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HUMAN RIGHTS: AN OVERVIEW IN INDIAN FRAMEWORK

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ABSTRACT

Human rights are those inalienable rights to which a person is inherently entitled simply because she or he is a human being and help to protect all people everywhere from severe political, legal, and social abuses. Human rights are thus conceived as universal and egalitarian, the same for everyone. These rights may exist as natural rights or as legal rights, in both national and international law. Examples of human rights are the right to freedom of religion, the right to a fair trial when charged with a crime, the right not to be tortured, and the right to engage in political activity. They are addressed primarily to governments, requiring compliance and enforcement. The main sources of the contemporary conception of human rights are the Universal Declaration of Human Rights (United Nations, 1948). The philosophy of human rights addresses questions about the existence, content, nature, universality, justification, and legal status of human rights. The object of the present work is to give an overview of human rights, in international and Indian framework. The present research will concentrate on the concept of Human Right, meaning, Legal Provisions, etc. This is a Doctrinal research for which various books, articles, journals, International Conventions, statutes, model rules, and newspapers have been referred.

KEYWORDS

Human Rights, International Conventions, Indian Constitution, Judicial Response.

INTRODUCTION

 Section 2 (d) of the Human Rights Act 1993 defines "human rights" as "rights relating to life, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India."

"Human Rights" is not an abstract or ideal concept but it is very much a pragmatic concept about those rights which are considered to be absolutely essential for the survival, dignified life and development of all human beings. In fact state was created for the sake of maintenance of rights of man that are endowed to him by the nature. Different scholars and philosophers have assigned different duties to the state. For example Kautilya in Arthashastra has advised that the protection of the life, property and dignity of "Prajā" (citizens) is the prime duty of the King. In Leviathan,¹ Thomas Hobbes, who otherwise believed in the absolute power of the ruler, too does not allow the king to violate the right of an individual to have life. According to Locke state existed only to protect Natural Rights of individuals i.e. right to life, property and liberty.² Besides them Rousseau, Montesquieu, Kant, Thomas Paine, Mill, Bentham, Karl Marx and John Rawls have been the protagonists of the rights that a state has to protect and maintain. To Harold J. Laski a state is known by the rights it maintains.³ According to him the very purpose of the existence of state is to recognize and protect the rights of individuals. Thus, it can be concluded that man created state for the protection and maintenance of his rights. The history of evolution of the systems of governance also manifests that any system if not able to protect the rights of the citizens, was rejected and changed. In modern times Human Rights have become a movement. International organizations, governments and nongovernmental agencies have continuously been exploring the dynamics of human rights and have been working to evolve such mechanisms which could safeguard the rights of human beings.

THE GENERAL IDEA OF HUMAN RIGHTS

Human rights are the basic standards human beings need to live life with freedom and dignity. Human rights include fundamental civil and political rights, such as the right to free speech, to freedom of religion, and the right to participate in government. Human rights also include essential economic, social and cultural rights, such as the right to education, to work, and to healthcare.⁴ Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible.

It is our duty to ensure that these rights are a living reality -- that they are known, understood and enjoyed by everyone, everywhere. It is often those who most need their human rights protected, who also need to be informed that the Declaration exists -- and that it exists for them.

Most conventions establish mechanisms to oversee their implementation. In some cases these mechanisms have relatively little power, and are often ignored by member states; in other cases these mechanisms have great political and legal authority, and their decisions are almost always implemented. Examples of the first case include the UN treaty committees, while the best exemplar of the second case is the European Court of Human Rights.

The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights are sometimes referred to as the *international bill of rights*.

Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.

¹ Leviathan is a book written in 1651 by Thomas Hobbes. It is one of the most famous and influential books of political philosophy.

² John Locke has discussed his concept of Natural Rights in his book, Two Treatises of Government, Published anonymously in 1689.

³ Laski, H.J., A Grammar of Politics, p.89

⁴ http://tandis.odhr.pl/documents/hrecompendium/rus/CD%20SEC%202%20ENV/II_17_2_%20ENG.pdf

FEATURES

1. Universal and inalienable

The principle of universality of human rights is the cornerstone of international human rights law. This principle, as first emphasized in the Universal Declaration on Human Rights in 1948, has been reiterated in numerous international human rights conventions, declarations, and resolutions. The 1993 Vienna World Conference on Human Rights, for example, noted that it is the duty of States to promote and protect all human rights and fundamental freedoms, regardless of their political, economic and cultural systems.⁵



All States have ratified at least one, and 80% of States have ratified four or more, of the core human rights treaties, reflecting consent of States which creates legal obligations for them and giving concrete expression to universality. Some fundamental human rights norms enjoy universal protection by customary international law across all boundaries and civilizations.

Human rights are inalienable. They should not be taken away, except in specific situations and according to due process. For example, the right to liberty may be restricted if a person is found guilty of a crime by a court of law.

2. Interdependent and indivisible

All human rights are indivisible, whether they are civil and political rights, such as the right to life, equality before the law and freedom of expression; economic, social and cultural rights, such as the rights to work, social security and education, or collective rights, such as the rights to development and self-determination, are indivisible, interrelated and interdependent. The improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others.

3. Equal and non-discriminatory

Non-discrimination is a cross-cutting principle in international human rights law. The principle is present in all the major human rights treaties and provides the central theme of some of international human rights conventions such as the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women.

The principle applies to everyone in relation to all human rights and freedoms and it prohibits discrimination on the basis of a list of non-exhaustive categories such as sex, race, colour and so on. The principle of non-discrimination is complemented by the principle of equality, as stated in Article 1 of the Universal Declaration of Human Rights: "All human beings are born free and equal in dignity and rights."

4. Both Rights and Obligations

Human rights entail both rights and obligations. States assume obligations and duties under international law to respect, to protect and to fulfill human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfill means that States must take positive action to facilitate the enjoyment of basic human rights. At the individual level, while we are entitled our human rights, we should also respect the human rights of others.

Human rights are political norms dealing mainly with how people should be treated by their governments and institutions. They are *not ordinary moral norms applying mainly to interpersonal conduct* (such as prohibitions of lying and violence).

Human rights exist as moral and/or legal rights. A human right can exist as (1) a shared norm of actual human moralities, (2) a justified moral norm supported by strong reasons, (3) a legal right at the national level (here it might be referred to as a "civil" or "constitutional" right), or (4) a legal right within international law. A human rights advocate might wish to see human rights exist in all four ways.

Human rights are *minimal or at least modest standards*. They are much more concerned with avoiding the terrible than with achieving the best. Their dominant focus is protecting minimally good lives for all people. Henry Shue suggests that human rights concern the "lower limits on tolerable human conduct" rather than "great aspirations and exalted ideals." As modest standards they leave most legal and policy matters open to democratic decision-making at the national and local levels. This allows them to have high priority, to accommodate a great deal of cultural and institutional variation, and to leave open a large space for democratic decision-making at the national level.

Human rights are *high-priority norms*. Maurice Cranston held that human rights are matters of "paramount importance" and their violation "a grave affront to justice". This does not mean, however, that we should take human rights to be absolute. The high priority of human rights needs support from a plausible connection with fundamental human interests or powerful normative considerations.⁶

Human rights *require robust justifications that apply everywhere and support their high priority*. Without this they cannot withstand cultural diversity and national sovereignty. Robust justifications are powerful but need not be understood as ones that are irresistible.



HISTORICAL OVERVIEW

The history of human rights movement can be traced from the 13th century. Magna Carta (1215), the Petition of Rights (1628), Bill of Rights (1689), Virginia Declaration of Rights (1776), the American Declaration of Independence (1776), the French Declaration of the Rights Man and Citizens (1789), and the American Bill of Rights (1791) were the documents which gave human rights their initial constitutional status. Most of these documents were the result of long struggles of the people. After the First World War, world community started showing its concern for global mechanisms to protect human rights. After the formation of the League of Nations first international effort was made for human rights on 25th September, 1926 in first conference against colonialism and serfdom. Again on 28th June 1930 a conference was held on Forced Labour. But it was only after the formation of United Nations that human rights movement got momentum, they were defined scientifically and concrete measures were taken for the protection and promotion of human rights. On 10th December 1948 UN adopted the Universal Declaration of Human Rights and subsequently adopted two more covenants (one on Economic, Social and Cultural Rights and other on Civil and Political Rights) on 16th December 1966 and they came into force on 3rd January, 1976 and 23rd March 1976 respectively.⁷ Both the covenants were binding on the rectifying states. Another major development occurred in September, 1978 when Commission on Human Rights organized a seminar in Geneva where a set

⁵ V.C. Mishra, "Cardinal Principles Of Human Rights", *Indian Bar Review*, Vol. 20(1) 1993, Pp. 12-15

⁶ Sen, Sankar. *Human Rights and Law Enforcement*. (2th Edn., 2002). Concept Publication.

⁷ H.R. Bhardwaj, "Evolving Human Rights Jurisprudence", *Indian Bar Review*, Vol. 20(1) 1993, Pp. 32-36.

of guideline was evolved regarding the functions of National Human Rights Institutions (NHRIs).⁸ These guidelines were endorsed by the UN General Assembly. It created a lot of pressure on the member states to constitute NHRIs. A series of reports, workshops and seminar were organized by the UN to prepare the member states for the cooperation between national and international agencies for Human Rights protection and promotion. The conclusion arrived at, after deliberations of this Workshop, came to be known as Paris Principles of 1991. The role of NHRIs was also emphasized in the Vienna Declaration and Programme of Action in 1993. The General Assembly through its resolution 48A/134 of 20th December, 1993 endorsed the same.⁹ Since India was closely and actively participating in all these developments, it became obligatory to set up NHRI at home.

INTERNATIONAL CONVENTIONS

In 1945 in San Francisco, 50 nations adopted the *United Nations Charter*, a document setting forth the United Nations' goals, functions, and responsibilities. Article 1 of the Charter states that one of the aims of the UN is to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.

The goals of Article 1 of the Charter are of a general nature. For those goals to be achieved, specific "human rights and freedoms" needed to be defined first. Then laws and procedures had to be drawn up that would promote and protect those rights and freedoms. For these purposes, the *Commission on Human Rights* was established and charged with creating an *International Bill of Human Rights*.

FROM DECLARATION TO CONVENTION

The *International Bill of Human Rights* consists of the *Universal Declaration of Human Rights (UDHR)*, *The International Covenant on Civil and Political Rights* (1966) and its optional Protocol, and *The International Covenant on Economic, Social, and Cultural Rights* (1966). First in 1948 came the UDHR, which serves to define the basic human rights and freedoms to which all individuals are entitled. A declaration is not a legally binding document, however. For the rights defined in a declaration to have full legal force, they must be written into documents called *conventions* (also referred to as *treaties* or *covenants*), which set international norms and standards. When a government signs a convention, it becomes legally bound to uphold those standards.

The rights proclaimed in the Universal Declaration of Human Rights, may be classified into following four categories:

- (i) General (Articles 1 and 2),
- (ii) Civil and Political (Articles 3 to 21),
- (iii) Economic, Social and Cultural Rights (Articles 22 to 27), and
- (iv) Concluding (Articles 28 to 30).

Once the UDHR was drafted and adopted by the UN General Assembly, work began to codify the rights it contained into a convention. For political and procedural reasons, these rights were divided between two separate covenants, each addressing different categories of rights. The *International Covenant on Civil and Political Rights (ICCPR)* articulates the specific, liberty-oriented rights that a state may not take from its citizens, such as freedom of expression and freedom of movement. The *International Covenant on Economic, Social, and Cultural Rights (ICESCR)* addresses those articles in the UDHR that define an individual's rights to basic necessities, such as food, housing, and health care, which a state should provide for its citizens, in so far as it is able. Both covenants were adopted by the UN in 1966.

INDIAN CONSTITUTION AND HUMAN RIGHTS

India was a signatory to the Declaration. The Indian Constitution adopted by the Constituent Assembly on November 26, 1949 which came into force from January 26, 1950 was greatly influenced by the Declaration. The Preamble of the Constitution stated 'dignity of the individuals' which implied that the worth inherent in the human person was well recognised. Further, provisions of Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy) bear a close resemblance to the Universal Declaration. Consequently, a number of fundamental rights were guaranteed to individuals in Part III of the Indian Constitution which were similar to the provisions of the Declaration is clear from the following chart¹⁰ :-

Name of the Rights	UDHR Article	Indian Constitution Article
Equality before law	Article 7	Article 14
Prohibition of discrimination	Article 7	Article 15 (1)
Equality of opportunity	Article 21 (2)	Article 16 (1)
Freedom of speech and expression	Article 19	Article 19(1) (a)
Freedom of peaceful assembly	Article 20(1)	Article 19(1) (b)
Right to form associations or unions	Article 23(4)	Article 19(1)(c)
Freedom of movement within the border	Article 13(1)	Article 9(1)(d)
Protection in respect of conviction for offences	Article 11(2)	Article 20(1)
Protection of life and personal liberty	Article 3	Article 21
Protection of slavery and forced labour	Article 4	Article 23
Freedom of conscience and religion	Article 18	Article 25 (1)
Remedy for enforcement of rights	Article 8	Article 32

The above chart shows that the Universal Declaration which was adopted just before the Indian Constitution widely held to have provided the model for the latter's human rights guarantees. In *Keshvananda Bharati v. State of Kerala*¹¹ the Supreme Court observed that 'The (Universal) Declaration (of Human Rights) may not be a legally binding instrument but it shows how India understood the nature of Human Rights' at the time the Constitution was adopted. Thus, although the Supreme Court has stated that the Declaration "cannot create a binding set of rules" and that even international treaties may at best inform judicial institutions and inspire legislative action, constitutional interpretation in India has been strongly influenced by the Declaration.

HUMAN RIGHTS AND SUPREME COURT

In *Ahmedabad Municipal Corporation vs. Nabab Khan Gulam Khan and others*,¹² the Apex Court considered the provisions of Article 19 (1) (e) read with Article 21 of the Constitution of India and Article 25 (1) of the Universal declaration of Human Rights and held that everyone has a right to standard living, adequate health and welfare of himself and his family. It also, considered Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights which lays down that the States, parties to the Covenant, recognize that everyone has right to standard living for himself and his family including food, clothing, housing and to continuous improvement of living conditions.

⁸ Report, UN Commission on Human Rights, 1979

⁹ UN Annual Report, 1993-9

¹⁰ Srikant Mishra, "Human Rights – A Fundamental Issue", *Indian Bar Review*, Vol. 20(1) 1993, Pp.16-18.

¹¹ AIR 1973 SC 1461.

¹² 1995 (Suppl) 28CC 182

In *Chameli Singh vs. State of U.P. and others*,¹³ the Supreme Court held that right to shelter is a fundamental right available to every citizen and it was laid into Article 21 of the Constitution of India as encompassing within its limit the right to shelter to make the right to life more meaningful. The Court observed as under:

"In any organized society, right to live as a human being is not entered by meeting the only animal's need of the man. All human rights are designed to achieve" the freedom from restriction which inhibits his growth right to life., implies the right to food, water, disintegrated environment, education, medical care and shelter. All the civil, political, social and cultural rights enshrined in UDHR cannot be exercised without these basic rights: Shelter for a human being, therefore, is not a mere protection of his life and limbs. It is the home where he has opportunity to grow physically, mentally, intellectually and spiritually."

In *Olga Tellis vs. Bombay Municipal Corporation*,¹⁴ the Constitution Bench of the Supreme Court considered the right to dwell on pavement or in slums by indigent as part of right to life enshrined under Article 21. In *P.C. Gupta vs. State of Gujarat*¹⁵ the Supreme Court considered the human right to shelter and rights.— enshrined in Article 19 (1) (e) of the Constitution of India and Articles 21 of the UDHR and the Convention on Civil, Economic and Cultural Rights and held that it is the duty of the State to construct houses at reasonable cost and make them easily accessible to the poor. The said principle was found embodied and in-built in the Constitution of India to secure socio-economic democracy so that everyone has a right to life, liberty and security of person. The Court, also, emphasized on Article 21 of the Declaration of Human Rights which envisaged that everyone has a right to social security and is entitled to its realization as became the economic, social and cultural rights are indispensable for his dignity and free development of his personality.

The right of prisoners to ask for observance of the human rights has been recognized by the Supreme Court in *Charles Shobhraj vs. Superintendent, Central Jail, Tihar*,¹⁶ *Sunil Batra vs. Delhi Administration*,¹⁷ and *Sunil Batra vs. Delhi Administration*,¹⁸ the fruits of Article 21 were made available to the prisoners while dealing with the question of their right of reading and writing books in jail. In *Suresh Chandra vs. State of Gujarat*,¹⁹ and *Kishan Lida vs. State of Bihar*,²⁰ the Apex Court provided for penological innovation in the form of parole and recommended for its liberal use. In *Bhuvan Mohan Patnayak vs. State of Andhra Pradesh*,²¹ the Apex Court stated that resort to oppressive measures to curb political people should not be permitted. In *Kedar Pandey vs. State of Bihar*,²² the Supreme Court issued direction prohibiting the putting of under-trial prisoners in leg-irons.

In *Vellore Citizen Welfare Forum vs. Union of India and others*,²³ the Court issued direction for maintaining the standard stipulated by Pollution Control Board and held that right to have pollution-free environment was a fundamental right. Similar view has been taken by the Supreme Court in *Dr. B.L. Wadera vs. Union of India and others*,²⁴ wherein the Court held that reminiscence in performance of duties, non-availability of funds, inadequacy or insufficiency of the medicine, cannot be a ground for condoning the mis deeds of the authorities to deviate from their statutory obligation to scavenge and clean the city. In *M.C. Mehta vs. Union of India and others*,²⁵ the Apex Court issued directions to stop the tanneries discharging affluent in Ganga and for setting up of primary treatment plant to purify it.

In *People's Union for Civil Liberty vs. Union of India and others*,²⁶ the Court considered the provisions of Article 19 (1) (a) and 21 of the Constitution of India along with the provisions of Article 17 of the International Covenant on Civil and Political Rights, 1966 and Article 12 of the Universal Declaration on Human Rights, 1948 and held that when a person talks on telephone, he exercises his right of freedom of speech and expression and his telephone cannot be tapped unless it comes within the ground of restrictions under Article 19 (2). would interact Article 19(1) (a) of the Constitution of India.

The Apex Court has further laid down the procedure for arrest in *D K Basu vs. State of WB*.²⁷ The right to be brought before a Magistrate within a period of not more than twenty-four hours of arrest has been created with a view:

1. To prevent arrest and detention for the purposes of attracting confession or a means of compelling people to give information.
2. To prevent police stations being used as though they were prisons—a purpose for which they are unsuitable.
3. To afford an early recourse to a judicial officer independent of police on all questions of bail and discharge.

A police officer often ends up violating this requirement and hence is in violation of Article 10, which says, "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him." A custodial death is perhaps one of the worst crimes in a civilized society governed by the rule of law. Custodial death as a result of police atrocities is the extreme form of police cruelty and as such is a blatant violation of human rights. Article 5 of UDHR states, *No one shall be subjected to torture or to cruel, inhuman treatment or punishment.*

In *Saheli vs. Commissioner*²⁸ of Police, Delhi a child of nine years died because of being battered by a police officer. The Supreme Court again held that the state is liable to pay compensation in case of police atrocities and accordingly it directed the government to pay Rs. 75,000 as compensation to the mother of victim.

*Nilabati Behera vs. State of Orissa*²⁹ is yet another case of custodial death where the deceased was taken in police custody and next day his body was found on railway track with multiple injuries. The Supreme Court reiterated that in case of violation of fundamental rights by state instrumentalities or servants, court can direct the state to pay compensation to victim or his/her heir or legal representative. The principle of 'sovereign immunity' shall be inapplicable in such cases. Having regard to the age and income of the deceased, the state was directed in this case to pay Rs. 1,50,000 as compensation to the deceased's mother.

One of the most neglected aspects of criminal justice system is the delay caused in the disposal of the cases and detention of the poor accused pending trial. Procrastination of trials may sometimes result in injustice because of a duly prolonged process much of the material evidence may perish as when witness may die or when situations are altered. Long incarceration without trial is not only violative of the Constitution, but is also against India's commitment to the UDHR.

Justice Krishna Iyer while dealing with the bail petition in *Babu Singh vs. State of UP*,³⁰ remarked, "Our justice system even in grave cases, suffers from slow motion syndrome which is lethal to 'fair trial' whatever the ultimate decision. Speedy justice is a component of social justice since the community, as a whole, is concerned in the criminal being condignly and finally punished within a reasonable time and the innocent being absolved from the inordinate ordeal of criminal proceedings."

¹³ A.I.R. 1987 SC 2117

¹⁴ 1990 (1) SCC 520

¹⁵ 1995 (Suppl) 2 SCC 182

¹⁶ A.I.R. 1978 SC 1514 15

¹⁷ A.I.R. 1578 SC 1575

¹⁸ A.I.R. 1980 SC 1579

¹⁹ A.I.R. 1966 SC 424

²⁰ A.I.R. 1976 SC 2462

²¹ A.I.R. 1976 SC 1139

²² AIR. 1980 SC 1535

²³ A.I.R. 1996 SC 2715

²⁴ A.I.R. 1966 SC 2969

²⁵ A.I.R. 1988 SC 1037

²⁶ AIR. 1997 SC 568

²⁷ 1997 SCC (1) 416

²⁸ (1990) 1 SCC 422

²⁹ AIR 1993 SC P. 1960

³⁰ SCC (1997) (1) 416

Justice Bhagwati in *Hussainara Khatoon vs. Home Secy, State of Bihar*³¹ declared that the right to speedy trial is an essential part of fundamental right to life and liberty enshrined in Article 21 of the Constitution.

In *Sheela Barse vs. Union of India*³² court reaffirmed that "the right to speedy trial is a fundamental right implicit in Article 21 of the Constitution" and observed "the consequence of violation of fundamental right to speedy trial would mean that the prosecution itself would be liable to be quashed on the ground that it is in breach of the fundamental right."

Right to privacy has been recognized as both a fundamental right and a right guaranteed under the UDHR. Article 12 of UDHR reads, "No one shall be subjected to arbitrary interference with his privacy everyone has a right to the protection of the law against such interference or attacks."

In *Raja Gopala's*³³ case the apex court has observed that a citizen has a right to safeguard the privacy of his own, his family, marriage procreation, motherhood, child-bearing and education among other matters, because right to privacy implicit in the right to life and liberty guaranteed to the citizen of this country under Article 21 of the Constitution. The privacy of a rape victim is violated during a criminal case. Taking advantage of the lacunae in legal procedure the shrewd defense lawyer will invariably encroach upon the privacy of the prosecutrix. It is time we ponder over this problem faced by the victims of rape during court trial and make in-camera trial mandatory for all rape cases. To protect the privacy of the rape-victims, it is desirable that the identity of the victims must not be published in any manner by any agency at any time.

In *Prem Shankar Shukla vs. Delhi Administration*³⁴ the Supreme Court gave a number of directions with a view to reforming and humanizing the jail administration. Unfortunately, for a variety of reasons, the directions of the Supreme Court are not being followed properly in most of the jails in the country.

In *Prakash Gupta vs. State of Gujarat & Ors.*, 2010(2) SLR 72, the Supreme Court held that food, shelter and clothing are the minimal human rights. The court reiterated its earlier expansion of the right to residence and settlement by again holding that, it is a "fundamental right under Article 19(1)(e) and it is a facet of inseparable meaningful right to life under Article 21" of the Constitution of India.

N.C. Dhourial vs. Union of India and Ors. (2011) 2 SCC 279 the Supreme Court held that the right to shelter is a fundamental right available to every citizen of India. It was also read into the right to life guaranteed under Article 21 of the Constitution to make it more meaningful. In para 8 of the judgment, the court succinctly set out the nature of the right and the mandate on the state as follows:-

"In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space and decent structures, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens of course subject to its economic budgeting. In a democratic society as a member of the organised civil community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a culture being. Want of decent residence, therefore, frustrates the very object of the Constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself....."

Rajesh Das vs. Tamil Nadu State Human Rights, 27 Feb, 2012, the court held that "The Universal Declaration of Human Rights, 1948 though not a treaty, but is a declaration published by the General Assembly of the United Nations and is the primary document which is concerned with the listing of the rights. It affirmatively lays down the common standards of achievement for all peoples and all nations. It consequently has an effect which is similar to a treaty. Further every nation who is a signatory to the aforementioned International Covenant on Economic, Social and Cultural Rights ('ICESR') must refrain from acts which would defeat the object and purpose of the covenant. The preamble to the ICESCR establishes that the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights as well as his civil and political rights".

In *Kapila Hingorani Vs. State of Bihar* January 2012, the Apex court stressed on the importance of respecting International Treaties and Conventions while interpreting the Constitution and domestic law so as to effectuate the recognized rights.

In *Shantistar Builders Vs. Narayan Khimalal Totame & Ors.*, (2011) 1 SCC 520 the Supreme Court had observed as follows:-

"Basic needs of man have traditionally been accepted to be three-food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body; for a human being it has to be a suitable accommodation which would allow him to grow in every aspect - physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well-built comfortable house but a reasonable home particularly for people in India can even be mud-built thatched house or a mud-built fire-proof accommodation."

Thus, it has been seen that the Supreme Court while interpreting the provision of the Bill of Rights has drawn deeply upon the universally agreed upon human rights and has also given widest possible definition to human dignity. It is an ongoing process and it is hoped, the present judicial trend will continue.

CHALLENGES

- Lack of proper value education in school and society we are facing human rights problem. Some facts related to human rights problem are given below.
- Violation of human rights is a regular feature by persons in power or persons belonging to the under-world.
- Police violation of human rights is a recurring phenomenon.
- forced or bonded labour.
- Judiciary takes a long time in deciding the cases of human rights violation.
- Women trafficking and female foeticide is also rampant in most places.
- Moral and ethical values exist in name only. No practices of values\Materialism are causing the violation of human rights.
- Enforcement machinery is dilatory and lacks the desired powers.
- Machinery designed to ensure the protection of Human rights is not adequate to tackle large number of personnel and people are unaware of the structure and functions of such machinery.
- There is Centralization: Need Decentralization.
- Universities, colleges and other institutions not involved in the education of Human rights.
- Politicians of whatever political parties they belong do not adhere to Human rights and Duties.

³¹ AIR 1979 SC P. 1369

³² SCC 4 (1987) P.373 P. 381

³³ AIR 1995 SC P. 264

³⁴ AIR 1980 SC P. 1535

SUGGESTIONS

- Rights and duties must be pursued simultaneously.
- Need of Genuine leadership to support rights of common men.
- Need of sensitizing police personnel through education and training.
- Need to inculcate ethical and moral value.
- Emphasis on Human rights Education in Universities.
- Research and Documentation in Human right.
- Introducing human rights topics in school education.
- Arranging seminar on different areas of human rights through experts from different discipline by engaging in interdisciplinary Approach.
- Discussion with opinion leaders in cities.
- Student's involvement is must. Human rights organizations require a comprehensive, standardized naming and border database in order to gather satellite imagery of locations of suspected human rights abuses.
- Activists and individuals should attempt to use social networking and other new communications, such as mobile text-messaging, to promote free speech, report abuses and coordinate medical care.

CONCLUSION

It was the UDHR, almost 60 years ago, that first recognized what have become nowadays universal values: human rights are inherent to all and the concern of the whole of the international community. Drafted by representatives of all regions and legal traditions, the UDHR has stood the test of time and resisted attacks based on "relativism". The Declaration and its core values, including non-discrimination, equality, fairness and universality, apply to everyone, everywhere and always. The UDHR belongs to all of us. The UDHR protects all of us, and it also enshrines the gamut of human rights. The drafters of the UDHR saw a future of freedom from fear, but also of freedom from want. They put all human rights on an equal footing and confirmed human rights are essential to a life of dignity. More than ever, in a world threatened by racial, economic and religious divides, we must defend and proclaim the universal principles –first enshrined in the UDHR– of justice, fairness and equality that people across all boundaries hold so deeply.

Human rights are not only a common inheritance of universal values that transcend cultures and traditions, but are quintessentially local values and nationally-owned commitments grounded in international treaties and national constitutions and laws. Not all governments have become parties to all human rights treaties. All countries, however, have accepted the UDHR. The Declaration continues to affirm the inherent human dignity and worth of every person in the world, without distinction of any kind.

The struggle is far from over. As the Declaration's custodians and beneficiaries, all of us must reclaim the UDHR, make it our own. While we are entitled to our human rights, we should also respect the human rights of others and help make universal human rights a reality for all of us. In our efforts lies the power of the UDHR: it is a living document that will continue to inspire generations to come.

Status of the Declaration today- Fifty years have passed since the Declaration was adopted. Despite a continuing struggle in many regions of the world, significant progress has been made in developing legal, moral and institutional regimes consistent with the principles proclaimed in the UDHR. For instance, many human rights non-governmental organizations (NGOs) refer to the Declaration to hold governments accountable for their policies and actions.

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