponds to social rights. Marshall believes that both incentives can be served- capitalism can be reconciled to citizenship since these paradoxes are inherent in our contemporary social system.' (Hoffman and Graham, 2007: 132)

Citizenship in the context of multiculturalism and globalization

The discourse on citizenship has been enriched by the growing acceptance of multiculturalism as a factor in conceptualizing the notion of citizenship in present times. The basic argument of the multiculturalist theoreticians is that the democratic citizenship must accept the distinct cultural diversities of various sections of society. In other words, in multicultural societies, the idea of citizenship needs to be rooted in the cultural distinctiveness of various groups while affording them to forge a common identity having underpinned by the idea of citizenship. Hence, in such societies, instead of the liberal common citizenship, the idea of *differentiated citizenship* has been evolved which means, in nutshell, that the members of certain distinct groups should not only be accepted in the society as individuals but also in form of a distinct group, with the provision that their rights would depend, in part, on their membership of that particular group. For instance, in India, the enjoyment of certain special protection by the tribal groups in accordance with the differentiated citizenship under which their members are not only taken at citizens of the country, but the enjoyment of the particular protection depends only on their membership of the particular group.

In this regard, Kymlicka recognizes three types of group-differentiated rights: self-government rights; poly-ethnic rights; and special representative rights. Self-government rights refer to the claim of some sort of political autonomy by sub-national or ethnic minorities which would have either been retained by the particular group at the time of its integration with the nation-state or been demanded and received even after its integration. Similarly, poly-ethnic rights relate to those rights of the ethnic groups which remain fundamental in the articulation of the ethnic identity of the group. For instance, the demand of the Sikhs to have the right to carry a *kirpan* (sword) and wear a turban in various European countries reflects the poly-ethnic rights of that group. Finally, the special representation rights are in the nature of bracketing out certain share of weightage in the legislative bodies for both ethnic as well as non-ethnic groups who might feel marginalized in the society due to historical or contemporary reasons. The provision for reservation of seats in the legislatures in India is an example of special representation right.

The complexity of the contemporary debate on the nature of citizenship is further enhanced with the strengthening of the processes of globalization world over. A number of theorists have argued that in the wake of increasingly globalized and interconnected world where the movement of people and cultures has been permitted without strenuous checks, it would be somewhat irrational, if not absurd, to stick to the conventional idea of citizenship being essentially linked to the territorial entity of nation-state. For instance, Soysal reasons out that globalization has given birth to a novel and more universal notion of citizenship having a sort of 'universal personhood' in comparison to the 'national belonging' as its underlying principle. Conceptually, universal personhood thrives on taking the legal rights as separate entity independent of citizenship rights and national belonging. Taking the example of the status of guest workers in Europe who have been living and working there without having acquired the citizenship as they have been assured of their legal and social rights by the countries of their residence, Soysal feels that the existence of wide network of human rights laws and other United Nations frameworks would help these people gain their adequate place in the societies of their residence even without being the *du jure* citizen of those societies.

Moreover, the processes of globalization have also resulted in a number of countries experiencing a huge outflow of their skilled manpower of other parts of the world where there seems to be either scarcity of skilled manpower or find the immigrant manpower more cheap and convenient to hire and handle. In such cases, the country of the migrating population stands to gain much of its foreign inflow and worldwide recognition by virtue of its migrant workers. Hence, for such people, the idea of offering double citizenship or sometimes multiple citizenships has cropped up in recent years. For instance, the proposal of government of India to empower its migrant population with double citizenship happens to be a case in point as these people stand out to be valuable asset for both the countries of their origin as well as the country of home and occupation. Thus, the wave of globalization has brought about newer complexities in the conceptualization of the idea of citizenship.

Citizenship Rights

All legal rights are not citizenship rights. As explained earlier, Citizenship is considered a status ordained to those who happen to be full members of a national community. Derived from this, thus, citizenship rights may be said to be those rights which may be derived from and facilitate participation in this common possession. Citizenship rights are ultimately secured by the state owing to the membership of the individuals in the community of nation-state. Moreover, citizenship rights, directly or indirectly, impose certain fetters on the sovereign authority of the state. Hence, as Greaves notes, citizenship rights 'may be better called the duties of the state to its members.' Yet, it needs to be noted that all rights which restrict the domain of the state cannot be claimed to be citizenship rights though the reverse seems to be true in case of the citizenship rights.

While providing for his conceptualization of the notion of citizenship, Marshall talks about three components of citizenship rights: civil, political and social. The civil element of citizenship rights consists of the rights indispensable for personal liberty of an individual. Similarly, the basic institutional requirement in order to safeguard and facilitate the enjoyment of this right is said to be the rule of law and a system of courts. This, in a way, turns out to be the mainstay of the liberal capitalist social order where the fundamental gains of the individuals in terms of the right to life, liberty and property could have been sustained and safeguarded only when there existed a mechanism to punish the violators of such rights. Moreover, the civil elements of the citizenship rights not only included the natural rights and the consequent right of contract but also rights to freedom of thought and speech, religious practices and of assembly and associations. Thus, to Marshall, civil rights, though vested in individuals, are used to create groups, associations, corporations and movements of every kind, thereby becoming a sort of umbrella term of consist of all such rights having potential to permit human action in the society.

The political component of the citizenship has been understood by Marshall to include the rights having the propensity of being associated with the parliamentary institutions of the British political system. These rights mainly consist of the rights which provide for the avenues to participate in the exercise of the political power. In the modern times, the political rights consisted mainly in having the right to vote for those sections of the society which had remained disfranchised for a fairly long period of time. However, with the increasing number and growing assertion of their right to be associated with the processes and institutions of government, the workers got the valuable right to vote. Thus, in crux, the political component of citizenship rights revolve, in the main, around the right to vote which reaches its logical conclusion with the inherent right to part of the government processes of the country.

In accordance with the formulations of Marshall, the third and probably most significant component of the citizenship rights happens to be the social right of the citizens. The major concern of the social rights of the citizens does not remain confined to only the attainment of a dignified and honourable for the people in the society but goes to the point of assuring some sort of equitable life in the economic sphere also. Indeed, the economic exclusion and inequality in the society are sought to be addressed by the welfare schemes of the government such as comprehensive employment, expansion in the social security network to include most of the vulnerable sections of society, provision of monetary assistance to those facing unemployment, among other. On the social front, the citizenship rights extended to secure the equality and dignity of each individual and ensuring equal claim to the societal dynamics of life in the particular country.

Finally, it may be argued that the nature and scope of the citizenship rights have been witnessing constant transformations owing to the theoretical input being provided by the scholars on the one hand, and the practical modifications being introduced by the capitalist countries in the wake of the processes like globalization, on the other. Hence, the citizenship rights, which in the early times only included the civil and political rights have been stretched to such an extent so as to include the social and economic rights, affording quite a comprehensive package of rights to the citizens.

Convergences between the Human rights and Citizenship rights

Despite being two different conceptual formulations, the human rights and citizenship rights seem to have a number of points of convergence. To begin with, both human rights and citizenship rights seem to be based on the assumption of endowing the individuals with the ability to make their own decisions in so far as their individual lives are concerned. For instance, the basic assumption on which the notion of human rights is based is that a human being is entitled to certain rights and conditions which are condition precedent for him to enjoy the life as a human being. In such an understanding of the notion of human rights, the inherent idea seems to be the life, liberty and fraternity of the individual so that he can enjoy his individual life the way he desires. Similar argument may be advanced in the case of citizenship rights which are nothing but certain special rights which an individual acquires by virtue of being a member of a political community or state. Like human rights, the essence of citizenship rights also appear to be affording the citizens certain circumstances or avenues where he can make decisions based on his own volition. Such decisions may range from living a secluded and lonely life to that of carving a very prominent place for oneself in the political, social or economic life of the country based on his individual choice.

Another point of convergence between the human rights and the citizenship rights appear to be rooted in the fact that both aim at securing some sort of inclusive and non-discriminatory life for the people, irrespective of the difference in the operational domain of the two. For instance, the subtle emphasis of the idea of human rights remain focused on securing for all the individuals irrespective of class, caste, gender, race or any other primordial affinities, those rights and avenues of life which happen to be instrumental in sustenance and flourishing of their lives. Thus, the ideals of inclusiveness and non-discrimination become apparent in the notion of human rights, though there may not be any legal framework to secure such a state of things in a country. Likewise, in the case of citizenship rights, despite the fact that such rights are available to only the citizens of the country, the basic purpose of such rights is to bring about inclusiveness and egalitarianism in the society.

The human rights and the citizenship rights may also be argued to converge on the point that they are addressed primarily to governments, requiring compliance and enforcement. In a way, right from the beginning the idea of human rights, and for that matter the idea of rights themselves, have been found to be either requiring compliance with the innate rights of the people or requiring their enforcement as in the case of welfare measures. In other words, in case the rights are in the nature of negative ones, they required the state to comply with the some sort of natural possessions of the people; and in case the rights being in the nature of positive commandments to the state, the state is required to implement such rights. These appear to be the general characteristics of the concept of rights. When applied to the distinct categories of human rights or the citizenship rights, that particular property of rights hold good for both of them in more or less the same degree. For instance, the human rights, coming as they in the form of some naturally ordained rights of the individuals by virtue of their being born as human beings, the onus of responsibility on the state appears to be in the nature of compliance. In this regard, the state is supposed to just respect the inherent human rights of the people and refrain from doing any such thing which might have the implication of infringing the enjoyment of such rights. Though the same holds good in the case of citizenship rights also, there may be the added rights given to the citizens in the nature of positive and welfare functions, like ensuring full employment to the citizens or offering social security net to the unemployed citizens, the state is called upon to take necessary measures to enforce or implement such responsibilities in such a way that the citizenship rights of the citizens appear to be guaranteed.

Thus, it may be shown that the human rights and citizenship rights, despite being two distinct categories of rights, share a number of common traits which result into some sort of convergences between the two. Indeed, the moot point of the convergence between the two appears to be the rooting of the two in the broad domain of the concept of rights. Hence, as long the as the commonality of rights applies in the description of the two notions, the points of convergences may be distinctly found. But the moment, the 'human' and 'citizenship' elements of the concepts gain predominance, the points of differences between the two become prominent.

Differences between human rights and citizenship rights

The demonstration of the points of convergences between the human rights and the citizenship rights needn't be construed that the two naturally different notions are one and the same. As is mentioned earlier, the differences between the two become apparent when the commonality of rights is perceived within the framework of 'human' and 'citizenship'. Moreover, with the rapid transformations taking place in the conceptualization of the notions of both human rights and citizenship rights, the inherent differences between the two have also been emphasized in order to show that human rights cannot take the place of citizenship rights or vice versa.

First, the human rights are in the nature of ethical obligations on the state to have some sort of sympathetic outlook towards the rights and necessities of each and every individual living within its boundaries irrespective of the fact whether they are citizens of the state or not. In other words, the human rights are born out of ethical consciousness of the humanity to accord the bare minimum needs of life to everybody. However, the state may pretend not to be legally bound to obey the ethical obligations and therefore, the guarantee of human rights to the people may not be enforceable. On the contrary, the citizenship rights are legal rights in strict sense of the term without any scope for the state to back out of them. In fact, ordinarily, when the provisions for citizenship rights are being made in the constitution, adequate provision is also made at the same time get the enforceability of such rights intact in all the times. Thus, in brief, while the human rights appear to be moral and ethical in nature, the citizenship rights are legal and binding in nature.

Second, a difference can be made between the human rights and the citizenship rights on the basis of the geographical location of the two. In this regard, while the human rights are said to be universal in nature in the sense that they need to be observed and honoured in all parts of the world and by all the countries irrespective of their unique political and socio-economic systems, this does not hold true in the case of the citizenship rights. Actually, the citizenship rights appear to be as diverse as geographically diverse the world is. Each and every country in the world follow a particular pattern of citizenship rights within its own territorial boundaries keeping in view its own typical socio-economic and political systems.

Third, human rights are individualist in nature in comparison to the citizenship rights which appear to be collective and common to all the citizens of the country. Human rights are individualist in the sense that they seek to protect the integrity of the individual in terms of her body and mind and the choices she makes in this regard. On the contrary, the citizenship rights aim at providing for certain particular status and concomitant rights and responsibilities every citizen of the country.

Finally, the human rights and the citizenship rights can also be distinguished on the basis of 'differentiation'. In other words, in the context of growing wave of multiculturalism, it has been argued to provide for a 'differentiated citizenship' within a country instead of universal citizenship seems to be case till now. Thus, in case, the idea of differentiated citizenship is accepted, there might emerge various sets of citizenships in place of single or dual citizenship, as is the case in the present times. However, in the case of human rights, they are considered to the universal norms of human existence which need to be accepted by all the states in the world.

Interlinkages between human rights and citizenship rights

To begin with, the convergence between the two becomes quite obvious when the objective of guaranteeing the human rights and citizenship rights to the people are deeply analyzed. As a matter of fact, the provision of human rights has been made in view of the fact that the human existence would not be possible in the absence of such rights. Thus, beginning with the right to life and liberty, the domain of human rights extend to include even those rights whose enjoyment are considered to be necessary in order to help an individual develop and use his human faculties, intelligence, talents, in addition to satisfy his or her spiritual or other needs. In nutshell, the aim of human rights is not only to secure the life of the individual but also ensure the avenues for her to develop her self to the maximum possible level. However, such a lofty and ideal condition of life might not be possible for the individual if she is not afforded even those rights which come as part of the package of citizenship rights. For instance, the individual might wish to become the repository of the political power in a country. But such a situation is not possible unless she is endowed with the political right of full and substantive participation in the political processes of the country including the right to hold political offices. It, therefore, becomes obvious that the citizenship rights start where the human rights stops. But since the innate purpose of both of them is to secure a full and developed life to the individual, the said purpose could be attained only when the two are to function in tandem, thereby affording a point of convergence between the two.

The interlinkages between the human rights and the citizenship rights appear to be poised for a sudden spurt in the wake of the process and products of globalization. As the processes of globalization have set into motion a number of seemingly mutually paradoxical tendencies in the global scenario, it would be interesting to note the final outcome of the ongoing process of globalization. But going by the pointers available in the current times on the portent features of the globalization process, it is assumed to result in to some sort of more free flow of goods, services as well as people from one part of the world to another. In such a situation, the scenario may emerge when the citizens of one country in the world might find it appropriate to base themselves in some other countries in order to carry out their trade or commerce in a more efficient and profitable manner. If this happens, then the intermix of human rights and the citizenship rights may produce certain innovative interlinkages between the two. In such a situation, the hold of citizenship rights might get loosened and the prominence would naturally ordain on the human rights. Thus, though the human rights and the citizenship rights may remain the guiding principles of the conduct of the individual, their might emerge certain subtle interlinkages between the two in order to bring about a harmonious working framework of rights for such moving people.

Concluding Observations

The idea of citizenship and the citizenship rights have always been the core concern of the political theory right from the beginning. However, with the emergence of the idea of human rights, the notion of citizenship rights have been faced with a new set of circumstances whereby a life was conceptualized for an individual even outside the domain of the citizenship rights. In such a situation, though the citizenship rights continued to hold their ground, the expansion in the acceptability of human rights as some sort of universal notion to ensure for the people the bare minimum level of freedom of civil and political rights, appears to have compromised with the position of citizenship rights. Moreover, with the growing acceptability of the factors like multiculturalism and globalization, the nature of both human rights as well as the citizenship rights is bound to undergo drastic transformations paving way for certain subtle pointers in the convergences, differences as well as interlinkages between the human rights and the citizenship rights.

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Suggested Questions

1. Critically examine the conceptual perspectives on Human Rights and Citizenship Rights.
2. Critically examine the Marshall's theory of citizenship. How has the nature of citizenship undergone subtle transformations in the wake of multiculturalism and globalization?
3. Examine the interlinkages, convergences and differences between human rights and citizenship rights.

Lesson 4

HUMAN RIGHTS AND THE INDIAN CONSTITUTION

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

India after independence also provides fundamental rights to its citizens including some Directive Pricnciples of State Policy for their development and to lead a civilized life. The preamble of the Constitution clearly describes the values of justice, equality, secularism and cultural pluralism to make a stable democratic society and polity.

Human Rights and the Constitution of India

The constitution of India is known as one of the most right-based constitutions in the world. It was drafted around the same time when the Universal Declaration of Human Rights by the United Nations came into force (1948). Indian constitution provides the spirit of human rights in its preamble and the sections on Fundamental rights and Directive Principle of State Policy.

Individual partly and wholly expects that he/she should be provided the good environment for his/her overall development. Rights provide that environment. Rights have been defined as those claims of an individual that are necessary for the development of his/her ownself and recognized by state or society. Some of the rights provided by the state and enshrined in the constitution are known as fundamental rights. Fundamental rights are those rights that are enforceable through the court of law.

The Indian constitution is based on the theory that guided India's struggle against British colonialism, which was marked by the violation of civil, political, social, economic and cultural rights of the people. Therefore, after independence the framers of the constitution provided some fundamental rights to the citizens which are enshrined in the part III of the constitution. These fundamental rights are defined as basic human freedom for a proper and harmonious development of personality of every Indian citizen. These fundamental rights apply to all Indian citizens, irrespective of caste, creed, colour, sex, race or place of birth. They are also enforceable by the courts, subject to certain restrictions.The rights have their origins in many sources including England's Bill of Rights, the United States Bill of Rights and France's declaration of the Rights of Man.

India's Independence Movements, Human Rights and the Constituent Assembly

The development of constitutionally guaranteed fundamental human rights in India was inspired by England's Bill of Rights (1689), the United States Bill of Rights (approved on September 17, 1787, final approval on December 15, 1791) and France's Declaration of the Rights of Man (created during the revolution of 1789, and ratified on August 26, 1789).

The Rowlatt Act of 1919 provided extensive powers to the British government. It allowed the officials to indefinite arrest, detention of individuals and armed them with warrant-less searches and seizures. It also restricted people for public gathering and censored the media. Therefore, the extensive powers given to the officials resulted into the gross violation of Human rights of masses. In response to this the public opposition grew and there was a widespread demand of guaranteed civil liberties and limitations on the powers of government. Prior to this Act, there were Vernacular Press Act of 1878, Indian Council Act, 1892, Indian Council Act 1909 etc, which faced political and public opposition. The regime of Lord Curzen (1892-1909) was marked by the violation of basic human rights of individuals. Thus it can be said that the leaders of freedom movement were not only fighting for the independence but they were also fighting for the basic human rights of Indian masses.

Another major development during that period was the Nehru Commission Report of 1928 (with Motilal Nehru as its Chairman). It proposed constitutional reforms for India. It apart from demanding a dominion status for India and elections under universal suffrage laid emphasis on the rights deemed fundamental, representation for religious and ethnic minorities and suggested to limit the power of government. It also proposed to protect the fundamental rights of the people, which were denied most frequently by the colonial administration.

In 1931, the Indian National Congress approved several resolutions committing itself to the protection of fundamental civil rights and economic-social rights for example, the minimum wage and the abolition of untouchability and serfdom. The Karachi Resolution adopted by Congress was also a landmark as it demanded to include the economic freedom with political freedom to end the exploitation of the people and lastly the Sapru Committee[xiii] recommended the political and civil rights, equality of liberty and security, freedom to practice a religion, worship etc to the people. When India achieved independence on 15 August 1947, the task of framing a constitution was undertaken by the Constituent Assembly. It consisted of elected representatives with Rajendra Prasad as its President. While members of Congress composed of a large majority, some persons from diverse political backgrounds were appointed with a responsibility to frame the constitution and national laws. Dr. Bhimrao Ambedkar became the chairperson of the drafting committee, while Jawaharlal Nehru and Sardar Vallabhbhai Patel became chairpersons of committees and sub-committees responsible for different subjects. A notable development during that period took place on 10 December 1948 when the United Nations General Assembly adopted the Universal Declaration of Human Rights and called upon all member states to adopt these rights in their respective constitutions, this development has a significant impact on the Constitution of India.

The Fundamental Rights were included in the Ist Draft Constitution (February 1948), the IInd Draft Constitution (17 October 1948) and the IIIrd and final Draft Constitution (26 November 1949), being prepared by the Drafting Committee.

Human Rights and the Constitution of India

The Constitution as said above provides some Fundamental Rights to its citizens. The Fundamental Rights are included in Part III of the Constitution (Articles 12-35)[xiii], these rights were finalized by a committee of the Constituent Assembly headed by Sardar Vallabhbhai Patel.

Nature of Rights

These rights have not been defined in the Constitution. But it is agreed that they are described as fundamental because they are superior to ordinary laws; they can be altered only through constitutional amendment. Furthermore they are vital for the full development of the human personality, promoting an individual's dignity and welfare. These rights unlike other justifiable rights are protected by the constitutional remedy by way of an application direct to the Supreme Court under Article 32, which is itself included in Part III. The Fundamental Rights are not absolute; they can be subject to certain restrictions. While some of these restrictions are spelt out by the Constitution, other restrictions may be imposed by the government. However, the reasonableness of such restrictions is to be decided upon by the courts. Thus a balance is stuck between individual liberty and social control. The Fundamental Rights can be suspended during emergency. The rights are available against the State and not against private parties.

Fundamental Rights in India

The Fundamental Rights included in the Indian constitution are guaranteed to all Indian citizens.[xiii] These civil liberties take primacy over any other law of the land. They include individual rights common to most liberal democracies, such as equality before the law, freedom of speech and expression, freedom of association and peaceful assembly, freedom of religion, and the right to constitutional remedies for the protection of civil rights such as habeas corpus. In addition, the Fundamental Rights for Indians are aimed to topple the inequities of past social practices. They abolish the practice of untouchability; prohibit discrimination on the grounds of religion, race, caste, sex, or place of birth; and prohibit traffic in human beings and forced labor. They even protect cultural and educational rights of minorities by ensuring them to preserve their distinctive languages and establish and administer their own education institutions.

There are six fundamental rights enshrined in the Indian Constitution. Right to equality is included in Articles 14. 15, 16, 17 and 18 of the constitution. It is the principal foundation of all other rights and liberties. Article 14 describes that all citizens of India shall be equally protected by the laws of the country. Article 15 of the constitution provides that no individual shall be discriminated on the basis of caste, colour, language etc. However, the State may make any special provision for women, children, and for socially or educationally backward class or scheduled castes or scheduled tribes. Article 16 of the constitution defines that the State cannot discriminate against anyone in the matters of employment However, there are some exceptions, the parliament has the right to enact law/s describing that certain jobs can only be filled by the applicant/s who are domiciled in the area for the post that require knowledge and the language of the locality or the area. The state may also reserve posts for members of educationally and economically backward classes, scheduled castes and tribes for their adequate representation in the jobs. Article 17 abolishes the practice of untouchability. Article 18 of the constitution prohibits state from conferring any titles. This means that the citizen of India cannot accept titles from a foreign state. But Military and academic distinctions can be conferred on the citizens of India and also the awards of *Bharat Ratna* and *Padma Vibhushan* cannot be used by the recipient as a title.

Except the right to equality, the Constitution of India provides the right to freedom, given in articles 19, 20, 21 and 22. Freedom of speech and expression (it includes the freedom of press), freedom of assemble peacefully without arms, freedom to form associations or unions, freedom to move freely throughout the territory of India, freedom to reside and settle in any part of the territory of India, freedom to practice any profession or to carry on any occupation, trade or business are some of the freedoms which are provided to Indian citizen.

However, at the same time these freedoms can be restricted in the interests of public order, morality and the sovereignty and integrity of India. Freedom of speech and expression, generally interpreted to include freedom of the press, can be limited "in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence"

The constitution also guarantees the right to life and personal liberty under article 20 and 21. Article 20 states that no individual can be awarded punishment which is more than what the law of land prescribes at that time. This legal axiom is based on the principle that any criminal law cannot be made retrospective. Therefore, the essential condition for an act to become a crime or offence is that it should have been an offence legally at the time of committing it. It also provides that no person can be convicted twice for the same offence. Article 21 declares that no citizen can be denied his/her life and liberty except by law. Therefore, an individual’s personal liberty can only be disputed if the person has committed a crime. This right does not include the right to die thus suicide or an attempt thereof is an offence.

Rights of a person arrested under ordinary circumstances are laid down in the right to life and personal liberty. No person can be arrested without being informed about the grounds for his/her arrest. If arrested the person has the right to defend himself by a lawyer of his choice and also the arrested citizen has to be brought before the nearest court within 24 hours

In 2002, Article 21 (A) was incorporated by the 86th constitutional amendment act. The primary education has been made a fundamental right under the right to life and personal liberty. It says that “to the children in the age group of six to fourteen years shall be provided free and compulsory education” by the state.

There are provisions that state can impose restrictions on these rights for the interest of independence, sovereignty and integrity of India. Nevertheless, the right to life and personal liberty cannot be suspended. The six freedoms described above are suspended automatically or bear some restrictions imposed on them during the state of emergency.

Article 23 and 24 provides the right against exploitation. It has two provisions, one being, the abolition of trafficking in human beings and Begar (forced labor) and other the abolition of employment of children below the age of 14 years in dangerous jobs like factories and mines.

Articles 25, 26, 27 and 28 of the constitution cover the right to freedom of religion. The objective of this right is to maintain secular nature of Indian state. Thus all religions are considered equal before the state and no religion shall be given preference over other. Citizens are free to preach, practice and propagate any religion of their choice. It also includes the freedom not to practice a religion and to propagate such views. However, the state can restrict certain practices of religions in the interests of public order, morality and health, say for example the wearing and carrying of *Kirpans* in the profession of the Sikh religion can be restricted by the state. There are some other provisions like religious communities can set up charitable institutions and no Individual shall be compelled to pay taxes for the promotion of a particular religion. It should also be noted that the institution/s run by the state cannot impart education that is pro-religion

Article 29 and 30 provides special measures to protect the rights of the minorities. While article 29 applies to all the citizens of India, article 30 deals with the rights of minorities. Any religious or linguistic community that has a language and a script of its own has the right to conserve and protect them. State cannot discriminate any citizen against for admission in State or State aided institutions.

All minorities, religious or linguistic, can set up their own educational institutions in order to preserve and develop their own culture. In granting aid to institutions, the State cannot discriminate against any institution based on the fact that it is administered by a minority institution. Although state can interfere in case of maladministration.

Article 32 of the constitution deals with the right to constitutional remedies. It empowers the citizens to seek a court of law in case of any denial of the fundamental rights, by asking the courts to preserve or safeguard the citizen's fundamental rights. It can be done in various ways, for example the courts can issue various kinds of writs. These writs are *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*. This right can be suspended by the central government in case of a national or state emergency is declared.

Except this there was a provision for right to property under Articles 19 and 31. Article 19 guaranteed to all citizens the right to acquire, hold and dispose off property. Article 31 provided that "no person shall be deprived of his property save by authority of law. The 44th constitutional amendment act of 1978 deleted the right to property from the list of fundamental rights. A new article (Article 300 A) was introduced which says that 'no person shall be deprived of his property save by authority of law'. Therefore, if a legislature makes a law that deprives a person of his property, there would be no obligation on the part of the State to pay anything as compensation. The aggrieved person shall have no right to move the court under Article 32. Thus, the right to property is no longer a fundamental right, but a constitutional right.

Rights simply mean the freedom which is necessary for the individual good and at the same time for the good of the community. The fundamental rights guaranteed under the Constitution of India have been incorporated into the *Fundamental Law of the Land* and are enforceable in a court of law. However, this does not mean that they are absolute or that they are immune from Constitutional amendment.

Critical Analysis of the Fundamental Rights in India

These rights have been criticized for a number of reasons. There is criticism of the provisions of preventive detention and suspension of Fundamental Rights in times of Emergency. The provisions of acts like MISA (*Maintenance of Internal Security Act*) and NSA (*National Security Act*) are criticized as a means of attacking the fundamental rights. These acts sanction excessive powers to fight the internal, cross-border terrorism and political violence, but do not safeguards the civil rights. The phrases like "security of State", "public order" and "morality" have a wider implications. The meaning of phrases like "reasonable restrictions" and "the interest of public order" have not been explicitly defined in the constitution, and this ambiguity leads to unnecessary litigation. The freedom to assemble peacefully and without arms is also criticized due to use of force by police (in some instances) to break up the meetings. The fundamental rights does not include freedom of press in the right to freedom, which is necessary for formulating public opinion and to make freedom of expression more legitimate.

Some critiques feel that the rights benefit only a few in the country, mainly the rich. The Constitution makes no difference between the rich and the poor, but in practice the poor are unable to demand or fight for their rights, as they do not have the money to go to court. The rich with the capacity to go court are able to stand up for their rights. Besides, many of these rights obstruct progressive legislation in the interest of socio-economic development. If one subscribes to the idea of a democratic polity, one cannot quite agree with the idea of removing the rights to facilitate social welfare. The Fundamental Rights chapter does check State tyranny which could ensue in the name of social welfare measures. The right way is to empower the disadvantaged sections of the population with free legal aid and educate all people about their rights (as well as duties).

Fundamental Rights are basic to a democratic polity, and, with all the shortcomings of their enunciation in the Indian Constitution, their inclusion in the Constitution has protected the basic human rights of the individual well.

Directive Principles of State Policy

Part IV of the constitution (Article 36-51) contains the Directive Principles of State Policy.[xiii] Finalized by the Sapru Committee, these Directives are in nature of directions to the legislative and executive wings of the government to be observed while formulating laws and policies. Most of them aim at the establishment of economic and social democracy which is pledged for in the preamble.

A Survey of the Directive Principles

Articles 36 and 37 define the term state and lay down that the provisions in Part IV shall not be enforceable by courts. Article 39 of the constitution requires the state to direct its policy towards securing adequate means of livelihood for all citizens, the citizens, men and women equally, have the right to an adequate means of livelihood, the ownership and control of the material resources of the community are so distributed as best to subserve the common good, the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. In addition to this, Article 39A added by the 42nd Amendment. It wants the state to ensure equal justice and free legal aid to poor. Organization of village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government is suggested in Article 40. Article 41, 42, and 43 suggest the right to work, to education and to public assistance in certain cases, provision for just and humane conditions of work and maternity relief, living wage, etc., (for workers), and the participation of workers in management of industries. Article 44 deals with the concept of Uniform civil code for the citizen, means that all religions should be governed by one uniform law. Article 45 and 46 suggest for free and compulsory education for children, and promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections of the society. Article 47 expects the state to raise the level of nutrition and the standard of living and to improve public health. While Article 48 deals with the organization of agriculture and animal husbandry, Article 48A suggests for the protection and improvement of environment and safeguarding of forests and wild life. Article 49 concerns with the protection of monuments and places and objects of national importance and Article 50 expects the separation of judiciary from executive. At last Article 51 of the Directive Principle deals with the concept of promotion of international peace and security

The State shall endeavor to promote international peace and security, maintain just and honorable relations between nations, foster respect for international law and treaty obligations in the dealings of organized people with one another; and encourage settlement of international disputes by arbitration. Many of the Directive Principles are influenced by Gandhian philosophy.

Implementation of the Directive Principles

While the Directive Principles have not been fully translated into action, it cannot be denied that the various governments have put in some effort in this direction. The Directive in Article 39(b) has influenced legislation to fix land ceilings and remove intermediaries such as Zamindars; Article 40 has led to several laws for organizing village panchayats; Article 43 is seen working in the formation of several boards to help develop cottage industries; legislations for compulsory education at primary level exists as directed by Article 45; various measures have been taken to protect historical monuments, forests and wild life. Efforts have been made to organize agriculture along modern and scientific lines. Cow slaughter is banned in many states. A legal aid system has been established.

However, on the whole, implementation of the legislations giving importance to the Directive Principles has been slow and has not shown desired effect of removing economic, social and political injustices, nor has the tendency of wealth being concentrated in a few hands been retarded. Prohibition has proved a sad experience as states find themselves caught in the dilemma of practical difficulties and loss of revenue. Political parties are reluctant to agree to structural changes in the existing property relations because they do not want to hurt their vote banks.

Significance of the Directive Principles

The Directive Principles are not enforceable in courts. So what is the utility of including them in the Constitution? How can a Government be made to implement them? It may be pointed out, however, that no Government can afford to ignore them without running the risk of apply these principles in making laws. The Directives amplify what is said in the Preamble, that the goal of Indian polity is a welfare state. They are 'moral precepts' and the courts are increasingly talking the Principles into consideration while interpreting the Constitution.

Fundamental Rights and Directive Principles: A Comparison

There is no doubt that both the Fundamental Rights and the Directive Principles of State Policy are important features of the constitution. However, they differ from each other in certain points. For example, the Fundamental Rights seek to protect the individual from state encroachment but the Directive Principles are aimed at the promotion of the general welfare of the society. The Fundamental Rights constitute some limitations upon the State action and the

Directive Principles are positive instruction to the Government to take steps to establish a just social, economic and political order. The Fundamental Rights are justifiable, any citizen can seek court's assistance if he/she is denied the rights guaranteed to them or if their rights are violated by individual or state but the Directive Principles are not enforceable by the courts if the state has not implemented them. If there is no law enacted to carry out the policy stipulated in any of the Directives, no individual or the state, for that matter, can violate any existing law under the pretext of following a Directive. In other words, legislation is required before any Directive is implemented. The Fundamental Rights, on the other hand, are guaranteed by the constitution.

Human Rights Discourses in India

There are three major specific course of human rights discourse in the Indian context

Civil and Political Rights[xiii],

Rights of the Marginalized (such as women, Dalits and Adivasis) and

Economic, Social and Cultural Rights.

Civil and Political Rights

The late 60s and early 70s is known as the years of various movements and political formations due to the growing disappointment with the state. It was the period when Congress was bifurcated into Congress (O) led by Old Guard and Congress (R)[xiii] led by Indira Gandhi. But later Congress (R) became the main Congress and Indira Gandhi as its main leader. But the successive years followed some movements like Nav Nirman movement in Gujarat (1974) and Jai Prakash Narain agitation against Congress regime, due to corruption in Congress regime, price rice insufficient generation of employment etc. these developments were not tolerated by Indira Gandhi regime and insecurity of her government caused imposition of Emergency (1975-77). During that period most of the civil and political rights were suspended. Almost all the political opponents, activists and critique of the government were imprisoned. It was the period when every civil and political rights guaranteed by the constitution to the citizens were violated by the state. The emergency is marked out by a black spot in the history of democracy in India. Custodial violence, arbitrary detention and police atrocities etc caused the serious violation of human rights against the citizens of India.

In the last 20 years, the movement for civil and political rights has become much more lucid and extensive. It has developed beyond a set of urban middle class liberal intellectuals to a wide and diverse socio-political base. With the increase of insurgencies in the 1980s and the resulting State suppression of separatist movements in different parts of the country, caused the incidents of violation of basic human rights to most of the citizens. It is this period when various human rights organization began to appear. The Sikh massacre in 1984, followed by the assassination of Mrs Gandhi, raised serious questions about the role of the state in protecting the fundamental rights of the citizens.

The rise of right-wing Hindu communalist forces, the biased State machinery and increase of the incidents of communal violence in recent years have given rise to a different set of actors who put emphasis on the civil and political rights of the minority communities. The communal violence in Gujarat (2002), where more than 1,000 people were killed and hundreds of homes and shops destroyed and looted, portrayed the inherent contradictions in the Indian polity and State. But the rise of these sectarian, fanatical and communal forces and their anti-human rights image provided a way for bringing human rights activists across the political spectrum, including leftist groups and minority rights groups together.

The recent ongoing human rights violation of Hindi-belt people in Assam and Maharashtra also portrays the negative picture of human rights situation and state response to it. Therefore the condition of civil and political rights in India has been in a very haphazard situation. No doubt the constitution provides safeguards of basic rights of every citizens of India; the real picture shows a different story.

Rights of the Marginalized

The civil and political rights as discussed above focused largely on the rights of individual, but the mid 70s witnessed a new development of human rights discourse in India, which was based on group rights, collective rights and people rights for the economic, social and political empowerment of the marginalized groups, like women, Dalits, and Adivasis (Tribals).

The women's movement emerged in the 1970s. The committee on Status of Women submitted a report in 1974 describing the marginalization of women in every sphere of life. The emergence of some women's groups like Self Emloyed Women's Association, (SEWA), All India Democratic Women's Association (AIDWA), Manushi, Joint Women's Forum and Centre for Struggling Women etc raised a new consciousness and public debate on the issue of status of women. These organizations raised voice against domestic violence, dowry, rape, custodial violence, trafficking, sexual harassment in work place or educational institutions and invisible labour of women in their household etc.

The women's movement not only presented a critique of the Indian patriarchy, casteism and feudalism, it also endorsed a new awareness of women's rights. Though the movement initially emerged as a largely urban movement, but now it has developed as one of the most articulated and widespread movements in India, with new campaigns for political participation of women and their rights.

It is partly the pressure from these women's movements that the 73^{rd} and 74^{th} constitutional amendments provided 33% reservation for women in local self government institutions in India.

In the post-Emergency years, emphasis on social mobilization of marginalized groups is witnessed. A number of political and social activist etc focused on the movements of Dalits or Tribal rights. These activists highlight the historical and structural marginalization of Dalits, Tribals and landless labourers. The empowerment of these groups has become a key concept in contemporary politics and social discourses. Affirmative action (like reservation for these marginalized groups in educational institutions and public jobs, program and policies for their economic, social and political development) is done by the state to enable them for a dignified life. The Social and political activists working in the field of rights of marginalized use the term People rights to emphasize the collective characteristics of their rights and to focus on political aspects of their rights.

Therefore, from the mid 80s there have been continuous efforts to describe and re-articulate the rights of dalits, Tribals over natural resources etc. This became more articulated and vocal, when issue of displacement because of large dams, developmental projects, forestry projects, mining companies etc, came into existence. Most of the sufferers of these displacements were Dalits and Tribal people. The movement like Narmada Bachao Andolan, the Fishworker's struggle and Dalit movements brought the issue of the marginalized communities into the mainstream political discourse in India.

Economic, Social and Cultural Rights

The unequivocal focus on Economic, Social and Cultural (ESC) Rights is comparatively new when compared to civil and political rights or group rights. The appearance of ESC rights in the mainstream development agenda is related with the emergence of more institutionalised and funded efforts for the eradication of poverty and social development of the masses. These initiatives generally termed as Non Governmental Organizations (NGOs). In the initial years, many such NGOs commenced with a welfarist approach, with an effort to supplement or substitute the welfare State.

However, over a period of time there has been an extensive realisation of the limitations about these micro-level development projects and poverty eradication programmes, as they do not question the politics and programs that disseminate deprivation among the masses. Thus primarily because of this contradiction, there was felt a need to bridge the micro-level program and macro-level political and policy formulation became relevant, resulting the rise of some grassroots level action groups and the mass movements of Women, Dalits, Tribals and landless poor to pressurise and influence the State to meet its obligation to fulfil the ESC rights.

The active judiciary has also served for the development of the scope of fundamental rights which resulted into the integration of economic and social rights in its arena. It expanded the scope of Article 21 of the Indian Constitution which guarantees the Right to Life and suggests that the right to life means the right to live with dignity, and that the right to live with dignity includes the right to livelihood, right to education and right to health.

The various World Summits on ESC rights, starting with the Vienna Summit on Human Rights in 1993, encouraged to bring ESC rights into the agenda of many international developmental organizations. Thus different groups have taken up the issue to promote specific rights. This contains the campaign for the fundamental right to education. Therefore, the 86th constitutional amendment of the Indian Constitution, guarantees the fundamental right to education. There have also been parallel campaigns for the rights of self-employed women and unorganised workers including the right to universal healthcare and some other campaigns which focus on economic, social and cultural rights.

To protect the rights of consumers and people, the environmental and consumer protection movements (from 1980s) suggested the way for a series of new legislations and policy interventions. The Adivasi (tribal) movement and the increasing marginalisation of the minority groups by the right-wing forces have brought the concept of cultural rights into public debate and policy discourse.

While the period of 1970s can be termed as the decade of the civil liberties movements, the 1980s observed the appearance of group rights and people's rights over resources and livelihoods. But the 1990s witnessed the emergence of ESC rights, causing the rights-based reorientation through the international development organizations and the political impulses on the ground and the increased visibility of the rights discourse provided the right conditions for advocating ESC rights.

Making Human Rights Work: Indian Judiciary and other Human Rights Institutions in India

Human Rights and Indian Judiciary

The Indian judiciary occupies a unique place in Indian democratic set up. As an interpreter of the Constitution, the Indian judiciary is an independent organ of state and contains the power to strike down executive, quasijudicial and legislative actions as unconstitutional. The Supreme Court's interpretation of the law is binding to all the higher or lower courts within the Indian territory. Except this, all authorities like civil or judicial in India shall act in aid of the Supreme Court. It is armed with the power to punish for contempt of the law or court and also reinforces the position of the judiciary as a Constitutional authority that enforces accountability and answerability of the other organ of the state.

In recent years, it is witnessed that the court has emerged as a dynamic institution which play active role in the task of expanding the scope and content of individual and collective rights of the citizens in civil and political spheres and in the economic, social and cultural spheres.

Nature of Court Orders

The enforcement of orders declared by courts is heavily dependent on the nature of its orders, primarily there are two aspects of court's order

a) *Declaratory* and b) *Mandatory*

While d*eclaratory* orders and judgments (without substantial directions to the state authorities) have to await the acceptance of their binding nature under Article 141 & 144 by the state and the *mandatory* orders, on the other hand, are grounded on the general indifference displayed by the executive to move to action and spell out a plan of action as well as a time schedule within which compliance with court orders is expected.

The *Unnikrishnan JP vs. State of Andhra Pradesh*[xiii] is the example of declaratory orders, in which the court held that the right to education is implicit in and flows from the right to life guaranteed under Article 21 of the constitution, which includes that a child who is a citizen of India has the fundamental right to free education upto the age of 14 years. After nine years of this jurisdiction, the nineteenth constitutional amendment act came into force as a response providing Article 21 A which entitles free education to every child between ages of 6- 14 years.

The *Bandhua Mukti Morcha Case*[xiii] is the example of Mandatory orders by court. In this case the court pronounced that the non-enforcement of welfare legislation like the Minimum Wages Act, 1948 and the Bonded Labour (Abolition) Act, 1976 would equivalent to denial of the right to live with human dignity enshrined under Article 21 of the Constitution. The *Asiad Working Case and the Olga Telis Case*[xiii] are also the examples of this mandatory order, where the court clearly describes these incidents as the violation of Article 21 and gave judgments in favor of the sufferers. Ban on Child labor can also be referred as an example of this category.

Debate on Judicial role in the arena of Human Rights

There are two kinds of arguments in judicial intervention in the arena of Human rights, one is *positive implications* and other is *negative implications* of court's order.

Positive Implications

In the case of *Vishaka*[xiii] on the issue of sexual harassment of women in the workplace, the Supreme Court provided recognition and enforcement of the right to access judicial remedy against the injury caused to women at the work place. The Supreme Court's jurisdiction of free education to every child between ages of 6-14 years protects the basic rights to education of every child of India.[xiii] In the *Paschim Banga case*[xiii] the right to emergency medical care for accident victims, the court protects the right to health of every citizens of India and lastly the environmental issues enabled the court to develop and apply the polluter pays principle, the precautionary principle and the principle of restitution.[xiii]

Negative Implications

Because of this court's intervention, there may be a situation of conflicts of rights, for example, the court's decision to close a polluting abattoir in Delhi has also affected the livelihoods of butchers.[xiii] This intervention may lead a negligence of accounting for competing public interests. For example, while ordering the closing of a polluting industry or ban of child labor, the workmen and their families may be affected adversely and their issues may go unheard or unnoticed. There may be instances of challenges to the legitimacy of court's order due to continued non-implementation of a declaratory judgment. It is debatable question whether the use of contempt of power (due to problem/s of lack of resources), is indeed the best or only way of guaranteeing implementation of the orders.

In spite of some shortcomings, Indian judiciary is playing an active role in implementing and protecting the basic rights of its citizens. The court is also providing a platform for the state, civil society organizations (like NGOs or some other social organizations), activists or institutions of human rights to engage in the scheme for realization and protection of human rights of Indian citizens.

National Human Rights Commission

It was established on 12th October, 1993 under the legislative mandate of the Protection of Human Rights Act, 1993. Over the past few years, the Commission has given a positive meaning and a consent to the aims set out in the Protection of Human Rights Act, 1993. It has been armed through this Act to promote and protect human rights in the country. While enterprising the tasks set out in the Protection of Human Rights Act, 1993, it has noticed several loopholes in the Act over the past few years. Therefore, the commission put emphasis on the need to review and amend the Act of 1993 for the proper and effective functioning of the Commission.[xiii]

The Commission generally takes up the issues involving cases of human rights violation that are of significance, either through suo moto, or when the civil society organization, the media, concerned citizens, or expert advisers, bring the cases to its notice. It focuses on the protection of human rights to all section of society, particularly the vulnerable or marginalized sections of the society.

A significant increase in public awareness of the work of the Commission has been witnessed. This is partly reflected in the growing number of the complaints of human rights violations, which have been received by the Commission over the past few years. The Commission divides the cases in these following categories: (1) Custodial deaths; (2) Police excesses (Torture, Illegal detention\ unlawful arrest, false implication etc.; (3) Fake encounters; (4) Cases related to Women and Children; (5) Atrocities on Dalits\Members of Minority community\ Disabled (6) Bonded labour (7) Armed forces\ para military forces and (8) other important cases.[xiii]

Once the Commission receives a complaint from any individual or civil society organizations etc, it asks statements from the concerned government or authority regarding complaint. After receiving the comments from the concerned authority a comprehensive note on the merits of the case is prepared for the consideration of the Commission. Once this process is completed a detailed directions and recommendations by the Commission are communicated to the concerned government under Sections 18 and 19 of the Act.

Since its establishment in October 1993, the commission has issued compensation in the amount of Rs. 9,76, 68,634 to be paid in 559 cases.[xiii] In year 2002-2003 the Commission recommended the compensation amount of Rs. 31, 40,000 to be paid in 39 cases.[xiii] The Commission during the period beginning from 1 April 2002 to 31 March 2003 lodged 68,779 cases and in the same period for 2001 to 2002 the Commission registered 69,083 cases.[xiii] Out of 68,779 cases placed before the commission in the year 2002 to 2003, 67, 354 complaints related to human rights violations, 1340 related to custodial deaths, 2 concerned custodial rapes and 83 related to police encounters were found.[xiii] Till 31March 2003, the total number of cases of human rights violation which were placed before the Commission was 43,010, out of which, 9763 cases were awaiting for preliminary consideration and 33,247 cases either reports were awaited from the authorities concerned or the reports had been received and are pending further consideration within the Commission.[35]

National Human Rights Commission v. State of Arunachal Pradesh

The Commission under Article 32 of the Indian Constitution registered a writ petition as a public interest petition before the Supreme Court of India.[xiii] The Commission filed this petition mainly to enforce of fundamental rights of about 65,000 Chakma\ Hajong tribals under Article 21 of the Constitution. In this case due to Kaptain Hydel Project, a huge number of refugees from former East Pakistan[xiii] were displaced in 1964. These displaced Chakmas took shelter in North-Eastern States of India, like, in Assam and Tripura. There were two foremost issues involved in this case, one being the conferring of citizenship and other fear of maltreatment by certain sections of the people of Arunachal Pradesh. Largely to deal with these two issues NHRC was approached by two different NGOs.

In this case the Commission argued before the Court that the Commission received some complaints against All Arunachal Pradesh Students Union (AAPSU) to Chakmas and their act was appeared to be supported by the officers of Arunachal Pradesh. The State government intentionally delayed the disposal of the matter by not furnishing the required response to NHRC and infect supported the enforcement of eviction of the Chakmas from the State through its agencies.[xiii]

The Court after hearing the argument asked the government of Arunachal Pradesh to guarantee the life and personal liberty of each and every Chakma who are residing within the State. This decision defines that foreigners are entitled to enjoy the protection of right to life and liberty under Article 21 of the Indian Constitution. Timely intervention by the Commission has saved the life of thousands of innocent Chakma refugees from AAPSU.

Indian Council of Legal Aid and Advice and others

The Commission took action on a letter from Chaturanan Mishra (then Union Minister for Agriculture) on 3rd December, 1996, about the starvation deaths in Bolangir district of Orissa, due to the drought. In related matter a Writ petition[xiii] was filed by the *Indian Council of Legal Aid and Advice and others* on 23 December 1996 before the Supreme Court of India under Article 32 of the Constitution. The petition claimed that deaths by starvation continued to occur in certain districts of Orissa. The Supreme Court of India on 26th July 1997 gave judgment that because the matter is seized with the NHRC and is expected to deliver some order, the petitioner can approach to the Commission. Supporting the view that to be free from hunger is a fundamental right of the people, it acted quickly on this matter and prepared an interim measure for the period of two years and also requested the Orissa State Government to form a Committee to inspect all aspects of the Land. The Commission has endorsed the establishment of a Core Group on Right to Food that can give advice on issues referred to it and also propose appropriate programmes, which can be undertaken by the Commission.[xiii]

Punjab Mass Cremation Order

Two writ petitions were filed before the Supreme Court of India which contains serious allegations about large-scale burials of people by the Punjab Police, allegedly killed in what were termed as “encounters”.[xiii] These petitions were mainly based on a press release of 16th January 1995 by the Human Rights Wing of the Shiromani Akali Dal titled “Disappeared” “cremation ground”. The press release charged that the Punjab Police had cremated a large number of human bodies by arguing that they were unidentified. The Supreme Court after a close examination of the report handed it over to CBI for further inquiry. Central Bureau of Investigation (CBI), after examination of the report concludes that 585 dead bodies were fully identified, 274 partially identified and 1238 unidentified.[51] This report exposes deliberate violation of human rights on a large scale. On 12 December 1996 the Court requested the Commission to examine the matter in accordance with law and resolve all the issues related with the case. Though matter is still pending before the Commission for final consideration, however, the Commission granted in some cases compensation amounting of Rupees Two Lakh Fifty thousand (Rs. 2,50,000/-) to the next of kin of the 89 deceased persons.[xiii]

Gujarat Communal Riot

The commission took *suo motu* action on the incident of communal violence against Muslims, which took place in Gujarat in March/April 2002. The decision to take action was primarily based on the reports of print and electronic media.[xiii] A team of the Commission visited

Gujarat between19 to 22 March 2002 and prepared a confidential report, which is latter made to the public.[xiii] Unfortunately, the State government did not bother much about this report.

Action in the case of Rohtak fire cracker unit blast in Haryana

The Commission took sup-motu action on the basis of press reports, which says about an explosion at a fire cracker factory in Tohtak, Haryana on 24 May 1995 and issued notice to the State Government calling for a report. The press reports claims the death toll at 23, which included 13 women, 6 children and 4 men.

Compensation to the next of kin of riot victims in Gujarat in 1993 Communal Riots

The Commission received a complaint from Bashir Ahmed Mir of Jammu & Kashmir, which stated that Gulab Nabi Bandey and Zahir Ahmad Bandey, (his relatives) were killed in Surat, during communal riots of 1993, followed by Baburi mosque demolition. Upon the intervention of the Commission, a sum of Rs. 2, 00,000/ was sanctioned to the heirs of who died in communal riots in Surat,

Atrocities against minorities: Killing of Australian missionary and his sons: Orissa

On Janurary 25, 1999, the Commission took suo-motu action against killing of Australian missionary and his sons. The Commission also expressed its deep shock and pain at the attacks on the members of the Christian community in Madhya Pradesh, Gujarat and Orissa, these incidents had been extensively reported in the Press. The Commission observed that given the persistent character of these grave occurrences, a pattern transcending any single State appeared to be emerging, threatening the pluralistic character of the country and constitutionally guaranteed human rights to the people and suggested the state/s to prevent the recurrence of such tragic events.

The National Human Rights Commission has taken suo-motu action against the distressing press report (*The Times of India", New Delhi; dated 21.10.08*) which highlights the incidents of attack on north Indian aspirants for railway jobs by the Maharashtra Navnirman Sena. It has issued notice to the Chief Secretary, Government of Maharashtra and the Director General of Police, Maharashtra for their comments within two weeks. The Commissions in its notice said that the news of the press report, if true, raise grave problem of violation of human rights of the citizens of the country.The Commission in numerous cases recommended prosecution of the public servants, who had been responsible for violation of human rights, under section 18(1) of the Act. In this case of violation of human rights in Maharashtra, the Commission may recommend under Section 18 (3) of the Act that the concerned State to grant immediate interim relief to the victim or members of the family.

The National Commission for Minorities

The NCM is a body constituted by the Government of India to monitor and evaluate the progress of people classified as minorities by the Indian government. Essentially the minorities in India consist of followers of all religions other than Hinduism and weaker sections in the

Hindu community. The Commission is also referred to as the *Minority Commission*. It was formed as a result of an act of the Indian Parliament in 1993.

Functions and powers

The Commission's to evaluate the progress of the development of Minorities under the Union and States, to monitor the working of the safeguards provided in the Constitution and in laws enacted by Parliament and the State legislatures, to make recommendations for the effective implementation of safeguards for the protection of the interests of Minorities by the Central Governments or the State Governments, and to look into specific complaints regarding deprivation of rights and safeguards of the Minorities and take up such matters with the appropriate authorities.

The work done by NCM in protecting Minority Rights

In its meeting on July 1998, the commission discussed the complaints against the violation of human rights of minorities in Gujarat. The commission decided to send a fact finding team (NCM team) to Gujarat headed by its member, Mr. James Massy. The NCM toured to Gujarat between 10-12 August in various parts of the state and met with the persons, groups and the office bearers of the state government, collected and recorded evidence and examined witnesses. The main incidents which looked into depth were, a) alleged exhuming of a corpse from a Christian cementry in Kapadganj in old Khera district, b)alleged burning of the holy Bible in a school in Rajkot city and c0. alleged harassment of the Muslims of village Randhikpur as a reaction to some inter-religious marriage.[xiii] The commission urged the concerned constitutional authority in Gujarat to take effective steps to maintain complete religious harmony in the state, ensuring that the fundamental rights are freely enjoyed by the citizens of the state. It also provided some recommendations to the Gujarat government and to lay it before the state legislature and to act on the statutory requirements as soon as possible and also expressed its will to provide any cooperation that may be required in the matter by the state government. But nothing worked out, as in 2002 Gujarat witnessed the worst incident of communal violence against Muslims. The NCM took a grave concern over the issue but no action is taken by the state government.

As far as development of Minorities is concerned, the commission submitted its report on 31st March 2002 to review the working of the constitution for minorities and backward classes. In this report the commission dealt with the problems of Muslims, Scheduled Castes, Scheduled Tribes and women. The NCM also recommend some measures for development of minority communities, particularly the Muslims. In this recommendation the commission also supported the idea of reservation for backward Muslims under Article. 15 (4) and 16 (4). This opens doors to appoint a commission to establish whether the Muslim community and/or any section who constitute a backward class, and if it does, to determine the question of reservation in their favour as has already been done in Kerala and Karanataka.[xiii]The main objective of the commission is to emphasize that the life, honor and dignity of minorities must be protected, their identity must be respected and the laws should be implemented effectively for their better protection.

National Commission for Women

It is a statutory body for women in the Indian Union. The Commission is established under specific provisions of the Indian Constitution.[xiii]

Activities

The main concern for the NCW is to provide a voice for the problems faced by the women, thus it represents the rights of women in India They have actively worked and campaigned against injustices, which hampers the human rights of women, such as dowry, equal representations for women in jobs, politics, religion, domestic violence, cases of rape, sexual harassment in work place or educational institutions and the exploitation of women in labor. The commission regularly publishes a monthly newsletter, "Rashtra Mahila" in Hindi and English.

Functions of the Commission

The Commission can investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws. For example it can present to the Central Government, (annually and at such other times) the reports upon the working of those safeguards to protect women's rights and can make in such reports recommendations for the effective implementation of those safeguards for improving the conditions of women by the Union or any State. It is empowered to review, from time to time, the existing provisions of the Constitution and other laws affecting women and recommend amendments thereto so as to suggest remedial legislative measures to meet any lacunae, inadequacies or shortcomings in such legislations and can take up the cases of violation of the provisions of the Constitution and of other laws relating to women with the appropriate authorities. The Commission also looks into the complaints and takes suo moto notice of matters which relates to a). deprivation of women's rights; b). non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development; c). non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women, and take up the issues arising out of such matters with appropriate authorities; d) call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal; e). undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement, such as, lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and occupational health hazards and for increasing their productivity; f). participate and advise on the planning process of socio-economic development of women; f). evaluate the progress of the development of women under the Union and any State; g). inspect or cause to be inspected a jail, remand home, women's institution or other place of custody where women are kept as prisoners or otherwise, and take up with the concerned authorities for remedial action, if found necessary; g). fund litigation involving issues affecting a large body of women; h). make periodical reports to the Government on any matter pertaining to women and in particular various difficulties under which women toil and i). any other matter which may be referred to it by the Central Government.[xiii]

The Commission also held some public hearings on the issues of the impact of Globalization, Mechanization and Liberalization on women workers in the informal sector; Women Bamboo Workers in Malyatorr, (Kerala); Problems of Share Croppers and rope makers at Patna; Crimes against women in Uttar Pradesh, West Bengal, Kerala, Orissa, Tamilnadu and Jharkhand; Problems of Muslim Women in Maharashtra and Rajasthan; Problems of Beedi and Cigar Workers at Ahmedabad, Thirunalvela and Sagar; Problems of Construction Workers at Jaipur, Delhi, Mumbai, Patna and Bangalore. In order to create awareness about the evils of child marriage, the Commission organized *Bal Vivah Virodh Abhiyan* in collaboration with State

Commissions for Women and NGOs. The Commission held several State level consultations to evolve an appropriate action plan for empowerment of women besides undertaking visits to States to evaluate the status of women in the States.

Cases before the National Commission for Women

In a case of, Smt. Bhanwari Devi, a 'Sathin' working in the rural areas of Rajasthan under the State Government's Women Development Programme, was allegedly raped by certain villagers for her campaign against child marriage. Later, the District and Sessions, Judge, Jaipur, whose court heard this case, acquitted the persons accused of rape. The press reported this judgment prominently and also reported that a sense of hostility persisted amongst some persons against the victim. NCW took up this case with the State Government as also the Government of India. Their intervention had resulted in the sanction by the Prime Minister of a token amout of ten thousand rupees as relief to the victim and also entrusting of the investigation to the Central Bureau of Investigation (CBI). The NCW also provided financial support to the women's organization which took up the litigation on behalf of the victim.

The Commission received a complaint from Smt. Shanti Devi, w/o Mangelal Rao, (Village Kanana, District Barmer, Rajasthan), who alleged that for the last 2 years widow pension had been stopped to her by the concerned authorities, as they had declare her dead. She approached the concerned department for redressal but no action was taken. On the receipt of the complaint by NCW, the matter was brought to notice to the District Collector, Barmer and the Collector provided information to the Commission about the allegation of Shanti Devi to be correct and necessary instructions had been issued by the District Collector to the Treasury office, Barmer. Also the concerned Patwari had been proceeded for stopping the pension on false grounds. In another case of Ms. Rupali Jain whose services in a school run by a non-governmental organization were terminated without providing any reason.The Commission had taken up the matter with the District Collector, Ferozabad, who reported to the Commission that Ms. Rupali Jain had been allowed to join back as her grievance was found to be valid. In another case of Smt. Chanchal Bajaj, a resident of Delhi, who approached the Commission alleging that she was not allowed to stay in the flat jointly owned with her son. Her son got married and was staying at Gurgaon in a rented flat. Smt. Bajaj, after getting flat's possession, allowed her son to shift to the Gurgaon flat. Previously, Smt. Bajaj was staying in a government accommodation but now she is residing in a flat in Delhi on rent which she cannot afford. Thus, she, too, wanted to shift into the Gurgaon flat, but her son and daughter in law did not allow her to shift into the flat. The matter was taken up in the Commission and it held three counseling sessions on the issue. Thereafter, Sachin Bajaj, son of Chanchal Bajaj gave a cheque of Rs.5, 49,000/ to his mother after selling the flat at Gurgaon. The matter was, thus, compromised with the interference of the Commission to the satisfaction of both the parties. The commission was approached by Smt. Savitri, a resident of Kotdwar, Uttaranchal, regarding exploitation of her deaf and dumb daughter Sunita (name changed). Sunita was studying in a school in New Delhi. Savitri was the neighbor of Mahendra Prasad. Rohit Kumar (name changed), son of Mahendra Prasad, was also staying at the same time in R.K.Puram, New Delhi for his studies. A few years back, Savitri took out her daughter from the Deaf and Dumb School to her house at Kotdwar. Rohit Kumar used to visit the girl at her house in Kotdwar and during these meetings, developed physical relationship and because of this Sunita became pregnant. When the complainant got to know about this, she pressurized Rohit Kumar to marry her daughter, thus Sunita and Rohit Kumar were married in July, 2004 in Kotdwar. The marriage was also registered. In August, 2004, Mahendra Prasad renounced his son and daughter-in-law. In October, 2004, Sunita delivered a daughter, and thereafter, Rohit Kumar abandoned her. Due to this injustice, the complainant approached

NCW. Before approaching NCW, the complainant had approached the police to obtain justice but she was not heard by anyone. The Commission summoned the SP of Pauri Garhwal to the Commission, urging him to take necessary action. After the Commission's intervention, the police traced the husband and counseled him. He has now agreed to accept back his wife and daughter. In a case of 2002, Mrs. Sudha Bala (name changed) was allegedly gang-raped by some BSF personnel in early 2002 at Gojhadanga at Indo-Bangladesh Border. Since then the victim along with her young daughter had been passing days in the Presidency Jail at Kolkata simply because of non-submission of charge-sheet by Police although a case under section 376 I.P.C. was registered against the BSF personnel. The issue was taken up by the Commission for the release of rape victim from the jail and arrangement for her rehabilitation. The joint efforts of the National Commission for Women and the West Bengal State Commission for Women resulted in the release of Mrs. Das from jail, who was given into safe custody to her brother. In Gujarat violence of 2002, NCW took a grave concern over the violation of human rights of women also the National Commission for Women accused organizations and the media of needlessly exaggerating the plight of women victims of the riots. Nafisa Hussain, a member of the NCW, went on record saying that several organizations and the media have needlessly blown out of proportion the violence suffered by minority women in the communal riots of Gujarat.

The recommendations by NCW covered various suggestive measures. The follow up was jointly taken up with State Governments and in few cases, compliance reports were received. Overall, NCW's Complaints & Investigation Cell has been able to make its impact in terms of the numbers of complaints received and subsequently the desirable remedial action taken by the Commission were noticed everywhere.

National Commission for Scheduled Castes and Scheduled Tribes

The Scheduled Castes (SCs) and Scheduled Tribes (STs) are those people who are explicitly recognized by the Constitution of India who require special support and assistance from state to overcome centuries of discrimination by mainstream Hindu society. The Scheduled Caste peoples are also known as Dalits or lower castes Hindus, and Scheduled Tribe people are referred to as Adivasis. Articles 338 and 338A, provides two statutory commissions, one is The National Commission for Scheduled Castes and The National Commission for Scheduled Tribes for effective implementation of the various safeguards which are included into the constitution and other legislations.[xiii]

History

To provide safeguard against exploitation, injustices etc and to promote and protect the social, political, economical and cultural interests of these communities, some special provisions were made in the constitution. Due to the existence of undemocratic caste system and their backwardness, they could not achieve reasonable share in elected office, government jobs and educational institutions etc. Thus, to ensure their effective participation in democratic set ups, the policy of reservations for them was implemented. Except this, the Constitution under Article 338 provided for appointment of a Special Officer. The post of Special Officer was designated as Commissioner for SCs & STs for effective implementation of various safeguards provided in the Constitution and was assigned the duty to investigate all matters relating to the protection of human rights of SCs and STs.

The 46th Amendment Act replaced the arrangement of one Member system with a Multi-Member system. Although 338 was under consideration, the Government decided to set up a

Multi-Member Commission. Thus, the Ministry of Home Affairs in its Resolution Number. 13013/9/77-SCST (1) dated 21.7.1978, established the first commission for SCs and STs with Sri Bhola Paswan Shastri as its chairman.

This provision for Multi-Member Commission was modified by the Ministry of Welfare in its Resolution Number. BC-13015/12/86-SCD VI dated 1-9-1987 and the commission for SCs & STs was renamed as the National Commission for Scheduled Castes and Scheduled Tribes. It was set up as a National Level Advisory Body with a motive to advise the government on broad policy issues and the questions of development of these communities.

The 65th Constitution Amendment Bill 1990, provides a statutory National Commission Scheduled Castes and Scheduled Tribes. It was constituted on 12-3-1992, which replaced the previous Commissioner for Scheduled Castes and Scheduled Tribes and the Commission set up under the Ministry of Welfare Resolution of 1987.

Consequently, the 89th Constitution Amendment Act 2003 (which came into force on 19-2-2004), bifurcated the previous National Commission for Scheduled Castes & Scheduled Tribes into (1) National Commission for Scheduled Castes, and (2) National Commission for Scheduled Tribes. The Rules of the National Commission for Scheduled Castes were reported on 20th February, 2004 by the Ministry of Social Justice & Empowerment.

Main activities/functions of the public authority

The functions, duties and power of the Commission have been laid down in clauses (5), (8) and (9) of the Article 338 of the Constitution. It shall be the duty of the Commission to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards; to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes; to participate and advise on the planning process of socio-economic development of the Scheduled Castes and to evaluate the progress of their development under the Union and any State; to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards; to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes; and to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

Role of NCSCST in protecting the rights of Dalits

Atrocities on Dalits: Bihar

Commission took steps on killing of 21 Dalits in Jehanabad (Bihar) by Ranvir Sena (private army of upper caste landlords) on the basis of newspaper 'Indian Express' dated 27 January 1999 captioned "Bihar: old script, new victims, and upper caste Ranbir Sena kills 21 Dalits in Jehanabad". According to the Indian Express report (dated January 27, 1999), the persons of Ranbir Sena who were armed with sophisticated weapons, killed at least 21 people including 6 children and 5 women on 25 January 1999 in Rukhsagar Bigha village under the

Mehandia Police Station in Jehanabad district of Bihar. The victims were all from the backward castes and included several Dalits.

The Commission paid grave concern and asked for immediate steps to be taken and bring to book the guilty persons, and to ensure that there was no recurrence of such incidents.

Police Firing on Dalits in Tamil Nadu

Two persons belonging to the Scheduled Castes from Village Vashistpuram, District South Arcot were shot dead by Tamil Nadu police on 17 January 1995, while they were trying to protect others of their community who were being lathi-charged by the police when they tried to hoist a flag of Dr. Ambedkar in the street. The allegation was that the police even helped members of other castes to ransack the homes of those belonging to the Scheduled Castes. Media persons were not allowed to file any report on the matter in the newspapers. The police had fired two rounds causing injury to Jyoti and Mahindra, who were hospitalised and later discharged. However, in the clash, the mob of non-Adi Dravidars had beaten to death two persons, Shri Shanmugham and Shri Ramesh. The police had registered the complaint and charge-sheeted the accused persons. The commission criticized the incidents and supported the direction of NHRC, which directed the the Chief Secretary, Government of Tamil Nadu to pay Rupees one lakh as compensation to the wife of the deceased, Shri Shanmugham, and to give her a job to earn her livelihood. It was also directed that Rupees One lakh should be paid as compensation to the father of the deceased, Shri Ramesh, who was also a victim of mob anger. Of the Rupees One lakh being paid to them, it was directed that Rs.20,000/- may be paid straight away and the balance Rs.80,000/- kept in a long-term fixed deposit in a Nationalised Bank with the interest earned being paid to them every month. The Commission also directed that Rs.30,000/- each be paid to Shri Jyoti, son of Shri Muthu and Shri Mahindra, son of Shri Peruman, who suffered bullet injuries at the hands of the police. Of this a sum of Rs.5,000/- should be paid in cash and the balance of Rs.25,000/- placed in a long-term fixed deposit in a Nationalised Bank with interest thereof to be paid to them every month.

It has also examined the incidents of violence against Dalits in Jhajhar (Haryana), Uttar Pradesh, Bihar, Gujarat, Orissa and some other states during recent years. The Commission also criticized the Nitish Kumar government who formed the Mahadalit Commission in September 2007. The NCSC has declared the Mahadalit Commission as unconstitutional. The NCSC criticized the move by government by saying that the state government was not empowered to de-categorize reservation. The state government last year stated 18 out of the 22 Dalit sub-castes as Mahadalits. The four sub-castes excluded from the Mahadalit category are Dussadh or Paswan, Ravidas (Cobblers), Dhobi (Washermen) and Pasi (toddy-sellers). A bench of the NCSC held a meeting under the chairmanship of Buta Singh, to express its objection to the one-sided decision of the state government in this regard. Officials of the Ministry of Social Justice, Department of Personnel and Training, and Ministry of Home Affairs also attaended the meeting. The NCSC claimed that Bihar does not have State Commission For Schedule Caste (SCSC) and if it wants betterment of the Dalit community, it should first set up SCSC. It questioned the state government's authority of excluding some sub-castes of Dalits.

In a recent violence against Christians in Orissa, a fact finding team of the NCSC chaired by Buta Singh visited Kandhamal on October 17/2008. The team visited the worst affected Kandhamal district and adjoining areas to assess the situation. NCSC members held meetings with the Chief Secretary, Home Secretary and DGP of the state.

The Commission apart from examining cases of attacks against Dalit Christians evaluated the steps taken by the state government to render protection to the Christians.

Human Rights in India: A Critical Assessment

The status of human rights in India presents a complex picture, on the one hand there is constitutional provisions for protection of human rights and on the other there is found systematic violation of human rights of marginalized groups, like minorities, women, Dalits, Tribes, unorganized workers etc. It is often held, particularly by Indian human rights groups and activists that members of these marginalized groups have suffered and continue to suffer substantial discrimination. Although the problems of violation of human rights do exist in India, the country is generally not known as a human rights apprehension, unlike other countries in South Asia. The report on Freedom in the World 2006 by Freedom House put testimony to the fact when it gave India a political rights rating of 2, and a civil liberties rating of 3.

Survey of Human Rights Violation in India

Custodial death

In spite of the fact that state prohibits against torture and custodial delinquency by the police, torture and fake encounter is widespread in police custody. G.P. Joshi, the programme coordinator of the Indian branch of the Commonwealth Human Rights Initiative in New Delhi explains that the main issue at hand concerning police violence is a lack of accountability of the police.

In 2006, the Supreme Court of India in its judgment of the *Prakash Singh vs. Union of India* case, gave guidelines to central and state governments with seven directives to begin the process of police reform. The aim of these directives was twofold, firstly to provide tenure to and streamlining the appointment/transfer processes of policemen, and to increase the liability and answerability of the police

Freedom of Press

The freedom of press in Indian is under certain restrictions, that is why the Reporters Without Borders ranked India 120th worldwide in press freedom index. (press freedom index for India is 39.33 for 2007). The Constitution of India, without mentioning the word press endows with the Right to Freedom of Speech and Expression in Article 19(1:a). However this right is subject to certain restrictions under sub-clause (2), means this right can be restricted for certain reasons like to preserve the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, preserving decency, preserving morality, in relation to contempt of court, defamation, or incitement to an offence. Some laws like Official Secrets Act and Prevention of Terrorism Act (POTA) have been systematically used to check or control press freedom. POTA was revoked in 2006, but the Official Secrets Act of 1923 still continues.

Indian print and electronic media was fully controlled by the state which was the major constraint on its freedom. Indira Gandhi in her famous declaration in 1975 in which she insisted that the All India Radio is "a Government organ, it is going to remain a Government organ," put testimony to the fact of state control over press. With the starting of liberalization in the 1990s, private controlled media has flourished, resulting increase of independence and greater scrutiny of government. The Prasar Bharti Act of November 1997 contributes significantly in reducing the control of the press by the government.

Communal Violence

Communal riots, mostly occurs between Hindus and Muslims have been of a grave concern. It has a long history in India, among the oldest incidents of communal riots was Moplah Rebellion of 1921 and post partition riots in 1947-48, in 1969, 1985, 1989 except this most recent violence includes 1992-93 and Gujarat violence of 2002

The anti Sikh riots of 1984 continued for four days, in which Sikhs were massacred by members of the secular-centrist Congress Party of India; it is known as the large scale violence against Sikhs in India, damaging crores of rupees and making lots of Sikhs homeless. This anti Sikh riots of 1984 is known as a black day in India. Other incidents consist of the 1992 Bombay Riots, (soon after Baburi mosque demolition by Hindu communal groups) and the 2002 Gujarat violence, which was carried out by the Hindu militant Sangh Parivar, where almost 1500 people were killed. Other incidents can be laid down as the killing of some people in Mau (Uttar Pradesh) in a recent violence, the 2002 Marad (Kerala) massacre, which was carried out by Muslim militant group National Democratic Front of Abdul Madani and communal riots in Tamil Nadu executed by the Islamist Tamil Nadu Muslim Munnetra Kazagham against Hindus. These incidents are not only go against the secular nature of Indian state but also violates the human rights of the victims.

The survey of Human Rights in India presents a complex scenario. While Indian Constitution provide every citizen some fundamental rights and has developed some institutions to deal with the gross violation of Human Rights, but at the same time there are incidents of basic human rights violations. It must be noted that Human rights are necessary and essential condition for the development of democracy and personality of people for their overall progress in political, social and economic life.

Lesson 5

HUMAN RIGHTS LAWS AND INSTITUTIONS IN INDIA: THE ROLE OF THE NATIONAL HUMAN RIGHTS COMMISSION

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India has been one of the oldest civilizations in the world having a chequered history of the existence of some sort of human right precepts and values to secure a dignified and contended life for the people. Though at a certain point of time in her history a rupture occurred in this rich tradition resulting in the snatching away of the human rights of few sections of people in the society, the sense of appreciation for the ideals and values of human rights as the primary foundation stone for the modern and democratic life for the people remained intact amongst the national leaders of the country. As a result, even during the course of the freedom struggle, the national leadership never failed to emphasize the bestowing of basic human rights on all the people of the country irrespective of any distinction in the form of fundamental rights once the country becomes independent. Hence, in the post-independence times, the Constitution of India became the chief instrument for the national leaders to redeem their pledge of securing for the people the basic human rights through the provisions like the fundamental rights and the directive principles of state policy, along with the others. Moreover, stipulations were also made with the futuristic vision to enable the government to enact law for the constitution of certain bodies and institutions for the purpose of protecting and promoting the human right in the country. The present chapter, thus, seeks to present a concise analysis of the human rights laws and institutions in India with special reference to the National Human Rights Commission.

Human rights laws in India

Conceptually, human rights laws in almost all parts of the world are relatively recent phenomenon. Given the philosophical roots of the human rights being traced back to the sixteenth century social contract theory which evolved the idea of natural rights of the people as being ordained by birth without any positivist intervention on that count, the initial take on human right considered it to be a notion existing even in the absence of any positivist law being framed on the subject. However, with the growing complexity of life on the one hand, and varying understanding of the concept of human rights by various countries and people on the other, sometimes even to the detriment of the notion of human rights itself, arguments were advanced for the clear-cut stipulations of the idea of human rights through the means of constitutional and statutory provisions. Following the lead given by the United Nations mandated Universal Declaration of Human Rights, 1948, various countries in the world have strived to make elaborate provisions for the enjoyment of the human rights by their people through the constitution and other statutory enactments.

The inauguration of a liberal democratic political system in the country after independence ensured that India becomes one of the foremost countries in the world to have an elaborate system of human rights laws. The body of human rights laws in the country could be conveniently categorized into two segments: constitutional and statutory laws. The constitutional laws pertaining to the human rights are spelt out in varying measures in the chapters and provisions dealing with the preamble to the constitution, the fundamental rights, and the directive principles of state policy. (Basu: 1994, 34) The statutory laws on human rights are provided for in the form of various enactments to ensure the social and economic justice to the marginalized sections of the society like women, children, disabled people, weaker sections of society etc. Important among such enactments include the Protection of Human Rights Act, 1993, Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 etc. Apart from these, the corpus of human rights laws in India also consist of the numerous international covenants, conventions, treaties signed, ratified and acceded to by the government of India. Such international legal documents not only include the general documents like the Universal Declaration of Human Rights but also various target-specific legal frameworks aimed at protecting the human rights of the specified groups of people like women, children, disabled, minorities, refugees etc.

Human rights laws in the Constitution

The Constitution of India embodies the cherished ideals and aspirations of the founding fathers of modern India whose most concise articulation is found in the Preamble to the constitution. Indeed, each and every word of the preamble connotes one of the loftiest precepts which underline the nature and substance of the polity and its duties towards the people of the country. Hence, the first part of the Preamble viz., 'we the people of India, having solemnly resolved to constitute India into a Sovereign, Socialist, Secular, Democratic, Republic' enunciates the principal characteristics of the nature of the Indian polity. Similarly, the second part of it i.e., 'to secure to all citizens: justice, social, economic and political; liberty of thoughts, expression, belief, faith and worship: equality of status and of opportunity; and to promote among them all fraternity assuring the dignity of the individual and the unity and the integrity of the nation…' professes the basic ingredients which go to constitute the essence of the body of human rights of the Indian people. Combined together the two parts, the Preamble, in a sense, represents the soul of the Constitution and full and substantive retention of the ideals enunciated in it becomes the first condition for the Constitution of India to remain in force with the visions cherished by the national leaders of the country.

Providing some sort of detailed description and ordaining justiciability to the ideals enumerated in the Preamble, the chapter III of the Constitution contains the provisions regarding the fundamental rights of the people. Categorized into six distinct groups of rights, the right to equality (Articles 14-18), right to freedom (Articles 19-22), right against exploitation (Articles 23-24), right to freedom of religion (Articles 25-28), educational and cultural rights (Articles 29-30) and right to constitutional remedies (Article 32) probably cover the widest possible spectrum of the civil and political fundamental rights provided for in the constitution of any country. Acting as the bulwark against the infringement of individual rights by the individuals or the state, these fundamental rights happen to be the core of the body of constitutional human rights laws in the country.

In order to assign a seemingly balanced perspective to the body of human rights in India, the constitution makers made elaborate provisions for certain positive claims of the people on the resources and priorities of the state through the provision of the directive principles of state policy. This appears to be a plausible realization on the part of the fathers of the constitution as the essentially negative provisions in the form of the fundamental rights would not have served the purpose of securing a dignified and contended life for the people without adequate provisions for the social and economic rights for them. Moreover, in a country like India marked by social hierarchies and discrimination along with the economic inequalities and deprivation of a majority of people, the social and economic directives contained in Part IV of the Constitution may turn out to be the bedrock of the body of human rights in the country. Indeed, the value of the directive principles becomes fundamental in any conceptualization of the body of human rights laws in India owing to their utility in providing for the basic minimum needs of the people in terms of adequate means of livelihood (Article 39(a)), protection of the health and strength of the workers (Article 39(d)), free and compulsory education for the children (Article 45), enhancing the level of nutrition, the standard of living and improving the public health (Article 47) etc. It goes without saying that the common masses would be able have some measure of the realization of the fundamental rights only in case their basic livelihood requirements are fulfilled beforehand. Hence, in final analysis it stands out that the framework of human rights as given in the Constitution of India demonstrates the best possible amalgamation of both negative as well as the positive rights of the people whose holistic and integrated articulation appears in the Preamble to the Constitution.

Statutory human rights laws

Statutory laws refer to the laws enacted by the legislature. In India, despite the existence of the elaborate provisions in the Constitution to secure for the people the basic human rights, the need was felt by the government from time to time to enact certain laws to ensure not only the socio-economic justice but also to address the particular issues in the enjoyment of the human rights by the marginalized, weaker and vulnerable sections of the society. Such body of laws, called the statutory human rights laws, aims at making specific protective and promotive provisions for the human rights of, some times general but normally a particular group of people. Hence, the most important statutory law to endow the general masses with the basic human rights happens to be the Protection of the Human Rights Act, 1993 under which the provision for the constitution of a National Human Rights Commission has also been made. The other statutory laws are mainly particularistic in nature as their application is confined to the target group for which the law has been enacted.

Amongst the specific statutory human rights laws, one set of laws deal with the stipulation, protection and promotion of the human rights of particular groups of people while the other set of laws provide for the establishment of a particular statutory body to take care of issues arising in the protection and promotion of the human rights of the specific groups. The best example of the first set of laws is the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which seeks to define the human rights of the disabled persons in order to provide equal opportunities to them and ensure their full participation in the various activities of life. The second set of statutory laws consist of the numerous enactments like The National Commission for Minorities, 1986, The National Commission for Women Act, 1990, The National Commission for the Backward Classes Act, 1993 and The National Commission for the Safai Karmcharis Act, 1995 with the specific purpose of setting up national commission to ensure the enjoyment of human rights by these groups of people.

Human rights laws in international covenants

It is interesting to note that the initial pursuits for the evolution of the paradigm of human rights and its universalization in the world were made at the international level through the mechanism of the United Nations. Hence, most of the countries who owe their allegiance to the UN, more or less, also sign and ratify the international covenants and treaties originating under the auspices of the UN. In this regard, the track record of India has been found to be excellent as she has not only signed and ratified most, if not all, of the UN mandated covenants and treaties on human rights but also pioneered several such covenants and treaties as active participants in the formulation and drafting of these documents. The signing and ratification of the international covenants and treaties have made it incumbent upon the government of India to modify her laws and institutions in consonance with the requirements of the international documents for the protection and promotion of human rights at both domestic and international levels.

The landmark international document which India signed happens to be the Universal Declaration of Human Rights, 1948 which heralded the era of the universalization of the hitherto seemingly parochial notion of human rights. Afterwards, the country has become party to several conventions encompassing the ambit of a diverse set of subjects the important of which included: Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of others (1953), Convention on the Nationality of the Married Women (1957), Convention on the Prevention and Punishment on the Crime of Genocide (1959), Convention on the Political Rights of the Women (1961), The International Convention on Elimination of all Forms of Racial Discrimination (!968), The Convention on the Rights of the Child, Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (1971), International Covenant on Suppression and Punishment of the Crime of Apartheid (1977), The International Covenant on Economic, Social and Cultural Rights (1979), The International Covenant on the Civil and Political Rights (1979), The Convention on the Elimination of all Forms of Discrimination Against Women (1981) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1997) etc.

The significance of the comprehensive framework of human rights laws in India, both domestic as well as international, lies in setting a standard benchmark for both the government and the common people to enjoy and respect the enjoyment of the fundamental human rights of other sections of society. Even in the trouble prone areas of the country, specific instructions have been issued to the Armed Forces and the Para military forces to pay serious attention to the allegations or complaints of the violation of human rights and also to take strict and prompt action against the guilty. Though the existence of the vast body of laws on human rights has no doubt put India in the category of countries having significant legal framework for the protection and promotion of human rights, the real picture on the ground in terms of the implementation of such laws present somewhat a disturbing picture as reports of the violation of human rights appear to be a common thing in the country.

Enforcement of Human Rights Laws in India

The responsibility for the enforcement of the human rights laws in India lies on the shoulders of number of executive and judicial authorities, including the Supreme Court of India. Indeed, the whole gamut of the human rights laws need to be put into practice both by the individuals on the one hand and the governmental agencies on the other. However, the department which has been found to be violating the human rights of the people more often than not happens to the Police department in various states of the country. Hence, in the routine politico-administrative set up of the country, the judiciary has been assigned the task of hearing the complaints of the violation of the human rights and providing relief to the people through judicial pronouncements. Thus, while at the apex of the administrative structure an exclusive Human Rights Cell has been set up in the Union Ministry of Home Affairs in 1993 to coordinate and implement the policies and programmes on human rights, the Supreme Court stands at the apex of the judicial system of the country for protecting the human rights of the people from violations on the part of both the individuals as well as the state agencies.

However, with the growing inability of the ordinary politico-administrative set up to protect and promote the cause of human rights along with the persuasions of the United Nations Covenants for the setting up of a national level body dedicated to the cause of protection and promotion of human rights, the government decided to set up the National Human Rights Commission to act as the nodal agency for the cause of human rights in the country. This Commission is designed to deal with the cases of the violations of human rights of the people irrespective of any discrimination in contrast to the role of the other statutory commissions like the National Commission for Women, National Minorities Commission etc. which are entrusted with the responsibility dealing with the cases of the people falling within the rubric of the catchments of the Commissions as such. Thus, the setting up of the NHRC in 1993 heralded a new era in the field of the human rights governance as by providing a focused attention to the cause of protection and promotion of human rights in the country the Commission would set a new benchmark in enjoyment of the human rights by the people.

National Human Rights Commission[xiii]

The setting up of the National Human Rights Commission (NHRC) as an autonomous body for the protection and promotion of human rights under the provisions of the Protection of Human Rights Act, (PHRA) 1993 has met with only guarded welcome on the part of the human rights activists in the country. (Guha Roy: 2003, 394) They were not amused with the idea of the NHRC as they found it coming not as a sui generis institution in the country but as some sort of a supplant from the institutions suggested by the western countries. Moreover, the feeling was also there that the genesis of the idea of having some sort of institutional mechanism for the protection and promotion of human rights in India seemed to have emanated from the policy of the western countries, notably the United States, to link the economic and financial assistance to the developing nations with the condition of human rights protection in these countries. Though such a move would not have been tolerated by India in ordinary times, the compulsions of availing the grants and concessional loans from the developed countries left no way out for the country than to provide for an institutional arrangement to safeguard the human rights of the people. Yet another factor contributing to the formation of the NHRC seems to be the growing awareness amongst the people regarding their democratic and civil rights, coupled with the mounting pressures from the human rights organizations in the country to have a law and institutional mechanism for the protection of human rights.

Like the formation of many other statutory commissions, the creation of the NHRC also has a history exposing the stiff resistance put up by the vested interests in the country in the way of the establishment of the body. Moreover, the lack of self-visualization on the issue of human rights commission amongst the government circles rendered the first effort in the direction of providing for such a commission futile as the Human Rights Commission Bill introduced in Parliament in May 1993 was withdrawn in view of scathing criticisms it received from all quarters and persons involved in the propagation and promotion of human rights in the country. Subsequently, after due course correction in accordance with the objections raised on the Human Rights Commission Bill and incorporating the suggestions made on the issue, the government came out with a Presidential ordinance in the name of Protection of Human Rights, providing for the constitution of a Human Rights Commission. Thus, the NHRC was set up as per the provisions of Chapter II of the Protection of Human Rights Act, 1993 which mandated that 'the Central government shall constitute a body to be known as the National Human Rights

Commission to exercise the powers conferred upon and to perform the functions assigned to it under the act.' (Mathew: 2006, 16)

Structure of the NHRC

The structure of the NHRC has been provided for in a way slightly different from the pattern ordained for other statutory commissions in the country. Thus, as per the provisions of the PHRA, 1993, the NHRC consists of a Chairperson and four other members with definite qualifications stipulated for each of them. Hence, while its Chairperson needs to be a former Chief Justice of India, two of its members again need to be of judicial background – one a sitting or former judge of the Supreme Court and the other a sitting or former Chief Justice of a High Court. As per the Act, the other two full time members of the Commission should be 'persons having knowledge of, or practical experience in, matters relating to human rights.' Apart from that, the NHRC is to have the Chairpersons of three other National Commissions, namely, the National Commission for Minorities, the National Commission for Women and the National Commission for Scheduled Castes and Scheduled Tribes, as its ex-officio members in order to provide for a focused and balanced perspective in the functioning of the NHRC in matters relating to the minorities, women and the SCs and STs. In addition to the membership of the Commission, the Act also made provisions for two statutory administrative offices in the Commission, viz., the Secretary General and the Director General (Investigations) to afford an adequate administrative support so that the functions of the Commission are carried out in an impartial and efficient manner. Thus, the structure of the NHRC appears to be provided for with the objective of ensuring its autonomy on the one hand and attributing administrative capability to its functioning on the other. (Gopalaswamy: 2000, 13)

A look at the structure of the Commission demonstrates a number of typical features peculiar to the NHRC as compared to other such commissions existing in the country. (Chakrabarty and Pandey: 2008, 217-220)

Firstly, as out of five full time members of the Commission, three positions including that of the Chairperson has been reserved for the members of the higher judiciary, the structural orientation of the Commission appears to have become somewhat legalistic whereby the problems of the violations of human rights would tend to be seen from the jurisprudential perspective rather than in context of the prevailing socio-economic and cultural circumstances in the country. In other words, the cases of the human rights violations should supposedly be taken up by the Commission not just with the objective of handing down a definite verdict holding somebody guilty of the crime but also with the purpose of going down deep into the probable reasons for the commitment of such crimes so that subtle and permanent remedial measures could be suggested in order to check the recurrence of such cases. However, such a possibility seems to be remote with a body consisting predominantly of the people in the habit of delivering the final verdict rather than looking at the causes and circumstances of the particular case.

Secondly, the provision that sitting judges may be appointed to the NHRC with the consent of the Chief Justice of India does not seem to go well, either in theory or practice, with both the health of the Commission and the independence of the judiciary. The appointment of a sitting judge to the Commission might in all probability lead to a kind of friction amongst the members of the Commission as the sitting judge may supposedly carry more weight in comparison to the other members which may not prove good for the health of the Commission. Similarly, the appointment of such a judge to the Commission might cast aspersions on the independence of the judiciary as the provision may be used both as carrot as well as stick by the government in the course of time. Thankfully, therefore, the government has desisted from appointing any sitting judge as the member of the Commission, making the provision redundant so that it may die a natural death.

Thirdly, in contrast to the two negative features of the structure of the Commission, a welcome provision appears to be the methodology of the selection of the Chairman and the members of the Commission. As laid down in the Act, the appointments to the Commission would be made a Committee under the headship of the Prime Minister and consisting of the Union Home Minister, Speaker of the Lok Sabha, Deputy Chairperson of the Rajya Sabha and the leaders of Opposition in both the houses of the Parliament. Such a seemingly impartial method of the constitution of the Commission is particularly praiseworthy due to the fact that India being a plural country with high degree of political discord and lack of unanimity amongst the political leaders as to what constitute the violation of human rights, need to have the participation of the opposition leaders so that the appointment to crucial body like the NHRC which is bestowed with investigating and suggesting remedial steps in the cases of the violations of human rights, should be made in such a manner that it remains above the board in the political discourse of the country and discharges its functions as impartially as possible, irrespective of the claims and counter claims of various sections of the people.

Finally, again as a positive sign of its structure, the provisions for the offices of the Secretary General as well as the Director General (Investigations) as the statutory adjunct of the Commission appear to be the fulfillment of a pre-requisite for effective functioning of the Commission. While, the former officer has been made the administrative head of the machinery of the Commission, the latter is made responsible for the performance of the most critical task in the functioning of the Commission i.e. the investigation of the complaint of human rights violations. Had these tasks of running the administration of the Commission and conducting the investigations into the complaints to be outsourced by the governmental agencies lying outside the domain of the Commission, the effective discharge of such responsibilities would have been in doubt, which in final analysis had gone in tarnishing the image and effectiveness of the Commission.

Autonomy of the NHRC

Keeping in mind the significance of the NHRC as the principal national agency for the protection and promotion of the human rights in the country, adequate provisions have been made by the PHRA, 1993 to ensure the functional autonomy of the Commission. (Karthikeyan: 2005, 170-171) To begin with, as pointed out earlier, the Chairperson and the members of the Commission are appointed by the President on the recommendations of a Committee consisting of the Prime Minister as the chair, and the Speaker of the Lok Sabha, Deputy Chairman of the Rajya Sabha, the Union Minister of Home Affairs, and the leaders of Opposition in both the houses of the Parliament. The recommendations of such a committee would probably go a long way to ensure that the Commission retains a high degree of neutrality and impartiality and remains the bastion of justice in the eyes of the people whose human rights have been violated.

Further the appointment of the Commission's members for a fixed term of five years also ensure that they function during this period without any fear or favour as their appointment is final and their service conditions cannot be varied during their tenure of office nor can they be subjected to any other sort of undue stress or disadvantage during this period of time.

Moreover, the independence of the Commission has also sought to be protected by making the process of their removal form office quite cumbersome. Generally, a member of the Commission may be removed from office only by an order of the President on the grounds of proved misbehaviour or incapacity after a duly constituted and thorough inquiry to be conducted by the Supreme Court. As such cases of inquiry by the Supreme Court are very fair and impartial, there exists no reason for an honest and fearless member of the Commission to buckle under the pressure of the government for the apprehension of being removed from office in an arbitrary and partisan manner.

Functions of the NHRC

Having been created as the apex body for the protection and promotion of the human rights in the country, the NHRC has been entrusted with the vast range of functions having a bearing on the enjoyment of the human rights by the people. The functions of the NHRC have been laid down under the provisions of the PHRA, 1993. (Malimath: 2000, 215) Thus as per Section 12 of the Act, the main functions of the Commission include the following:

1. To inquire suo moto or on petition presented to it by a victim or any other person on behalf of the victims, into complaints against the public servants regarding the violation of human rights, or abetment thereof, or negligence in the prevention of such violations.
2. To have an interjection in a Court of law, with the approval of the Court, where any issue of human rights violations are involved in the proceedings of a pending case.
3. To Conduct inspections to study the conditions of life of the inmates, and presenting its recommendations thereof, confined in any jail or any other institution meant for cure, reforms or protection of such people under the control of a state government with the prior information to the concerned state government.
4. To review the provisions in the Indian Constitution or any other law or provisions under such law regarding the protection of human rights and making recommendations for effective implementation of such laws and provisions of the Constitution.
5. To examine the factors that curtails or circumscribes the enjoyment of human rights, including the acts such as terrorism and suggesting suitable remedial measures for them.
6. To study the international treaties and other related covenants or documents pertaining to human rights and making suggestions for their effective implementation.
7. To undertake research in the field of human rights in order to promote human rights in India.
8. To promote awareness regarding the human rights in different sections of the society and disseminating awakening on the measures for the protection and promotion of human rights through the methods of publications, media, seminars and other available mediums.
9. To encourage the endeavours of the non-governmental organizations and other such organizations which are involved in the field of human rights protection and promotion.
10. To perform such other functions as are deemed necessary for the promotion of the human rights.

Achievements of the NHRC

The successful functioning of the NHRC for the last fifteen years has gone well to remove the apprehensions of the skeptics regarding the whole idea of a human rights commission in the country to promote and protect the human rights of the people. Indeed, an effective functioning of the NHRC has enabled it to come out with flying colours in so far as the inculcation of a culture of respect for human rights is concerned in most of the circles of government as well as in the minds of common people in the country. In fact, the Commission has turned out to be true custodian of the protection and promotion of human rights in India with its sincere and spontaneous efforts to not only redress the grievances of the victims on a petition but quite often, it has also taken suo moto cognizance of any incident of violation of human rights and promptly took remedial steps in order to provide relief to the aggrieved persons. Consequently, the Commission has not only been able to command a high degree of respectability and moral ground amongst the people but also amongst the government functionaries whose positive outcome has been in the form of the recommendations of the Commission getting due respect by the concerned departments. Thus, the Commission has been able to create a niche for itself in the country due to its sheer hard and honest work.

A welcome departure in the functioning of the NHRC has come in the form of turning the work culture of the Commission form that of a purely governmental agency to that of a novel organization having strong public-private partnership in dealing with the issues of the protection and promotion of human rights in the country. Thus, there appears to have developed a tendency on the part of the NHRC to involve the civil society organizations, in addition to the educational and public oriented organizations, in its endeavours for protection and promotion of the human rights of those people who either suffer from some sort of social stigma or they are faced with the vested interest bent upon sabotaging the efforts of the Commission for the same. Hence, the problems pertaining to the child prostitution, prison reforms, rehabilitation of the persons displaced by the ongoing mega projects, child labour, bonded labour, iron deficiency among pregnant women and problems of the mentally disabled etc. have been able to attract the attention of the Commission whose efforts would supposedly have gone in vain had it not received the insightful input and active support of the non-governmental organizations. These activities seemed to have given a philanthropic outlook to the functioning of the Commission.

Another significant achievement of the NHRC happens to be in the field of spreading the human rights literacy and awareness amongst the different sections of society in accordance with one of its statutory obligations. Indeed, the informed public opinion in the country on the issues pertaining to the human rights of various sections of the people is a tribute to the efforts of the Commission almost every section of people are quick to seek a redressal of their problems if they feel aggrieved by any act of omission or commission by both the governmental or non-governmental sectors, whose reflection has been found in the ever increasing number of complaints received by the Commission on the issues pertaining to the violations of human rights. Moreover, by succeeding to make the lessons of human rights as part of the school curriculum for educating the young minds the value of protecting and promoting human rights, the Commission seems to be sowing the seeds of a vibrant society marked by unflinching devotion to the cause of human rights rooted in the ancient Indian dictum of live and let live. Thus, the efforts of the Commission are sure to make the vital contribution of inculcating the value of human rights in the young minds of the country.

In the end, performing its role in both letter and spirit of the provisions of the PHRA, 1993, the Commission has been able to enhance its acceptability as the apex body for the protection and promotion of human rights even to those government agencies which have the ill reputation of violating the human rights of the people more often than not. Moreover, the Commission has been able to formulate guidelines and issue directions to the concerned agencies on a number of issues including the misuse of police powers, especially arbitrary arrests, setting up of human rights cells in state and city police headquarters, prison reforms, elimination of child labour, compulsory education, caste and communal violence, rights of persons with disability, human rights of mentally ill, abolition of manual scavenging, quality assurance in hospitals, review of certain laws and statutes affecting human rights of citizens, implementation of international treaties and instruments of human rights, protection of human rights and dignity of AIDS affected patients and sex workers, institutional changes in the legal system etc. The cumulative effect of all such measures has been that the concern for human rights informs almost all the spheres of human activity in the Indian society due to efforts of the NHRC. In other words, the Commission's endeavour to leave no stone unturned in its urge for the protection and promotion of the human rights of the people has gained for itself a place of respect and dignity in the eyes of the informed public in the country.

Critique of the NHRC

The existence of the NHRC for over fifteen years as the apex body to deal with the issues of human rights violation has exposed a number of structural and functional limitations which have gone a long way in compromising the efficient and effective functioning of the Commission.(Chakrabarty and Pandey: 2008, 226-227) Firstly, despite the best efforts of the NHRC, the creation of the State Human Rights Commission has not been able to become a reality in all the states and Union Territories of the country. The obvious consequence of such a state of thing is that the complaints of the violation of human rights emanating within the territories of a particular state also get directed towards the NHRC as there is no state level mechanism to take care of such cases. In such a situation, the time and energy of the Commission get absorbed in redressing such grievances and the Commission is not able to spare its time to pay its attention to neither streamline the system of governance from the human rights perspective nor evolve innovative measures to make respect for human rights as a way of life in the country. Hence, the sooner all the states create their state human rights commission the better will it be for the country to have a comprehensive mechanism to deal with the issues of human rights effectively.

Secondly, the apathy of the state governments towards the cause of human rights is further deepened with the reluctance of majority of the state to set up the Human Rights Courts at the district level under the provisions of the Protection of Human Rights Act, 1993. As has been experienced in the cases of effective and speedy functioning of special courts being set up to deal with the issues of particular nature or significance, such as the courts to deal with the terrorist activities, crime against women, trafficking in drugs and narcotics etc., the setting up of special Human Rights Courts at the district level in all the district of each state would have heralded a new era of dispensing justice in the cases of the violation of human rights. But in the absence of such courts, the cases pertaining to the violation of human rights go to the ordinary courts of law whose procedures and speed of delivering justice is well known resulting in the exorbitant procrastination in such cases leading to the lose of faith of the common people in the deliverance of justice by the courts.

Thirdly, the functional limitations of the Commission are manifold, of which two stand prominently. One, the commission is handicapped by its jurisdictional limitation of not being able to investigate the cases of the violation of human rights by the armed forces. Such a scenario appears to be quite disheartening owing to the growing tendency with the government to use the armed forced in counter-insurgency operations in many parts of the country, more notably in Jammu and Kashmir as well as in the states of North-East. Moreover, with the reports pouring in on the cases of violation of human rights by the armed forces, the time may be ripe to bring about the suitable changes in the law in order to bring the armed forces also within the ambit of investigations of the NHRC, though certain safeguards may be provided so that the operational efficiency of the armed forces is not hindered in taking on the anti-national forces in these states.

Two, the function of the NHRC as a mere advisory or recommendatory body affects adversely its functional effectiveness as a recalcitrant department or official may not have the courtesy to honour the recommendations of the Commission in which case the watchdog body is left with no option than to swallow a bitter pill of insignificance. What is more alarming is the tendency amongst most of the departments and agencies of the government to out rightly ignore the recommendations of the Commission of the issues concerning the departmental inquiry or criminal actions against the errant functionaries.

Thus, a critical appraisal of the structure and functioning of the NHRC reveals the variety of scope existing for carrying out suitable course correction in this body of national significance.

State Human Rights Commissions

The State Human Right Commissions (SHRCs) have been stipulated by the PHRA, 1993 presumably in order to decentralization the structure and functioning of the mechanism for the protection and promotion of the human rights to the state level on the one hand, and streamline the working the state level agencies with regard to their attitude towards the human rights of the people by having a body in the state itself to monitor their functioning on the other. The structure of the SHRCs has been laid down on the pattern of the structure of the NHRC with the only variation that the members of the SHRC are appointed by the Governor of the state. These bodies have also given the functions similar to the ones given to the NHRC with the condition that their operational domain remains confined to the geographical limits of the concerned state. Thus the SHRCs become a sort of miniature of the NHRC at the state level to cater to the needs of the protection and promotion of the human rights at the state level.

Despite the specific advice from the central government to all the states for the creation of the SHRCs, only ten states have been able to constitute their human rights commissions so far. Moreover, what is more distressing is the fact that the defaulters in the formation of the SHRCs happen to be those states whose records in the protection and promotion of the human rights have been most deplorable. For instance, the state of Uttar Pradesh which has the dubious distinction of being the state with the highest number of cases of human rights violations had desisted from setting up the SHRC till recently when it was impressed upon by the central government to go for setting up of the human rights commission in the state. It would still be interesting to know the way the SHRCs function in order to meet the challenges entrusted to them. Though the NHRC has already set a bench mark for the human rights bodies in the country to attain a distinct level of efficiency, impartiality and effectiveness in carrying out its function of protecting and promoting human rights in the country, how far the SHRCs go to emulate NHRC on this count remains to be seen.

Concluding observations

The institutional arrangement towards the protection and promotion of human rights in India got a new impetus with the establishment of the National Human Rights Commission as a statutory body. However, over the years, the functioning of the Commission has exposed the inherent weaknesses in the governmental agencies like the NHRC which are not able to blow the whistle on each and every incident of human rights violations in the country. For instance, while the Commission has been able to address the issues of human rights violations being perpetrated by the societal forces or individuals, it seems to have utterly failed to provide adequate solution to the victims of the human rights violations being perpetuated by state apparatus and the security agencies. The situation appears to be more dismal at the level of provinces where either the State Human Rights Commission itself has not been set up, or if established, it is not bestowed with sufficient powers and administrative support system so as to enable it to work as the true custodian for the protection and promotion of human rights in the state. The establishment of the human rights commissions, both at the central as well as state levels must, therefore, be seen as the beginning in the right direction. Yet the basic objective in setting up these commissions would only be served when at least two propitious conditions are met. One, they are bestowed with sufficient powers and administrative support to take prompt and effective step in case of the violation of human rights. Two, a sense of responsibility also need to be developed amongst such bodies to see them not as part and parcel of the governmental machinery to serve the interests of governmental agencies. Rather, they must see themselves as the statutory bodies existing to serve the cause of the hapless citizen of the country whose human rights have been violated and she finds herself in a helpless position to seek adequate redressal of her problems.

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Suggested Questions

1. Elucidate the framework of human rights laws in different legal documents as applicable in India.
2. What are the institutions of human rights in India? Analyze their role with special reference to the National Human Rights Commission.
3. Write a critical essay on the structure and functions of the NHRC with special reference to its autonomy. Evaluate its achievements over the years.

Lesson 6

HUMAN RIGHTS OF MARGINALIZED GROUPS: DALITS, ADIVASIS, WOMEN, MINORITIES AND UNORGANIZED WORKERS

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Marginalized groups refer to those categories of people in a society who remain in a state of deprivation and subjugation for centuries as a result of which they are not able to attain a position of parity with the other sections of society in contemporary times. Denied of their equal share in the social, economic and political rights, privileges and resources of the country for obvious reasons over the years, such groups continue to remain in a vulnerable position even after country gains independence and marches ahead on the path of progress and development. In India, for instance, such groups of people included the vulnerable sections of the society like dalits, adivasis, women, minorities, unorganized workers etc. The discourse of human rights for such groups of people differs from the discourse of human rights for other sections of society for at least two reasons. First, owing to their long drawn social, economic and political deprivation, these groups become some sort of marginalized lot in the society in comparison to the mainstream sections as a result of which the notion, standards and exercise of the general human rights do not remain valid and meaningful for such groups. Second, each of the marginalized groups carries certain distinct physiological, social, economic, cultural, religious and related traits which distinguish them from the rest of the people in society whose obvious result is that the norms of human rights for latter could not be applied uniformly to the former. Hence, a discussion on the issue of the human rights of the marginalized groups becomes an exercise in diagnosing the ills and evaluating the remedies in action for the time being with a view to evolve a holistic perspective on the human rights of these groups.

Dalits

Dalits or the Scheduled Castes have been the largest marginalized section of the Indian society. Indeed, Caste has remained as one of the predominant paradigms of the Indian social system. Emerging out as the perverted off-shoot of the classical and puritan varna-system of the ancient times, it has introduced a variety of cleavages in the Indian society which in the course of time turned out to be the most cruel and inhuman traits of glorious Indian civilization. For the last many centuries, the Indian society if fragmented into hundreds of castes and sub-castes neatly ordered into a hierarchical pyramidal form. Broadly, three distinct levels of hierarchy in the caste system can be discerned: (a) the so-called forward castes people occupying not only the superior echelon of the social hierarchy but also the power, privileges and false ego, (b) the middle order of the caste system consists of those people who own a part of the parameters of position and distinguished by their profession and vocational acumen. This category of people is generally termed as other backward castes (OBCs). (c) The lowest rung of the social order is occupied by the people who have neither social status nor economic powers and properties. Known as dalits in the contemporary political discourses and badly bereft of necessary resources and rights, these people have been suffering from various despised social stigmas like slavery, indenture and the curse of untouchability.

Challenges in abolishing the caste-based stigmas

Ensuring the enjoyment of human rights for the vulnerable groups of people continues to be the biggest challenge for the Indian democratic ethos. Various disadvantages faced by these people are, though, common to both the OBCs and the dalits, it is the latter that has been at the receiving end of the inequitable Indian social order. Owing to the pollution and purity praxis, the Indian social set-up permitted the recognition and acceptance of untouchability which is probably the greatest crime against the humanity. Efforts to overcome the curse of untouchability were precious little till independence. Things started changing as a result of the strong reservations expressed by Mahatma Gandhi and Dr. B. R. Ambedkar whose pressure was so strong that the constitution makers had to enshrine its prevention under the chapter of the fundamental rights. Article 17 of the Constitution declared that untouchability is abolished and its practice in any form is prohibited. It gave a clear mandate to the state to eliminate the practice of untouchability with all the forces at its command and with ruthless will.

Despite of the Article 17 coming into practice with the inauguration of the Constitution on 26 January 1950, no serious attempts were made to translate the spirit of the Constitution into practice. However, with the enactment of the Untouchability (Offences) Act, in 1955, the things were assumed to look up. But in spite of certain merits in arresting the practice of untouchability, it failed to make a significant impact on the society due to certain inherent constraints and deficiencies. Hence in order to make an improvement over this legislation, a parliamentary committee was appointed to look into the matter. Based on the recommendations of this committee, the Parliament, in 1974, effected major changes in the principal Act which was redesigned as the 'Protection of Civil Rights Act, 1955'. A little later, the Parliament enacted one more piece of legislation to include certain additional issues not covered under the previous Act. The new Act, known as the 'Scheduled Castes, Scheduled Tribes (Prevention of Atrocities) Act, 1989', has gone a long way in protecting the human rights of these people. This Act was further strengthened with the passage of the SC and ST (Prevention of Atrocities) Rules, 1995. Among others, the National Commission for Backward Classes Act, 1993 and the National Commission for Safai Karamcharis Act, 1993, are the major enactments to provide for a holistic approach to ameliorate the conditions of the people to ensure the basic human rights to them. (Bhatt: 2005, 87).

In the face of these legal guarantees, one could naturally expect the demolition of the monolith growth of the monster of untouchability. However, the result has not been as expected due to the lack of awareness among the people about these legislations. Without awareness, neither the victims get relief nor the oppressors stop victimizing the hapless people. In view of the plethora of legal enactments and the subsequent administrative measures, a large section of the people sitting in the urban areas tends to assume that the practice of untouchability has ceased to exist. But the social realities come to the fore when one goes to the grass root level of the Indian society. Direct or indirect practice of untouchability, more so in rural areas, can be encountered in the spheres of entry into hotels, temples and religious processions, drawing drinking water from tank, tap or other sources, social mixing, economic activities etc. The females of these castes are often subjected to eve-teasing and the males are normally forced to act as the bonded labor.

Unfulfilled Promises

Contrary to all expectations that in the light of the improved social policies and programs of the state, the practice of untouchability would have either vanished or diminished to a large extent, a number of studies reveal that the practice, more or less in the same areas of human social interactions, are very much alive in the rural areas. (Khan: 1999) Attempts to challenge these practices invariably result in conflicts and atrocities. But, with access to education, reservation in jobs and emergence and growth of the scheduled castes organizations, a new awakening and realization of self-respect is experienced.

Despite these piece-meal improvements, the challenge of ensuring human rights of these people continues to be insurmountable. The disabilities of the SCs, STs and the other backward castes remain in the nature of economic, educational, political, and social or a combination of several of these factors. For a given community, backwardness is a relative phenomenon. But in a developing country like India where large sections of the population are economically poor, the other disabilities provide additional points in determining backwardness.

The scheduled castes and the scheduled tribes are the people who occupy the lowest rung of the Indian social system and are subjected to numerous types of discriminations. The magnitude of the discrimination is great in social like and institutionalized for centuries especially in rural parts of the country. Similarly, economic disparities and deprivations are deep rooted and their dependence on the upper castes is proverbial. The social stigma and ritual pollution is so great that the SCs and STs cannot engage themselves in many gainful employments and they are caught in the whirlpool of traditional occupation. The very fact that majority of rural scheduled castes and scheduled tribes remain landless agricultural laborer confirm this point that though there're equally weighty economic and educational factors that militate against them.

Adivasis

In the discourses on human rights, Adivasis or tribals stand out prominently as a community owing to their unique cultural tains and inhabitation. Etymologically, they are referred to as a group of people, families, clans or communities who share social, economic, politicall etc, ties and often a common ancestor and who usually have a common culture, dialect and a leader. (Cambridge 21st Century Dictionary) However, the point that has emerged as the nucleus of the debate on the isues of the human rights of the Adivasis is the unfettered traditional rights of these people in forests, and the erosion of this right has been the hallmark of the most of the tribal movements in both pre and post independent India. (Singh: 1985, 107)

Demographic Profile of Adivasis in India

The demographic profile of Adivasis in India presents a sporadic picture having both numeric as well as spatial variations. With a total population of around 6.76 crore (8.08% of the total population), according to 2001 census, the highest number of Adivasis are found in Madhya Pradesh (1.5 crore), followed by Maharashtra (0.73 crore), Orissa (0.70) crore) etc. The position of states, in terms of percentage of the scheduled tribes to their total population is as follows: Mizoram 94.75%, Nagaland 87.7%, Meghalaya 85.53% and Arunachal Pradesh 63.66%. The spatial distribution of the Adivasis shows a strong tendency among the these groups to cluster and concentrate in the hilly, forested and the geographically inaccessible tract of the country. On the map of India thus, there is a clustering of Adivasis in the North-Eastern part of the country and also in the central eastern zone comprising of Madhya Pradesh, Chhatisgarh, Maharashtra, Orissa and Jharkhand.

Issues in human rights of the Adivasis

A distinct feature of the life of the Adivasis has been their aloofness from the so-called plain or modernized people which afforded the former the right to preserve their ethnic-cultural characteristics, to carry on with their traditional socio-economic and political formations and to share a symbiotic relationship with the natural environment, particularly the forests. However, with the establishment and consolidation of the colonial rule in the country, the Adivasis were sought to be politically, economically and administratively integrated with the rest of the society. This integration resulted not only into the disturbance of the quite and autonomous life-style of the Adivasi people but also introduced the perennial problems of the so-called modern people like poverty and indebtedness, unemployment and exploitation into the life of the tribals. These problems led to the erosion of the traditional life style of the Adivasis and infringed upon the human rights of the Adivasi communities.

The starting point to analyze the issues in the human rights of the Adivasis is the notion of land alienation. Owing to the factors like opening up of the tribal areas and their acquisition by the government and other institutions for the purposes of communication and development, coupled with the lacunae in the land laws, the native people lost their prized possession resulting into land alienation. Moreover, the modern system of land ownership fundamentally transformed the socio-economic system of the Adivasis and led to the infiltration of non-tribals in the tribal regions.

Another significant issue in the realm of the human rights of the Adivasis is the symbiotic relationship with the forests. Traditionally, the forests have been, along with the land, the basis of sustenance and prosperity of the tribal people. Gradually, with the government taking up the management of the forests as the natural resources, there has come up a constant tension between the Adivasis and the government. It has been of little concern to the government that the forests are central to the social customs and rituals of the Adivasis.

Among other issues that cause concern to the human rights of the Adivasis are poverty, indebtedness and unemployment. Bereft of the ownership over land and forests, the Adivasis lost their means of livelihood and were forced into poverty in course of time. Due to their frequent need for money in adverse times and famines, the Adivasis were compelled to borrow money from the unscrupulous moneylenders. The transformation of subsistence agriculture into a cash crop economy also led to their indebtedness, as the Adivasis became more and more dependent on the market for their food requirements. Above all, industrialization has not been of much help to these people because, although, new job opportunities were created, the native people could not fit themselves into these jobs due to the lack of necessary skills and education. (Sinha: 2002, 259) In the face of these bottlenecks in the human rights of the Adivasis, the pursuits of both the governmental and the non-governmental organizations should not only be to restore the traditional rights of these people but also to modernize them in such a way that they are not cut from their roots.

Constitutional Protection for the Adivasis

Recognizing the delicate nature of the Adivasi life and the ensuing threat to it from the various quarters along with the need to integrate them with the national mainstream, the Constitution makers made elaborate provisions in this regard in the Constitution. Article 342 of the Constitution provided for a special category having those social groups which were to be treated as Scheduled Tribes (STs) for official purposes. Further, under Article 15(4), the measures for the advancement of the STs are exempted from the general ban on discrimination on the grounds of race, sex, caste and like. Moreover, under Article 19(5), the state may by law curtail the general rights of all citizens to move freely, settle and acquire property to presumably prevent the alienation or fragmentation of tribal property. Article 45 directs the state to promote with special care, the educational and economic interests of the STs. Provision for reservation for these people in public services at both the centre and the state levels are made under Articles 16 and 355. Article 338 provides for the setting of a National Commission for the Schedule Tribes also.

The Union Government, under Article 339(2), is empowered to exercise its executive power in giving direction to states for drawing up and executing schemes specified in the direction to be essential for the welfare of the STs. Article 275(1) instructs the union to give grants-in-aid to the state to meet the expenses on tribal welfare schemes. Elaborate provisions have been made under Articles 244 and 244(A) of Part X of the Constitution regarding the administration of the Scheduled areas and the tribal areas. Further, the fifth schedule of the Constitution deals with the administration and control of the scheduled and tribal areas of in states other than Assam, Meghalaya, Tripura and Mizoram. The sixth schedule applies to the tribal areas within the above mentioned states. Similarly, under Article 164, provision has been made for a particular minister in charge of the tribal welfare in the states of Bihar (now Jharkhand), Madhya Pradesh (now Chhatisgarh) and Orissa. Also, under Articles 330, 332 and 335, certain temporary provisions exist for the special representation and reservation of seats for the scheduled tribes in the Union and state legislatures. The cumulative effect of these constitutional provisions has been the starting of a plethora of policies and programmes for the tribal development.

Policies and Programmes for the Development of Adivasis

In the post-independence times, there existed a wide gap among the scholars and officials regarding the development strategy to be adopted for the Adivasis. The main reason for this divide was that the tribal development would have required a very delicate balance between the economic growth and prosperity of the tribals on the one hand and the protection and preservation of the ethnic, cultural, linguistic and ecological systems of the people on the other. The two broad policy formulations were suggested on the issue – one, schemes of national park, seeking total non-interference in the tribal areas by the government, as advanced by V. Elwin; and the other, the scheme of G. S. Ghurye calling for complete assimilation of tribals with the rest of the people in the national mainstream. In this regard the final word came from Pandit Jawaharlal Nehru who called for a development strategy for the tribals with the emphasis on development along the lines of their own genius with respect for their rights in land and forests. (Oomen: 1998, 77)

Later on, the successive five year plans became the basic policy document containing the policies and programmes for the tribal development. Within the overall development plan, the component of tribal sub-plan was introduced to accommodate the special needs of the tribal development in the areas dominated by them. Even till date, the tribal sub-plan continues to be the mainstay of the development policies of the government. In addition to this, the other initiatives for the tribal development included various specific tribal development projects, setting up of Tribal Research Institutes, Tribal Cooperative Marketing Development Federations and financial assistance for minor forest produced operations. These policies and programmes have, however, not been found to achieve the desired results to a large extent.

Global Efforts

At the global level, 'indigenous' is the term used to denote the tribal and sub-tribal people due to the need for a broad categorization to include the vast variations in the descendants of the original inhabitants of a given area or region. Nevertheless, the reference to the protection of tribal and indigenous peoples at the global level was made for the first time in 1957 in a resolution adopted by the International Labour Organization (ILO). Since then, the issues confronting the tribal and indigenous people were echoed at various conferences and forums.

At the UN level, it was in 1982 that the UN Commission on Human Rights set up a working Group on Indigenous Populations. This group has prepared a Draft Declaration on the Rights of the Indigenous Peoples, awaiting adoption by the General Assembly. The Economic and Social Council established the Permanent Forum on Indigenous Issues in 2000 as one of its subsidiary organs. The year 1993 was observed as the International Year of the World's Indigenous People and subsequently the General Assembly decided in 1994 to proclaim the decade of 1995-2004, as the International Decade for the World's Indigenous People. It is expected that the global efforts would result in the end to marginalization and forcible assimilation of these people and they would be provided with their due share in decision making

In final analysis, it may be pointed out that the issues of protecting and promoting human rights of the Adivasis have been the perennial challenge to the democratic polity in India. Despite the mammoth efforts mounted to bring the Adivasis into the national mainstream through concerted development based on the tenets of the 'Tribal Panchsheel', the simmering discontent amongst these people have led to a number of tribal movements. Such movements have, broadly, two major defining features- geographical and political. In the central and eastern India, the tribal movements were basically political in nature seeking the betterment of the people within the national mainstream of the country. On the other hand, the tribal movements among the tribes of the north-eastern regions including Nagaland, Tripura, Manipur etc., have often been shown geographical overtones with secessionist tendencies. However, the underlying causes of almost all tribal movement have uniformly been their socio-cultural isolation, economic backwardness and feeling of frustration about their low status in the national mainstream. (Roy Burman: 1979, 115) The governmental policies have been able only to eradicate economic backwardness, that too only in part. The need in present times is, therefore, to eliminate the feeling of alienation among the tribals by elevating their status to a higher pedestal in the national mainstream.

Women and Human Rights

Women's human right is a revolutionary notion. This radical reclamation of humanity and the corollary insistence that women's rights are human rights have profound transformative potential. The incorporation of women's perspectives and lives into human rights standards and practices forces recognition of the dismal failure of counties worldwide to accord women the human dignity and respect that they deserve simply as human beings. A women's human rights framework equips women with a way to define and analyze and articulate their experiences of violence, degradation and marginality. (Patil: 2001, 185)

Human rights framework for women

In the late eighties and early nineties, women in diverse countries took up the human rights framework and began developing the analytic and political tool that together constitute the ideas and practices of women's human rights. Taking up the human rights framework has involved a double shift in thinking about human rights and talking about women's lives. In other words, it has entailed examining the human rights framework through a gender perspective and describing women's lives through a human rights framework. (Patil: 2001, 186)

In looking at the human rights framework from women's perspectives, women have shown how current human rights definitions and practices fail to account for the ways in which already recognized human rights abuses often affect women differently because of their gender. This approach acknowledges the importance of the existing concepts and activities, but also points out that there are dimensions within these received definitions that are gender specific and that need to be addressed if the mechanism, programs and the human rights framework itself is to include and reflect the experiences of the female half of the world's populations. When people utilize the human rights framework to articulate the vast array; of human rights abuses that women face, they bring clarifying analyses and powerful tools to bear on the women's experiences. This strategy has been pivotal in efforts to draw attention to human rights that are specific to women and that heretofore have been seen as women's rights but not recognized as human rights. (Patil: 2001, 186)

Issues in human rights for women

The genealogy of the women's human rights originates with a need to articulate and collaborate around broad and similar concerns about the status of women in the civil and political realm of the women's life. By the dawning of the early nineties, it was unanimously recognized that more important and basic, than the issues of status and prestige, are the issues pertaining to the personal possessions like and body of the women. Their personal possessions were subjected to the insidious endeavors of the people in general , most profound and universal reflection of which has seen in the whole range of violence's against women as well as a negation of the reproductive rights to the women exclusively.

In contemporary times, violence against women has emerged as the cardinal issue to epitomize the human rights of the women. This is so because violence against women takes a dismaying variety of forms, ranging from domestic abuse and rape to child marriages and female circumcision, all of which constitute the most fundamental violations of the human rights. The ambit of the violence against women is amplified in Article 2 of the Declaration on the Elimination of Violence against women as follows:

1. Physical, sexual and psychological violence that occurs in the family including battering; sexual abuse of female children in the household; dowry-related violence; marital rape; female genital mutilation and other traditional practices harmful to women; non-spousal violence; and violence related to exploitation.
2. Physical, sexual and psychological violence that occurs within the general community including rape; sexual abuse; sexual harassment and intimidation at work, in educational institutions and elsewhere; trafficking in women; and forced prostitution; and

3. Physical, sexual and psychological violence perpetrated or condoned by the state, wherever it occurs.

In addition to these, violence against women consists also of all forms of gender biases in the administration of justice and of any conflicts arising between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism. Any comprehensive endeavor to safeguard the women's human rights must have at its centre the pre-condition of eliminating all forms of violence against women. (Raju and Satyanarayana: 2002, 132)

Position in India

The pursuits of women's emancipation in India may be traced back to the nineteenth century when various socio-religious reforms organizations persuaded and joined hands with the colonial rulers to get the prevalent heinous practices pertaining to women declared illegal on the one hand and ingrain in the social psyche the values of women's empowerment and well being, on the other. After independence, the state, backed by the constitutional mandate, emerged as an important sphere for grasping the contentious issues concerning women. (Singh: 1995, 147) The major determinants of the role of state in relation to women included constitutional provisions, legislations and the dynamics of public policy, though the efforts of the non-governmental organizations and international agencies are no insignificant.

The constitution of India does not provide for elaborate and specific provisions pertaining to the issues of women. The general principles embodied under the rubric of the right to equality apply to women also as any discrimination only on the basis of sex is absolutely forbidden. Article 15(3) suggests state action in the interest of women and children. Rather specific provisions regarding women are placed in the Directive Principles of State Policy which includes maternity benefits, health and moral well-being of the mother and the child, equity provisions like equal pay for equal work for both men and women and a common civil code. However, even after more than fifty years of independence, a number of these provisions have remained only in the constitution.

The deficiency of the constitutional provisions regarding women was sought to be made up through a string of legislations. (Challapan: 1998, 149) Though law has never been considered an adequate means of transforming social structures, institutions and attitudes, it is still considered an indispensable method of social engineering. Hence, the state, also under pressure from the women's organizations, has brought about several legislations on the women's issues like dowry prohibition, child marriage restraint, equal remuneration, the indecent representation of women and pre-natal diagnostic techniques etc. Two important pending bills relate to reservation of seats for women in the higher elected bodies.

Though the constitutional-legal framework affirms and promotes the principles of equity and equality of women and takes care of their special needs, the practical shape to the doctrinal pronouncements has been accorded through the successive five –year plans. Till the fifth five-year plan, the governmental approach was to provide welfare measures for the women. The sixth plan for the first time shifted this welfarist approach to the development one with the focus being on health, education and employment. The seventh plan broke new grounds with 'beneficiary –oriented programmes' which extended direct benefits to women. The eighth plan shifted the thrust from development to empowerment. The ninth plan committed itself to empowering women as agents of social change and development to enable them to exercise their rights both within and outside the home as equal partners with men. The tenth plan refers to the need to gender sensitize the various organs of the government and proposes to continue with the strategy of women empowerment as agents of social change and development with a three fold strategy of (i) social empowerment (ii) economic empowerment with adoption of the concept of Gender Budgeting and Auditing, and (iii) gender justice to end gender discrimination and to allow women enjoy freedom on par with men in all spheres of life.

In the wake of the renewed efforts, originating from both the governmental and non-governmental quarters aimed at women empowerment came attitudinal changes in policy and perspective resulting into legal reforms, remedial measures at the level of public policy and institutional arrangement along with greater focus on socio-economic problems. (Verma: 1995, 98) Consequently, the National Commission for Women was set up in 1992 to act as the nodal agency to look after the general well-being of the women including the protection of women's human rights. It has been given a comprehensive mandate to tackle the issues like economic empowerment through transfer of technology and vocational training and wage equality: political empowerment through representation in the legislative and decision-making bodies from the grass roots level to parliament; legal issues such as the need for the review of laws, speedy justice, custodial justice, redressal of grievances and the need for sensitization of the police and the judiciary; health and social issues such as tackling female foeticide and infanticide, trafficking in women and children; the problem of SC and ST women; the plight of the widows, specially in religious places; women victims of domestic violence and improving the status of women in India, among others.

The performance of the Indian government on the issue of protection and promotion of human rights of the women betrays the high sounding promises made in policy pronouncements and programme formulations. The increasing incidents of violence and crime against women bear testimony to the stark reality of the wide gap between the theory and practice. The way out, definitely, seems to be a holistic approach to the problem leading to attitudinal change in policy and perspective which in turn should lead to legal reforms, remedial measures at the level of public policy and institutional arrangement along with a greater focus on socio-economic problems faced by the women.

Human Rights of the Minorities

Minorities are defined as groups of people numerically inferior to the rest of the population of a state, whose members being citizens of the state possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language. Thus in Indian context, religious minorities are found in the form of various non-Hindu religious groups, ethnic minorities are found in the states of Assam West Bengal etc. and linguistic minorities are found in various states in relative context, i. e. Hindi speaking people being linguistic minority in the states like Punjab, Jammu and Kashmir as well as various southern states of the country on the one hand and non-Hindi speaking people become linguistic minority in Hindi-belt states on the other.(Weiner: 1997)

Conceptually, the most important right of members of a minority group is right to equality, through which it is ascertained that ethnic, religious or linguistic differences cannot form the basis for discrimination against minorities. At the same time, members of minority groups need special rights to enable them to preserve and develop their ethnic, religious or linguistic characteristics. In other words, these people should be entitled to enjoy their own culture, practice their own religion and use their own language. (Bannerjee: 1998, 17)

Statutory Provisions

For the promotion and protection of the human rights of the minorities, an elaborate provision has been made in the constitution of India. At the very outset, Article 14 of the constitution declares that the state shall not deny to any person equality before law or equal protection of laws within the territory of India, thereby preventing discriminatory practices to be followed by the state. Not content with a more general declaration of the right to equality and fully conscious of the types of discrimination prevalent in the country, the framers of the constitution went a step further in Article 15 to propound that the state shall not discriminate against any citizen on the grounds only of religion, race, caste, sex, place of birth or any of them. Further, Article 16, equality of opportunity in matters of public employment has been ensured. In addition to the various provisions to ensure right to equality, the basic civil and political rights have been provide to the minorities under Article 19 to 22.

However, the framers of the Constitution were not satisfied with such provisions alone and under Article 25 to 28, provided for the most generous rights to religious minorities in order to infuse a sense of complete confidence in them. While Article 25Provides that all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion, Article 26 goes a step further to guarantee the freedom to manage the religious affairs and institutions. Article 27 enshrines an additional protection to religious activity by exempting funds appropriated towards the promotion or maintenance of any particular religion from the payment of taxes. Article 28 prohibits religious instruction in any educational institution wholly maintained out of state funds, to provide a secular orientation to the polity.

Ethnic and linguistic minorities are bestowed with distinct set of cultural and educational rights under Articles 29 and 30 of the constitution. Section (1) of Article 29 guarantees the right of any section of the citizen residing in any part of the country having a distinct language, script or cultures of its own, to conserve the same. Further, section (2) of the same Article prohibits any discrimination based only on religion, race, caste, language or any of them in the matter of admission to state of state-aided educational institutions. Section (1) of Article 30 provides that all minorities, whether based on religion or language shall have the right to establish and administer educational institutions of their choice. According to section (2) of the said Article, the state shall not, in granting aid to educational institutions, discriminate against any educational institutions on the ground that it is under the management of a minority, whether based on language or religion. Thus, we find that when provisions under Article 29 and 30 are considered along with other provisions in the chapter on fundamental rights and elsewhere in the constitution, safeguarding the rights of religious, linguistic and ethnic minorities, it becomes clear that the purpose of these provisions is to reassure the minorities that certain special interests of theirs which they cherish as fundamental to their life, are safe under the constitution. (Pylee: 2001, 81)

Global Pursuits

International community has sought to assure minorities equal rights and freedom from invidious discrimination through declarations, covenants and statutes. In 1946, the Commission on Human Rights was asked to submit to the Economic and Social Council, proposals, recommendations and reports regarding the protection of minorities. In 1947, the Commission established a Sub-Commission on Prevention of Discrimination and Protection of Minorities and authorized it to give recommendations to the commission, to undertake studies and to suggest remedies concerning the protection of racial, national and linguistic minorities. During the discussion in the Sub-Commission of the implementation of the General Assembly's 1948 resolution on human rights, it was agreed that the most effective means of securing the protection of the minorities would be the inclusion of an article (Article 27 is the one), on the subject in the proposed International Covenant of Civil and Political Rights.

In December 1992, the United Nations came out with a more formidable Declaration on the rights of minorities. This Declaration stated that states shall protect the existence of the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for promotion of that identity. For carrying out this mandate, the 1992 Declaration asked all the nations to take measures to ensure that person belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law. (Rai: 2001, 113)

Issues and Challenges

The issues and challenges of the human rights of the minorities have always been at the forefront of the efforts for the advancement of the human civilizations to newer vistas. Over the centuries, minority's questions have led to interventions, aggressions and wars, both local and general. Today, they lead to friction between states, intervention by one state in another or to appeals to United Nations for international intervention. States in which minorities live are sometimes concerned about the possibility of a secessionist movement by minorities, threatening in territorial integrity of the state or about the danger of the interference by other states with which the minorities are connected by ties of race, national origin, language or religion. (Patil: 2001, 245)

The basic hurdle in granting special protection to minorities and ensuring generous fundamental rights to them is the apprehension in the minds of the majority people that they might them invoke the doctrine of self-determination, leading ultimately to secession from the parent country. (Capotori: 1954, 9)Alternatively, among societies with a prevailing negative attitude of the majority towards the minority, the members of the minorities are fearful that any declaration of one's national, ethnic, and cultural and other characteristics might be interpreted as a so-called civil disloyalty on his part as citizen of the country concerned. (Peacock: 1988, 1938) Similarly, the right to profess and practice one's own religion is protected by profound constitutional provisions and states are obliged to ensure the religious and moral education of the children of minorities in conformity with their own convictions. Ideally, being part and parcel of one's very personal affairs, these rights ought not to be subject to derogation and limitation even in times of public emergency. In practice, however, most of the states subject these rights to such limitations as are prescribed by law and are declared to be necessary to protect public safety, order, health or morals and freedoms of others. (Dhami: 1975, 34) The provisions of the national constitutions have proved to be a failure to prevent abuse and misuse of executive and legislative powers in victimizing the minorities.

Unorganized Workers

India's vast labour force is classified into two broad categories –organized and unorganized. The formal or organized sector consists of central, state and local government administration along with the registered public and private companies. The unorganized sector forms the huge majority of labour force consisting of not only the agricultural workers in farming, fishing, forestry and plantation activities but also the urban home based, wage workers, migrant workers and self employed workers whose average monthly earnings do not exceed Rs. 6500 per month. In other words, that ninety-three percent of the total Indian workforce is employed in the informal economy at low wages and with few social security measures is a grim reminder of the state's inability to intervene positively in the bulk of India's labour market. The growing unorganized nature of work in India in the recent years, in part in the wake of the process of globalization, and the consequent worsening working conditions have put the informal economy at the verge of developmental intervention by state and civil society organizations.

A report on the conditions of work and promotion of livelihood in the unorganized sector revealed that nearly seventy-seven percent of India's workforce survives only on Rs.20 a day as wages goes to show that mere economic growth does not translate into development- a conviction that appears to drive the larger macro policy of the government. The number of people employed in the informal economy has in fact increased from 811 million in 2000-2001 to 836 million in 2004-2005, a period when growth rate of the Indian economy registered an all time high. Any serious intervention will therefore have to take on board the links between such immiserisation and growth. Besides, certain other concerted measures like constituting a national minimum wage board, access to credit, marketing and skill development etc. may be taken to improve the conditions of work and social security, cutting across different types of employment and for specific segments of workers like home workers, women workers and marginal farmers.

The issues and challenges of the human rights of the labour are sought to be tackled through the fifty odd existing labour laws in the country. Placed in the Constitution as a concurrent subject, the gamut of labour laws deals with the issues like employment, wages, job security, working conditions, benefits, dismissal, industrial safety, disciplinary action, industrial disputes, formation of trade unions and collective bargaining. The sad part of the story is that these provisions protect only the organized segment of the labour force and leave the unorganized labour totally as a hapless lot.

The absence of a law to deal with the problems of the unorganized labour has gone to accentuate the miserable plight of these workers. Hence, there is an urgent need for expeditious enactment of a comprehensive legislation concerning the social security aspect and the service conditions of the unorganized sector workers. Such legislation should be drafted by a tripartite working committee after taking into account the inputs from all the stakeholders. It should be seen that the floor level social security schemes such as life and accident cover, health insurance and maternity benefits should be funded by the central government.

Concluding Observations

The idea of the human rights of the marginalized sections of society has come to occupy a sort of centre stage in the contemporary discourses on human rights. The uniqueness of the notion of marginalized sections of society and their human rights lies in the denial of such rights to these people for many centuries ostensibly for extraneous and repressive motivations of the dominant sections of the society. However, with the deep rooting of democratic ethos and emergence of some kind of accommodative spirit amongst the hitherto dominating classes, the human rights of the marginalized sections of society have come to signify a new dawn in the empowerment of the marginalized sections of society by way of providing for certain specific human rights for them.

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Suggested Questions

1. Describe the importance of human rights for marginalized groups with reference to the rights of Dalits *or* Adivasis.
2. Identify the unique issues in the human rights of women. Analyze the status and functioning of the framework of human rights for women in India.
3. Write a critical essay on the human rights for minorities *or* unorganized workers in India.

Lesson 7

CONSUMER RIGHTS: THE CONSUMER PROTECTION ACT AND GRIEVANCES REDRESSAL MECHANISM

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The age old dictum goes that the consumer is considered to be the king in the capitalist societies ostensibly for the reason that it is his or her response to the products of the industrialists which drives and determines the onward march of the whole economy in such societies. In other words, given the inherent nature of the market driven societies where the producers and the consumers constitute the two wheels upon which the whole economy moves, it is the consumer who stands at a higher pedestal than the producer as the behaviour of the latter is seemingly regulated, to a large extent, by the responses of the former. This situation turns out to be more true in the contemporary times when the forces of liberalization and globalization are inducing greater integration of the various economies in the world leading to greater competition amongst the market players. Under these circumstances, the consumers would need to have more leverage, at least in theory, in his dealings with the producers and retailers of the goods as the availability of more and more choices would have gone in his favour. However, the state of things in recent times have gone is disfavour of the consumers as the unscrupulous and excess-profit minded producers and traders leave no opportunity to deceive the consumers taking undue advantage of his ignorance and helplessness while purchasing the goods and services. The magnitude and dimensions of the deception are overwhelmingly wide spread as the consumer has to enter into a deal with the trader so often to meet the diverse requirements of life. Hence, in order to protect the interests of the consumers and enable him with certain grievance rederssal techniques that the Consumer Protection Act was passed in 1986 in the country. The present chapter seeks to provide a critical overview of the various issues involved in the protection of the interests of the consumers. In addition to analyzing the rights and responsibilities of the consumers, it also attempts at a critical appraisal of the functioning of the Consumer Protection Act, 1986 with special focus on the discussion of the grievance redressal mechanism in place in the country.

Before we set on to delineate the rights and responsibilities of the consumers, it would be pertinent to find out whether who is a consumer and what do we mean by the goods and services that the consumer buys and consumes.

Definition of the consumer

In common parlance, a consumer is a person who buys something by paying to consume certain goods and services. In other words, the technical definition of a consumer consists of three critical elements the absence of even one of which may disqualify a person from being considered as a consumer. One, a consumer has necessarily to be a buyer as no other means of acquiring the goods or services would qualify him to be so. For instance, the goods availed through the barter system would not entitle a person to be taken as a consumer. Two, the acquiring of the goods or services must be for a consideration as only then it would be considered to be a purchase which lies at the root of the notion of a consumer. For example, the goods or services availed through the medium of gift or Will without any consideration would not qualify a person to be called as a consumer. Three, the purchase of the goods or services must be for the direct consumption of the consumer. For instance, if a person purchases certain goods or services for resale or for any other commercial purpose like reprocessing or recycling, his status would not be that of a consumer.

The Consumer Protection Act, 1986 conceptualized the notion of consumer in a quite strict sense of the term so as include only the individualistic and personalized, as against the commercialized or trade-related, dealings within the ambit of the concept of the consumer. Thus, under Section 2(1) (d) of the Act, a consumer is a person who purchases, hires or avails any goods or services for his use or benefit for a consideration which has been paid or promised or partly paid or paid under a system of deferred payment. The Act explicitly provides for the exclusion of a person from the definition of the consumer who avails of such goods or services for any commercial purpose. However, the term 'commercial purpose' does not include the use by a person of goods bought and used by him and services availed by him exclusively for the purpose of earning his livelihood by means of self-employment. This appears to be a progressive element in the Act as a vast majority of Indians are engaged in self employment through small enterprises like shops, retail outlets, processing units etc. to run which they need to purchase the goods or services from the bigger producers or traders. Now, the exclusion of even such dealings from the purview of the Consumer Protection Act would have rendered a large majority of people helpless in the face of the greedy and unscrupulous big sharks of the market and would have gone to defeat the very purpose for which the Consumer Protection Act would have been enacted.

Concept of goods and services

Ordinarily, goods are understood as concrete movable products worthy of consumption by the individuals. However, in the legal parlance, 'goods' means every kind of movable product or property capable of being sold. Hence, things like stock, share, copyright, trade marks, patent, and a decree are all goods. Moreover, in the famous case of *Commissioner of Sales Tax v M. P. Electricity Board* (AIR 1970 SC 732), the Supreme Court held that with reference to movable property 'goods' cannot be defined in a narrow sense and merely because electricity is not tangible or cannot be touched or moved like a piece of wood or a book, it cannot cease to be movable property when it has all other attributes of such a property. As it can be transmitted, transferred, delivered, stored, possessed etc. in the same way as any other movable property, hence it falls within the ambit of 'goods'. Thus, on similar logic, water, air, steam and gas also could be included in the concept of 'goods'.

Like goods, service can also be defined in both general as well technical terms. Generally, service is considered to be some sort of favour done by a professional for the consideration of money. In providing his service, the professional does not deliver any concrete consumable goods in the strict sense of the term. However, in the technical sense, as Section 2 (1) (o) of the Consumer Protection Act defines, 'service' means service of any description which is made available to potential users and includes the provisions of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information.' The Act, however, excludes the free services or personal services under a contract from the purview of the concept of 'service' for the purpose of the Consumer Protection Act, 1986.

Consumer Rights

With the rapid advancement in the science and technology leading to the creation of highly specialized and technologically complex products, the common prudence of the consumers have started failing them to select the cheap and best product for their consumption. Moreover, the rigorous marketing techniques of the companies assisted by the eye catching advertisements on both the print and electronic media, the consumers are more likely to be deceived into believing something which is not true and therefore purchasing things in good faith which later on turns out to be not up to the mark. Above all, the lack of organization and collective endeavour on the part of the consumers to safeguard their interests and stand up against the unscrupulous market forces have also gone to add to the woes of the consumers. It is in these circumstances that the moves were set on in various countries of the world to devise certain institutional mechanism to protect the interests of the consumers.

Interestingly, the idea of the consumer rights in the twentieth century was probably recognized first of all by non other than the Mahatma Gandhi who sought to reemphasize the vantage status of the consumer/customer by asserting that all business exists for the satisfaction of the consumers. After some time the issue of consumer rights cropped up in the debates and discussions in the United Nations on the subject of human rights. However, the first substantive statement on the subject of consumer rights emanated from the US President John F. Kennedy who sought to recognize and define the basic idea of consumer rights through his special message to the Congress on March 15, 1962. Subsequently, in its declaration on human rights, the United Nations included the right to safety, right to be informed, right to choose and the right to be heard within the ambit of the human rights. It also declared the 15th March of every year to be observed as the 'World Consumer Rights Day'.

The movement towards the reassertion of the consumer rights got a shot in the arm with the formation of the 'International Organization of Consumer Unions' (IOCU). In India also the 'Confederation of Indian Consumer Organizations' was set up with the explicit purpose of evolving, operationalizing and popularizing the idea of consumer rights in the length and breadth of the country. Subsequently, a number of innovative rights were added to the category rights and the demand was made to evolve a mechanism to protect the rights of the consumers.

Rights of Consumers under the Consumer Protection Act, 1986: The different rights of the consumers as enumerated in various documents and presented by various organizations and bodies would not have carried weight unless legal sanction had been provided to them. Thus in order to streamline the bunch of the consumer rights and give legal sanctity to them, the Consumer Protection Act, 1986 delineates the following rights of the consumers:

Right to protection against hazardous goods: The Act specifically seeks to protect the right of the consumer against the marketing of goods and services which are hazardous to his life and property. Thus, the onus of responsibility lies with the trader not to supply any consumer goods which fails to comply with the general standards of safety stipulated for health and possessions of the individuals.

Right to Information: Even before the enactment of the Right to Information Act, 2005, the Consumer Protection Act, 1986 was very categorical in emphasizing the right of the consumers to be informed about the quality, quantity, potency, purity, standard and price of goods/services, as the case may be, so as to protect the consumer against the unfair trade practices on the part of the seller of the goods or the provider of the services. Thus, any default on the part of the traders to inform the consumer on the above mentioned aspects would render the former liable to be prosecuted before the consumer disputes redressasl forum.

Right of Choice: The Act has the vision of requiring the organization of markets and market practices in a manner which ensures that all the dealers are provided with a variety of goods and services for the benefit of the consumers. At the same time, it is also required that such variety of goods and services need to be offered at the competitive prices so that the consumers do not only have access to the variety of goods and services but also get the same at the fair prices to maximize their gains without compromising on the quality and safety standards of the product.

Right to Hearing: Being an unconventional right, the right to hearing has added weight to the body of consumer rights provided for in the Consumer Protection Act, 1986. The right maintains that a consumer retains the right to he heard and to be assured that his interest would receive due consideration at appropriate forum once a representation is made against the exploitation and unfair trade practices adopted by the trader. Thus, the representation of the consumers would no longer be brushed aside by the adjudicating authorities as the consumer carries the right to be heard as a matter of right and proper hearing no longer depends upon the discretion of the forum.

Right to Redressal: An obvious extension of the right to be heard and to be assured that his interests would receive due consideration at appropriate forums, the right to redressal seeks to emphasize the right of the consumer to get a fair settlement of just claims. Thus, in the face of being a victim of the unfair trade practices or the restrictive trade practices or the unscrupulous exploitation of the consumers by way of misrepresentation, supply of defective goods or deficiency in services, the consumer is fully entitled for adequate compensations from the competent authorities.

Right to Consumer Education: The right to consumer education gains significance in the realm of consumer rights in view of the ever-increasing range of super-specialized and innovative products and services being made available to the consumers by the companies. Given the limited knowledge and expertise of the consumers in choosing the product or service of his or her requirement, he or she is more often than not prone to be deceived by the companies advertently or inadvertently. In such a situation, it becomes utmost important for the consumer to be informed of his rights and responsibilities as a consumer. He should also be educated about the remedies available to him in case he feels aggrieved and the proper institutional arrangement through which he can seek the redressal of his grievances. Thus, an educated and enlightened consumer is likely to have the dual advantage of making an informed and probably infallible choice at the time of making the purchase of goods or hiring of services, on the one hand, in case the goods or services are not found up to the mark he may be prompted to use his right to take recourse to the grievance redressal mechanism provided for the purpose, on the other. The consumer education, therefore, holds key to the ultimate success of the Consumer Protection Act, 1986.

Constitutional Rights of the Consumers

Basically, a consumer is also a citizen of the country. As the Constitution of India contains of one of the finest provisions on the fundamental rights of the people and the directive principles of state policy aimed at providing a comprehensive framework for the protection and well-being of the citizens of the country, a few provisions in these parts of the Constitution appear to have a great bearing on the citizens as the consumers of goods and services. In this context, Article 21 of the Part III and Articles 47, 48A, 51A (b) and 51A (g) of the Part IV of the Constitution seem to be quite relevant.

The pivotal fundamental right which impliedly dovetails the most critical right of the consumer as the citizen of the country seems to be the right to the protection of life and personal liberty of the individual under the provisions of Article 21 of the Constitution. In other words, by virtue of being safeguarded against any infringement to his life or personal liberty, the citizens of the country seemingly get the automatic right to be protected against any danger to his life and personal liberty, emanating from the consumption of goods and services. In order to protect this right of the citizens, the government is vested with the necessary powers to not only regulate the conduct of any business but also prohibit the running of any enterprise altogether.

Another right of the consumers germinating from the provisions of the Constitution appears to be the right to a healthy environment to ensure a healthy, cheerful and satisfactory life to the people. The fundamental law in this regard has been stipulated by the Supreme Court and high courts in a number of cases involving the environmental pollution due to industrial or other developmental activities. For instance, in the case of *T. Damodar Rao vs. Municipal Corporation, Hyderabad*, (AIR 1987 AP 171) the Andhra Pradesh High Court held that the slow poisoning by the polluted atmosphere caused by environmental pollution and spoilation should also be regarded as amounting to the violation of Article 21. Thus, right to healthy environment has emerged as the major fundamental right of the citizens to get which enforced vociferous efforts have been made by public interest conscious individuals and organizations have move to the various courts in the country. A glowing example of the right to healthy environment being accepted by the apex court as the fundamental right of the people has been the case of the compulsory introduction of the Compressed Natural Gas (CNG) run public transport system in the city of Delhi in order to minimize the level of air pollution so that the people could breathe easy in the national capital.

Consumer Rights under the Sale of Goods Act

Interestingly, even before the idea of consumer rights gained popularity and concerted efforts were mounted for comprehensive codification of the consumer rights and responsibilities, an enactment of the pre-independence days, the Sale of Goods Act, 1930 has had the vision of stipulating certain rights of the people as the buyer of the goods. In this context, the most significant right of the consumer seems to be the right to reject. To put it differently, as per the provisions of the Sale of Goods Act, a consumer carries the inherent right to reject certain goods which are not found to correspond with their description provided somewhere, in addition to the right to reject such goods also on the ground of the goods not found fit for the purposes of the consumer. Moreover, the goods can also be rejected if they do not come up to be of merchantable quality. Similarly, a consumer can also reject the goods when in bulk they do not match with the quality of the sample.

However, the right of the consumer as provided for in the Sale of Goods Act appears to be of only substantive nature without any other peripheral arrangement for the enforcement of such rights. Hence, the right of a consumer to reject a good may be exercised only at the stage of buying the good. Once the goods are purchased and the consumer discovers some sort of discrepancy or deficiency in such goods, he would not have found any mechanism to exercise his right in the post-purchase stage. In this context, the only remedy available to the consumers under the provisions of the Sale of Goods Act has been the cumbersome process of suing his immediate seller, whether he happens to be the manufacturer of the good or not. As for another right of the consumer, the Act also provides some protection to the buyer by way of implied terms and conditions in such transactions. However, this right of the buyer has normally been nullified by the seller by adding the clause of excuse for himself for any defect in such transaction.

Complainant and complaints under the CPA, 1986

From the point of view of the consumer rights, a very significant part of the CPA, 1986 deals with the provisions relating to the complaint mechanism in order to provide relief to the consumers. Thus, under Section 2(b) of the Act the concept of complainant has been defined in such manner that it includes a vast array of persons and organizations who could file the complaint. Accordingly, a complaint can be filed by not only the consumer but also by any registered voluntary consumer association even though the consumer concerned might not be its member. Moreover, the Central or the state governments are also authorized to file complaint to safeguard the rights of the consumers. The Act also provides for the filing of the complaint by one or more consumers in case there happens to be several consumers having the same interest. Finally, a complaint could also have been filed by the legal heir or the representative of a consumer who has died even before the complaint could have been filed during his lifetime.

The Act stipulates that a complaint needs to be filed within a span of two years from the date on which the cause of action arises. However, in certain cases, the delay in the filing of complaint could have been condoned on discretion of the complaint authority if it is satisfied that sufficient cause exists for the delay, though the specific reasons for the satisfaction of the authority in condoning such delay have to be recorded. Thus, a consumer can file a complaint against the seller of the goods and also the manufacturer of the goods in case of the defective goods received by him. Further, the filing of the complaint is also governed by the factors of the monetary value of the defective goods or deficient services, on the one hand, and the geographical jurisdiction of the operational domain of the opposite party or any of the opposite parties, along with the origin of the 'cause of action', on the other. In other words, different amounts of monetary value of the cases to be filed in the consumer forums determine the appropriate level of consumer forum, i.e., district forum, state forum or the national forum, where the cases can be filed. Similarly, the condition of geographical jurisdiction of the 'cause of action' or the place from where the opposite conducts its business, may be the determining factor in deciding the appropriate geographically located forum competent to hear the complaint on the consumers' grievance.

Causes of Action

With a view to provide for the widest possible ambit of the grievances which a consumer may have, the CPA, 1986 stipulates three major bases on which a consumer may file a written complaint before the appropriate authority.

1. Unfair and Restrictive Trade Practices

Unfair trade practices have been defined under the Act as such trade practices which take recourse to any unfair or deceptive practices of trading for the purposes of promotion of sale, use or supply of any goods, or for the provision of any service. Hence, under such indefinite definition of unfair trade practices, though, numerous practices which the consumer finds as per his wisdom, to be unfavourable to him may be alleged to be unfair, yet there exists a fair understanding on what specifically constitutes unfair trade practices. Thus, a serious unfair trade practice appears to be the practice of false representation on the part of the trader either through written statement or oral representation. Such representation or statement may claim falsely certain qualities or properties regarding the standard, quality, grade, model etc. of certain goods or services. For instance, an oft repeated claim of the traders which finally turns out to be false happens to be their claim of warranty on a particular goods or services.

Another variant of the unfair trade practices happens to be the false offer of bargain publicized by various traders from time to time. Most of the offers like buy one get one free, sale or discount of exorbitant percentages, free home delivery of goods, exchange offers etc. are generally fraught with several false representation by the traders on the prices or the other monetary considerations attached with the deal. Interestingly, the small asterisk i.e. '*' put on the top corner of the offer appears to be the most important qualifying statement on the false offer of bargain price of the product promised to be given by the trader. What is important regarding the asterisk is that while it normally goes unnoticed by the prospective consumers, for the traders, it happens to be mainstay of the qualification which the trader takes as the escape route to go scot free if hauled in a consumer court for the false offer. Hence, it is desirable on the part of the consumers to seriously go through the qualifications attached to the offer in order to remain free from the trap of the unscrupulous traders.

A tendency on the part of the traders having the propensity of turning in to an unfair trade practice seems to be the schemes offering gifts, prizes etc. on certain deals or purchases. Aimed at promoting the sales or expansion of business, such schemes quite often are detected to be fraud on the consumers when the understanding of the trader and the consumer differs on such offerings. For instance, such offers ordinarily give the impression to the consumer that something is being offered free of charge along with the goods while the fact remains that the price of such an offer is wholly or partly covered by the price of the article sold. Moreover, even if the offered prize is not covered through the price of the bought things, the real prize, say camera, does not conform to the standard, quality, grade or model as being offered by the traders. Nowadays, an interesting phenomenon has come up on the part of the companies in calling the consumers to some get together or party and promise certain tours or goods or services which are laced with exorbitant prices in comparison with the same offer being made in the open market. Further, the provision of offering some prizes to the consumers through the method of some sort of lottery or chance game also appears to be falling in the category of unfair trade practices.

Amongst other business transactions and processes bordering the concept of the unfair trade practices include the unethical and illegal practices such as non-compliance of the prescribed standards set by competent authority with regard to certain goods, hoarding of goods with the purpose of fueling inflation in the market, destruction or refusal to enter into transaction for sale of goods with the pernicious design of raising the cost of such goods. What is remarkable with regard to the definition of unfair trade practices under the provisions of the CPA, 1986 is that it does not purport to provide an exhaustive list of illustrations, identical resemblances of which might be construed to be the cases of the unfair trade practices. Rather, it provides a general conceptualization that any unethical method or ill-intentioned practice on the part of the trader to promote sale or business prospects of the goods or services, having the propensity of deceiving the consumers would be construed to be an unfair trade practice whether it resembles to any of the methods mentioned in the illustrative list of unfair trade practices or not. Thus, the concept of unfair trade practices remains open-ended notion to include any trade practice within its rubric which may hurt the interests of the consumers.

2. *Defective Goods*

'Defect' in goods has been defined under the provisions of CPA, 1986 in such a way as to include most, if not all, of the deviances from the structural as well as standard quality stipulations prescribed either under a law or promised by the trader himself in accordance with the expectations of the consumers to make his goods saleable to the consumer. Hence, Section 2(1)(f) of the Act defines defective goods as the ones having any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which need to be maintained by or under any law, or under any contract or as is claimed by the trader. In practice what this law holds for the consumers is that he should be delivered the goods as per his expectations to which either there would have been a law to regulate the quality of certain products, or the trader would have needed to promised the requisite quality of the goods. Any contravention either on the part of the manufacturer or the trader on the stipulations of quality of the good would definitely amount to a defect in goods for the compensation of which the consumer is entitled to move the appropriate forum.

3. ***Deficiency in Services***

If the core of the defective goods lie in deviance in the prescribed or promised quality in the structure of the goods, the focal point of the deficiency in services lie in the unsatisfactory rendering of the services by the service providers. Defined in a comprehensive manner under Section 2(1) (g) of the Act, deficiency in services consists of any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by, or under any law or undertaken by the provider of the service to perform in pursuance of a contract or otherwise in relation to a service. Thus, though scope of deficiency in service may range from failure to issue a sale certificate to the delay in the declaration of examination results by an examining authority, a critical point in the issue seems to be some sort of a privity of contract between the consumer and the service provider, notwithstanding the fact that the Act of 1986 explicitly mentions the service being performed in pursuance of contract or 'otherwise' as well. Interestingly, the only notable exception to the law on deficiency of services is the pricing of services over which a consumer cannot claim any grievance.

Consumer Protection Councils

In order to provide for the constant reviews of the consumer protection policies at various levels as well as strengthen the function of advocacy in giving depth to the consumer rights in the Indian society, the CPA, 1986 provides for the setting up of the Consumer Protection Councils at the national, state and district levels in the country. Designed to be the broad based consultative bodies, the organizational pattern of such bodies are conceptualized in the mould of public-private partnership in order to facilitate a better feedback and thereby review of the policy in the area of consumer rights protection. Consequently, for instance, the Central Council is to consist of a Chairman (the Minister in charge of the Department of Consumer Affairs in the Union Government) and such number of other official or non-official members as may be prescribed from time to time. Crucially, however, it is argued that the citizens and organizations representing different interest groups having implications for the consumer rights protection need to be overwhelmingly represented as the members of such bodies as the converse position i.e. the majority of the official members in such councils is likely to compromise on the relentless urge and fight for the protection of the rights of the consumers.

Basic functional objective of the Consumer protection councils is supposed to provide a helping hand to the respective governments at various levels in adopting and reviewing the policies and programmes for promotion and protection of the rights of the consumers. For this purpose, the councils are required to meet as and when deemed necessary with at least one meeting in a year made mandatory. The councils are expected to act as the watchdog in respect of the policies and programmes of the governments aimed at the promotion and protection of the consumer rights on the one hand, and the advancement of the general interests of the consumers in the society on the other. In the performance of such a crucial and quite often disgusting to the well-off sections of the society, function, it becomes imperative for the councils to be dominated by the public-spirited and incorruptible civil society groups to ward off any probability of their functioning being compromised in any way.

Consumer Disputes Redressal Agencies

With a view to provide for effective remedies to the grievances of the consumers, the CPA, 1986 envisages for the establishment of consumer disputes redressal adjudicatory bodies at the district, state and the national levels. Stipulated in a hierarchical order, these agencies are to be set up by the appropriate competent governments. The complaints of the consumers are ordinarily to be routed through the lowest level of the body and case may go to the higher bodies only by way of appeal. However, the final appeal against the orders of the national commission may lie with the Supreme Court whose verdict on the matter would be final and binding on all the parties. The proceedings before these adjudicatory bodies are regulated in accordance with the stipulations of the CPA, 1986 and also the principles of natural justice. These agencies are required to decide complaint, as far as possible, within a period of three months from the date of notice received by the opposite party where complaint does not requires analysis or testing of commodities and within five months if it requires analysis of testing of the commodities. Thus, these agencies are designed to provide inexpensive and speedy justice to the common consumers.

District Consumer Disputes Redressal Forum (District Forum)

Standing at the bottom of the hierarchy of the consumer disputes rederssal agencies, the District Forum is set up to adjudicate the complaints where the compensation sought is not more than Rs. Twenty lakhs. Normally, the District Forum is to consist of a President and two other members. The President of the Forum is to be person who is or has been or is qualified to be a District Judge and is nominated by the state government. The other two members of the Forum are required to be persons of eminence in the field of education, trade or commerce, and one of such member needs to be a woman. Educationally, the members of the District Forum need to possess at least a graduation degree. To ensure some sort of impartiality and autonomy in the functioning of the District Forum, the appointments to it are made by the state government on the recommendations of a selection committee consisting of the President of the State Consumer Disputes Rederssal Commission, Secretary of the Department of Law and the Secretary in charge of the department dealing with the consumer affairs in the state. Holding the office for a term of five years or up to the age of sixty-five years, the members of the Forum are not eligible for reappointment to the same positions.

The jurisdiction of the District Forum is in consonance with practices followed with regard to other quasi-judicial bodies in the country. Thus, while the pecuniary jurisdiction of the Forum extends to the matters up to Rs. Twenty lakhs, its territorial jurisdiction demands that either each or whole number of the opposite parties reside or carry on business or personally work for gain in the district or the cause of action, wholly or partly, has arisen within the territorial limits of the district.

Having satisfied the jurisdictional requirements of the District Forum, a complaint may be filed by an identifiable complainant before the Forum in the prescribed manner. Not only the document of complaint needs to be submitted along with the application of complaint, the deposition of requisite fee of the Forum is one of the mandatory requirements before the complaint is admitted by the Forum. Once the complaint is admitted, the Forum refers a copy of the complaint to the opposite party directing it to file its replies to the complaint within a period of thirty days which may be extended by a maximum of fifteen days in certain eventuality by the

Forum. Normally, in its reply to the complaint, the opposite party is prone to deny the complaint, thereby placing the Forum in a quasi-judicial position to decide the matter in a fair and free manner. Moreover, in order to verify the claims and counter claims of the parties, the Forum may take recourse to enquiry, testing and scientific aids. For instance, in case of complaint for some defective goods, first the defects in the goods are categorized whether they require some sort of testing or not. Having established that, separate procedures are followed in case of defects in goods requiring testing and defects in the goods not requiring testing.

Once the District Forum arrives at the final decision in the case in view of the findings of its enquiry, if any, or from the documentary evidences available to it, it may issue appropriate order to the opposite party to compensate the complainant in an adequate manner. The relief provided by the District Forum may range from the removal of the defect as pointed out by the laboratory testing to the outright return to the complainant the price of the goods or the charges for the services. It may also issue suitable orders with regard to the costs as well. However, no relief can be permitted by the Forum outside the scope of the relief provided for in Section 14 of the Act. If the opposite party finds the order of the District Forum inflicting injustice to it, it may file an appeal against such order to the State Consumer Disputes Rederssal Commission within a period of thirty days which may be overlooked by the State Commission if it is satisfied that sufficient cause existed for the delay in filing appeal within the stipulated period. Thus, even in cases of appeal being made to the State Commission, the District Forum remains the starting point for filing complaint in ordinary cases falling within the pecuniary and territorial jurisdictions of the District Forum.

State Consumer Disputes Redressal Commission (State Commission)

State Commission exists as the intermediary agency to redress the grievances of the consumers within a state. It consists of a President who should be a person qualified to be a judge of the High Court, and two other members having experiences in economics, law, industry, administration etc. one of whom would compulsorily be a woman. Presently, the State Commission is presided over by a retired Judge of the High Court. The jurisdiction of the Commission is basically of three kinds: original, appellate and supervisory. Under its original jurisdiction, the Commission may entertain complaints where the value of goods or services and the compensation sought exceeds Rs. Twenty lakhs but does not exceed Rs. One crore. Acting as appellate authority, the Commission may admit appeal against the orders of the District Forum. Interestingly, more sweeping powers appear to have been afforded to the Commission under its supervisory jurisdiction. Exercising such power, the Commission may call for the records and pass appropriate orders in any consumer dispute which remains pending before or has been decided by any District Forum within the state. The use of this power becomes necessary for the Commission if it finds that such District Forum has acted outside its jurisdiction or has failed to exercise a jurisdiction so vested, or has acted illegally or with material irregularity. Moreover, on an application of the complainant or on its own, the Commission can transfer any complaint, pending at any stage of the proceeding before the District Forum to another District Forum within the state if it deems so fit in the interest of justice.

The procedure for disposal of complaints by the State Commission is by and large same as is followed by the District Forum. In case of the dissatisfaction of a person with the orders of the State Commission, an appeal may be filed to the National Commission within a period of thirty days of the receipt of order from the State Commission.

National Consumer Disputes Redressal Commission (National Commission)

The National Consumer Disputes Redressal Commission is the apex body conceptualized by the CPA, 1986, to deal with the issues of consumer disputes all over the country. Situated at New Delhi, the National Commission consists of a President and four other members one of them is to be a woman. The President of the Commission needs to be a person qualified to be a judge of the Supreme Court while other members, like the members of the State Commission, should have adequate experiences in the fields of economics, law, industry, administration, etc. Further, akin to the State Commission, the National Commission also is vested with three types of jurisdiction: original, appellate and supervisory. Under its original jurisdiction, the Commission may entertain complaints where the value of goods or services and the compensation sought exceeds Rs.One crore. Acting as appellate authority, the Commission may admit appeal against the orders of any State Commission. Exercising its supervisory power, the Commission may call for the records and pass appropriate orders in any consumer dispute which remains pending before or has been decided by any State Commission. The use of this power becomes necessary for the Commission if it finds that such State Commission has acted outside its jurisdiction or has failed to exercise a jurisdiction so vested, or has acted illegally or with material irregularity. The National Commission also retains the right to transfer any complaint pending before the District Forum of one State to a District Forum of another State or before one State Commission to another State Commission, on an application made by the complainant or on its own volition, if it finds that doing so would be in the best interest of the canons of natural justice.

The National Commission, acting as the apex body on the matter of consumer disputes redressal, by its orders, sets precedent for the lower level agencies to decide any dispute in accordance with the rule enunciated by the national body. Thus, it also acts as the court of record and the principles of justice propounded in its orders need to be followed by other authorities subsequently. At the same time, after the passage of the Consumer Protection (Amendment) Act, 2002, the power of the National Commission has also been extended to review its own orders when there appears to be an apparent error in the face of the record. However, if any party does not seem to be satisfied with the judgment of the National Commission, it may file an appeal against such judgment only in the Supreme Court within a period of thirty days from the time of the receipt of the order from the National Commission. However, normally only such cases are admitted by the Supreme Court which involves the substantive questions of law to be decided by the apex court in the country.

Certain issues having significance in the working of the disputes redressal mechanism at various levels in the country are also discussed in various provisions of the CPA, 1986. Under Section 24, it has been laid down that where no appeal has been preferred, the orders of a District Forum, State Commission and that of the National Commission shall be final. The period of limitation has also been provided for in the Act for filing of complaint at different bodies. For instance, it has been envisaged that none of the consumer disputes redressal agencies would admit a complaint unless it is filed within two years from the date on which the cause of action arose, with the rider that such a delay may be condoned by the competent agency by recoding the reasons for condoning such delay in writing. The consumer disputes redressal agencies are also empowered to dismiss a complaint if it finds the same to be of frivolous or vexatious in nature by recording the reasons for such dismissal. Moreover, in such cases, the harassment caused to the opposite party may be compensated by awarding suitable costs to the tune of an amount not exceeding Rs. Ten thousand

On the issue of deciding whether a complainant is a consumer or not, it has been established that the consumer forums are competent and vested with power to decide such issues.

The consumer agencies are vested with the power to impose penalties on a trader or a person against whom a complaint has been filed and he fails to comply with the orders of the Forum or the Commissions. Such a penalty may range from a minimum imprisonment of one month and maximum of three years, to the minimum fine of Rs. Two thousand and maximum of Rs. Ten Thousand or both. Finally, the CPA, 1986 does not have the effect of barring remedies under other laws. Section 3 of the Act provides that the provisions of the Act shall be in addition to, not in derogation of the provisions of any other law for the time being in force. As a result, a complainant has the option of seeking redress to his grievances either under the Consumer Protection Act or under the provisions of any other law.

Concluding observations

The enactment of the Consumer Protection Act in 1986 has been hailed as the landmark event in the direction of providing a comprehensive protection to the common consumers. It seeks to protect the consumers from the greed of unscrupulous traders on the one hand, and the restrictive and monopolistic trade practices of the big sharks of the business on the other. The most outstanding virtue of the Act is discerned in terms of providing inexpensive, fast and smooth remedies from the vagaries of the traders and manufacturers. Moreover, straight forward system of filing complaint and getting justice without undergoing the agony of cumbersome process of normal judicial process appears to the innovation introduced by the Act as far as protection of the consumer rights are concerned.

However, the functioning of the Act for more than a decade has revealed a number of structural and functional lacunae undermining the effective role performance by the Act as the harbinger of protection of consumer rights in the country. Structurally, while a number of bodies supposed to be set up under the Act have not been set up, even the bodies that have been established appear to be too unwieldy and without the vigour to act as the protector of the interests of the consumers. The powers granted to these bodies also seem to be not in proportionate to the responsibility assigned to them. As a result, in certain cases, these bodies find themselves unable to discharge their functions effectively. Above all, despite being in existence for over a decade, the consumer bodies have not been able to make people aware of their existence and take recourse to these bodies in case their consumer rights are infringed. Therefore, the onerous task before the consumer bodies in the country seems to be making themselves known to the common people as much as possible so that they can think of going to them as and when they are cheated by the traders and the manufacturers. The cases of the violations of consumer rights are galore in the country, the only need is to make people aware and feel free to go these bodies to get their grievances redressed.

References/readings

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Suggested Questions

1. Define a consumer? Elucidate the important rights of consumers as given in various legal documents.
2. What are the various causes of action under the Consumer Protection Act, 1986? What remedies are available to consumers in case of the violations of his rights as a consumer?
3. Critically examine the structure and functions of the consumer disputes redressal agencies with special reference to the National Consumer Disputes Redressal Commission. How far have they been able to achieve the expected results?

Lesson 8

HUMAN RIGHTS MOVEMENT IN INDIA

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India happens to be one of the few countries in the world having a chequered history of human rights movement. Though formidable antecedents of the protection and promotion of human rights may be traced to the ancient literature and life of the people, the foundations of the modern human rights movement seem to have been laid in India only during the course of the anti-colonial struggle. In fact, in order to provide for a holistic critique of colonialism in the country, the leaders of the national movement found it convenient to denounce the British government in India for its utter disregard even to the basic human rights of the Indians while trying to perpetuate the colonial rule in the country. Thus, the provision for the highest order of human rights for the citizens of the country in the Constitution of independent India was taken for granted as the reflection of the cherished vision of the founding fathers of the Constitution since the times of the genesis of the national movement in the country.

In the post-independence times, despite having one of the most elaborate exhibition of the fundamental human rights of the people, the operationalization of the human rights in the country became quite problematic. Owing to certain inherent contradictions in the socio-economic system of the country, a large number of people found themselves out of the reckoning to enjoy even the basic human rights guaranteed to the citizens of India. Moreover, with the disappearance of the euphoria attached to the attainment of the independence for the country, the stark realities of running a democratic system of government in a heterogeneous country started having a telling effect on the enjoyment of the human rights by the people. With claims and counter claims started being made on the social status, economic resources and political positions of the country, the Indian state began to find it in an utterly helpless position to accommodate the aspirations of all the sections of the society. Consequently, multiple types of violations of human rights appeared on the Indian landscape. For instance, while the archaic and exploitative socio-economic system continued to permit the exploitation of one section of society at the hands of the few, any radical move on the part of the marginalized people to either seek their dues in the socio-economic and political life of the country or claim preferential treatment by the government in order to ameliorate their conditions met with stiff resistance not only by the vested interests of the society but also by the Indian state on numerous occasions. Thus, over the years, the history of human rights movement in India has turned out to be a chronicle of the civil society initiatives in securing for the marginalized, exploited and politically persecuted people their due share and respectful place in socio-economic and political system of the country even in the face vehement resistance of the vested sections of the society and the government. In this chapter, therefore, an attempt has been to provide an analytical overview of the chronological genesis and growth of human rights movement in the country. Moreover, the role of the major actors in fostering the human rights movement and the critical issues impacting on the successful march of the human rights movement in the country have also been evaluated with a view to map the probable pointers in the human rights movement in India.

Seeds of Human rights in Ancient India

The earliest fragments of the human rights, not only in India but probably in the world as such, may arguably be found in the ancient Indian literary sources depicting the norms of the socio-economic and political life of the people in ancient times. For instance, the *Vedic* literature eloquently proclaims the equality of all human beings and calls for the fostering of the sense of fraternity amongst them all. Moreover, it reiterates the equal claims of the human beings on the basic life supporting amenities like food, water, air and shelter and professes an egalitarian and fulfilling social order by calling for the ideal of '*Sarve Bhavantu Sukhinah'* across the board. The essence of the human rights in the ancient times seems to lie in the timeless concept of *Dharama* (righteousness) which denotes the loftiest ideal underpinning the whole notion of good life for the people. As a perceptible expert clarifies, '[T]he *Vedas* including the *Upanishads (Shruti*) were the primordial source of '*Dharama*', a compendious term for all human rights and duties, the observance of which was regarded as essential for securing peace and happiness to individuals as well as society. The *Smritis* and the *Puranas* were collections of the rules of *Dharama* including civil rights and criminal liabilities (*Vyavahara Dharama*) as also *Raja Dharama* (Constitutional Law) which were developed on the basis of fundamental ideals incorporated in the *Vedas*.' (Jois, 1997:1)

An authoritative glimpse of the nature and functions of the human rights in ancient times is also found in the monumental work of Kautilya, the *Arthashashtra*. Rooting his concept of rights and duties in the notion of *Dharama*, Kautilya reiterated the civil and legal rights as propounded by the law giver of ancient times, the Manu. Moreover, he also insightfully tried to supplement the civil and legal rights of people with the formidable economic rights presumably in order to evolve a comprehensive notion of the human rights of the common people. Unfortunately, with the growing complexity of life on the one hand, and the degeneration of the moral values of life, on the other, the pious ideals of the *Varna* System started getting perverted into the cruel and inhuman caste system. Subsequently, during the middle ages, with the arrival of the Muslim rulers, newer elements seemed to have been introduced in the socio-economic and political life of the country which impacted on the realization of the human rights by the common people adversely. As a result, by the time of the British arrival in India, a vast mass of the people were abjectly deprived of their human rights at the hands of the dominant sections of the people. With no perceptible initiative forthcoming on the part of the government of the day to restore the human rights of the common people, the responsibility for the same appeared to have fallen on the social reformers and the enlightened individuals to strive for the propitious circumstances in which the common people are able to enjoy their human rights freely and adequately.

Genesis of human rights movement

In modern times, the genesis of the human rights movement in India may be traced to the colonial period. The long years of throttling and dehumanizing colonial rule has ensured that the majority of Indians remain oblivious to the ideas of human rights, respect for common people and enjoyment of a dignified life by all even as late as 1820s. However, for obvious reasons of their own, two sets of people started to rekindle the urge for human rights amongst the people impliedly, if not directly, via media of asking for social reforms in the Indian society on the one hand, and adoption of a more liberal attitude by the colonial government towards the issues dear to Indians like the freedom of press etc., on the other. While the first set of people consisted of those having sincere concern for the indigenously conceptualized social reforms in India so as to secure the human and livelihood rights for the hitherto marginalized sections of the society, the second category of people included a number of Indians as well as the Westerners who looked upon the British government to bring about the necessary positive transformations in the society and the polity of the country.

The pioneering efforts leading to the eventual germination of the human rights movement in India appeared to have come from the relentless social reformer Raja Rammohan Roy. Having strong critical faculties right from his childhood, Rammohan Roy's powerful training in the Indian scriptures on the one hand, and his deep erudition of English moral and political literature on the other, ingrained in him a unique blend of critique and creation on almost everything obscurantist and anti-liberal in Indian society and polity.

Consequently, Ram Mohan Roy became one of the bitterest critics of the redundant religious rituals denigrating the human rights of all the people in general, and those of the women in particular. Advancing a well-reasoned plea for the abolition of the cruel and inhuman practices like *Sati*, he presented a comprehensive outline of reforms to ameliorate the conditions of women in India. He decried the general environment of violence against the rights of women and called for eradicating all such social practices like polygamy, child marriage, *devadasi* system etc. which appeared to have denigrating effect on the dignity and respect of women. Moreover, providing creative solutions to the problems facing women in India, he advocated a number of progressive measures like widow remarriage, equal rights of women to property and fixation of a ripe age of marriage for women. Though most of such ideas of Rammohan Roy seemed to be much ahead of his time and, therefore, could not bear fruit so soon, two positive outcomes of his efforts remain remarkable. One, with the support of the humanist Governor-Generals like William Bentick, he indeed succeeded in stamping out the most heinous crimes against humanity in terms of the abolition of the *Sati* system by 1823. Two, irrespective of the successes or failures of his efforts, he was able to arouse the passions of other humanist elements in the Indian society who picked up from where he left and, thus, kept the flame of the struggle for human rights alighted throughout since then in the country.

Besides waging a sustained struggle for the rights of women, Rammohan Roy also strived hard for the protection of the civil and political right of the Indians. Hence, despite holding the colonial rule in India in high esteem, he did not hesitate to take on the British government at least on two occasions when he found the moves of the government infringing upon the civil and political rights of the natives. First, in 1823, when the British attempted to curb the freedom of Press in the country by putting unreasonable restrictions on it, Rammohan Roy happened to be one of the most vocal opponents of such a move and called for freeing of the Press from all draconian and unreasonable regulations passed by the colonial government. Second, the move on the part of the British Parliament to introduce certain discriminatory and illogical provisions in the Indian judicial system aimed at compromising the civil liberties of the Indians also earned the vehement ire of Rammohan Roy. Opposing the insertion of a clause by the Jury Act of 1827 which envisaged that 'natives, either Hindu or Muslims, are subject to judicial trial by Christians, either European or native, while Christians are exempted from being tried either by a Hindu or Muslim juror,' he campaigned forcefully against it. Not only that, he submitted a petition against this piece of legislation, signed by both Hindus and Muslims, in the two houses of the British Parliament arguing for the abandonment of such a discriminatory legislation. In nutshell, it may be argued that the idea of human rights movement in India appears to have found its genesis in the thoughts and actions of Rammohan Roy. His passion for the protection and promotion of human rights of various sections of society, in particular women, probably inadvertently began a wave upon which the subsequent movements for human rights may have been built up in India.

Human rights elements in social reform movements

As argued earlier, the genesis and growth of human rights movement in India seem to be enmeshed in the various socio-religious reform movements championed by the great social reformers from time to time. Indeed, the exhibition of concern for the human rights of individuals by the leaders of the national movement came quite late. As an expert notes, '[I]n fact, civil liberties of individuals, within the concern of India's liberation struggle, manifested itself as late as in the 1930s when Nehru started the Civil Liberties Union to provide legal aid to the freedom fighters accused of treason. The Congress Party, only at its Karachi session of 1931, passed the first resolution demanding civil liberties and equal rights for citizens.' (Ray, 2003:3411) Therefore, in order to have an unbroken sequence of growth of human rights movement in India, it is important to critically grasp the human rights elements in the socio-religious reform movements waged in the country during the late second half of the nineteenth and the early first half of the twentieth century.

In the realm of socio-religious reform movements, Bengal happens to be the pioneering state. Drawing upon the lead given by the torch-bearers of European Renaissance in India like William Carey and Joshua Marshman, the social reformers like Raja Rammohan Roy and Ishwar Chandra Vidyasagar waged relentless struggle for upliftment in the social status of certain sections like women. They not only tried to protect the human rights of these people by calling for the abolition of inhuman social and religious practices that unleashed untold miseries on them, they also tried to persevere for the protection of their human rights by empowering them through the medium of education and generating awareness amongst them for their rights and responsibilities in society. The social reformers in Bengal received immense support and help from a number of western social reformers and educationists such as David Hare, Sister Nivedita and Darezio, as also certain humanist British officials like Governor-General Lord William Bentick in getting their efforts eventually bearing fruit.

While in Bengal the social reform movements drew their intellectual inspiration from the European Renaissance, in Maharashtra, they appeared predominantly, if not exclusively, out of an indigenous awakening amongst the people having a vision for the amelioration of the miserable condition of the masses. For instance, though remaining quite active in the affairs of the Indian National Congress, Justice M.G. Ranade founded the Indian Social Conference in 1887 precisely for the purpose of working towards the realization of a dignified and respectful life for the socially disadvantaged sections of society by eradicating the socio-religious practices violating the human rights of such people. The mundane understanding of the problems facing people by Justice Ranade induced him to conceptualize such conditions of life for the people where the enjoyment of civil and political rights is supplemented by the adequate availability of the social, economic and cultural rights to the people. Another formidable social reform movement in Maharashtra, having deep-rooted implications for the growth of human rights movement in the country, was launched by Jyotiba Phule under the auspices of *Satyasodhak Samaj* to seek the protection and promotion of the human rights of the people belonging to the oppressed castes.

Early leads for the growth of human rights movement in India also came from the various socio-religious reform movements initiated in various parts of the south India. The prominent amongst such movements appears to be the movement launched by Sri Narayan Guru for *sanskritizing* the norms and customs of the Irava community in Travancore. (Shah, 1990:110) Yet, numerous other socio-religious movements were also launched in different parts of the region which sought to either protect or promote the socio-religious rights of the hitherto marginalized sections of society belonging to lower castes.

The other socio-religious reform movements having pointers for the growth of human rights movement in the country included the ones spearheaded by Arya Samaj of Swami Dayanand Saraswati, the Ramakrishana Mission of Swami Vivekanand and the Aligarh School founded by Syed Ahmad Khan. These were basically religious reform movements having repercussions on the social standing of the people as well. Thus, while the first two movements worked hard to reform the Hindu society, the last one was aimed at bringing about some sort of awakening amongst the Muslim society. The impact of these movements was remarkable in bringing about a perceptible social awakening amongst the masses as a result of which they became vigilant warriors of demanding basic liberties from the colonial rulers.

Human rights movement during the freedom struggle

The long span of anti-colonial movement in India, in a way, may be argued to be some sort of human rights movement keeping in mind the demand of the Indians for bestowing of basic civil and political rights to the common people of India as the short term perspective and the complete independence for the country as the long term vision of the nationalist leaders. However, such an argument has been countered by the scholars on the plea that 'the mainstreaming intellectual and political discourse of the liberation struggle had its central focus around the nation as a community, initially against colonial rule, and later also against contesting groups like Muslims, Sikhs, dalits and tribals as communities claiming nationhood.' (Ray, 2003:3411) The argument further goes to emphasize the point that since the thrust of the nationalist leadership did not have on the concern for the rights of individuals, as against the rights of nation as a community, it might not be justified to label the entire national movement as a movement for the securing of human rights in the country.

Situated, thus, in the frame of human rights of the individuals, the human rights movement during the phase of nationalist struggle appears to have taken shape only during the decade of 1930s. The biggest impetus in this direction came in the form of the Congress adopting a comprehensive resolution on the theme of 'Fundamental Rights and duties and Economic and social Change' in 1931 at its Karachi session. The passage of this resolution was seemingly the culmination of a series of subtle moves made the Congress to seek the civil and political rights for the native people. For instance, while the Constitution of India Bill drafted by it in 1895 called for guaranteeing certain specified civil and political rights as the fundamental rights of the people in any future constitution for India, the Madras session of the Congress adopted a resolution calling for the inclusion of a Declaration of Fundamental Rights in the future constitutional arrangement for the country. Moreover, the various committees like the Nehru

Committee, in their reports categorically ingrained certain civil and political rights in the discourse of freedom struggle in the country.

However, the institutional beginning in this regard is arguably made by the setting up of the Indian Civil Liberties Union (ICLU) in 1934 at the behest of mainly Nehru to ensure legal assistance to those freedom fighters who remained undefended while facing trial under the charges of treason. Functioning in a very limited and rudimentary fashion, the major activities of the ICLU remained confined to 'gathering information about violations of civil liberties, particularly regarding the conditions of prisoners and people in detention, police brutality, proscriptions on literature and restrictions on the press.'
(SAHRDC, 2000: 78) Nonetheless, the foundation of the ICLU marked the formal and distinct initiation of the human rights movement in the country.

Unfortunately, the institutional experiment of civil rights movement by way of the ICLU started facing rough weather from various quarters. Though the initial euphoria created by the setting up of the ICLU led to the formation of a number of civil liberty unions like the Bombay Civil Liberties Union, the Madras Civil Liberties Union and the Punjab Civil Liberties Union, such enthusiasm remained only ephemeral. The real challenge to these unions came with the inauguration of Congress led provincial governments in 1937 under the provisions of the Government of India Act, 1935. Loud noises made by certain Congress leaders in support of civil and political rights of the people started being lost in the din of the governance dynamics. When such betrayal of a noble cause was exposed and objected to by the ICLU and other such unions, they came in direct conflict with the powerful vested interests in the Congress party. Subsequently, growing tension between the ICLU and the Congress led governments found its articulation in the founders of the ICLU started arguing for the redundancy of the bodies like ICLU at a time when the country has got some sort of self-rule. Eventually, with the support and patronage from its founders being withdrawn due to seemingly autonomous and vigorous style of functioning of the body, the ICLU could not sustain itself for long and met with an untimely demise. In final analysis, the experiment of the ICLU exposed the hypocrisy of the some of the Congress leaders in espousing the cause of civil and political rights of the people vehemently as long as they remain out side the corridors of power, and becoming the willing partner of the colonial government in grossly violating the same rights when absorbed in the ruling dispensation of the time.

An analysis of the development of human rights movement during the phase of nationalist movement in India reveals two interesting features having a powerful influence on the march of the movement in the post-independence times. Firstly, despite having a very rich and ancient tradition of the enjoyment of some sort of human rights, if not the ones identical to the modern ones, the nationalist leaders in the country appeared more prone to look at the western, more particularly the British liberal traditions of human rights to argue for the same to be given to the native people by the colonial rulers. Consequently, the entire discourse of human rights during the freedom struggle boiled down to only the civil and political rights, as in the case of the western countries, to the marginalization, if not total exclusion, of the social and economic rights of the people which might have gone to create a more socially egalitarian and economically equitable order in the post independent times. Secondly, and more importantly, the concern of the many, if not all, of the nationalist leaders for the human rights of the people seemed to be more cosmetic than deep rooted. In other words, arguing for the human rights of the people as one of the intellectual high points from which to browbeat the colonial rulers as an overall package of their anti-colonial strategy, the leaders very conveniently forgot the struggles waged and the promises made for guaranteeing certain basic fundamental rights to the people once they come to power in the country. The empirical evidences to substantiate the dismal record of the leaders on the front of the protection and promotion human rights are galore right from the establishment of first Congress led ministries in the provinces in 1937 through the interim government of Jawaharlal Nehru till the functioning of various democratically elected governments even in the post independent times.

Human rights movement in independent India

The functional narrative of human rights movement in the post independent times presents a story of belied promises on the one hand, and the emergence of a powerful civil society initiative to keep the flames of human rights movement alight despite all odds, on the other. The portents of the future shape of human rights in independent India became obvious with the context in which the Constituent Assembly set on to fine-tune the provisions on fundamental rights of the people. The foundational fetters of the Constituent Assembly, including the historical factors conditioning its origin like the limited social base, vortex of partition and concomitant clamouring amongst various princely states for independence, etc. went a long way in determining the broad contours of thinking of the Assembly on the issue of fundamental rights. Hence, despite the liberal moorings of the members of the Constituent Assembly, the circumstantial dynamics constricted the deliberations of the Assembly so much so that it could not resolve on anything other than a strong governmental apparatus even at the cost of the basic human rights of the people. The agenda of nation building, national security and the unity and integrity of the nation was so overbearing in the minds of the framers of the Constitution that they could not rise above the routine offerings to the people by way of the fundamental rights. What was however heartening was that not only draconian provisions like those of 'preventive detention' were introduced, even the routine fundamental rights were placed so much of 'reasonable restrictions' that any government would have find a reasonable cause to put restrictions on the enjoyment of such rights.

While the constitution making process was underway in India, an international event of profound significance took place in December 1948 when the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR). Though the adoption of the UDHR had its own political underpinnings, reflecting the existing reality of the time in terms of ensuing cold war, it gave new impetus to the human rights movement in the newly independent countries like India. The Declaration, in a very subtle manner, morally, if not materially, impressed upon most of the countries to have a comprehensive framework of human rights for people in their constitutions on the pattern presented in the UDHR. Consequently, almost all the countries, including those not very anxious to have human rights as defining feature of their political system, found it somewhat compelling to not only sign the UDHR but also make matching arrangement in their own laws or constitutions to reflect the ethos of the Declaration. In such propitious circumstances, the task of the constitution makers in India became more daunting keeping in mind the requirements of the UDHR on the one hand, and the imperatives of the national unity and integrity on the other.

As the final product, the Constitution of India incorporates a number of valuable provisions having profound implications for the human rights movement in the country. The three important sections where direct or indirect references have been made with regard to the rights of the people are the Preamble, the Fundamental rights and the Directive Principles of State Policy (DPSP). Indeed, though the Preamble articulates the holistic vision of the founders of the Constitution on certain vital aspects of the political system of the country, the subtle reference to the various rights and freedoms of the citizens at the very outset clearly indicates the salience which the framers apparently sought to dovetail in the Constitution. However, when it came to providing for the specific rights to the people, the Constitution makers thought of making a clear distinction between the first and the second generation of human rights, owing to the prevailing socio-economic conditions in the country. Hence, given the firm decision of the framers to have the democratic system of governance in the country, it was obvious that elaborate provisions are made for the guaranteeing to the citizens certain fundamental rights, mainly in the nature of civil and political rights, in order to giver functional vibrancy to democracy in India. Thus, as given in Part III of the Constitution, there exists six sets of fundamental rights i.e. right to equality, right to freedom, right against exploitation, right to religious freedom, cultural and educational rights and the right to constitutional remedies. As against these justiciable rights for the enjoyment of which the citizens are also entitled to go to court, the second generation of human rights are envisaged in Part IV of the Constitution in the nature of directive principles which are to remain critical in the formulation of governmental policies and programmes on the condition of the availability of resources and social awareness amongst the people.

Despite having elaborate provisions on political and civil rights of the people, the operationalization of such provisions started exposing the inherent structural as well as concomitant functional deformities of the human rights from the very beginning. Structurally, for instance, the loftier provisions on the freedoms given to the people appeared to be severely constrained by the draconian provisions such as preventive detention. Functionally, the first two decades of the working of the Constitution was marked by the predominance of the Congress party in the political system of the county on the hand, and the gradual emergence of local and regional voices of dissent which started questioning the functional efficacy of the democratic institutions in the country. In response to growing aspersions being cast on the human rights record of the government, two pronged strategy seemed to be evolved by the government. First, most of the issues of micro human rights violations, say, in cases of the displacement of the people in the wake of the establishment of heavy industries and big multipurpose projects, were sought to be brushed aside in the name of nation building and bringing about a turn around in the socio-economic life of the people. But when the inherent fallacy of such an emotive bogey failed to convinced the proponents of human rights of the citizens, the government started showing its true colours by taking repressive actions against those agitating for the human rights of the common man. Consequently, two kinds of reactions seemed to forthcoming in face of the growing violations of the human rights of the people at the hands of the government. The radicals, who would not retain their faith in the efficacy and effectiveness of the democratic constitution to bring about any substantive transformations in the socio-economic and political life of the common people, floated a violent mode of struggle in the form of Naxalite movement. However, the moderate elements amongst the crusaders for the human rights opted for the democratic and peaceful method of setting up civil liberties groups in order to raise the issues of human rights violations. Consequently, the groups such as Association for the Protection of Democratic Rights (APDR) and Andhra Pradesh Civil Liberties Committee (APCLC) were set up in 1972 and 1974 respectively, though in course of time, their functional domain remained confined to identification, investigation, documentation and in certain cases campaign against cases of the violations of human rights.

Arguably, the most formidable assault on the human rights of the people came in the wake of the imposition of national emergency in the country by the government of Mrs. Indira Gandhi in June 1975. With most of democratic institutions and liberal laws in the country under suspension, the brutality of the governmental machinery resulted into one of the most comprehensive and flagrant violations of the human rights of the people in the history of India.

However, the unbridled and revengeful repression actions of the government paved the way for the emergence of equally determined and democratic associations in various parts of the country to take up the cudgels on behalf of those whose human rights were violated during the 1975-77. Under the leadership of certain die hard democrats, the bodies like the Peoples Union for Democratic Rights (PUDR) and the People's Union for Civil Liberties (PUCL) became the leading organizations putting up a brave and effective front to defend the human rights of the people in the face of growing wrath of the state machinery against the human rights of one and all. In fact, the span of two years of emergency led to a natural proliferation of numerous human rights groups in various parts of India with the common agenda of fighting for the protection of the human rights of the people in the face of the violations being carried out by the state agencies. Thus, while Bombay witnessed the setting up of the Committee for the Protection of Democratic Rights, Association for the Protection of Democratic Rights was established in Punjab. Even amongst the marginalized sections of society like the tribals, the urge for protecting the human rights led to the foundation of formidable bodies like Banavasi Panchayat in West Bengal to fight for the cause of human rights.

Significantly, the strengthening of human rights movement in India owes, in main, to the untiring efforts of numerous non-governmental organizations (NGOs) as well as public spirited individuals working in diverse spheres of public life. Indeed, the proliferation in the number of human rights NGOs is a tribute to the vitality of civil society in India which is able to stem the tide of repression and marginalization of certain sections of society for partisan, and in some cases pernicious considerations. It's the result of the ceaseless efforts of these organizations that the human rights movement in India has not only solid ground but also achieving newer milestones in the field of protection and promotion of the human rights in the country. Moreover, these organizations and individuals are now turning their attention to those spheres of life which hitherto remained out of focus of the human rights crusaders. For instance, the human rights movement has gradually encompassed the spheres like social and cultural rights, environmental degradation, rights of women and other marginalized sections of society, in addition to working in the field of civil and political rights of the people with renewed vigour, giving a sort of al inclusive character to the human rights movement in the country.

A unique dimension of the human rights movement in India appears to be its diversification into hitherto unchartered domains due mainly to the felt needs of time. In other words, as and when, some public minded person noticed the violations of some rights of the people, he or she volunteered to take up the cudgels on behalf of the victims. The pioneering role in this regard has been played by Sundarlal Bahuguna who launched the Chikpo Movement in the hills of Garhwal during 1980s for the protection and promotion of the inherent rights of the natives in the forest resources of the region. The movement not only thwarted the sinister government backed designs of the unscrupulous merchants to infringe upon the rights of the natives, it also brought about an electrifying consciousness in the minds of the people to be ever vigilant for the protection and enjoyment of their rights. The example set by the Chipko Movement later gave inspiration to other crusaders like Medha Patkar to begin the Narmada Bachao Andolan, Aruna Roy to start the campaign for the Right to Information to the people, B.D. Sharma to fight for the cause of the rights of the tribals of Bastar region. The cumulative impact of all such movements has resulted into broadening of the domain and deepening of the ethos of human rights movement in the country.

A plausible product of the human rights movement, which has also added a new vigour in the movement, seems to be the emergence of the concept of 'Public Interest Litigation' (PIL). It evolved in the wake of a petition filed in the Supreme Court by the Delhi chapter of People's

Union for Democratic Rights on behalf of the unorganized workers hired by the private contractor, demanding the implementation of the provisions of the Minimum Wages Act, by the government. The decision of the Supreme Court in this case afforded some sort of legal sanctity to the efforts of the human rights groups in fighting for the cause of the protection and promotion of the rights of the helpless and vulnerable sections of society. Moreover, it has motivated a number of people seeking judicial recourse to set the things right for the rights of the people. For instance, the efforts of H.D. Shouri through his NGO 'Common Cause' to protect the rights of the consumers, and the attempts by Lawyer M.C. Mehta and the NGO 'Centre for Science and Environment' (CSE) to get solutions to the environmental problems of Delhi are illustrative of the utility of PIL as a formidable instrument in the hands of the individual and organizations to get the rights of people protected.

Another remarkable highpoint in the efforts of the human rights organizations came when the government of India decided to set up the National Human Rights Commission (NHRC) in 1993. Interestingly, though a number of statutory commission and institutions existed for the protection and promotion of the rights of certain sections of society like Scheduled Castes and Scheduled Tribes, it was realized that such bodies neither have the mindset nor logistical support to effectively protect the rights of even their target groups. Moreover, the necessity was felt for some sort of dedicated national as well as provincial bodies that can comprehensively look into the issues of protection and promotion of human rights of all sections of society with adequate powers and administrative support system. Consequently, setting up of the NHRC came as a welcome step for the cause of human rights in the country. However, showing its propensity to play to the gallery, the government also constituted a number of other commissions like National Commission for Women, the National Commission for Minorities, and the National Commission for Safai Karamcharis etc. with the declared purpose of protecting and promoting the human rights of these sections of society. Yet, the functioning of these bodies for over a decade leaves much to be desired on the functional efficacy and effectiveness of these bodies, including the NHRC.

The functioning of human rights movement in independent India provides a mixed bag of results on a closer scrutiny. There is not much to be surprised that the violations of the human rights of the people would remain a blot on political system even in the democratic countries like India. What was surprising were the intensity and scale of such violations during the two years of emergency during 1975-77. However, with the untiring efforts of the human rights groups, some degree of lost space in the realm of human rights was recovered even during the decade of 1970s itself. Yet, the newer forces and events that not only strengthened but also gave new vitality to the human rights movement in the country came during the decade of 1980s and 1990s when both governmental as well as non governmental efforts made sure that the discourse of human rights movement gets a new narrative in India.

Issues and Challenges of Human Rights Movement

The onward march of the human rights movement in India carries its own share of issues and challenges that remain critical in shaping the future course of action for the same. The newer aspects of the movement seem to emanate from two interrelated underlining features of the human rights movement getting prominence from the decade of 1990s. First, with the deepening of democracy on the one hand, and concomitant intrusion of state/individual actors into the hitherto untouched areas like commercial ventures in the coastal areas, rising level of environmental pollution in the metro cities, acquisition of land for industrial development form the unwilling farmers etc. have provided the propitious circumstances for the proliferation of human rights groups in most of the areas. Second, the growing professionalization of the human rights movement with the advent of numerous non governmental organizations has raised doubts about the pious objectives with which the human rights movement was started in the country even before the dawn of independence.

As a result of the complex and rapid churning taking place in the socio-economic and political sphere of pubic life, a number of dislocations are introduced in the lives of the people. With ostensible purpose of providing support to the distressed people, the so called human rights bodies are proliferating in almost all walks of public life. Thus, the question of the legitimate domain of the human rights bodies becomes apparent. For example, with the rising threat of terrorism to all the people, the security agencies find themselves in the dilemma of either taking stern action against the perpetrators of such crime which would, to some extent, entails restrictions on the enjoyment of the rights of the people, or just remain silent spectator to the specter of crimes against humanity being perpetrated by the terrorist groups. In nutshell, the human rights movement has to respond to the charge that the human rights groups are oversensitive to the acts of violations by the state agencies but turns a blind eye to the heinous crimes being committed by the terrorist organizations.

Another challenge having a deep impact on the working of the human rights groups in the country pertains to the adequacy of organizational structure and functional professionalism needed for the efficient and effective performance of their functions. With the rapid rise in the number of human rights bodies, sometimes happening to be one man army itself, it becomes pertinent to look into the issues of organizational structure and functional vibrancy of these bodies. For instance, there appears need for some sort of basic infrastructural facilities and functional skill enhancement for the human rights bodies so that they are able to discharge their functions of acting as watchdog for the protection and promotion of human rights of the people effectively.

In the contemporary times, a subtle threat to the sanctity and respect to the human rights bodies seems to have come from the growing cases of corruption and misappropriation of funds by few such bodies. Though, undoubtedly, most of the human rights organizations in the country grew out of the missionary zeal of their founders to work selflessly and sometimes even by spending money from ones own pocket, it is alleged that the same things no longer remain true to the mushrooming number of human rights NGOs. Today, a number of human rights bodies have been charged with coming into existence to provide a lucrative career option to its founder. Moreover, having remained into existence for a few years as crusaders for the cause of human rights, many of such bodies turn into money minting machine for their custodians, keeping in mind the huge amount of money coming in the form of grants and financial assistance to these NGOs. Hence, it is of utmost importance that the human rights NGOs remain rooted to the missionary spirit of the old times rather than turning out to be career option and money minting machine for their promoters.

The human rights movement also faces the challenge of taking a balanced view of the things in cases where the vital interests of society at large seem to be at stake in face of the opposition being mounted by the miniscule people. This assertion becomes not truer in other cases as in the cases of socio-economic development of a particular region or sections of people. For instance, the opposition to a number of projects like Singur in West Bengal, no doubt, emanate from the callousness of the government to look into the issues of the displaced people seeking adequate compensation and rehabilitation. However, the resistance to such projects by the human rights groups should focus only upon the redressal of the genuine grievances of the people by the government as well as the promoters of the projects. Having secured the protection of the legitimate grievances of the people, the human rights groups need to afford space to the government to effect substantial economic gains for the people of region and outside as well.

Finally, with the installation of a number of governmental agencies like the National Human Rights Commission, State Human Rights Commissions, the National Commissions for Women, Minorities etc, for the ostensible purpose of promoting and protecting the human rights of their targeted people, the human rights movement in the country is likely to face the challenge of retaining their credibility as well as exposing the dysfunctionalities of these bodies. It will be quite obvious now that the cases of violations of human rights would be reported to these bodies. After investigation and assessment of facts, the commissions are likely to give their verdict on the matters which on certain occasions are likely to be against the complainant or the victim. In such cases, the human rights bodies would need to exercise extra caution in highlight the other part of the story because the verdict of the governmental commission is also likely to carry credibility in the eyes of the people. Therefore, in order to keep their credibility intact, the human rights NGOs must put forth their case with irrefutable evidence and keeping the public good in mind. However, this must not dissuade these NGOs to become a passive recipient of the verdicts given by one or the other governmental commission. If they find that the governmental machinery seems to have failed to address the issues of the violations of the human rights adequately, they must carry out their own investigations and put before the public the real facts and issues of the case. Thus, in the form of the governmental agencies, the human rights bodies have found a sort of competitor in espousing the cause of promotion and protection of human rights in the country.

Concluding Observations

Human rights movement seems to have come of age in India. Emanating from the various socio-religious reform movements launched in the country in the pre-independence times, the cognizable shape and discernible contours of the human rights movement became obvious only during the early twentieth century. The major thrust was given to the movement in the course of the national movement when in opposing the repressive laws and regulations of the colonial rulers, promises were also made to ingrain some sort of comprehensive and impeccable scheme of human rights in the Constitution of independent India. In the post independence times, despite having elaborate provisions having auspicious portents for the enjoyment of human rights by the common people, the things did not turn out to be as rosy as was promised by the national leaders. The height in this regard came during 1975-77 when the national emergency showed the inadequacy of the human rights movement in the country to cope up with such extreme situations. Consequently, a new vigour was experienced both in term of rise in the number of human rights bodies as well expansion in the functional domain of these bodies. The sphere of the human rights movement no longer remained confined to the protection and promotion of civil and political rights of the people. It went on to encompass almost all spheres of human activity to ensure that the basic rights of the people are infringed in any way and any where. The governmental efforts in this context came in the form setting up national as well state human rights commissions to look into the issues of human rights. However, even after these substantive initiatives, the numerous cases of violations of the human rights remain a burning issue in the liberal-democratic polity of India. Hence, despite facing a number of challenges and problems, the formidable role of the human rights bodies remain intact in the country as long as the circumstances and scope exist for the violation of human rights of the helpless and vulnerable masses.

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Suggested Questions

1. Critically analyze the role of social reform movements as the harbinger of civil rights movement in the pre-independence times.
2. Critically analyse the significant issues and challenges before the human rights movement in India.
3. Critically assess the role of human rights movement in promoting and protecting the human rights of the people in the post independence times.