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HUMAN RIGHTS ISSUES

Editorial Board

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What are human rights?

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.

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.

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.

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.

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.

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."

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 fulfil 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 fulfil 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.

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History of Modern Concept of Human Rights

Although ideas of rights and liberty have existed in some form for much of human history, there is agreement that the earlier conceptions do not closely resemble the modern conceptions of human rights. According to Jack Donnelly, in the ancient world, "traditional societies typically have had elaborate systems of duties... conceptions of justice, political legitimacy, and human flourishing that sought to realise human dignity, flourishing, or well-being entirely independent of human rights. These institutions and practices are alternative to, rather than different formulations of, human rights". The history of human rights can be traced to past documents, particularly Constitution of Medina (622), Al-Risalah al-Huquq (late 7th to early 8th century), Magna Carta (1215), the German Peasants' War Twelve Articles (1525), the English Bill of Rights (1689), the French Declaration of the Rights of Man and of the Citizen (1789), and the Bill of Rights in the United States Constitution (1791).

The modern sense of human rights can be traced to Renaissance Europe and the Protestant Reformation, alongside the disappearance of the feudal authoritarianism and religious conservativism that dominated the Middle Ages. One theory is that human rights were developed during the early Modern period, alongside the European secularisation of Judeo-

Christian ethics. The most commonly held view is that the concept of human rights evolved in the West, and that while earlier cultures had important ethical concepts, they generally lacked a concept of human rights. For example, McIntyre argues there is no word for "right" in any language before 1400. Medieval charters of liberty such as the English Magna Carta were not charters of human rights, rather they were the foundation and constituted a form of limited political and legal agreement to address specific political circumstances, in the case of Magna Carta later being recognised in the course of early modern debates about rights. One of the oldest records of human rights is the statute of Kalisz (1264), giving privileges to the Jewish minority in the Kingdom of Poland such as protection from discrimination and hate speech. Samuel Moyn suggests that the concept of human rights is intertwined with the modern sense of citizenship, which did not emerge until the past few hundred years.

16th–18th century

The earliest conceptualisation of human rights is credited to ideas about natural rights emanating from natural law. In particular, the issue of universal rights was introduced by the examination of extending rights to indigenous peoples by Spanish clerics, such as Francisco de Vitoria and Bartolomé de Las Casas. In the Valladolid debate, Juan Ginés de Sepúlveda, who maintained an Aristotelian view of humanity as divided into classes of different worth, argued with Las Casas, who argued in favour of equal rights to freedom from slavery for all humans regardless of race or religion.

17th-century English philosopher John Locke discussed natural rights in his work, identifying them as being "life, liberty, and estate (property)", and argued that such fundamental rights could not be surrendered in the social contract. In Britain in 1689, the English Bill of Rights and the Scottish Claim of Right each made illegal a range of oppressive governmental actions. Two major revolutions occurred during the 18th century, in the United States (1776) and in France (1789), leading to the United States Declaration of Independence and the French Declaration of the Rights of Man and of the Citizen respectively, both of which articulated certain human rights. Additionally, the Virgini Declaration of Rights of 1776 encoded into law a number of fundamental civil rights and civil freedoms.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. — *United States Declaration of Independence, 1776*

These were followed by developments in philosophy of human rights by philosophers such as Thomas Paine, John Stuart Mill and G.W.F. Hegel during the 18th and 19th centuries. The term *human rights* probably came into use some time between Paine's *The Rights of Man* and William Lloyd Garrison's 1831 writings in *The Liberator*, in which he stated that he was trying to enlist his readers in "the great cause of human rights". Although the term had been used by at least one author as early as 1742.

19th century

In the 19th century, human rights became a central concern over the issue of slavery. A number of reformers, notably British Member of Parliament William Wilberforce, worked towards the abolition of the Atlantic slave trade and abolition of slavery. This was achieved across the British Empire by the Slave Trade Act 1807, which was enforced internationally by

the Royal Navy under treaties Britain negotiated with other nations, and the Slavery Abolition Act 1833. In the United States, all the northern states had abolished the institution of slavery between 1777 and 1804, although southern states clung tightly to the "peculiar institution". Conflict and debates over the expansion of slavery to new territories constituted one of the reasons for the southern states' secession and the American Civil War. During the reconstruction period immediately following the war, several amendments to the United States Constitution were made. These included the 13th amendment, banning slavery, the 14th amendment, assuring full citizenship and civil rights to all people born in the United States, and the 15th amendment, guaranteeing African Americans the right to vote. In Russia, the reformer Tsar Alexander II ended serfdom in 1861, although the freed serfs often faced restrictions of their mobility within the nation.

Many groups and movements have achieved profound social changes over the course of the 20th century in the name of human rights. In Europe and North America, labour unions brought about laws granting workers the right to strike, establishing minimum work conditions and forbidding or regulating child labour. The women's rights movement succeeded in gaining for many women the right to vote. National liberation movements in many countries succeeded in driving out colonial powers. One of the most influential was Mahatma Gandhi's movement to free his native India from British rule. Movements by long-oppressed racial and religious minorities succeeded in many parts of the world, among them the Civil Rights Movement, and more recent movements, on behalf of women and minorities in the United States.

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, to be further developed following the two World Wars.

20th century

The World Wars, and the huge losses of life and gross abuses of human rights that took place during them, were a driving force behind the development of modern human rights instruments. The League of Nations was established in 1919 at the negotiations over the Treaty of Versailles following the end of World War I. The League's goals included disarmament, preventing war through collective security, settling disputes between countries through negotiation and diplomacy, and improving global welfare. Enshrined in its charter was a mandate to promote many of the rights later included in the Universal Declaration of Human Rights.

At the 1945 Yalta Conference, the Allied Powers agreed to create a new body to supplant the League's role; this was to be the United Nations. The United Nations has played an important role in international human-rights law since its creation. Following the World Wars, the United Nations and its members developed much of the discourse and the bodies of law that now make up international humanitarian law and international human rights law. Analyst Belinda Cooper argued that human rights organisations flourished in the 1990s, possibly as a result of the dissolution of the western and eastern Cold War blocs. Ludwig Hoffmann argues that human rights became more widely emphasised in the latter half of the twentieth century because it "provided a language for political claim making and counter-claims, liberal-democratic, but also socialist and post colonialist.

Cairo Declaration of Human Rights in Islam: The CDHR was signed by member states of the OIC in 1990 at the 19th Conference of Foreign Ministers held in Cairo, Egypt. It was seen as the answer to the UDHR. In fact, the CDHR was "patterned after the UN-sponsored UDHR of 1948".The object of the CDHR was to "serve as a guide for member states on human rights issues. CDHR translated the Qur'anic teachings as follows: "All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the basis of race, colour, language, belief, sex, religion, political affiliation, social status or other considerations. True religion is the guarantee for enhancing such dignity along the path to human integrity. On top of references to the Qur'an, the CDHR also referenced prophetic teachings and Islamic legal tradition.

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Universal Declaration of Human Rights (UDHR)

The Universal Declaration of Human Rights was adopted by the UN General Assembly in 1948. This declaration represents the first international expression of human rights to which all human beings are entitled. It is described as the “International Magna Carta”. The declaration consists of 30 articles which can be divided into four parts. These are explained below.

The first two articles contain the basic principles underlying all human rights. Thus, they state as follows:

Article 1 : All human beings are born free and equal in dignity and rights.

Article 2 : Everyone is entitled to all the human rights and freedoms, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Articles 3 to 21 consist of civil and political rights. They are as under:

Article 3 : Right to life, liberty and security
Article 4 : Freedom from slavery and servitude
Article 5 : Freedom from torture and inhuman punishment
Article 6 : Right to recognition as a person before the law
Article 7 : Right to equality before the law
Article 8 : Right to judicial remedy
Article 9 : Freedom from arbitrary arrest or exile
Article 10 : Right to a fair trial and public hearing
Article 11 : Right to be presumed innocent until proved guilty
Article 12 : Right to privacy and reputation
Article 13 : Right to freedom of movement
Article 14 : Right to seek asylum
Article 15 : Right to a nationality
Article 16 : Right to marriage and family protection
Article 17 : Right to own property
Article 18 : Freedom of thought, conscience and religion
Article 19 : Freedom of opinion, expression and information
Article 20 : Freedom of peaceful assembly and association

Article 21 : Right to participate in government and equal access to public service

Articles 22 to 27 contain economic, social and cultural rights. They are mentioned below:

Article 22 : Right to social security
Article 23 : Right to work and equal pay for equal work
Article 24 : Right to rest and leisure
Article 25 : Right to adequate standard of living for health and well-being including food, clothing, housing, medical care, social services and security.
Article 26 : Right to education
Article 27 : Right to participate in cultural life of community

The last three articles specify the context within which all the human rights are to be enjoyed. Thus, they state as under:

Article 28 : Everyone is entitled to a social and international order in which the above rights and freedoms can be fully realised.

Article 29 : The exercise of the above rights and freedoms shall be limited for the purpose of securing recognition and respect for the rights and freedoms of others and for meeting the requirements of morality, public order and general welfare.

Article 30 : No state, group or person has any right to engage in any activity aimed at the destruction of the above rights and freedoms.

International Bill of Human Rights

Later on, the Universal Declaration of Human Rights was bifurcated into two separate covenants, namely, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

The human rights and freedoms contained in the Universal Declaration have been further developed and elaborated upon in these two covenants. Both the covenants were adopted by the UN General Assembly in 1966 and came into force in 1976.

In addition to the above two detailed covenants, two Optional Protocols to the International Covenant on Civil and Political Rights were also adopted by the UN General Assembly. The First Optional Protocol was adopted in 1966 itself while the Second Optional Protocol was adopted in 1989. The First Optional Protocol provides for the submission of complaints by individuals whose human rights have been violated by a State party. The Second Optional Protocol, on the other hand, advocates the abolition of the death penalty.

The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and its two Optional Protocols, and the International Covenant on Economic, Social and Cultural Rights constitute what is now widely regarded as the “International Bill of Human Rights”.

Other International Conventions

The International Bill of Human Rights has been further supplemented by various other international treaties, conventions and declarations. They are usually regarded as "human rights instruments". They are specialised in nature and related to either a particular human right or to a specific vulnerable group. The important among them are as follows:

1. Convention on the Elimination of All Forms of Racial Discrimination (1966)
2. Convention on the Elimination of All Forms of Discrimination Against Women (1979)
3. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
4. Declaration on the Right to Development (1986)
5. Convention on the Rights of the Child (1989)
6. Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)
7. Convention on the Rights of Persons with Disabilities (2006)

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Human Rights in India

The Constitution of India has a rich content of human rights. The Preamble, the Fundamental Rights and the Directive Principles of State Policy reflect the principles and provisions of the Universal Declaration of Human Rights (1948).

The four ideals of the Preamble are aimed at the promotion of human rights. They are as under:

1. Justice in social, economic and political spheres
2. Liberty of thought, expression, belief, faith and worship
3. Equality of status and opportunity
4. Fraternity assuring the dignity of the individual

The Fundamental Rights under Part-III of the Constitution contain an elaborate list of civil and political rights divided into six categories:

1. Right to equality
2. Right to freedom
3. Right against exploitation
4. Right to freedom of religion
5. Cultural and educational rights
6. Right to constitutional remedies

The Directive Principles of State Policy in Part-IV of the Constitution comprise economic, social and cultural rights. They can be classified into three broad categories, *viz.*,

1. Socialistic Principles

2. Gandhian Principles
3. Liberal-Intellectual Principle

Besides the Fundamental Rights included in Part-III, there are certain other rights contained in other parts of the Constitution—for example, the right to property in Part-XII of the Constitution.

In the course of time, the Supreme Court has also expanded the scope of human rights contained in the Fundamental Rights. It declared a number of human rights as integral part of fundamental rights, though they have not been specifically mentioned in Part-III of the Constitution. The examples of such unenumerated fundamental rights are right to health, right to speedy trial, right against torture, right to privacy, right to travel abroad, right to free legal aid, and so on.

In addition to these, the various laws enacted by the Parliament and the State Legislatures contain a number of human rights, particularly for the vulnerable sections of the society. Some such laws are the Bonded Labour System (Abolition) Act, the Protection of Civil Rights Act, the Persons with Disabilities Act, the Minimum Wages Act, and so on.

Finally, the Protection of Human Rights Act (1993) defines human rights in India as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India. Further, it also defined the International Covenants as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on 16th December, 1996 and such other Covenant or Convention adopted by the General Assembly of the United Nations as the Central Government may, by notifications, specify.

The Indian Government acceded to these two International Covenants on April 10, 1979. The Constitution of India and the laws of Parliament as well as state legislatures not only consist of several human rights but also provide for the establishment of national and state commissions for the protection and promotion of those rights.

National Commissions related to Human Rights

1. National Commission for SCs Constitution (Article 338)
2. National Commission for STs Constitution (Article 338-A)
3. Special Officer for Linguistic Minorities Constitution (Article 350-B)
4. National Human Rights Commission (The Protection of Human Rights Act, 1993)
5. National Commission for Protection of Child Rights (The Commissions for Protection of Child Rights Act, 2005)
6. National Commission for Women (The National Commission for Women Act, 1990)
7. National Commission for Minorities (The National Commission for Minorities Act, 1992)
8. National Commission for Backward Classes (The National Commission for Backward Classes Act, 1993)
9. Central Commissioner for Disabled Persons (The Persons with Disabilities Act, 1995)

State Commissions Related to Human Rights

1. State Human Rights Commission (The Protection of Human Rights Act, 1993)
2. State Commission for Protection of Child Rights (The Commissions for Protection of Child Rights Act, 2005)
3. State Commissioner for Disabled Persons (The Persons with Disabilities Act, 1995)
4. State Commission for SCs and STs (Act of the State Legislature or Executive Resolution of the State Government)
5. State Commission for Women (Act of the State Legislature or Executive Resolution of the State Government)
6. State Commission for Minorities (Act of the State Legislature or Executive Resolution of the State Government)
7. State Commission for Backward Classes (Act of the State Legislature or Executive Resolution of the State Government)

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National Human Rights Commission

The National Human Rights Commission is a statutory (and not a constitutional) body. It was established in 1993 under a legislation enacted by the Parliament, namely, the Protection of Human Rights Act, 1993. This Act was amended in 2006.

The commission is the watchdog of human rights in the country, that is, the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the international covenants and enforceable by courts in India.

The specific objectives of the establishment of the commission are :

a) To strengthen the institutional arrangements through which human rights issues could be addressed in their entirety in a more focused manner;
b) To look into allegations of excesses, independently of the government, in a manner that would underline the government's commitment to protect human rights; and
c) To complement and strengthen the efforts that has already been made in this direction.

Composition of the Commission

The commission is a multi-member body consisting of a chairman and four members. The chairman should be a retired chief justice of India, and members should be serving or retired judges of the Supreme Court, a serving or retired chief justice of a high court and two persons having knowledge or practical experience with respect to human rights.

In addition to these full-time members, the commission also has four ex-officio members—the chairmen of the National Commission for Minorities, the National Commission for SCs, the National Commission for STs and the National Commission for Women.

The chairman and members are appointed by the president on the recommendations of a six-member committee consisting of the prime minister as its head, the Speaker of the Lok Sabha,

the Deputy Chairman of the Rajya Sabha, leaders of the Opposition in both the Houses of Parliament and the Central home minister. Further, a sitting judge of the Supreme Court or a sitting chief justice of a high court can be appointed only after consultation with the chief justice of India.

The chairman and members hold office for a term of five years or until they attain the age of 70 years, whichever is earlier. After their tenure, the chairman and members are not eligible for further employment under the Central or a state government. The president can remove the chairman or any member from the office under the following circumstances:

a) If he is adjudged an insolvent; or
b) If he engages, during his term of office, in any paid employment outside the duties of his office; or
c) If he is unfit to continue in office by reason of infirmity of mind or body; or
d) If he is of unsound mind and stand so declared by a competent court; or
e) If he is convicted and sentenced to imprisonment for an offence.

In addition to these, the president can also remove the chairman or any member on the ground of proved misbehaviour or incapacity. However, in these cases, the president has to refer the matter to the Supreme Court for an inquiry. If the Supreme Court, after the inquiry, upholds the cause of removal and advises so, then the president can remove the chairman or a member.

The salaries, allowances and other conditions of service of the chairman or a member are determined by the Central government. But, they cannot be varied to his disadvantage after his appointment.

All the above provisions are aimed at securing autonomy, independence and impartiality in the functioning of the Commission.

Functions of the Commission

The functions of the Commission are:

a) To inquire into any violation of human rights or negligence in the prevention of such violation by a public servant, either *suo motu* or on a petition presented to it or on an order of a court.
b) To intervene in any proceeding involving allegation of violation of human rights pending before a court.
c) To visit jails and detention places to study the living conditions of inmates and make recommendation thereon.
d) To review the constitutional and other legal safeguards for the protection of human rights and recommend measures for their effective implementation.
e) To review the factors including acts of terrorism that inhibit the enjoyment of human rights and recommend remedial measures.

f) To study treaties and other international instruments on human rights and make recommendations for their effective implementation.
g) To undertake and promote research in the field of human rights.
h) To spread human rights literacy among the people and promote awareness of the safeguards available for the protection of these rights.
i) To encourage the efforts of non-governmental organisations (NGOs) working in the field of human rights.
j) To undertake such other functions as it may consider necessary for the promotion of human rights.

Working of the Commission

The commission's headquarters is at Delhi and it can also establish offices at other places in India. It is vested with the power to regulate its own procedure. It has all the powers of a civil court and its proceedings have a judicial character. It may call for information or report from the Central and state governments or any other authority subordinate thereto.

The commission has its own nucleus of investigating staff for investigation into complaints of human rights violations. Besides, it is empowered to utilise the services of any officer or investigation agency of the Central government or any state government for the purpose. It has also established effective cooperation with the NGOs with first-hand information about human rights violations.

The commission is not empowered to inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed. In other words, it can look into a matter within one year of its occurrence.

The commission may take any of the following steps during or upon the completion of an inquiry:

a) it may recommend to the concerned government or authority to make payment of compensation or damages to the victim;
b) it may recommend to the concerned government or authority the initiation of proceedings for prosecution or any other action against the guilty public servant;
c) it may recommend to the concerned government or authority for the grant of immediate interim relief to the victim;
d) it may approach the Supreme Court or the high court concerned for the necessary directions, orders or writs.

Role of the Commission

From the above, it is clear that the functions of the commission are mainly recommendatory in nature. It has no power to punish the violators of human rights, nor to award any relief including monetary relief to the victim. Notably, its recommendations are not binding on the

concerned government or authority. But, it should be informed about the action taken on its recommendations within one month. In this context, a former member of the Commission observed: 'The government cannot wash away the recommendations made by the Commission. The commission's role may be recommendatory, advisory, yet the Government considers the cases forwarded by it. It is, therefore, improper to say that the commission is powerless. It enjoys great material authority and no government can ignore its recommendation'.

Moreover, the commission has limited role, powers and jurisdiction with respect to the violation of human rights by the members of the armed forces6. In this sphere, the commission may seek a report from the Central government and make its recommendations. The Central government should inform the Commission of the action taken on the recommendations within three months.

The commission submits its annual or special reports to the Central government and to the state government concerned. These reports are laid before the respective legislatures, along with a memorandum of action taken on the recommendations of the commission and the reasons for nonacceptance of any of such recommendations.

Performance of the Commission

The various human rights issues taken up by the Commission are as follows:

1. Abolition of Bonded Labour
2. Functioning of the Mental Hospitals at Ranchi, Agra and Gwalior
3. Functioning of the Government Protective Home (Women), Agra
4. Issues Concerning Right to Food
5. Review of the Child Marriage Restraint Act, 1929
6. Protocols to the Convention on the Rights of the Child
7. Preventing Employment of Children by Government Servants: Amendment of Service Rules
8. Abolition of Child Labour
9. Guidebook for the Media on Sexual Violence against Children
10. Trafficking in Women and Children: Manual for the Judiciary for Gender Sensitisation
11. Sensitisation Programme on Prevention of Sex Tourism and Trafficking
12. Maternal Anemia and Human Rights
13. Rehabilitation of Destitute Women in Vrindavan
14. Combating Sexual Harassment of Women at the Work Place
15. Harassment of Women Passengers in Trains
16. Abolition of Manual Scavenging
17. Dalits Issues including Atrocities Perpetrated on them
18. Problems Faced by Denotified and Nomadic Tribes
19. Rights of the Disabled Persons
20. Issues Related to Right to Health
21. Rights of Persons Affected by HIV / AIDS
22. Relief Work for the Victims of 1999 Orissa Cyclone

23. Monitoring of Relief Measures undertaken after Gujarat Earthquake (2001)
24. District Complaints Authority
25. Population Policy – Development and Human Rights
26. Review of Statutes, including Terrorist & Disruptive Activities Act, and (Draft) Prevention of Terrorism Bill, 2000
27. Protection of Human Rights in Areas of Insurgency and Terrorism
28. Guidelines to Check Misuse of the Power of Arrest by the Police
29. Setting up of Human Rights Cells in the State / City Police Headquarters
30. Steps to Check Custodial Deaths, Rape and Torture
31. Accession to the Convention against Torture
32. Discussion on Adoption of a Refugee Law for the Country
33. Systemic Reforms of Police, Prisons and other Centers of Detention
34. Review of Laws, Implementation of Treaties, and the International Instruments on Human Rights
35. Promotion of Human Rights Literacy and Awareness in the Educational System
36. Human Rights Training for the Armed Forces and Police, Public authorities and Civil Society

Human Rights Amendment Act 2006

The Parliament has passed the Protection of Human Rights (Amendment) Act, 2006. The main amendments carried out in the Protection of Human Rights Act, 1993, relate to the following issues:

1. Reducing the number of members of State Human Rights Commissions (SHRCs) from five to three
2. Changing the eligibility condition for appointment of member of SHRCs
3. Strengthening the investigative machinery available with Human Rights Commissions
4. Empowering the Commissions to recommend award of compensation, etc. even during the course of enquiry
5. Empowering the NHRC to undertake visits to jails even without intimation to the state governments
6. Strengthening the procedure for recording of evidence of witnesses
7. Clarifying that the Chairpersons of NHRC and SHRCs are distinct from the Members of the respective Commission
8. Enabling the NHRC to transfer complaints received by it to the concerned SHRC
9. Enabling the Chairperson and members of the NHRC to address their resignations in writing to the President and the Chairperson and members of the SHRCs to the Governor of the state concerned
10. Clarifying that the absence of any member in the Selection Committee for selection of the Chairperson and member of the NHRC or the SHRCs will not vitiate the decisions taken by such Committees

11. Providing that the Chairperson of the National Commission for the Scheduled Castes and the Chairperson of the National Commission for the Scheduled Tribes shall be deemed to be members of the NHRC
12. Enabling the Central Government to notify future international covenants and conventions to which the Act would be applicable

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State Human Rights Commission

The protection of Human Rights Act of 1993 provides for the creation of not only the National Human Rights Commission but also a State Human Rights Commission at the State level. Accordingly, twenty three states have constituted the State Human Rights Commission through Official Gazette Notifications.

A State Human Rights Commission can inquire into violation of human rights only in respect of subjects mentioned in the State List (List-II) and the Concurrent List (List-III) of the Seventh Schedule of the Constitution. However, if any such case is already being inquired into by the National Human Rights Commission or any other Statutory Commission, then the State Human Rights Commission does not inquire into that case.

Composition of the Commission

The State Human Rights Commission is a multi-member body consisting of a chairperson and two members. The chairperson should be a retired Chief Justice of a High Court and members should be a serving or retired judge of a High Court or a District Judge in the state with a minimum of seven years experience as District Judge and a person having knowledge or practical experience with respect to human rights.

The chairperson and members are appointed by the Governor on the recommendations of a committee consisting of the chief minister as its head, the speaker of the Legislative Assembly, the state home minister and the leader of the opposition in the Legislative Assembly. In the case of a state having Legislative Council, the chairman of the Council and the leader of the opposition in the Council would also be the members of the committee. Further, a sitting judge of a High Court or a sitting District Judge can be appointed only after consultation with the Chief Justice of the High Court of the concerned state.

The chairperson and members hold office for a term of five years or until they attain the age of 70 years, whichever is earlier4. After their tenure, the chairperson and members are not eligible for further employment under a state government or the Central government.

Although the chairperson and members of a State Human Rights Commission are appointed by the governor, they can be removed only by the President (and not by the governor). The President can remove them on the same grounds and in the same manner as he can remove the

chairperson or a member of the National Human Rights Commission. Thus, he can remove the chairperson or a member under the following circumstances:

a) If he is adjudged an insolvent; or
b) If he engages, during his term of office, in any paid employment outside the duties of his office; or
c) If he is unfit to continue in office by reason of infirmity of mind or body; or
d) If he is of unsound mind and stands so declared by a competent court; or
e) If he is convicted and sentenced to imprisonment for an offence.

In addition to these, the president can also remove the chairperson or a member on the ground of proved misbehaviour or incapacity. However, in these cases, the President has to refer the matter to the Supreme Court for an inquiry. If the Supreme Court, after the inquiry, upholds the cause of removal and advises so, then the President can remove the chairperson or a member.

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a) To inquire into any violation of human rights or negligence in the prevention of such violation by a public servant, either *suo motu* or on a petition presented to it or on an order of a court.
b) To intervene in any proceeding involving allegation of violation of human rights pending before a court.
c) To visit jails and detention places to study the living conditions of inmates and make recommendation thereon.
d) To review the constitutional and other legal safeguards for the protection of human rights and recommend measures for their effective implementation.
e) To review the factors including acts of terrorism that inhibit the enjoyment of human rights and recommend remedial measures.
f) To undertake and promote research in the field of human rights.
g) To spread human rights literacy among the people and promote awareness of the safeguards available for the protection of these rights.
h) To encourage the efforts of non-governmental organizations (NGOs) working in the field of human rights.
i) To undertake such other functions as it may consider necessary for the promotion of human rights.

Working of the Commission

The Commission is vested with the power to regulate its own procedure. It has all the powers of a civil court and its proceedings have a judicial character. It may call for information or report from the state government or any other authority subordinate thereto.

The Commission is not empowered to inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed. In other words, it can look into a matter within one year of its occurrence.

The Commission may take any of the following steps during or upon the completion of an inquiry:

a) it may recommend to the state government or authority to make payment of compensation or damages to the victim;
b) it may recommend to the state government or authority the initiation of proceedings for prosecution or any other action against the guilty public servant;
c) it may recommend to the state government or authority for the grant of immediate interim relief to the victim;
d) it may approach the Supreme Court or the state high court for the necessary directions, orders or writs.

From the above, it is clear that the functions of the commission are mainly recommendatory in nature. It has no power to punish the violators of human rights, nor to award any relief including monetary relief to the victim. Notably, its recommendations are not binding on the state government or authority. But, it should be informed about the action taken on its recommendations within one month.

The Commission submits its annual or special reports to the state government. These reports are laid before the state legislature, along with a memorandum of action taken on the recommendations of the Commission and the reasons for non-acceptance of any of such recommendations.

Human Rights Courts

The Protection of Human Rights Act (1993) also provides for the establishment of Human Rights Court in every district for the speedy trial of violation of human rights. These courts can be set up by the state government only with the concurrence of the Chief Justice of the High Court of that state. For every Human Rights Court, the state government specifies a public prosecutor or appoints an advocate (who has practiced for seven years) as a special public prosecutor.

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Child labour in india: A human rights perspective

Child labour is undoubtedly a human rights issue. It is not only exploitative but also endangers children's physical, cognitive, emotional, social, and moral development. It perpetuates poverty because a child labour, deprived of education or healthy physical development, is likely to become an adult with low earning prospects. This is a vicious cycle which apart from ruining the lives of many results in an overall backwardness in the masses.

Moreover, conceptualising child labour as a human rights issue gives the victim with the authority to hold violators liable. Human rights generate legal grounds for political activity and expression, because they entail greater moral force than ordinary legal obligations. Children are right holders with the potential to make valuable contributions to their own present and future well being as well as to the social and economic development of the society and thus they should under no circumstances be perceived as passive and vulnerable.

Today, traditionally prescribed interventions against child labour which were welfare based like providing a minimum age for work are being replaced by rights-based approach. A rights-based approach to child labour needs to be adopted which puts internationally recognized rights of children to the center while utilizing UDHR, ICCPR and ICESCR as a supportive framework. Child labour is a condition from which the children have a right to be free and it is not merely an option for which regulating standards must be devised.

In this paper we shall firstly trace the slow orientation of child labour laws to include human rights perspective internationally, and then evaluate current Indian laws and policies from a human rights perspective

Human Rights Approach to Child Labour

Initially, scholars were unsure over extending human rights to children. For instance, the 1948 Universal declaration of Human Rights (UDHR) emphasises that "everyone is entitled to all rights and freedoms set forth in the declaration…" but makes no age qualification to the same. So it is unclear whether it extends to children. However, Art.4 of UDHR has been interpreted as prohibiting exploitation of child labour by interpreting "servitude" to include child labour.

In addition, Articles 23 and 26 of the United Nations Universal Declaration of Human Rights seek to guarantee "just and favorable conditions of work" and the "right to education," both of which are violated constantly and globally through the exercise of the worst forms of child labor.

In 1966 the International Covenant on economic, social and cultural rights (ICESCR) and International Covenant on civil and political rights (ICCPR) took significant preliminary steps towards modifying human rights according to age, by defining childhood as a state requiring special protection, with rights distinct to those of adults. Even so it was not until 1989 that the Convention on Rights of Children (CRC) clearly spelt out the rights of the child while giving them a special status apart from the adults.

Thus, it should not be surprising that early international legal efforts to address child labour tended to be abolitionist in tone and treated as an aspect of labour market regulation. Next, a prioritization approach was adopted where concentration was on the more abusive forms of child labour. So the ILO adopted Convention 182 on the Worst Forms of Child Labor, 1999, aimed at the immediate elimination of intolerable forms of child labor. The convention requires signatories to work with business groups to identify hazardous forms of child labor and introduce time-bound programs for eliminating them.

Conventions 138 and 182 are recognised as core International Labour Organization (ILO) conventions but unfortunately human rights groups have done much to criticise it. They argue that this artificial division of hazardous and non-hazardous forms of child labour is artificial and made only for the benefit of labour regulations. Child labour in any form is very harmful and exploitative for the children.

Secondly, child labour, as defined by ILO is work done by children under the age of 12; work by children under the age of 15 that prevents school attendance; and work by children under the age of 18 that is hazardous to their physical or mental health. It is an economic activity or work that interferes with the completion of a child's education or that is harmful to children in any way. Such an age based classification is incongruous and is behind time. The right to a childhood cannot be replaced by placing such age barriers which imply at least some work could be done by children at even age 12! Where is the best interest of child seen in such laws?

Fortunately, a human rights approach to child labour was soon adopted by Convention on Rights of the Child (CRC) in 1989. Such rules focus not only on the avoidance of harm to children but as well, on regulation of employment relationship in which working children find themselves and beyond that, on rights of children to education and to participate in decisions that affect their lives, including those related to their employment. This holistic view of child labour as only a part of a child's life is principally what sets human rights approach apart from the labour regulation approach. However, some critique of CRC feel that categorizing child labour as a special category has trivialized their rights and have made them weak and in need of an adult advocate. Conversely, the defenders of CRC argue that it is through this classification that children gain more rights with legally recognized interests which are specific to their stage in life cycle.

The slavery convention, 1926 and Supplementary convention on abolition of slavery, the slave trade, institutions and practices similar to slave trade, 1956 entered into force in 1957 prohibits slavery like practice under Art 1. In recent times Child labour has been read as a slave like practice as it involves economic exploitation. Since children are more vulnerable than adults and are dependent on their parents, it can be assumed that when they are economically exploited by their parents or by their consent, the decree of dependency necessary for work to b qualified as slavery like practice will be attained in most cases.

In the light of ICCPR (art 8(2)) and Supplementary convention on abolition of slavery, the slave trade, institutions and practices similar to slave trade, 1956, Art.4 of UDHR should be interpreted as prohibiting exploitation of child labour as child labour comes under "servitude". Child labour also comes under the term "forced or compulsory labour" in Art.8(3) of ICCPR. The obligations of state parties under art 8 are immediate and absolute. Thus state parties have to prevent private parties from violating child labour norms. Art 24, ICCPR obliges the state to protect children from economic exploitation.

Conventions on Rights of Child

United Nations Convention on the Rights of the Child is the first legally binding international instrument to incorporate a full range of human rights such as civil, cultural, economic, political and social rights for children. The Convention offers a vision of the child as an individual and as a member of a family and community, with rights and responsibilities appropriate to his or her age and stage of development. By recognizing children's rights in this way, the Convention firmly sets the focus on the whole child.

The Convention under Art.32 speaks of economic exploitation of children by making them perform work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. The Convention spells out a child's right to education , as well as identifying the forms of harm to which children should not be exposed. Other rights given to children include right "to the enjoyment of the highest attainable standard of health" and to abolish traditional practices that are prejudicial to children's health (Article 24), a right "to a standard of living adequate for the child's physical, mental, spiritual, moral and social development"; parents have the main responsibility for this, but governments are required "within their means" to assist parents, as well as to provide material assistance and support in case of need(Article 27) and a right "to rest and leisure, to engage in play and recreational activities appropriate to the age of the child". Article 22 specifies that refugee children have the same rights as all other children.

Article 6 of the convention makes it the obligation of the governments to ensure that children are able to survive and develop "to the maximum extent possible" while Article 11 urges governments to prevent "the illicit transfer and non-return of children abroad". Under Article 19, Governments must take action to protect children against all forms of physical or mental violence, injury, abuse, neglect, maltreatment or exploitation, including sexual abuse and must provide special protection and assistance to children who are deprived of their own family environment under article 20. Article 35, requires governments to take action to prevent children from being trafficked while articles Article 36 and 39 requires governments to protect children "against all other forms of exploitation prejudicial to any aspects of the child's welfare" and to help children recover from exploitation, neglect or abuse (particularly their physical and psychological recovery and return and reintegration into the communities they come from).

Two other provisions in the Convention are also vitally important for working children. Article 3 says government agencies and other institutions taking action concerning a child or children must base their decisions on what is in the children's "best interests". Article 12 emphasises that when a child is capable of forming his or her views, these should be given due attention, in accordance with the child's age and maturity.

Other conventions of interest include Optional protocol to the convention on rights of child on sale of children, child prostitution and child pornography and Optional protocol to the convention on rights of child on the involvement of children in armed conflict both adopted in May, 2000.

India and Its international Commitment

India has ratified six ILO conventions relating to child labour but have not ratified the core ILO conventions on minimum age for employment (convention 138) and the worst forms of child labour, (convention 182) recognised as the core conventions at the international labour conference which makes it mandatory for the international community to follow certain standards in their crusade against child labour. Nevertheless, India has taken commendable steps to eliminate child labour.

The recent right of children to free and compulsory education Act, 2009 and the preceding 86th amendment exemplifies the same. Furthermore, the passing of Juvenile Justice (care and protection) Act, 2006 shows India's commitment to a human rights approach to child labour. The Act emphasises on looking into the best interests of the child and allows for social reintegration of child victims.

In such a scenario India not signing the core labour conventions does not make a difference in the fight against child labour. India is a party to the UN declaration on the Rights of the Child 1959. India is also a signatory to the World Declaration on the Survival, Protection and Development of Children. More, importantly India ratified the Convention on the Rights of the Child on 12 November 1992.

Other important international initiatives against child labour include the adoption of the first Forced Labor Convention (ILO, No. 29), 1930, Stockholm Declaration and Agenda for Action: States that a crime against a child in one place is a crime anywhere, 1996, establishment of 12 June as the World Day Against Child Labor in 2002 by ILO and the first global economic study on the costs and benefits of elimination of child labour.

Indian Laws on Child Labour

The present regime of laws in India relating to child labour are consistent with the International labour conference resolution of 1979 which calls for combination of prohibitory measures and measures for humanising child labour wherever it cannot be immediately outrun.

In 1986 Child labour (Prohibition and regulation) Act was passed, which defines a child as a person who has not completed 14 years of age. The act also states that no child shall be employed or permitted to work in any of the occupations set forth in Part A or in the process set forth in Part B, except in the process of family based work or recognised school based activities. Through a notification dated 27 January 1999, the schedule has been substantially enlarged to add 6 more occupations and 33 processes to schedule, bringing the total to 13 occupations and 51 processes respectively. The government has amended the civil service (conduct) rules to prohibit employment of a child below 14 years by a government employee. Similar changes in state service rules have also been made.

The framers of the Indian Constitution consciously incorporated relevant provisions in the constitution to secure compulsory primary education as well as labour protection for children. If the provisions of child labour in international conventions such as ILO standards and CRC are compared with Indian standards, it can be said that Indian constitution articulates high standards in some respects The constitution of India, under articles 23,24, 39 (c) and (f), 45

and 21A guarantees a child free education, and prohibits trafficking and employment of children in factories etc. The articles also protect children against exploitation and abuse. Equality provisions in the constitution authorises affirmative action policies on behalf of the child.

The National child labour policy (1987) set up national child labour projects in areas with high concentration of child labour in hazardous industries or occupations, to ensure that children are rescued from work and sent to bridge schools which facilitate mainstreaming. It is now recognised that every child out of school is a potential child labour and most programs working against child labour tries to ensure that every child gets an education and that children do not work in situations where they are exploited and deprived of a future. Similarly, there are other programmes like National authority for elimination of child labour, 1994 (NAECL) and National resource centre on child labour, 1993 (NRCCL). Recently, government of India notified domestic child labour, and child labour in dhabas, hotels, eateries, spas and places of entertainment as hazardous under the child labour (prohibition and regulation) Act, 1986, effective from 10-10-2006.

National human rights commission has played an important role in taking up cases of worst forms of child labour like bonded labour. In 1991 in a silk weaving village of Karnataka called Magdi it held an open hearing which greatly sensitised the industry and civil societies. It also gave rise to new NCLP programmes.

Judicial Reflections

Judiciary in India has taken a proactive stand in eradicating child labour. In the case of M.C. Mehta v. State of Tamil Nadu and Ors , this Court considered the causes for failure to implement the constitutional mandate vis-à-vis child labour. It was held that the State Government should see that adult member of family of child labour gets a job. The labour inspector shall have to see that working hours of child are not more than four to six hours a day and it receives education at least for two hours each day. The entire cost of education was to be borne by employer.

The same was reiterated in BandhuaMuktiMorchav.UOI and directions were given to the Government to convene meeting of concerned ministers of State for purpose of formulating policies for elimination of employment of children below 14 years and for providing necessary education, nutrition and medical facilities.

It was observed in both the case that it is through education that the vicious cycle of poverty and child labour can be broken. Further, well-planned, poverty-focussed alleviation, development and imposition of trade actions in employment of the children must be undertaken. Total banishment of employment may drive the children and mass them up into destitution and other mischievous environment, making them vagrant, hard criminals and prone to social risks etc. Immediate ban of child labour would be both unrealistic and counter-productive. Ban of employment of children must begin from most hazardous and intolerable activities like slavery, bonded labour, trafficking, prostitution, pornography and dangerous forms of labour and the like.

Also, in case of PUCL v. UOI and Ors children below 15 years forced to work as bonded labour was held to be violative of Article 21 and hence the children were to be compensated. The

court further observed that such a claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights.

However, Human rights experts criticise the scheme of payment of compensation envisage in Child labour act and further adopted by the Judiciary with gusto. They say that monetary compensation is like washing away ones conscious which still believes that if a child labour is sent to school he must be compensated for the amount which he might have got if he had worked instead. This only confuses the already divided opinion of the society today which still thinks that poor and needy children are better off working.

Conclusions

India has done well in enacting suitable legislations and policies to combat child labour. Nonetheless, its implementation at grass root level is very much lacking. The child labour laws today are like a scarecrow which does not eliminate child labour but only shifts it geographically to other places, to other occupations like agriculture which may be less paying or it might be still continued clandestinely. The lack of a specialised enforcement officer leads to lesser attention being given to child labour legislations. Furthermore, many of the child labourprogrammes remain poorly funded.

Child labour is a complex problem which cannot be eliminated without first attacking it at the roots. Thus, poverty, unemployment, lack of social security schemes, illiteracy and the attitude of society need to be tackled first before any progress can be made. A starting point can be to treat Child labour as a human rights problem and discouraging its manifestation in any form. If the society as such sees child labour as a social malaise, we will be much closer at achieving success.

Lastly, there is a lot of debate over the age from which child labour should be banned. The ILO conventions do not give a definite age, 14 years seems to be the general understanding but CRC defines a child to be below 18 years. Right to education is for children below 14 years and Child labour is prohibited till age of 14 years. This brings the question as to whether children of age 14-18 years are to be denied basic human rights and are to be left vulnerable.

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Initiatives for enhancing Safety of Women

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 came into force with effect from 9th December 2013. The Act seeks to cover all women, irrespective of their age or employment status and protect them against sexual harassment at all workplaces both in public and private sector, whether organized or unorganized. "*Sexual harassment at the workplace*" is defined in a comprehensive manner, in keeping with the

definition laid down in the Vishaka judgment, and broadening it further to cover circumstances of implied or explicit promise or threat to a woman's employment prospects or creation of hostile work environment or humiliating treatment, which can affect her health or safety. Furthermore, the Act goes much further in defining the 'workplace' to include organisations, department, office, branch unit etc. in the public and private sector, organized and unorganized, hospitals, nursing homes, educational institutions, sports institutes, stadiums, sports complex and any place visited by the employee during the course of employment including the transportation. For the first time, the Act provides protection to regular/temporary/ad hoc/daily wage employees, whether for remuneration or not and can also include volunteers. This covers domestic workers too.

The Act under Section 4 and Section 6 creates a redressal mechanism in the form of Internal Complaints Committee (ICC) and Local Complaints Committee (LCC). The Act mandates that the Committee shall complete the inquiry within a time period of 90 days. On completion of the inquiry, the report will be sent to the employer or the District Officer, as the case may be and they are mandated to take action on the report within 60 days. The Act under Section 19 casts a responsibility on every employer to create an environment which is free from sexual harassment.

Protection of Children from Sexual Offences Act, (POCSO), 2012

The Government enacted the Protection of Children from Sexual Offences Act, (POCSO), 2012 as a special law to protect children from sexual abuse and exploitation. The POCSO Act was formulated to address the heinous crimes of sexual abuse and sexual exploitation of children. The Act is gender-neutral and defines a child as any person below the age of eighteen years. It defines different forms of sexual abuse, including penetrative and non-penetrative assault, as well as sexual harassment and pornography, and deems a sexual assault to be "aggravated" under certain circumstances, such as when the abused child is mentally ill or when the abuse is committed by a person in a position of trust or authority vis-a-vis the child, like a family member, police officer, teacher, or doctor. In keeping with the best international child protection standards, the Act provides for mandatory reporting of sexual offences. The Act prescribes stringent punishment graded as per the gravity of the offence, with a maximum term of rigorous imprisonment for life, and fine. It also prescribes punishment for a person if he/she provides false information with the intention to defame any person, including a child.

Most importantly, the Act provides for child-friendly procedures for reporting of offences, recording of evidence, investigation and trial.

Model Guidelines under the POSCO Act, 2012 were issued by the Ministry on 18th September, 2013 under Section 39 of the POSCO Act. State governments are required to make guidelines for the use of professionals to assist the child in pre-trial and trial stage. The rules framed under the Act provide for qualifications and experience of interpreters, translators, special educators, and experts; arrangements for care and protection and emergency medical treatment of the child; compensation payable to a child who has been the victim of a sexual offence; and the manner of periodic monitoring of the provisions of the Act by the National Commission for Protection of Child Rights and State Commissions for Protection of Child Rights.

Domestic Violence Act, 2005

The Act seeks to cover those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or a relationship in the nature of marriage, or adoption; in addition relationship with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to get legal protection under the proposed Act. `Domestic violence' includes actual abuse or the threat of abuse that is physical, sexual, verbal, emotional and economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

One of the most important features of the Act is the woman's right to secure housing and appointment of Protection Officers and NGOs to provide assistance to the woman w.r.t medical examination, legal aid, safe shelter, etc.

The Criminal Law (Amendment) Act, 2013

The Ministry took special initiatives for amendment in the Cr. P.C. & I.P.C. for inclusion of offences like voyeurism, stalking, disrobing, voluntarily throwing or attempting to throw acid as crimes. There has been significant change in the definition of 'Rape' under IPC and stringent punishment has been prescribed for crimes against women.

Marriage Laws (Amendment) Bill, 2010

The Marriage Laws (Amendment) Bill, 2010 has been introduced in Parliament. It aims to amend the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954, to provide therein irretrievable break down of marriage as a ground of divorce. It provides safeguards, to parties to marriage who file petition for grant of divorce by consent, from the harassment in court if any of the party does not come to the court or wilfully avoids the court to keep the divorce proceedings inconclusive.

Manual Scavenging

Scavenging has been an occupation imposed upon certain citizens of the country by the society, which later on continued as a traditional occupation where a section of people among Scheduled Castes was ordained to clean the night soil and carry it manually on their heads. This class of citizens of India is known as Manual Scavengers. Manual scavenging exists primarily because of absence of water borne latrines. Using a broom, a tin plate and a drum, they clear and carry human excreta from toilets, more often on their heads, to dumping grounds and disposal sites. They are exposed to the most virulent forms of viral and bacterial infections that affect their skin, eyes, limbs, respiratory and gastrointestinal systems.Their children are also caught up in this quagmire. Under these circumstances, it is almost impossible for their children to become educated. Mostly, the women of the families of the scavengers are engaged in scavenging. Even though, in modern times these people desire to leave the profession, their social, economic, educational and cultural aspects have made it difficult for them to find an alternate profession. The social stigma of untouchability continues to stick, in one form or the other largely because of the unclean nature of their occupation.

Government Initiatives

In the past(before 1980), the main efforts of the Government were concentrated on improving the working and living conditions of scavengers and not the core problem of converting dry latrines to pour flush latrines in any systemic manner. In 1908-81, the Ministry of Home Affairs took up the Centrally Sponsored Scheme for Liberation of Scavengers by way of conversion of existing dry latrines into low cost pour flush latrines and providing alternative employment to the unemployed scavengers as one of the measures for removal of Untouchability and providing financial assistance in selected towns. A Task Force constituted by the Planning Commission in July 1989 on the subject suggested for separate scheme for liberation and rehabilitation. It also explored the bases for the enactment of certain legislation to ban construction and continuation of dry latrines and prohibit the practice of manual scavenging. In 1992, the scheme of 'Liberation of Scavengers' was bifurcated. For conversion of dry latrines into water borne flush latrines, an 'Integrated Low Cost Sanitation (ILCS) Scheme, was started. The **National Scheme for Liberation and Rehabilitation of Scavengers and their Dependents (NSLRS**) was started for providing alternative employment to the liberated scavengers and their dependents.

Taking into consideration the seriousness of the problem and the requests of the State Governments, Parliament enacted the "**Employment of Manual Scavengers and Construction of Dry Latrines(Prohibition) Act, 1993**". The Act, inter alia, provides that no person shall:

1. engage in or employ for or permit to be engaged in or employed for any other person for manually carry human excreta; or

2. Construct or maintain a dry latrine.

Self Employment Scheme for Rehabilitation of Manual Scavengers (**SRMS**), a successor scheme to NSLRS, was introduced in January, 2007, as a scheme of national priority, with the objective to rehabilitate remaining manual scavengers and their dependents in alternative occupations, in a time bound manner. 18 States/UTs had reported existence of 1,18,474 manual scavengers/dependents to be covered. All these States/UTs confirmed disbursement of loan for alternative occupations to **all** the 78,941 eligible and willing beneficiaries by June, 2010.

Nevertheless, there were reports of existence of manual scavenging. The Houselisting and Housing Census, 2011 reported that there are about 26 lakh insanitary latrines in the country. Accordingly, the Parliament passed the **'Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013'** (MS Act, 2013) which came into effect from 6th December, 2013. This Act intends to, inter alia, achieve its objectives to:-

1. Eliminate the insanitary latrines.
2. Prohibit:-
    a. Employment as Manual Scavengers
    b. Hazardous manual cleaning of sewer and septic tanks.
3. Survey of Manual Scavengers and their rehabilitation, within a time bound manner.

Main features of the Act are:-

(i) Definitions of manual scavengers and insanitary latrines widened to cover not only dry latrines but other insanitary latrines as well.

(ii) Offences under the Act are cognizable and non-bailable and attract stringent penalties.

(iii) Vigilance/Monitoring Committee at sub-Division, District, State and Central Govt. levels.

(iv) National Commission for Safai Karamcharis (NCSK) would, inter alia, monitor implementation of the Act and enquire into complaints regarding contravention of the provisions of the Act.

(v) Provision of construction of adequate number of sanitary community latrines in urban areas, within three years from the date of commencement of this Act to eliminate the practice of open defecation.

The SRMS has also been revised in November, 2013 with the following **major modifications**, **in sync with the** MS Act, 2013:-

(i) Definition of manual scavenger as per MS Act, 2013.

(ii) Provision of one time cash assistance of Rs. 40,000/-,

(iii) Enhancement of the maximum project cost from the existing Rs. 5 lakh to Rs. 10 lakh, and Rs. 15 lakh in case of sanitation related projects.

(iv) Enhancement of capital subsidy from the existing maximum Rs. 20,000 to maximum of Rs. 3.25 lakh, based on the project cost.

(v) Revision of the rate of monthly stipend during training from the existing Rs. 1,000 to Rs. 3,000 and the training period from 1 to 2 years.

So far, 12 States have identified about 12,000 manual scavengers. In view of the prevalence of large number of insanitary latrines, the number of manual scavengers identified in the country is too small. Even the identification of insanitary latrines is not in agreement with the data of Census, 2011.

Ministry of Social Justice and Empowerment is responsible for rehabilitation of manual scavengers and it implements the 'Self Employment Scheme for Rehabilitation of Manual Scavengers'(SRMS). Ministry of Social Justice and Empowerment has associated reputed NGOs like Safai Karamchari Andolan, Rashtriya Garima Abhiyan, Sulabh International etc. for identification of manual scavengers and their rehabilitation.

The Ministry has assigned the responsibility of rehabilitation of the identified manual scavengers to the National Safai Karamcharis Finance and Development Corporation. Under SRMS, so far, out of the identified about 12,700 manual scavengers, One Time Cash Assistance of Rs. 40,000/- has been credited into the bank accounts of about 6,600 manual scavengers. However, despite having an attractive SRMS Scheme, the task of comprehensive rehabilitation of the identified manual scavengers and their dependents is not picking up.

Ministry of Drinking Water & Sanitation under its Swachh Bharat Mission(Gramin) {SBM(G}provides for an assistance of Rs, 12,000/- (Rs. 9,000/- as Central grant and Rs. 3,000/- State/UT contribution). Although SBM(G) also targets identification of insanitary latrines and their conversion, the pace of implementation of the Scheme does not match with the targets of eradication of manual scavenging. Under SBM(G), so far 1.89 lakh insanitary latrines have been identified, of which 1.56 lakh are dry toilets and 1.13 lakh have been converted into sanitary latrines. About 0.55 lakh dry toilets are yet to be converted into sanitary toilets.

Ministry of Urban Development, under the Swachh Bharat Mission(Urban) provides a grant of Rs. 4000/- for conversion of insanitary latrine. The provision of the remaining fund for conversion will be made by the States/UTs.

Under Indira Awas Yojana of the Ministry of Rural Development, there is provision for providing assistance for construction of new houses and upgradation of kuchcha or dilapidated houses. Assistance of upto Rs.75,000/- it provided to the eligible households. A provision has been made under Indira Awas Yojana for special coverage of identified manual scavengers for providing them housing facilities in rural areas irrespective of their BPL status. The new

Scheme of 'Housing for All' under the Ministry of Housing and Urban Poverty Alleviation aims at providing housing facility to the citizens of India.

Under the Scheme of "Pre Matric Scholarship to the Children of those engaged in Occupations involving cleaning and prone to health hazards", being implemented by the Ministry of Social Justice and Empowerment, the children of manual scavengers are also provided scholarship @ Rs. 110 to Rs. 700 per month.

The Problems being faced in Elimination of Manual Scavenging

The States/UT's are slow in identification of insanitary latrines and manual scavengers as there is no time-bound plan for identification of insanitary latrines and manual scavengers. Further, in a case filed in the Supreme Court of India, many States/UTs gave affidavit that there are no insanitary latrines in their jurisdiction. Due to fear of contempt of the Court, they hesitate in reporting existence of insanitary latrines in their States/UTs.

At present the work of conversion of insanitary latrines into sanitary latrines is being attended to as a part of broad programme of construction of toilets. There is a need to have a time-bound approach as per the mandate of the MS Act, 2013, for conversion of insanitary latrines.

Rehabilitation of manual scavengers is also slow and in many cases not adequate due to various problems being faced, which include:-

(i) Manual scavengers are mostly illiterate and have no exposure to any work, other than sanitation related work. Many of them are old. They lack confidence for running self employment projects. Many of them are not willing even to avail any skill development training.

(ii) Banks are hesitant about providing loan to manual scavengers. Even many State Channelising Agencies, due to low rate of recovery of loan from safai karamcharis, are not willing to extend loan to manual scavengers.

Due to low confidence levels the identified manual scavengers demand that they may be provided jobs of safai karamchari in local authorities.

Roadmap

National Safai Karamcharis Finance and Development Corporation, an apex Corporation for the socio-economic development of safai karamcharis and manual scavengers and their dependents is the nodal agency of Government of India for rehabilitation of the identified manual scavengers and their dependents. The Corporation has adopted camp approach for mobilization of the target group and readying them to avail the benefits of government Schemes for their rehabilitation in alternate dignified occupations. So far, such camps have been held at Bareli, Moradabad, Meerut, Lucknow, Roorkee, Asansol, Bengaluru and Ratlam, and many more will be organized at other places. In these camps, apart from the manual scavengers and their dependents, various concerned departments of the State, training providers, representatives of banks and NGOs are invited. All the stakeholders are made aware

of the benefits to be provided to the target group and motivated to provide all possible cooperation and assistance for rehabilitation of manual scavengers and their dependents.

With the camp approach, it is hoped that the goal of meaningful and sustainable rehabilitation of the identified manual scavengers would be achieved.

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Human Rights and Terrorism

Human rights – two simple words but when put together they constitute the very foundation of our existence. Human Rights are commonly understood as "inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being." The most important issue, which is a challenge to human rights, is terrorism. The clouds of terrorism have shrouded the very beauty of human rights on the earth. The terrorism is present and prevalent almost in all the countries in the world in some form or the other. In India, post-independence it became a delicate nationwide issue with the emergence of human rights trends. Terrorism has slammed and affected almost every sphere of human life, be it economy or politics or social life, whatever. In broad sense, the terrorism is the antithesis of independence and the independence is meaningless without the human rights. The bordering states are the most affected regions from terrorism in India. It led India to make various laws to counter with the terrorism. Amongst these enactments are the Terrorism and Disruptive Activities (Prevention) Act, 1987 Prevention of Terrorism Act, 2002, Indian Penal Code, section 124-A, Sedition and 125, Waging war against India and Armed Forces (Special Power Act, 1958 etc. to deal with the menace of terrorism. The best strategy to isolate and defeat terrorism is by respecting human rights, fostering social justice, enhancing democracy and upholding the primacy of the rule of law. This Article seeks to search the various aspects and problems relating to terrorism in India and world. This is an attempt to look at the changing dynamics of terrorism in context of terrorism especially of the victims of terrorism, experience of some other countries and India, threat of terrorism to national security, the ISI's role and suggests some measures that might form part of a possible counter terrorism strategy for India.

Terrorism and human rights cannot co-exist they are mutually destruct each other. Where there is terrorism there is not human rights, where there are no human rights, there can be no respect for human dignity, life and democratic values. Terrorism not only affects the human rights of many but also hinders the resolution and settlement of disputes and conflicts by civil methods. The problem of terrorism transcends all frontiers whether national, international,

political or economic. Its solution calls for a global efforts, international co-operation and trans-national actions. Terrorism is a serious world problem not because of sheer amount of violence involved but because it constitute a threat to innocent life and right. Terrorism is a voluntary action to terrorize innocent people. It is a according to dictionary meaning a use of violence and threat of violence, especially for political purpose.

Terrorism has no caste, creed region or religion. It has global dimensions, the international terror is aided protected and financed by a no. of gouts who safe havens for terrorists and false passports, With technological advancement a whole range of small portable and easy to operate weapons are coming into the possession of the terrorist groups, The refinement of personal weapons is also talking place.

The 20th century witnessed great changes in the use and practice of terrorism, Terrorism became the hall mark of a number of political movements stretching from the extreme right to the extreme left of the political spectrum.

The September 11 incidents have altered everything. America with its more than 6000 people in the world trade centre and Pentagon blasts is distributed as it is a big blow on its face.

Meaning and Definition of Terrorism

The term terrorism has derived from Latin word 'terrere' which means great fear.The term terrorism is very difficult to define; one man's terrorism can be another man's freedom struggle. It is estimated that between 1936 and 1985 at least 115 different definitions have been given to the world. "Terrorism" According to Webster's dictionary 1990 defines terrorism as " the act or practice or terrorizing especially by violence for political purposes as by a Government seeking to intimidate a population or by revolutionary seeking to overthrow government compel the release of prisoners etc".

Yonas Alexander defines terrorism as "The use of violence against random civilians targets in order to intimate or create generalized pervasive fear for the purpose of achieving political goals.

League of nation convention (1937)

Pauli Wilkinson, defines "terrorism, as coercive intimidation" which is in practice "a systematic use of a murder and destruction in order terrorise individual groups. Communities or governments into conceding to the terrorists Alii criminal acts directed against a state and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public.

In the backdrop broadly speaking terrorism is recognized as an assault on a civilized society and law required is to entrust the law enforcing agencies with extraordinary powers to meet what is genuinely perceived as an extra ordinary situation of crime (terrorism) and further, at the same time law is to ensure Human Rights at three distinguished stages to take measures to combat terrorism by;

· Protection of Human rights of the victim s innocent people who are brutally killed or victimized in a terrorist act;

· Preservation of Human rights of terrorists in legal and judicial proceeding beginning from cordon/ search operation, encounters, firing in crowded areas, registration of case, detention, interrogation investigation, charge-sheet ,trial ,punishment etc.

· Promotion of Human Rights to eliminate the root cause of terrorism by ensuring basic human rights including liberty, dignity, education, health, employment, i.e., "inclusive growth" i.e. participation of every and each citizen of the country in the progress and development of country.

Instances of terrorist attack

In the recent past the terrorist acts including the last month Boston Marathon Bomb Blast (15th April, 2013), attacks on ·world Trade Centre, New York (11th September , 2001), attacks on the Indian Parliament (13Lb December, 2001), Mumbai attack (26th November , 2008), the Malegaon blasts or the Serial Blasts in Delhi, Ahmadabad , Surat, Mumbai Local Trains, Guwahati and many more has come to threaten the very foundation of modern civilization society and these acts assumed new dimensions. India has been a long time sufferer of terrorism be it in the North east, Punjab or Jammu and Kashmir but now terrorism has dangerously spread to other parts of the country with help of International agencies and groups actively participating in terrorism m increasing proportion .

Human rights and Terrorism can be study by following case laws

The Supreme Court of India in **Kartar Singh v State of Punjab** where it was observed that the country has been in the firm grip of spiraling terrorist violence and is caught between deadly pangs of disruptive activities.

Supreme Court of India as far back as in 1994 dwelt at length on it and drew a distinction between a merely criminal act and terrorist act in its judgment **Hitendra Vishnu Thakur v State of Maharashtra** "It may be possible to describe it (Terrorism) as use of violence with a view to disturb even tempo, peace and tranquility of the society and create a sense of fear and insecurity ."

Apart from Universal Declaration of Hum an Rights, 1948, there are other some important international normative framework relating to human rights, best practices are international covenant on civil and political rights, Convention against Torture and Other Cruel, inhuman or Degrading Treatment or Punishment, 1984; Convention on the Rights of the Child, 1989; United Nations Code of Conduct for Law Enforcement Officials.

The Supreme Court in Keshva nandan Bharati

The Constitution of India in its preamble, laid pragmatic panorama of constitutional philosophy to usher in the egalitarian social order under Rule of Law. The State, drawn from the will or the people , has been vested with power and duty to bring about united and integrated nation through human rights as instrumentality to achieve the cherished goal of social, economic and political justice, equality of opportunity, status and dignity to all people. And in order to make them meaningful and to translate them into reality, the certainty of human rights is woven

around the right to education, health, shelter, congenial environment, without discrimination as basics to unity and fraternity among the people, civil and political rights, social, economic and cultural rights have been elaborated to feed and give content to the human rights.

Some of the important legislations that have been used for regulating terrorism and concen1ed activities such as Terrorist and Disruptive Activities (Prevention) Act, 1985 (commonly known as TADA 1985 - repealed), Terrorist and Disruptive Activities (Prevention) Act, 1987 (commonly known as TADA 1987 - repealed); Prevention of Terrorist Act, 2002 (commonly known as POTA - repealed), the Maharashtra Control of Organised Crime Act, 1999 (State Law); apart from the present existing law, Unlawful Activities (Prevention) Act, 1967 and National Security Act, 1980. The Human Rights Violations committed under Anti Terrorism Law have been brought to the forefront both by he Judiciary and National Human Rights Commission (NHRC) . The constitutionality of TADA 1987 in Kartar Singh v State of Punjab where the Apex Court proceeded to tamper certain provisions of TADA 1987 so as to bring them within reasonable bounds and to introduce requisite safeguards against abuse. The Supreme Court also observed that the Parliament is competent to enact the said Act under Article 248 r/ w List I Entry 97 and not by List II Entry 1 of Schedule 7 to the Constitution of India .After Kartar Singh, validity of TADA was again challenged in R.M. Tiwari v State and in spite of close monitoring of the use of TADA , 1987 by the Court, the Review Committee complained of its gross abuse continued to be raised by various quarters, where under the circumstances of the case, the Court upheld the constitutionality of TADA, 1987.

Over a period of time, India continues to face the score-age of terrorism. Accordingly , the Prevention of Terrorism Act, 2002 (commonly called as POTA) was enacted to make the provisions for the Prevention of and for dealing with terrorist activities in the face of multifarious challenges in the management of internal security of the country and cross border terrorist activities and insurgent groups. Again the validity of some of the provisions of POTA was challenged in People's Union for Civil Liberties and Another v Union of India and under circumstances of the case, the Apex Court discussed the validity of POTA 2002 and observed that the Court has to maintain the delicate balance between the State Acts and Human Rights upholding the constitutional validity of the Act.

In **Devendra Pal Singh v N.C. T. of Delhi** where 9 persons had died and several others injured on account of terrorist act and the Apex Court under the circumstances of the case said that such terrorist have no respect for hum an life and they should be given death sentence.

In a much talked about case of Sanjay Dutt v State of Maharashtra through C.B.I., the Supreme Court recently upheld the conviction for possessing the arms and ammunitions under the Arms Act 1959 and not under Section 5 of the TADA.

Further in the case of **Vaiko v Union of India** [Madras High Court], Vaiko was arrested under Section 21 of POTA (offence relating to support to a terrorist organization) on the basis of certain remarks. Later on the trial proceedings at Chennai was challenged on the ground that the Central POTA Review Committee had found that no case was made out against them. The Madras High Court upheld that it was for the public prosecutor to independently apply his mind to the matter and take a decision to withdraw the case on the basis of the report of the Central POTA Review Committee and, accordingly, dismissed the writ petition seeking a direction to TN Government to withdraw the case. At present a Criminal Appeal against the order of the Madras High Court is pending before the Apex Court.

When we go through the provisions of the Anti Terrorism Law of other countries, we find that British Law has an exclusive chapter on banning terrorist organizations and after banning a terrorist organization, membership of a terrorist organization, ipso facto, becomes a punishable act.

Ultimately, on September 17, 2004 controversial Anti Terrorism Act - POTA, 2002 was repealed and consequently, the Unlawful Activities Prevention Act, 1967 was amended where, inter alia, definition of unlawful association has been expanded to also to include any association , which has for its object any activity which is punishable under Section 153A of the Indian Penal Code, or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity. Section 153A of the Indian Penal Code is about promoting enmity between different groups on grounds of religion, race, place of work, residence, language etc.

Dr. A.S. Anand in Hitendra Vishnu Thakur once said that "every terrorist may be criminal, but, every criminal cannot be given the level of a terrorist only to set in motion the more stringent provisions of TADA.

In **Kartar Singh v State of Punjab** the Supreme Court expressed serious concern about the sheer misuse and abuse of the act by the police and made an attempt to infuse human rights by devising certain guidelines to ensure that confessions obtained during pre-indictment interrogations is in conformity with human rights principles, which the Court went on to elucidate the same in the case of Shaheen Welfare Association v Union of India[21],where the Supreme Court opined that a more independent and objective scrutiny of TADA cases by a Committee headed by a retired Judge is obviously necessary. Such observation shows that the Apex Court has been always eager to preserve the human rights in combating terrorism.

There has been consistent calls for more laws to combat the terrorism, even though there is already a plethora of laws in India including the general and traditional law Indian Penal Code, The Unlawful Activities Prevention Act , 1967; The Criminal Law (Amendment) Act; The National Securities Act, 1980; State enacted laws, like The Maharashtra Control of Organized Crime Act, 1999 etc.The only need is to implement these provisions effectively, humanly and scientifically to contain the terrorism.

The USA Patriot Act in America by providing appropriate tools require to intercept and obstruct acts of terrorism enacted after 9/ 11 (l lU1 September, 2001 World Trade Centre attack, New York City, U.S.A.) can be an important piece of legislation to take cue from.

Therefore, the present scenario of increasing terrorist designs, demands that there has to be a well formulated plan to defeat the ever increasing threats about the existence of an individual.

It is true that terrorist threats that we are facing are now on an unprecedented global scale. Recently, the Boston Marathon Bomb Blast has once again shaken the confidence and trust of the people choosing to lead a peaceful and lawful life. War against terrorism, therefore, to be firm and relentless, but, it must be remembered that fundamental rationale of anti-terrorism measures has to be to protect human rights and democracy. We need only to recall the caution administered by the Supreme Court of India in D.K . Basu v State of West Bengal which reads thus: -

"State terrorism is no answer to combat terrorism. State terrorism would only provide legitimacy to terrorism: that would be bad for the State. The community and above all for the rule of law. The State must, therefore. Ensure that the various agencies deployed by it. For combating terrorism act within the bounds of law and not become law unto themselves".

The Supreme Court comprehending the "terrorist act" under Section 15 of the Unlawful Activities (Prevention) Act, 1967 in Md. Ajmal Amir Kasab 's case held that : "a terrorist act" and an act of "waging war against the Government of India" may have some overlapping features.

International Terrorism is a modern form of warfare against legal democracies and goal of these terrorists is to destroy the fabric of democracy and it would be wrong for any democratic state to consider international terrorism to be some one else's problem, rather, it is a collective problem and we must unite to condemn and combat it. As USA Senator, Jackson aptly stated

“The idea that one person's 'terrorist' is another's 'freedom fighter ' cannot be sanctioned. Freedom fighters or revolutionaries don't bow up buses containing non-combatants; as terrorist murderers do. Freedom fighters don't set out to capture and slaughter school children; terrorist murderers do... It is a disgrace that democracies would allow the treasured word freedom ' to be associated with acts of terrorists".

It is a strange paradox that while on one hand, higher and better international human rights and humanitarian standards have evolved over the past five or six decades, on the other hand conflict and newer form s of terrorism which threatens human rights of the people across the world are on the rise and becoming more and more dangerous. One also find s resort to the use of more and more deadlier and lethal weapons, deliberate targeting of innocent civilians, forced starvation of civilians and resort to rape and other sexual assaults, besides taking hostages etc. Scientific and technological development are being flagrantly exploited by the terrorists. What is a matter of serious concern is the existence of trans-national networks of terrorist organization s, which have a nexus with arms and drug traffickers and crime syndicates.

Neglect of Human Rights: A Fertile Ground For Breeding Terrorism

When we go to the root cause of terrorism, we find that systematic human rights violations for long periods of time are often the cause of conflicts and terrorism. Terrorism vis-a- vis Human Rights on the face of i t appears to be directly across each other, but, in fact terrorism, the ugliest form of mankind (Human Behaviour), is the outcome of deprivation of civil and political rights and manifestation of Social, Economic and Political injustice. Thus, when there is tyranny and wide spread neglect of human rights and people are denied hope of their better future. it becomes a fertile ground for breeding terrorism.

The fight against terrorism requires close cooperation of all countries both at Law Enforcement and Judicial Levels in order to put an end to illegal trafficking, which feeds terrorist networks. To clip the wings of terrorism, the international communities must target the roots of frustration as well as the feeling of injustice, but, the approach should be humane, rational and secular. A suitable balance between the need and the remedy requires respect for the doctrine of necessity and proportionality.

One of the main objectives of the Human Rights Act, 1993 is to establish the Human Rights Courts at every district level. Section 30 of the Act enables the State Government to specify for each district a Court of Sessions to be a Human Rights Court after the due concurrence with the Chief Justice of the respective High Court. The motive behind the provision is to provide speedy trial of offences arising out of violation of human rights. The creation of Human Rights Courts at the District Level has a great potential to protect and realize human rights at the grass root level. It is pertinent to mention that Calcutta High Court was the first to set up Human Rights Courts in all the Districts of the State to ensure speedy disposal of cases concerning Human Rights. These Courts function from the District Head Quarters under the Principal District & Sessions Judges.

The role of Judiciary is very important to contain the terrorism by ensuring the right of Access to Justice to each and every person, who is basic to the human rights and unless the basic tenets of human rights are preserved, the threat of terrorism cannot be contained.

Today the vast majority of fatal incidents through terrorism are caused by attacks on unarmed civilians who are going around about their peaceful and lawful business. What more fundamental attack on human rights can there be than to deprive the innocent people of their "Right to Life "?

Terrorism Whether Solution Lies With In International Law

The problem of international terrorism increased recently thus the thoughts were given many times to control it.[26] The problem was first time taken up by the 27th Session of the general assembly. International terrorism has in recent times manifested itself in various forms including:

a) Air craft hijacking
b) Kidnapping of diplomatic personnel and other persons and attack on Diplomatic missions.
c) Taking of hostages
d) Terrorism in war of National liberalization
e) Terrorism in Armed conflicts.
f) Nuclear terrorism.

Causes of International terrorism

It is yet another aspect to be scientifically explored; jthe identification of causes of international terrorism may no doubt be time consuming but cannot be avoided.

Although many states in the world are troubled by terrorism. Sufficient collective win has not developed in the international community to take collaborative action against it. There are some govt. and non officials who support it. Their argument is that there are some gouts in the world which employ methods of terrorism against people.

The birth of international terrorism however can be traced back to as early as 1948 when Israel was created through a partition of Palestine and the Palestinian Readers refused to accept the creation of two states. Several Palestinian groups adopted terrorism with the aim of destruction of Israel and the creation of independents state of Palestine, The world

consequently witnessed the rise of terrorism in the middle East Roots of suicide terrorism is a new face of international terrorism.[30] in the current context a no. of causes for terrorism can be identified. In some ways selfish, uncaring behaviour on the part of human beings mirror the adolescent stage of individual where personal concerns or grievances overwhelm people. The shikh noor-ud-din wali has with vehemence, force and stress expressed the idea of surrender of the evil in various modes and these ideas it oft repeated in his poetry.

Instances of International Terrorism

Most organizations that are accused of being a terrorist organization deny using terrorism as a military tactic to achieve their goals and there is no intentional consensus on the bureaucratic definition of terrorism. Therefore, this list is or organizations that are or have been in the part, prescribed as terrorist organization by other organizations including the united nations and national gouts, where the proscription has a significant impact on the group's activities e.g. Al-Qaeda, Jama'atal-Tawhid wa'al-Jahid, Hamas, Hezbollah, Hizbul Mujahideen, Lashkare-Toib,.Uberation Tigers of Tamil JEdam (LTTE) Taliban.

Osama Bin Laden comes from extremely rich capitalist family of Saudi Arabia. The Bin Laden group, which specializes in construction, is an MNC in its own right with projects and offices across the globe.

Solutions Under International Law

The international initiative to prevent and combat terrorism has had a positive impact on the progressive development of some fundamental principles of international law. While some of these had acquired general principles of international law, which some of these had acquired general principles of international law, the international initiatives on terrorism rein forced these principles through an expansion of their scope of application.

Efforts being made by the united nation to meet the menace of International terrorism.

The conventions to be considered in this context are:

(i) Convention on offences and certain other Acts committed on board Aircraft Tokyo September 14th, 1963 (The Tokyo convention).
(ii) Convention for the suppression of the unlawful seizure of Aircraft. The Hague December 16th, 1970 (The Hague convention).
(iii) Convention for the suppression of Unlawful Acts against the safety of civil aviation. Montreal, September 23, 1971 (The Montreal Convention).
(iv) Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents New York, 14th, 1973.

The impact of terrorism on human rights

Terrorism aims at the very destruction of human rights, democracy and the rule of law. It attacks the values that lie at the heart of the Charter of the United Nations and other international instruments: respect for human rights; the rule of law; rules governing armed conflict and the protection of civilians; tolerance among peoples and nations; and the peaceful resolution of conflict. Terrorism has a direct impact on the enjoyment of a number of human

rights, in particular the rights to life, liberty and physical integrity. Terrorist acts can destabilize Governments, undermine civil society, jeopardize peace and security, threaten social and economic development, and may especially negatively affect certain groups. All of these have a direct impact on the enjoyment of fundamental human rights.

The destructive impact of terrorism on human rights and security has been recognized at the highest level of the United Nations, notably by the Security Council, the General Assembly, the former Commission on Human Rights and the new Human Rights Council.

Specifically, Member States have set out that terrorism

• Threatens the dignity and security of human beings everywhere, endangers or takes innocent lives, creates an environment that destroys the freedom from fear of the people, jeopardizes fundamental freedoms, and aims at the destruction of human rights;

• Has an adverse effect on the establishment of the rule of law, undermines pluralistic civil society, aims at the destruction of the democratic bases of society, and destabilizes legitimately constituted Governments;

• Has links with transnational organized crime, drug trafficking, money-laundering and trafficking in arms, as well as illegal transfers of nuclear, chemical and biological materials, and is linked to the consequent commission of serious crimes such as murder, extortion, kidnapping, assault, hostage-taking and robbery;

• Has adverse consequences for the economic and social development of States, jeopardizes friendly relations among States, and has a pernicious impact on relations of cooperation among States, including cooperation for development; and

• Threatens the territorial integrity and security of States, constitutes a grave violation of the purpose and principles of the United Nations, is a threat to international peace and security, and must be suppressed as an essential element for the maintenance of international peace and security.

Conclusion

The guarantee of human rights and protection from terrorism cannot be over-emphasized. Combating and ultimately overcoming terrorism will not succeed if the means to secure that society are not consistent with human rights standards. The fundamental human rights principles that are most commonly engaged in the fight against terrorism. It explains states' obligations in respect of those rights when dealing with terrorism. Counter-terrorism strategies that are compliant with human rights not only avoid certain legal pitfalls, but may also prove more effective in the long term at winning the ideological battle against terrorism than strategies that themselves violate human rights. One of the side effects of terrorist activity and the international response to it has been the tendency to pit the ideas of liberty and security against each other. The notion of human rights protection has often been presented as being in conflict with protection from terrorism.

Nothing could be further from the truth. Human rights instruments are structured to respond to conflict and to provide the mechanisms to ensure peace and stability. The international

human rights framework is therefore applicable in dealing with the terrorist threat, from addressing its causes, to dealing with its perpetrators, to protecting its victims, to limiting its consequences .States have an obligation to provide protection against terrorism. Human rights standards impose positive obligations on states to ensure the right to life, protection from torture, and other human rights and freedoms. Acts of terrorism are likely to infringe on all of the rights that are part of a state's positive duty to protect. This does not necessarily mean that an act of terrorism amounts to a failure to protect by the state. However, if the state fails to take adequate and appropriate measures to protect those rights, the state itself bears some responsibility for the violation. An effective counter-terrorism strategy can therefore be a part of a state's human rights obligations.

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