DEFINITION OF HUMAN RIGHTS: A CRITICAL ANALYSIS

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INTRODUCTION

Human rights are a demand for recognition and respect for certain rights recognized as human rights by several international instruments like Universal Declaration of Human Rights, International Covenants on Civil and Political Rights etc. but the concept of human rights changes domestically as per the position of sovereign states. The constitutional approaches to incorporating international law often refer to 'monist' and 'dualist' theories concerning the relationship between international law and national law.[1] Monist theories imagine a unitary world legal system in which national and international law have 'comparable, equivalent, or identical subjects, sources, and substantive contents.'[2] For example, the Dutch Constitution of 1983 under Art.93 provides for monist approach. Dualist theories distinguish between the system or public order of international law and of national law. Each has 'its own distinguishable subjects, distinguishable structures and processes of authority, and distinguishable substantive content'.[3] For example, in the United Kingdom, there is no specific definition of human rights but the incorporation of human rights is by bringing a law in the United Kingdom law and giving the instrument enforceability by bringing a law in the territory. The Human Rights Act, 1998 gives effect to the European Convention on Human Rights in United Kingdom a charter or bill of rights for the first time.[4] The Act does not set out a new list of rights: rather, it lists the Convention rights to which its provisions are to apply and provides for them to be given domestic effect.[5] Section 6 of the said Act just provides its

[1] Henry J. Steiner, Philip Alston, *et. al., International Human Rights in Context Law Politics Morals* 1096 (Oxford University Press, New York, 3rd edn., 2007).
[2] Myres S. McDougal, "The Impact of International Law upon National Law: A Policy-Oriented Perspective", *SDKL* 27-31 (1959).
[3] Henry J. Steiner, Philip Alston, *et. al., International Human Rights in Context Law Politics Morals* 1097 (Oxford University Press, New York, 3rd edn., 2007).
[4] Lord Mackay Of Clashfern, *Halsbury's Law of England* vol. 88A, 20 (Lexis Nexis, London, 5th edn. , 2013).
[5] *Ibid*.

binding effect on public authorities but the convention has not been given a legal status, only the rights have been enlisted as provided under the Convention for the purpose of the said Act. There are several conventions and covenants according to which the contracting parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the conventions and covenants. India, a sovereign state is no different to others and follows the dualist approach and so the concept of human rights in India is not the same as provided under the international instruments together. Human rights in India are defined under *Section 2 (1) (d)* of the *Protection of Human Rights Act, 1993*(hereinafter referred as the "*1993 act*").

The definition has neither been elaborated by the Union legislator during the Parliamentary debates when the Bill was open for discussion nor been discussed before the court of law comprehensively till date.

To understand the definition better we need to bifurcate the definition in two parts. One part deals with "the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution" and "the other part dealt with the rights embodied in the International Covenants and enforceable by courts in India. The two main halls of the definition have limited the definition of human rights in India. The *1993 act* definition puts in the exhaustive list of human rights by using the word "means" which shows the prima facie restrictive and exhaustive intention of the legislation but the use of the words "relating to" creates confusion as the word "means" shows the provision to be exhaustive but words "relating to" shows inclusive nature of the provision.

The incorporation of human rights in India is basically by the constitutional recognition of rights as provided under part-I of the definition and by legislative reform as provided under part-II in the definition. The assignment tries to define the first part by basically referring to the rules of interpretation of the relevant Constitutional provisions and the Supreme Court's judgments and the second part by looking into the practices of implementation of human rights instrument in India by reading the legislative reforms and tries to open the folders of human rights which the definition covers.

CONSTITUTIONAL RECOGNITION OF HUMAN RIGHTS

"Human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution."

The first part of the definition basically refers to the Constitutional recognition of human rights which fall under the category of the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution. To this category belong South Africa's 1993 and 1996 Constitutions, Brazil (most of the treaties, especially CESCR; also CRC even before it was ratified); Finland (when the bill of rights was changed in 1995, the treaties were clearly influential in the drafting, to the extent that the specific wording was followed).[6]

Use of the words "means" and "guaranteed"

- The legislature has power to define a word artificially.[7] So the definition of a word in the definition section may either be restrictive of its ordinary meaning or it may be extensive of the same.[8] Here by using the word "mean", the definition is being kept restrictive and exhaustive. The Coram of three judges of Supreme Court in *Vanguard Fire and General Insurance Company Limited, Madras* v. *Fraser and Ross*[9] stated "when a word is defined to 'mean' such and such, the definition is prima facie restrictive and exhaustive." This shows that the intent of the legislature was to define human rights in a restrictive and exhaustive manner.

- The word "guaranteed" can be understood by referring to the case *Beenu Rawat* v. *Union of India*[10]in which the full bench of three judges of the Supreme Court stated that under the 1993 Act the definition of "human rights" is large enough to include rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution. The single judge bench of the Supreme Court in the case of *Murlidhar*

[6] Henry J. Steiner, Philip Alston, *et. al., International Human Rights in Context Law Politics Morals* 1090 (Oxford University Press, New York, 3rd edn., 2007).
[7] Kishanlal v. State of Rajasthan, AIR 1990 SC 2269, p. 2270 : 1990 Supp SCC 742.
[8] Jusice G. P. Singh, *Principles of Statutory Interpretation* 179 (Lexis Nexis, Gurgaon, 2014).
[9] AIR 1960 SC 971.
[10] (2013) 16 SCC 430.

> *Dayandeo Kesekar* v. *Vishwanath Pandu Barde*[11] stated that Economic empowerment to the poor, Dalits and Tribes, is an integral constitutional scheme of socio-economic democracy and a way of life of political democracy. Economic empowerment is, therefore, a basic human right and a fundamental right as part of right to live, equality and of status and dignity to the poor, weaker sections, Dalits and Tribes.

There is neither a judgment by the Supreme Court nor any debate in the Parliament can be found on whether the words guaranteed in the Constitution includes Constitutional rights or not but the use of the same under *Article 32* of the *Constitution* which is only in the context of *Part III*, so this can be indicative of the fact that the words 'guaranteed by the Constitution', in this definition only includes *Part III*.

The word "guaranteed" used in *s. 2(1) (*d) also includes constitutional right like that of *Article 300A* of the Constitution or not was settled by the single judge bench of Bombay High Court in *Maharashtra Housing and Area Development Authority* v. *Maharashtra State Human Rights Commission*[12]in which the question before the Court was whether It would be rights of humans relating to their life, liberty, equality and dignity as against the rights with regard to their properties. The Court stated that the right to property is now a constitutional right by virtue of the 44th amendment and hence the allotment of a house could not be claimed as a it was not a violation of the right to live a life with dignity under *Article 21*. Also if we refer to *Article 32* of the *Constitution* an analogy can be built by reading the provisions which refers to the word "guaranteed" which is in reference to *Part-III* of the Constitution which means that by use of the word "guaranteed itself" provides protection before the court.

Use of the phrase "rights relating to"

We also need to contrast the phrase "rights relating to" which also forms the core of the first part. The phrase on the one side was purposively used by the legislator because they did not only want to provide right to life, liberty, equality and dignity but also the creative rights which would fall under them as per the interpretation by the judiciary. By using "relating to" the legislature has widened the box to accommodate creative rights as interpreted by the judiciary

[11] 1995 Supp (2) SCC 549.
[12] 2010(3) Mh.L.J.

within the meaning of above three. On the other hand the*1993 act* definition puts in the exhaustive list of human rights by using the word "means" which shows as held by the division bench of the Supreme Court in *Commissioner of Trade Tax U.P.* v. *Kajaria Ceramics Limited*[13] the prima facie restrictive and exhaustive intention of the legislation.

- Use of the words "life, liberty, equality and dignity of the individual guaranteed by the Constitution" puts in that every creative rights incorporated by judiciary under the heads life, liberty, equality and dignity of the individual in the Constitution will be considered as human rights. For example, right to livelihood, right to food etc.
- Use of the word 'individual' also puts in that these rights are to be granted to individuals, that is, human rights are individual rights.

Example of human rights under the first part: *Right to marry* is a human right as provided under *UDHR Article 16, ICCPR Article 23, ICESCR Article 10* which is backed in India by *Article 21* of the Constitution of India which puts it as a competent right under this article. The division bench of the SC *in Lata Singh* v. *State of Uttar Pradesh*[14] held that

"This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste marriage the maximum they can do is that they can cut off social relations with the son or daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter caste marriage" which supports it as a human right.

LEGISLATIVE RECOGNITION OF HUMAN RIGHTS

"Embodied in the International Covenants and enforceable by courts in India"

This part of the definition basically refers to the legislative reforms that are prompted by the conventions and covenants, to which; the States are the contracting parties. To this category

[13]AIR 2005 SC 2968(paras 65,66).
[14]AIR 2006 SC 2522.

belongs Australia (Human Rights and Equal Opportunities Act, 1986 was a legislative reform to bring the rights under CERD, CCPR and CRC under the perimeter of domestic law), Brazil (Children's and Adolescents' Statute was brought to implement the rights under CRC), South Africa (Equality Bill was brought to implement the rights under CERD and CEDAW), etc.

This part of the explanation can be explained by making reference to section 2(1) (f) of the 1993 act as it defines "international covenants". *Section 2(1) (f)* states "International Covenants" means 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 the 16th December, 1966 and such other Covenant or Convention adopted by the General Assembly of the United Nations as the Central Government may, by notification, specify." Here also, the word 'means' is used which again shows the restrictive intent of the legislature.

Section 2(1) (f) uses '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 the 16th December, 1966 which makes it clear that every right under both the covenants are human rights in India. But the later part of the section which states "such other Covenant or Convention adopted by the General Assembly of the United Nations as the Central Government may, by notification, specify" means that every covenant or convention adopted by the General Assembly of the United Nations would not be human rights in India. Only those Covenants or Conventions would be human rights in India which has been signed and ratified by India and notified by the government. Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule. When it comes to International law and foreign affairs all the relevant entries are there in List I. The most relevant entries in this regard are 13 and 14 which deal with entering into and enforcing foreign decision, treaties etc.

In the Constituent assembly debates amendments to current *entry 13* and *14* of *List I* of the *Seventh schedule* was put forth but both were negative[15].

[15] CAD Vol. VIII Monday, 13th June 1949.

The entire debate on the Amendments on these two Items revolved around the power of the Parliament to legislate even in the matters which formed the part of State list. There was no debate as to what type of treaties will need a legislation for their implementation in India and what happens if the Parliament does not enact a law once the treaty is entered into. It would seem that it was accepted during the debate that any treaties and agreement entered with foreign countries will be brought before the Parliament for their implementation so as to afford an opportunity parliament to deliberate upon the need of the implementation of the treaty. However, as is apparent no provision was added in the constitution was added to give effect to above safeguard. Thus, reading Art. 246 read with entry 14 makes it clear that the treaty making and implementing power comes within the purview of Parliament and not the executive.

The status list of India is as follow[16]:-

i. *Acceded Conventions*: International Covenant on Civil and Political Rights (ICCPR), 1966, International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, Convention on the Rights of the Child (CRC), 1989.

ii. *Ratified convention:* Convention on the Rights of Persons with Disabilities (CRPD), 2006, Optional Protocol to the Convention on the Rights of the Child (CRC) on the Involvement of Children in Armed Conflict, 2000, Optional Protocol to the Convention on the Rights of the Child (CRC) on the Sale of Children, Child Prostitution and Child Pornography, 2000.

iii. *Ratified but with restrictions:* International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979.

iv. *Signed but not ratified:* Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984, International Convention for the Protection of All Persons from Enforced Disappearance (ICPAPED) 2006.

[16] India Ratification Status, *available at*: http://nhrc.nic.in/documents/india_ratification_status.pdf *(last visited on January 12, 2017).*

Domestic enforcement of human rights convention, how to do? Cite more authority, may be Prof Manoj Sinha or from oxford, UN etc

The ratified covenants and conventions when notified would be human rights in International Covenant that can be enforceable by Courts in India, for example:[17]

i. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979 was notified by the GOI on 18 September 2009 via Notification Number 1494 under S.O.2397 (E),
ii. Convention on the Rights of the Child (CRC), 1989 notified by the GOI on 18 September 2009 via Notification Number 1494 under S.O.2397 (E) etc.

Power of Legislator to make law for implementation of international documents on human rights:

Beside the Constitutional recognition of rights provided under human rights documents, there are numerous instances of legislative reform done by the respective legislators of the States. The domestic approach of the legislators may vary as per the domestic approach of the respective States. In the United States, international treaties require ratification by Congress after the treaty has been signed by a member of the executive branch of the American government. But once the treaty is ratified it is fully enforceable in their domestic law.[18] Implementation of international human rights law in the Canadian law, international human rights law is affected by the division of powers between the federal and provincial governments provided for in sections 91 and 92 of the *Constitution Act, 1867*. This clearly includes most of the subject matter of the instruments noted in Appendix 1 and is the Constitutional authority for provincial human rights codes. The power to negotiate and conclude treaties, however, is a uniquely federal domain.[19]

In India, Article *253* confers powers on the Indian Parliament to make any law for the whole or any part of the country to give effect to any International Treaty, Agreement, Convention or decision. Though the power to sign and ratify an international treaty lies with the Executive,

[17] J P Meena, B S Nagar, *et.al. A Handbook on International Human Rights Conventions 264(National Human Rights Commission, New Delhi, 1st edn., 2012)*
[18] L.H. Tribe, *American Constitutional Law*, 225-230 (New York: Foundation Press, Mineola, 2nd edn. 1988).
[19] R.M. Dawson, *The Government of Canada, 96-98* (University of Toronto Press, Toronto, 5th edn.1970).

the implementation of such treaties falls under the domain of Parliament as explicitly provided under *Article 253*. This shows that in India neither the instrument is enforceable merely India being a member of a human rights' instrument, that is, only by ratification as in the United States of America nor in India, the state has the power to bring a law on it as in Canada. Also, *Article 51* directs the state to 'endeavour to' 'foster respect for international law and treaty obligations.' On the one side they get the power to bring law to enforce international document from Article 253, on the other side they need to follow fundamental principles enshrined under Article 51 (c) as Directive Principles for State Policy. In the case of *National Legal Services Authority* v. *Union of India*[20], the Coram of two judges of the Supreme Court observed that:

"Article 253 of the Constitution of India states that the Parliament has the power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention. Generally, therefore, legislation is required for implementing the international conventions, unlike the position in the United States of America where the rules of international law are applied by the municipal courts on the theory of their implied adoption by the State, as a part of its own municipal law." The court further stated that "Article 51, as already indicated, has to be read along with Article 253 of the Constitution. If the parliament has made any legislation which is in conflict with the international law, then Indian Courts are bound to give effect to the Indian Law, rather than the international law. However, in the absence of a contrary legislation, municipal courts in India would respect the rules of international law."

Also, the full bench of three judges of the Supreme Court took recourse to International Convention for the purpose of the construction of domestic law in the *Visakha vs. State of Rajasthan*[21], the Court observed as follows:

In the absence of domestic law occupying the field to formulate effective measures to check the evil of sexual harassment of working women at all work places, the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1) (g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. Any international convention not inconsistent with the fundamental rights and in harmony with its spirit must be

[20] (2014) 5 SCC 438.
[21] AIR 1997 SC 3011.

read into those provisions to enlarge the meaning and content thereof, to promote the object of the Constitutional guarantee.

On the other hand, there is no specific law in India that deal with treaty making power. The treaty making power in India exists with the Executive as under Article 73 the executive power of the Union extends to all matters in respect of which the Indian Parliament may make laws and to the exercise of all powers that accrue to the Government of India from any International Treaty or Agreement. It is pertinent to note that executive power has to be exercised in accordance with Constitution and the laws. Parliament can control the treaty making power of the executive by enacting a law under *Article246* read with *seventh schedule list I Entries 13 and 14* of the Constitution. However, till date no law is passed to this effect. The result is that the Union Executive enters into international treaties by exercising power under Article 73 and simultaneously a law can be passed by the Parliament for the implementation of the same. The legislation passed by the Parliament may also encroach upon the state subjects but can't be questioned.

Power of Judiciary to make law for implementation of international documents on human rights:

In some isolated instances, treaties have been used as an independent basis on which the substantive outcome of cases in domestic courts has hinged. The courts in several countries have used the international instruments as interpretive guides to clarify legislative provisions. For example, treaties have been used as the basis for substantive outcomes in Estonia (CRC) and Japan (CCPR was held to be self-executing)[22].

Also, if we talk about "enforceable by courts in India", it means that a law also declared by Supreme Court shall be enforceable by all the Courts within the territory of India as provided under Article 141 of the Constitution of India. So, human rights under any international covenant or convention which is ratified by India but no law is passed by the union legislator, then if Supreme Court validates that human right as part of human rights in India, it would fall in the category of human rights in India. To understand the above argument, we need to go in

[22] Henry J. Steiner, Philip Alston, *et. al., International Human Rights in Context Law Politics Morals* 1091 (Oxford University Press, New York, 3rd edn., 2007).

the history of Article 51 by referring to the Constitutional Assembly Debates. Article 51 of the Constitution had its source and inspiration in the Havana Declaration of 30 November 1939. The first draft (draft Article 40) provided: [23]

The state shall promote international peace and security by the prescription of open, just and honorable relations between nations, by the firm establishment of the understandings of International Law as the actual rule of conduct among governments and by the maintenance of justice and scrupulous respect for treaty obligations in the dealings of organized people with one another.

With the acceptance of amendments moved by Dr. Ambedkar, H.V. Kamath, Ananthasayanam Ayyangar and P. Subbarayan, draft Art. 40 were adopted by the Constituent Assembly in its present form as Article 51. During the debate, all the speakers emphasized commitment of India to promoting International Peace and Security and adherence to principles of International Law and Treaty obligations. The Supreme Court has expanded the provisions of municipal law on several occasions by incorporating certain principles of international instruments, of which, India is a party by interpreting Article 51(c) as held in *Visakha vs. State of Rajasthan:*[24]

"In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all work places, the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15 19(1) (g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee."

The above judgment states that the Supreme Court can adopt measures to implement international treaties, which are consistent with domestic laws, even when parliament has not

[23] Subhash C. Kashyap, The constitution of India and International Law', Bimal N. Pate l (ed.), 'India and International Law', (Martinus Nijhoft Publishers, Leiden, 2005)

[24] AIR 1997 SC 3011.

enacted a legislation giving 'effect' to such an international treaty. This shows that on certain occasions a human right is created even if the legislator has not passed a law regarding that as provided under Article 253. In *Nilabati Behera* v. *State of Orissa*[25],

The Coram of two judges of the Supreme Court invoked Ar. 9(5) of ICCPR[26] for the purpose of granting compensation in a writ petition for violation of the fundamental right under article 21.

This holding was reaffirmed and followed in *D.K. Basu* v. *State of W.B.* [27]and *People's Union for Civil Liberties* v. *Union of India*[28].

Also, if the judiciary does this whether the executive directly without any law can be right in adopting measures to implement international treaties, which are consistent with domestic laws, even when parliament has not enacted a legislation giving 'effect' to such an international treaty? That is, the guidelines in *Visakhas* case could be given by executive. Also, the provisions of Article 51 is a part of DPSP, that is, fundamental in law making which is to be followed by the legislator in law making, administration and judiciary in judicial law making. In *Keshavananda Bharati* v. *State of Kerala*[29], the Supreme Court stated that

"Primarily the mandate in Art. 37 are addressed to the Legislatures, but, in so far as courts of justice can indulge in some judicial law-making, within the interstices of the Constitution or any statute before them for construction, the courts too are bound by this mandate".

This means that there can be certain human rights which can be incorporated by the judiciary from the contents of International Conventions and norms which are significant for the purpose of interpretation of the guarantee of certain established rights whether it's a legal or constitutional or fundamental rights. This approach is indeed what India argued in the WTO

[25] AIR 1993 SC 1960.
[26] Art. 9(5) provides that: Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

[27] AIR 1997 SC 610.
[28] AIR 1997 SC 1203.
[29] (1973) 4 SCC 225.

Solar Panel case[30] against the US, decided recently. Citing the jurisprudence of its own Supreme Court, India argued that 'legislative action to incorporate an international instrument is required only when there is "conflicting" domestic legislation'. But the question is till what extent the judiciary can incorporate from the contents of International Conventions and norms which are significant for the purpose of interpretation of the guarantee of certain established rights whether it's a legal or constitutional or fundamental right is a question to be answered. For example, there are several occasion where judiciary has referred to the international documents, to which, India is not a party and have incorporated certain rights.

The Coram of two judges of the Supreme Court in *G. Sundarajjan v. Union of India*[31] referred to the profit to the Joint Convention on the Safety of the Spent Fuel Management and on the Safety of Radioactive Waste Management dated 5th September, 1997 to which India is not a signatory. The Supreme Court stated India is not a signatory but the said convention is worth referring to in order to understand and appreciate the concern for public safety. They referred to Articles 4, 11, 15, 22 and 23 and further held that India has not ratified the said convention but the safety concern at any level is a fundamental human concern. Further the division bench of the Supreme Court in *NALSA* v. *Union of India*[32] referred to the Convention against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment, 2008 and quoted Para 21 of the Convention which states "that States are obliged to protect from torture or ill-treatment all persons regardless of sexual orientation or transgender identity and to prohibit, prevent and provide redress for torture and ill-treatment in all contests of State custody or control."

These cases show that there can be human rights incorporated in the definition of human rights by judicial activism, that is, what should have been in part-II of the definition by bringing a law by the legislator is now a part of invented rights by interpreting the phrase "rights the life, liberty, equality and dignity" under the part-I.

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[30] **India — Certain Measures Relating to Solar Cells and Solar Modules,** *available at*: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds456_e.htm (last visited on January 12, 2018).

[31] (2013) 6 SCC 620.
[32] (2014) 5 SCC 438.

CONCLUSION

There is no specific definition of human rights in the domestic laws of the States. However, India is an exception to it but India has left several ambiguities while defining human rights. Other States incorporate certain convention and covenant rights at the normative level by enlisting the existence of the respective rights but they don't provide specific definition of human rights. Section 2 (d) of the 1993 Act defines human rights but the definition in itself not tells about human rights rather it tells which rights can be enlisted as human rights in India. The only difference is that we have provided a category of rights which can be termed as human rights.

The question is that whether the category of human rights is comprehensive enough to cover the broad concept of human rights. The Coram of two judges of the Supreme Court in *Ram Deo Chauhan* v. *Bani Kanta Das*[33] where court stated *"it* must be jurisprudentially accepted that human right is a broad concept and cannot be straitjacketed within narrow confines. Any attempt to do so would truncate it's all - embracing scope and reach, and denude it of its vigor and vitality. That is why, in se eking to define human rights, the Legislature has used such a wide expression in *section 2(d)* of the Act." The view can be supported as even after using the restrictive clause, the legislator has left open the scope of inclusiveness. On the one side the by using "rights related rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution" which includes all the creative rights falling under these heads and on the other side by entering into Covenants and Conventions passed by General Assembly and putting it in notification new rights could be added. The Legislature has not made the inclusiveness of new rights as human rights completely restrictive but selective.

International Human Rights instruments are not directly enforceable in Indian courts till there is a domestic legislation giving effect to these norms. In practice, however, courts have practiced, where international legal norms are internalized into domestic law. The definition of human rights includes a variety of rights but the means of inclusion should not be by judicial

[33] (2010) 14 SCC 209.

overreach and there should be balance between the legislator and judiciary.

The definition of human rights in the 1993 Act might be an answer to the questions of responsibilities for the implementation of human rights in its territory. It has tried to bring a shift in the nature of human rights at the normative level but unwillingness has reduced the scope of human rights which does more harm than good. Scope for expansion of meaning and scope of the fundamental rights has limited the box of human rights in India as there are certain human rights which have been recognized by certain international instruments but India is neither a signatory to it nor has ratified the same like human rights of the refugees. The government unwillingness is the main reason behind the non-expansionist approach for human rights which can be proven by listing the Covenants and Conventions ratified by us. We need to ratify more and more conventions and covenants for implementation of a society with protection of human rights and Parliament needs to make law for the implementation of the same.