

REFLECTION OF THE INTERNATIONAL BILL OF RIGHTS IN THE CONSTITUTION OF INDIA: AN ANALYSIS

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Introduction

“The rights of every man are diminished when the rights of one man are threatened.”

— John F. Kennedy

The world witnessed the scourge of two mighty wars in the twentieth century. The massive violations of the human rights of the common man by the State were the laws of the day. The United Nations formed after the Second World War enjoys the laurels of laying down the foundation of the modern human rights treaty regime. There is no provision for the protection of the human rights in the Charter though there is reference to the need for the protection by the UN Bodies. The Universal declaration of the human rights has become the world constitution for the human rights with two specific arms: ICCPR and ICESR. Most of the world nations were not sovereign when the United Nations adopted the UDHR. Despite this, the countries have incorporated the provisions of the UDHR in their respective constitutions.

The aim of the article is to analyse the *influence of the International Bill of Human Rights in the Indian Constitution*. The Indian Constitution being the the world’s longest constitution has an elaborative provisions for the protection of the human rights in the form of the fundamental rights guaranteed under Part III of the constitution. The judiciary also has played significant role in protecting and upholding the fundamental rights’ of the citizens against the state. through the activist role played by the court the ambit of the fundamental rights have been elaborated and many human rights have been included as the fundamental rights under the Part III though there is no express provisions in the part and guaranteed the protection.

The article will begin with brief note on the concept of the human rights and the origin of the human rights with special focus on the United Nations Charter. The idea of the international bill of rights will be analysed by the author. The idea of human rights as reflected by the Indian constitution, the provisions of the Indian constitution for the protection for the human rights, the mechanisms available for the same will also be looked into. The role played by the judiciary, its activist role in protecting the fundamental rights of various sections of the society will be looked into. The treaty obligations of India towards the International human rights regime in the form of the measures taken at the domestic level for the implementation including the institutional mechanism are also included. The author tries to compare the role played by the judiciary and these institutional mechanisms in the human rights protection in the country which will be followed by the conclusions and the suggestions.

Human rights: concept and evolution

Human rights and fundamental freedoms are the birth right of all human beings; their protection and promotion is the first responsibility of Governments.¹ Human rights have roots in the history of mankind yet the term has been used in the international discussions since the formation of the United Nations.² What are human rights? The question is pertinent since there is no clear definition for the term. The concept of human rights, to the core embraces certain universe of values significant to the protection of human dignity which apply beyond the national borders and the cultural divides.³ The human rights derive their content from diverse sources ranging from fundamental moral, ethical precepts of rational thought, religious ideals etc.⁴ The office of the high commissioner of human rights points out that ‘those rights inherent to all human beings, irrespective of the nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. All human beings are entitled these rights

¹ Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on 25 June 1993 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx> assessed on 29 October 2015

² Rhona K. M Smith, *Textbook On International Human Rights* (Oxford University Press 2012), p.5

³ Lillich, Hannum, Anaya and D.Shelton, *International Human Rights, problems of law, policy and practice* (4th edn ,Aspen publishers, 2006)p.2

⁴ Ibid

which are interrelated, interdependent, and indivisible, without any form of any discrimination.’⁵

The existence of a body of basic human rights can be traced back to early 13th century in Europe.⁶ The 1215 Magna Carta contained detailed provisions regarding the human rights like the principle of equality before the law, the right to property, the right to religious freedom despite the fact that the freedoms were meant only for the nobles.⁷ The petition of rights of 1628 and the bill of rights of 1689 are the other two British documents which can be considered as the forerunners of the modern bill of human rights.⁸

Eighteenth century witnessed tremendous progress in the development of the human rights on the shores of the Atlantic. While the west coast saw the American Declaration of Independence (1776), the subsequent Virginia Declaration of rights of 1776, the American Declaration of rights of 1776, on the east there came the landmark French declaration of rights of man and citizen of 1789.

The freedom of religion, due process and the right to fair trial and freedom of property is ensured by the American Bill of rights. The French declaration begins by stating that Men are born, and always continue, free and equal in respect of their rights.⁹ Art 4 defines liberty as one consists in the power of doing whatever does not injure another. The declaration also contains provisions ensuring freedom of speech and expression, the principles of natural justice, rule of law etc.

Following the trend, many Constitutions have incorporated the ideals of human rights like Italian Constitution of 1831, Italian constitution of 1848, the Greek constitution of 1864, the Danish constitution of 1866, the Austrian constitution of 1867, the Spanish constitution of 1876, and Argentinean constitution of 1893.¹⁰

⁵ Office of the United Nations Human Rights Commissioner 'Vienna Declaration And Programme Of Action' (2015) <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>> accessed on 25 October 2015

⁶ Rhona, p.5

⁷ Magna Carta, (The Great Charter) <http://www.constitution.org/eng/magnacar.htm> assessed on 29 October 2015

⁸ Abdulrahim P. Vijapur, *Human Rights In International Relations*, (1st edn, Manak publications, 2010), p.22

⁹ Article 1 of The Declaration of the Rights of Man and of the Citizen, 1789

¹⁰ Vijapur, p.22

In spite of all these developments the world community was shocked to witness the after-effects of the two world wars of 20th Century. The WWI gave rise to the world organisation, League of Nations with the mandate to prevent another war¹¹ however the league failed to prevent another drastic world war which changed the entire history of the World.

The League of Nations was replaced by another international organization, the United Nations. The charter of the united nations was adopted in San Francisco in 1945 , entering into force on 24 October 1945.

The united nations charter begins with words stressing the importance of protecting and preserving the human rights and the world peace-“we the people of the United nations determined to save the succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm our faith *in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations* large and small....have resolved to combine our efforts to achieve these aims....

The aim of development of the protection of human rights is envisaged in Art 1 of the United Nations charter as one of the purposes of the Charter which provides as follows:

- To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;¹²
- To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.¹³

The united nations act as the umbrella for the human rights treaty framework. The international bill of rights is the greatest contribution of the UN to the world community.

¹¹ League of Nations Charter available at http://avalon.law.yale.edu/20th_century/leagcov.asp#art1 accessed on 30 October 2015

¹² Art 1(2) of the United Nations Charter, 1945

¹³ Art 1(3) of the Charter

International Bill of Rights

The United Nations since 1945 has tried to secure the promotion and protection of the Human rights¹⁴. The very significant step in the human rights protection is the adoption of the Universal Declaration of the Human rights in 1948 by the General Assembly.¹⁵ The UDHR was not a legally binding document yet it acted as a role for the new constitutions around the world. The declaration is of high moral value, representing as containing the first internationally agreed definition of the rights of all people in the light of the massive atrocities that was committed against the civilians during the war. The declaration is a comprehensive compendium, drawing together different types of rights emphasising the commonality, interrelatedness and interdependence of all rights which was later reaffirmed in Vienna.¹⁶

The idea of human rights was already in the charter of the League of Nations which ultimately led to the formation of the international labour organisation. The San Francisco conference of 1945 witnessed the proposal for inclusion of the "Declaration on the Essential Rights of Man"¹⁷ but was not accepted. The ECOSOC was requested by the UN preparatory commission in its first session to establish a commission for the promotion of human rights as envisaged under art 68 of the Charter¹⁸. The United Nations General Assembly adopted the draft declaration on fundamental rights and freedoms and asked for the further elaboration on the same which led to framing of an international bill of rights by the formal drafting committee formed thereafter, consisting of members of commission from 8 states, selected with due consideration on the geographical distribution.¹⁹

¹⁴ Rhona, p.37

¹⁵ Universal Declaration of Human Rights, Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948

¹⁶ OCHR, The United Nations Human Rights Treaty System, An introduction to the core human rights treaties and the treaty bodies, Factsheet No.30, p.11

¹⁷ The Foreign Affairs Minister of Panama, Ricardo J. Alfaro, with the support of Cuba, had proposed the inclusion of the 'Statement of Essential Human Rights' produced in 1944 within the American Law Institute.

¹⁸ Article 68 of UN Charter provides: The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.

¹⁹ OCHR, The International Bill of Human Rights, Fact Sheet No.2 (Rev.1)

The International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols.²⁰

The Universal Declaration of Human Rights

The Universal Declaration of Human Rights was adopted and proclaimed by the General Assembly as

“a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among, the peoples of Member States themselves and among the peoples of territories under their jurisdiction.”²¹

The Declaration though a non-binding instrument with moral force only was a remarkable achievement as it marked the first step in the great elocutionary process of the human rights regime.²² The declaration however has received the status of customary international law as observed by Judge Ammoun in his separate opinion on Namibia Case²³ that the provisions of UDHR ‘can bind states on the basis of custom within the meaning of paragraph 1 (b) of the same Article, whether because they constituted a codification of customary law as was said in respect of Article 6 of the Vienna Convention on the Law of Treaties, or because they have acquired the force of custom through a general practice accepted as law, in the words of Article 38, paragraph 1 (b), of the Statute . No state can avoid the impact of the universal declaration.²⁴ The universal declaration is claimed to represent the conscience of the world, to be the

²⁰ Ibid

²¹ Resolution 217 A (III) of 10 December, 1948

²² Speech delivered by the president of the General Assembly. United Nations yearbook <http://www2.ohchr.org/english/issues/education/training/docs/UNYearbook.pdf> assessed on 1 November 2015

²³ Legal Consequences For States Of The Continued Presence Of South Africa In Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970) Advisory Opinion Of 21 June 1971

²⁴ Separate Opinion Of Vice-President Ammoun in Namibia case, para 6.

synthesis, a profession of faith, a common philosophy of human rights and ipso facto a part of the general international law.²⁵

The preamble to the declaration recognises the inherent dignity and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world.²⁶ It also provides that human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.²⁷ The declaration recognises that all human beings are born free and are equal in dignity and rights and are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.²⁸ The declaration bars discriminations based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status in enjoying the rights and freedoms set forth in the declaration. It assures that there shall not be any distinction on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it is independent, trust, non-self-governing or under any other limitation of sovereignty.²⁹ It is a compendium of the basic human rights which includes right to life³⁰ and liberty with prohibition of slavery and slave trade;³¹ right against torture and cruel and inhuman punishment;³² right to equality, recognition before law, to have effective remedy form a competent organ, natural justice;³³ freedom of movement and residence throughout their state; right to a nationality; right to seek asylum from prosecution;³⁴ the rights of the persons in detention and the right to fair trial is also guaranteed.³⁵ The declaration puts obligation on the states not to interfere arbitrarily with

²⁵ Haskar, U, *Minority Protection And The International Human Rights*,(Bombay:Allied,1974),p.36 in Rhona Smith, p.39

²⁶ Universal Declaration of Human Rights,
http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf> assessed on 1 November 2015

²⁷ Ibid

²⁸ Art 1 of the UDHR

²⁹ Art 2 of the UDHR

³⁰ Art 3

³¹ Art 4

³² Art 5

³³ Art 6-10

³⁴ Art 13-15

³⁵ Art 7-11

individual's privacy, home, family, correspondence, and reputation; and provides right to marry to men and women recognizing that family is entitled to respect and protection being the fundamental unit of the society.³⁶ While ensuring the freedom of thought, conscience and religion, opinion and expression, along with freedom of assembly and association;³⁷ the declaration also ensures the individual an adequate standard of living, health, and well being, the right to work, social security, rest and leisure period etc.³⁸ The universal declaration has extensively influence the further developments of the human rights in the world. It had inspired the new constitutions all around the world.

If the provisions of the UDHR possess only morally binding force, the two covenants elaborating the provisions of the declaration –ICCPR AND ICESCR have the binding force on the parties. These Covenants can be claimed to be the kids of UHDR.

International Covenants: ICCPR and ICESCR

The general assembly though its resolution adopting the universal declaration of human rights requested the Economic and Social Council to entrust the Commission on human rights to continue working on the plan of work to give an International bill of rights including the declaration, covenant on human rights and mechanism for implementation.³⁹ The general assembly affirming that enjoyment of civil and political freedoms and of economic social and cultural rights are interrelated and interdependent and when deprived of the economic, social, and cultural rights⁴⁰, man does not represent the human person whom the UDHR regards as ideals of freeman, requested the ECOSOC to ask the Commission on Human rights to prepare two covenants – civil and economic simultaneously.⁴¹ Thus came two covenants; ICCPR and ICESCR with the former containing those rights and freedoms of UDHR as detailed in Art3-21 and the international covenant on the economic social and cultural rights contains the rights and freedoms guaranteed under Art21-27 of UDHR.

³⁶ Art 12 and 16

³⁷ Art 18-20

³⁸ Art 22-27

³⁹ Part F, GA resolution 217(III), 1948

⁴⁰ Part E, GA Resolution 421(V), 1950

⁴¹ GA Resolution 543(VI), 1952

The preambles of both the covenants call upon the state parties under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms. The right to self determination by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development is recognised by Art 1 of the Covenants.

The ICESCR calls upon the parties to undertake steps individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.⁴² Whereas the ICCPR places unequivocal obligation on the contracting parties to undertake to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant.⁴³

The covenants cast an obligation on the state parties to ensure these rights 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.⁴⁴ The state parties are obliged to take adequate domestic measures so as to ensure the people of their country the rights and freedoms guaranteed by the covenants.⁴⁵

ICCPR expands the rights guaranteed under Art 1-21 of UDHR. It ensures right to life,⁴⁶ abolition of death penalty,⁴⁷ right against torture, inhuman and cruel treatment,⁴⁸ abolishment of slavery and slave trade.⁴⁹ The right to liberty⁵⁰ and recognition before law⁵¹ is guaranteed and also ensures that there won't be imprisonment for the non fulfilment of the contractual

⁴² Art 2(1) of ICESCR

⁴³ Art 2(1) of ICCPR

⁴⁴ Art 2(1) of ICCPR and Art 2(2) of ICESCR

⁴⁵ Art 2(2) of ICCPR and art 2(1) of ICESCR

⁴⁶ Art 6 of ICCPR

⁴⁷ Art 6(2)

⁴⁸ Art 7

⁴⁹ Art 8

⁵⁰ Art 9

⁵¹ Art 17

obligation (art11). The right to freedom of thought, conscience and religion,⁵² the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests is also ensured.⁵³ Every person accused of any crime is ensured the right to be presumed innocent until proved guilty according to law.⁵⁴ the rights of children is also given due regard by ensuring that every child shall be registered immediately after birth and shall have a name and also have the right to have nationality under Art 14. The covenant establishes a Commission on human Rights,(now human rights committee since 2006) to ensure the effective implementation of the covenant by the state parties, with the mandate to ask for reports from the state parties, and also to entertain individual complaints.⁵⁵

Whereas the ICESCR expands the rights guaranteed under Art22-27 of the UDHR, Art 6 provides that everyone is entitled to a right to work and earn a living. The states are obliged to fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;⁵⁶ right of everyone to form trade unions and join the trade union of his choice⁵⁷; the right of everyone to social security, including social insurance.⁵⁸ Art 11 recognises the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. It also recognizes the right of everyone to education with primary education shall be compulsory and available free to all.⁵⁹

The united nations have played active role to ensure the implementation of these covenants in spite of the drawbacks and subsequent questions raised upon that. There are other core treaties including CEDAW, CRC, covenant on the migrant workers, person with differential abilities,

⁵² Art 18

⁵³ Art 22

⁵⁴ Art 14(4)

⁵⁵ Art 28-45

⁵⁶ Art 7(a)(1) of ICESCR

⁵⁷ Art 8(1)(a)

⁵⁸ Art 9

⁵⁹ Art 13

torture convention, refugee convention which try to incorporate the special needs of the special category of the people.

India and the Human Rights

Indian constitution is the longest constitution in the world and the most elaborative with originally consisting 395 Articles arranged under 22 parts and 8 schedules. Today the number has gone up to 441 Articles and 12 schedules. Indian constitution being drafted in the twentieth century was influenced by many world constitutions: Federal structure inspired by the American structure, the parliamentary form of the government from the British practice whereas the fundamental rights under part III owe its origin to American Bill of rights, the emergency provisions are taken from Germany. The directive principles of state policy owe its influence on the Irish constitution etc.⁶⁰

Part III of the Constitution guarantees fundamental rights to persons (some are available only for citizens) against the State. Locke opined that man is born with a title to perfect freedom and an uncontrolled enjoyment of all the rights and privileges of the Law of Nature and by nature he has the power to preserve his property-life, liberty, and estate, against the injuries and attempts of other men.⁶¹ The aim of the political association is the conservation of the natural and inalienable rights of man.⁶²

The fundamental rights guaranteed by the constitution are influenced by the American Bill of rights. Art 12 -35 of the Indian Constitution ensures various human rights guaranteed by the UDHR in its most sacrosanct manner. Though there is no explicit implication to the declaration in any of the provisions is the constitution, yet the Supreme Court now follows an approach to evaluate fundamental rights in the light of UDHR⁶³. The court had made reference to the provisions of the International Bill of rights and observed that ‘the applicability of the universal

⁶⁰ M.P. Jain, Indian Constitutional Law, lexis nexis 6th edn 2011, p.10

⁶¹ Extracts from Locke, Two Treatises of government in M.P. Jain, p.897

⁶² Declaration of French Revolution, 17989

⁶³ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597; *M.H. Haskot v. State of Maharashtra*, AIR 1978 SC 1548, *D.K Basu v. Union of India*, AIR 1997 SC 610, *Visakha v. State of Rajasthan*, AIR SCW 3043 etc

declaration of human rights and the principles thereof may have to be read, if need be, into the domestic jurisprudence.’⁶⁴

Indian constitution guarantees the essential human rights in the form of Fundamental Rights under part III and Directive principles of State Policy under Part IV which are fundamental in the governance of the country. The civil and political rights are guaranteed by Part III and the socio economic and cultural rights are guaranteed by part IV. The Supreme Court has interpreted the provisions of this part in the liberal way with the object of keeping the citizens at the centre and to make the state accountable for the acts.⁶⁵ Art 51(a) of the Constitution provides that state promises to ‘endeavour to promote international peace and security.’ DD Basu opines that though the provisions speak of duty to promote international peace, that very concept today presupposes a regard for human rights and human dignity as the foundation for a universal brotherhood of men, can prevent armed conflicts between nations.⁶⁶

The author confines to how the judiciary has interpreted these parts in the light of the International Bill of Human Rights. Art 32 of the Constitution guarantees the citizens of India the fundamental right to approach the Supreme Court in case of Violation of the Fundamental right.⁶⁷

⁶⁴ *Chairman , Railway Board v. Chandrima Das*, AIR 2000 SC 988

⁶⁵ *Peoples Union for Civil liberties v. Union of India*,(2005) 2 SCC 436

⁶⁶ DD Basu, commentary on the constitution of India, Wadwa Nagpur, 8th edn,2007, P.634

⁶⁷ Article 32 in The Constitution of India 1949

32. Remedies for enforcement of rights conferred by this Part

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part

(3) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2)

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution

The preamble to a statute is the key to the minds of its framers. The preamble of Indian constitution points that the sovereignty lies with the state. Preamble declares India to be sovereign, socialist, secular democratic republic and ensures the secure to all its citizens, social, economic and political justice; liberty of thought, expression, belief, faith and worship; equality of status and opportunity, and to promote among them fraternity so as to ensure the dignity of the individual and the unity and integrity of the nation.

Part III guarantees the most fundamental rights of equality, equal protection of law regardless of any discrimination on the basis of caste, colour, sex, religion, place of birth, residence, and language, ensures equality in public employment, abolishes untouchability, ensures freedom of speech and expression, right to form association etc , right to life and liberty, religious freedom , right against bonded labour, right against self-incrimination ,right to approach the court for the protection of fundamental rights etc. constitution also ensures equal pay for equal work etc.

India became party to the covenants by ratifying them on March 27, 1979 but has not ratified the optional protocols yet. Though all the rights ensured by the international bill of rights are not expressly provided under the Indian Constitution, yet the judiciary under Art 32 of the Constitution has widened the ambit of the fundamental rights.

Maneka Gandhi v union of India is a turning point in the legal history of India. The court gave a wide interpretation to the word life in the case. Thereafter many cases witnessed the broader interpretation of the word. In *Francis Coralie v Delhi*,⁶⁸ Bhagwati J observed that right to life includes the right to live with human dignity and all that goes with it including the bare necessities of life like adequate nutrition, clothing, shelter etc.

In *Shantisar Builders v Narayanan Khimala Toatame*,⁶⁹ the right to life under article 21 would include the right to food, clothing, decent environment and reasonable accommodation to live in.

⁶⁸ AIR 1981SC 746

⁶⁹ (1990) 1 SCC 520

In *DBM Patnaik v State of Andhra Pradesh*,⁷⁰ the court held that a convict is not denuded of all Fundamental rights imprisonment after conviction is bound to curtail some of his rights but he could not be deprived of his life or personal liberty except according to the procedure established by law.

The criminal justice system has undergone a tremendous change post Maneka. The court in *Jayendra Vishnu Thakur v State of Maharashtra*⁷¹ observes that art 21 ensures a fair trial, a fair procedure and a fair investigation. The accused has the right to be informed about the fundamental and statutory rights. In *State of Punjab v Baldev Singh*,⁷² the court held that conviction resulting from an unfair trial is contrary to our concept of justice. The juvenile enjoys the right to have a fair trial under the juvenile justice act as held in *Pratap Singh v State of Jharkhand*⁷³.

The right to speedy trial is not explicit in the constitution or the criminal procedure code. But the supreme court has now given the verdict that the speedy trial is a part of Art 21 in *Hussainara Khartoum v Home secretary, Bihar*⁷⁴, by observing that no procedure which does not ensure a reasonably quick trial cannot be regarded as 'reasonable, fair or just and it would fail the purpose of art 21. In *Khatar Singh v State of Punjab*,⁷⁵ the court held that concept of speedy trail is a part of art 21.

In *Khatri v State of Bihar*,⁷⁶ it was held that states cannot avoid its obligation of providing free legal services to the poor accused by pleading financial inability which will violate the person's fundamental rights.

Handcuffing is held to be prima facie inhuman and unreasonable and arbitrary in *Prem Shankar v Delhi administration*⁷⁷, Justice Krishna Iyer opined that art 21 now the sanctuary of human

⁷⁰ AIR 1974 SC 2092

⁷¹ (2009) 7 SCC 104

⁷² AIR 1999 SC 2378

⁷³ AIR 2005 SC 2371

⁷⁴ AIR 1979 SC 1360

⁷⁵ (1994) 3 SCC 569

⁷⁶ AIR 1981 SC 928

⁷⁷ AIR 1980 SC 1535

values prescribed fair procedure and forbids barbarities, punitive or procedural.. The Supreme Court has stressed that the police torture is disastrous to our human rights awareness and humanist constitutional order in *Raghubir Singh v State of Haryana*.⁷⁸The Supreme Court has given directions to ensure protection against torture and maltreatment of women in police locks up in *Sheila Barse v.State of Maharastra*⁷⁹

In *DK Basu v State of West Bengal*,⁸⁰ the Court observed that the custodial violence strikes the blow at the rule of law. It is therefore the sacred duty of the Court as the custodian and protector of the fundamental and basic human rights of citizens to deter violations of the human rights through police lock ups.

Besides the criminal justice the Supreme Court also has extended the fundamental rights in other spheres too. In *Chameli Singh v State of Uttar Pradesh*⁸¹, it was held that need for a decent and civilised life includes the right to food, water and decent environment. The most innovative and landmark judgement came in *Visakha v State of Rajasthan*,⁸²when the court declared sexual harassment of a working women at her place of work as amounting to violating the rights of gender equality and right to life and liberty which is a clear violation of Art 14, 15 and 21 of the constitution. The court here accepted the proposition that the international conventions and norms are to be read into fundamental rights when there is no inconsistency between them and there is a void in the domestic law.

The court has upheld the right to privacy in *Kharak Singh v State of U.P*⁸³. In *PUCL v Union of India*,⁸⁴ the Court has implied the right to privacy from Art21 by interpreting it in conformity with Art 12 of UDHR and Art 17 of ICCPR.

The list is not ending here but it is expanding. Many human rights in the constitution falls under the ambit of part IV-directive principles of state policy. The Supreme Court has also provided

⁷⁸ AIR 1980 SC 1087

⁷⁹ AIR 1988 SC 378

⁸⁰ AIR 1997 SC 610

⁸¹ AIR 1996 SC 1051

⁸² AIR 1997 SC 3011

⁸³ AIR 1963 SC 1295

⁸⁴ AIR 1997 SC 568

that the fundamental rights and the directive principles of state policy should be interpreted harmoniously in *Kesavanand bharti v State of Kerala*.⁸⁵

In *Consumer Education and Research Centre v Union of India*,⁸⁶ it was held that right to health and social justice to be fundamental right of the workers. It is the obligation of the employer to protect the health and vigour of his employee workers. The court has derived this right by reading art 21 with art 39(e), 41 43 and 48 A.

Equal pay for equal work is not expressly declared by the Constitution as a Fundamental right but in view of the Directive principles of state policy, it has become now a fundamental right.⁸⁷ Right to education implicit in art 21 is to be spelled out in the light of DPSP contained in Art 41 and 45 as pointed out in *Unnikrishnan v State of Andhra Pradesh*.⁸⁸ Later the right to education has itself become fundamental right under Art 21 A by the constitutional amendment.

The Supreme Court has thus upheld the fundamental human rights in many cases. These are only a few instances. The list is not exhaustive. The Supreme Court has exercised their jurisdiction under Art 32 of the Constitution.

Institutional body

National and the state human rights commission

India enacted a National Human Rights Act in 1993. National Human Rights Commission is a statutory body under the Act. The act was enacted to implement the international obligation of the country with respect to the human rights covenants. The Act establishes National human

⁸⁵ .AIR 1958 SC 966

⁸⁶ AIR 1995 SC 992

⁸⁷ *Grih Kalyan Kendra v Union of India*, AIR 1991 SC 1173

⁸⁸ AIR 1993 SC 2178

rights commission, the state human rights commissions and the human rights courts for the protection of human rights.⁸⁹ The national human rights commission shall consists of⁹⁰

- (a) A Chairperson who has been a Chief Justice of the Supreme Court;
- (b) One Member who is or has been, a Judge of the Supreme Court;
- (c) One Member who is, or has been, the Chief Justice of a High Court;
- (d) Two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

The functions of the national human rights commission is as follows:⁹¹

(a) Inquire, suo motu or on a petition presented to it by a victim or any person on his behalf or on a direction or order of any court, into complaint of

- violation of human rights or abetment thereof; or
- negligence in the prevention of such violation, by a public servant;

(b) Intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;

(c) visit any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations thereon to the Government;

(d) Review the safeguards provided by or under the Constitution or any law for the protection of human rights and recommend measures for their effective implementation;

⁸⁹ Jain, p.1478

⁹⁰ Section 3(2) of the Human Rights Act 1993

⁹¹ Section 12 of the Act

http://nhrc.nic.in/documents/Publications/TheProtectionofHumanRightsAct1993_Eng.pdf accessed on 2 November 2015

- (e) Review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures;
- (f) Study treaties and other international instruments on human rights and make recommendations for their effective implementation;
- (g) Undertake and promote research in the field of human rights;
- (h) Spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;
- (i) Encourage the efforts of non-governmental organisations and institutions working in the field of human rights;
- (j) Such other functions as it may consider necessary for the protection of human rights.

What are human rights? Section 2(d) defines human rights as: “human rights” means 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 commission is authorised to take any of the following steps on the completion of an inquiry:⁹²

- a) where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights or abetment thereof by a public servant, it may recommend to the concerned Government or authority to make payment of compensation or damages to the complainant or to the victim or the members of his family as the Commission may consider necessary; to initiate proceedings for prosecution or such other suitable action as the Commission may deem fit against the concerned person or persons
- (b) Approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;

⁹² Section 18 of the Act

(c) Recommend to the concerned Government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;

(d) Provide a copy of the inquiry report to the petitioner or his representative;

(e) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;

(f) The Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.

Section 21 deals with the constitution of state human right commissions. The Act also has the provision for the constitution of Human Right court for the speedy and effective trial of the human rights violations.⁹³ The Commission shall submit an annual report to the Central Government and to the State Government concerned and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report and the government shall place the report before the Concerned legislature.⁹⁴

In spite of all these, the question here is what the practical role is played by these human rights commissions. The statistics of the cases in the judiciary will clearly specify that even after the Act came into being the Supreme Court still is the Guardian of Fundamental rights in India. I do not hold the opinion that the Act is not essential but if the same has the mandate of protection

⁹³ Section 30. -For the purpose of providing speedy trial of offences arising out of violation of human rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights Court to try the said offences.

Provided that nothing in this section shall apply if : (a) a Court of Session is already specified as a special court; or (b) a special court is already constituted, for such offences under any other law for the time being in force

⁹⁴ Section 20 of the Act

of the fundamental human rights, it should have tooth and nail strong enough to deal with these violations rather than mere recommendatory role. The government should strengthen the same since the Act was enacted in consonance with the international obligation and the international pressure which arose from it.

Thus international bill of rights is really a role model for the constitutions. However when we celebrate the 70th anniversary of the United Nations, there are many questions which remain unanswered:

- Why the human rights convention used the word “fundamental rights guaranteed by the constitution or the law” to avail the judicial protection in Art 8 when it talks about the human rights as such in the declaration?
- Why United Nations is helpless or what they have done so far to prevent the human right violations in former Yugoslavia, Rwanda, Sudan, Libya etc?
- Why most of the human rights violations are in African Continent and why most cases in ICC is from there?
- Why can't we have an international court for human rights like International criminal court?

Turning now to the Indian aspects, there remains many questions to be answered;

- In spite of all these provisions, why the crimes against women in India is increasing?
- Is justice available to the downtrodden?
- Why is not possible in India even after years of independence unable to remove caste system and untouchability when the constitution has provisions against the same?
- What is the role played by the national and the state commissions in preventing human rights violations?
- What is the role played by the human rights court; if there are such courts being established?
- Why the army people are violating human rights in North east and Kashmir and what steps can be taken to prevent the same?
- Why do we need special provision to deal with army people when the human rights violated are same everywhere if it is by a civilian or army personnel?

- Is denial of right to participate in the decision making in case of environmental matters affecting the public a violation of human right?

The country has indeed made progress in the situations after independence. But the human rights violations are still rampant in many parts of the country. The situation of women, girl child and the downtrodden is pathetic even in this 21st century. The right to education being a fundamental right is still unavailable to many. The caste system, untouchability, communal riots, terrorism need to be tackled. The state should take effective steps in implementing the existing frame work available for the protection of the human rights rather than making laws. The focus should be strengthening the mechanism in consonance with the international standards by bringing forth the violations of the human rights and taking effective measures in preventing it.

