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Lipika Chaturvedi

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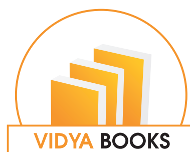

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Chapter 1

Introduction

HUMAN RIGHTS IN A GLOBALISED WORLD

The idea of human rights is one of the most powerful in contemporary social and political discourse. It is readily endorsed by people from many different cultural and ideological backgrounds and it is used rhetorically in support of a large number of different and sometimes conflicting causes. Because of its strong appeal and its rhetorical power, it is often used loosely and can have different meanings in different contexts, although those who use the idea so readily seldom stop to ponder its various meanings and its contradictions.

This combination of its strong appeal and its contradictions makes the idea of human rights worth closer consideration, especially for social workers and those in other human service professions. This book is concerned with what a human rights perspective means for social workers. Framing social work as a human rights profession has certain consequences for the way in which social work is conceptualised and practised.

In many instances such a perspective reinforces and validates the traditional understandings and practices of social work, while in other cases it challenges some of the assumptions of the social work profession. The position of this book is that a human rights perspective can strengthen social work and that it provides a strong basis for an assertive practice that seeks to realise the social justice goals of social workers, in whatever setting. Human rights, however, are also

contested and problematic. To develop a human rights basis for social work requires that the idea of human rights, and the problems and criticisms associated with it, be carefully examined. In this and following stages some of the issues and problems raised by human rights will be discussed, and the implications of these discussions for social work will be highlighted.

Many authors suggest that the idea of human rights is largely a product of Enlightenment thinking and is therefore inevitably contextualised within an essentially western and modernist framework. This has led to the criticism that human rights thinking and rhetoric are simply another manifestation of colonialist western domination, and to the suggestion that the concept of human rights should not be used. While it is true that much of the contemporary understanding of human rights has been shaped by western Enlightenment thinking, the same can be said of many other concepts that are frequently used in political debate, such as democracy, justice, freedom, equality and human dignity.

To stop using such words simply because of their western Enlightenment associations would be to deny their power and importance across cultures and would lead to sterile and limited political debate. The task rather is to loosen them from the shackles of western modernity and to reconstruct them in more dynamic, inclusive and cross-cultural terms. That is the approach taken, though of course cultural issues and the question of cultural relativism are critically important. There is a stronger reason, however, to resist the argument that the idea of human rights should be rejected because of its western connotations.

This is because it is simply not true to say that human rights is an exclusively western concept. Notions of human rights are embedded in all the major religious traditions and can be found in many different cultural forms, though the term'human rights' may not always be used. Ideas of human dignity and worth, ideas that all people should be treated just as to certain basic standards, ideas that people should be protected from what is frequently termed'human rights abuse',

and ideas of respect for the rights of others are not confined to the western intellectual tradition. To assume that they are is to devalue those other religious and cultural traditions that such critics often claim to be supporting. Nor is it true, as is commonly suggested, that human rights are a recent concept emerging only in the last two centuries, with their origins in Enlightenment thinking.

Although the Enlightenment was crucial in the construction of the modern western framing of human rights, the idea of human rights has been reflected in writings from much earlier ages, even though the term it self may not always have been used. Human rights, indeed, represent a powerful discourse that seeks to overcome divisiveness and sectarianism and to unite people of different cultural and religious traditions in a single movement asserting human values and the universality of humanity, at a time when such values are seen to be under threat from the forces of economic globalisation. The idea of human rights, by its very appeal to universally applicable ideas of the values of humanity, seems to resonate across cultures and traditions and represents an important rallying cry for those seeking to bring about a more just, peaceful and sustainable world.

As well as the criticism of cultural bias, two other criticisms are commonly made of a human rights perspective. One is that claims of human rights can be frivolous or selfish: people will claim something as a'human right' when in fact they are simply expressing a simple selfish'want'; for example people might claim the right to own a car, the right to take a luxury cruise, the right to smoke in a restaurant, the right to watch a video on an aircraft. Thus human rights become nothing more than a new language for consumerism and self-indulgence.

The other criticism is that claims of human rights can conflict with each other and therefore one is left with the problem of reconciling competing claims, for example the right of freedom of expression as opposed to the right to protection from libel or slander. A human rights perspective needs to show how it will overcome those criticisms, and this will be

undertaken in this and subsequent stages. Much of the academic debate about human rights remains at the theoretical level; less has been written about the practice of human rights. The important exception to this has been the legal profession, which has developed a significant specialisation in human rights law.

While lawyers have played a very important role in the promotion and safeguarding of human rights, an exclusively legal framing of human rights practice has limited the applicability of human rights in other professions and occupations. The reasons for this, and its consequences. Other professions, such as medicine, social work, teaching and nursing, are also concerned with human rights issues, and their practice can be seen as very much about the promotion of human rights in ways that extend beyond the more constrained practice of the law. The literature of these professions, however, while acknowledging that ideas of human rights are important for professional practice, does not for the most part define either theory or practice within a specific human rights framework.

There is little articulation of what it means in practice for professionals to claim that their work is based on human rights, and so human rights remain a'nice idea' rather than a solid foundation for the development of practice theories and methodologies.

This book represents an attempt to fill this gap by examining what a human rights perspective means for the practice of human service professions such as social work. It identifies some of the important theoretical and conceptual issues about human rights and looks at how they might be applied to practice in a way that can identify a social worker more clearly as a human rights worker.

In general use, the term'human rights worker' applies either to lawyers with a human rights specialisation or to activists working for organisations such as Amnesty International. This book seeks to locate social workers also as human rights workers and to identify some key issues that emerge when social work is reframed as human rights work.

SOCIAL WORK

While much of the material in this book can be applied to a broad range of human service professions such as teaching, medicine and the other health-related professions, the primary focus of the book is social work. In this regard,'social work' needs some clarification, as this term has different connotations in different national and cultural contexts. In some societies, most notably Australia and North America,'social worker' implies a fairly narrowly defined group of workers who have high professional qualifications, and excludes many others working in the human service field.

In other societies the term has a much wider application, covering human service workers from a variety of backgrounds, with varying levels of educational qualifications. In some societies, such as the United Kingdom, social work has been seen as the implementation of the policies of the welfare state through the provision of statutory services, with relatively little role in community development or social change.

In other societies, however, such as in Latin America,'social work' has much more radical or activist connotations: it is concerned with bringing about social change, progressive movements for social justice and human rights, and opposition to prevalent forms of bureaucratic and political domination. In some contexts, such as the United States, individualised therapeutic roles for social workers are dominant, while in other contexts, particularly in'the developing world' or'the south', social work has a much stronger community development orientation.

Even in societies that might superficially seem very similar, such as Australia and New Zealand, there can be significant differences in how social work is constructed and in what counts as good practice. Given the importance of grounding social work in its cultural, social and political context, it is inevitable that social work will be constructed differently in different locations. This has considerable benefits for social work as it allows for a diversity of interests and practices. But it also poses problems, in that readers of the

social work literature will be seeking to apply that literature in different contexts where the very idea of social work is contested. It is also a recipe for ambiguity and misunderstanding when social workers meet across cultural and national boundaries. This book accepts a broad view of the nature of'social work' and is not confined to specific professional, social control, conservative, radical, therapeutic or developmental formulations.

The term is meant to be understood in its broadest sense and to include all those working in the social services or community development, including those seeking social change. The aim of this book is to show that a human rights perspective such as that developed in the following stages provides a unifying framework within which the various activities identified as'social work' can be incorporated, while still allowing for cultural, national and political difference. There is a strong tradition in social work of identifying a core value position for the profession.

Social work writers have consistently emphasised the importance of this value base; social work is not seen as a neutral, objective or'value-free' activity, but rather as work which is grounded in values and which makes no apology for adopting partisan stances on a range of questions. In formulating this value base, the idea of human rights is often implicit, through phrases such as'the inherent worth of the individual', the 'right to self-determination', and so on. Such statements serve to locate human rights, though perhaps in a fairly limited form, as having a central role in social work, though characteristically there is usually little explication of the nature of these'rights', the contested nature of rights, what they mean in practice, and how adopting such rights as central actually affects what social workers do in their day-to-day work.

Professional codes of ethics also tend to imply some commitment to an idea of human rights, since it is often from an implied human rights position that the ethics of social work are derived. This again is a piecemeal approach to human rights and does not really confront the idea of human rights

head on. Indeed it might be suggested that the construction of human rights contained in documents such as codes of ethics and introductory texts often treats human rights as if they are self-evident and non-problematic, a position which even the most cursory examination of the extensive literature on rights would show to be misguided and simplistic.

A DISCURSIVE APPROACH TO HUMAN RIGHTS

Many of the issues and debates about human rights will be discussed in later stages, and their applicability to social work practice will be identified. At the outset, however, it is important to make a clear statement about the approach to human rights adopted in this book. This is an approach that rejects a positivist notion of rights, implying that human rights somehow 'exist' in an objective form and can be identified, 'discovered', and empirically measured or verified.

The idea of rights existing somehow independently of human agency is characteristic of the positivist world-view of the social sciences, which regards social phenomena as existing independently and objectively, and sees the task of the social scientist as objective empirical enquiry into the laws that govern how social phenomena interact. The positivist view has been the object of sustained critique in the social science literature and the position of this book is one that rejects such a paradigm. Rather than regarding rights as'existing' in some way, hence able to be uncovered through objective scientific enquiry, the arguments in later stages see human rights as essentially discursive, in other words rights are constructed through human interaction and through an ongoing dialogue about what should constitute a common or shared humanity. Hence human rights are not static but will vary over time and in different cultures and political contexts.

The best-known statement of human rights, the Universal Declaration of Human Rights, though representing perhaps one of the more remarkable human achievements of the twentieth century, should not therefore be reified and seen as expressing a universal and unchanging truth. Rather, the Universal Declaration represents a statement of what was

agreed by the leaders of the world's nations in 1948 as a statement of the basic rights of all people. It is an impressive and inspirational statement, with significant radical implications, and it has been used in many ways since to further many important causes in the name of humanity. But it is not holy writ, and it can and should be subject to challenge in different times, as different voices are heard and different issues are given priority.

The same must apply to any other statement of human rights: what constitutes the basic rights of all human beings will be a matter for ongoing debate and redefinition and should always be open to challenge. The Universal Declaration has been criticised because of the dominance of western political leaders in the forum from which it was derived, leading to a perceived western bias. This, however, is an argument not for the rejection of the idea of such a universal statement but rather for its continual reformulation in the light of different voices being validated and heard. The Enlightenment view of human rights, as argued by Locke, talks about'natural' rights, namely the idea that the very nature of human beings implies that they have certain rights, as a consequence of their very humanity.

By simply talking about 'human beings' we imply human rights arising from some notion of a common or shared humanity which requires that people be treated in a certain way. At birth we are all equal and therefore we'naturally' acquire equal rights. The idea of rights existing'naturally' might at first sight sound like a positivist framing of human rights, but the idea of'natural' rights in this sense is not necessarily inconsistent with the view of human rights as discursive. It is simply an affirmation of the view that our human rights are the consequence of our common or shared humanity, but it is nevertheless quite consistent to talk about a discursive construction of how we understand those'natural' rights.

The idea of human rights, by its very nature, implies the search for universal principles that apply to all humans, whatever their cultural background, belief system, age, sex, ability or circumstances. Such universality has been absent

from many of the more traditional understandings of human rights, simply because not everybody has been thought of as'human'. The discourse of the 'rights of man' and traditional views of patriarchal philosophers such as Locke have distanced women from the definition of'human' and therefore from an understanding of what'human rights' imply. Thomas Jefferson presumably saw no conflict between his advocacy of rights and freedoms and his ownership of slaves. The perpetrators of the Holocaust, while celebrating the high achievements of German civilization, were able to justify their actions by effectively defining Jews as subhuman, and the same can be said of the Apartheid regime in South Africa, the Indonesian occupying army in East Timor, the Serb forces in Bosnia, and so on. Oppressors can justify their actions by effectively removing their victims from their understanding of'human' and thereby avoiding the necessity of recognising their human rights.

Chapter 2

Human Rights and Public Law and Order

The Universal Declaration of Human Rights is a historically memorable and significant document of human liberty. Its preamble frames the document, proclaiming that"disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed the highest aspiration of the common people."

This stage attempts to discuss the role of human rights approach in eliminating or reducing cases of human rights violations in the sensitive and difficult task of maintenance of pubic law and order by law enforcement agencies *viz.*, police, para-military, military and the executive consistent with the spirit on Fundamental Rights of the Constitution of India, the Universal Declaration of Human Rights and other relevant UN Conventions and Covenants.

The smooth and effective maintenance of public law and order is the cornerstone for shaping and regulating the multi-ethnic, multi-religious and multi-lingual diversified society in India as a harmonious, democratic, secular and social welfare oriented civil society gravitating towards the concepts of"Unity in diversity","truth" and"transparency".

WHY HUMAN RIGHTS

It is essential if humanity "is not to be compelled to have

recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law".

- Article 8 is a 'due process' provision noting that"Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law".
- Article 13 of UDHR assures freedom of movement.
- Article 18 assures freedom of thought, conscience and religion.
- Article 19 assures freedom of opinion and expression.

Civil society has broken down in numerous areas. There is a widespread belief that society is disintegrating as are traditional, moral and social codes resulting in routine abuse of human beings and their rights. Against this background, the concept of human rights has acquired new importance and resonance.

The idea that people possess certain basic human rights, and that these should be safe from violation by the State or by other groups or individuals, seems today an important bulwark against the breakdown of law and order and degradation of moral norms.

GLOBALIZATION AND HUMAN RIGHTS

The global machinery of surveillance and monitoring through the UN human rights regime, is reinforced by an evolving set of regional regimes and mechanisms in the adjudication and enforcement of rights. There has thus occurred a consequent institutionalization for vindication of human rights.

Globalization is associated with significant challenges in the human rights project, as conventionally conceived. The most pressing issue confronting the guardians of the human rights project is how to marshal the forces of globalization in order to ensure the advancement of human rights and justice in the new millennium. The present trends of severe abridgement of human rights may continue in future and

demands for right to life, liberty, equality, etc. will continue to be made. The primary victims of human rights violations will be women, weaker sections, children, victims of terrorism-related violence and environmental degradation. Indiscriminate urbanization, consumerism and industrialization have brought degradation to the civil society. Thus human rights violations can be eliminated, if there are basic changes in the socio-economic and political milieu.

Accessibility to legal remedies by the common man is ensured by:

- Proper recording of General Diary/First Information Report in Police Stations and follow-up enquiries / investigations.
- Remedy before legal forums/Courts/tribunals, which includes invoking Constitutional writ y of the High Courts and the Supreme Court.
- Vindication of infringement of rights of persons.
- Legal counselling through awareness campaigns.
- Legal aid and clinics to remedy the problem of unequal financial power to continue law suits.
- Formulating and ensuring the accountability criteria of functionaries at different levels of the State/para-State institutions.
- To curb the general tendency of higher ups in administrative/social hierarchy to ignore and rise above the law by use of:
  - Muscle power
  - Money power
  - Political power
  - Rampant corruption

Human Rights for good governance are characterized by the following:

- Protection and promotion of fundamental rights depend on proper and efficient law enforcement.
- Effective law enforcement is possible only when there are trained and efficient keepers of the law, wedded to human rights norms.
- Politicians now prefer officers who are not upright and

strong-willed and are willing to function as"sycophants and courtiers".

- "The Rule of law in modern India, has been undermined by the rule of politics."
- "With the passage of years there is escalation of crime and lawlessness."
- "Large number of cases in police stations are not registered."
- Delay in disposal of cases.
- A vast number of old and outdated laws continue in statute books.
- The Police Act of 1861 remains archaic, inhibiting police to function professionally without fear or favour. Police reforms are yet to ensure greater transparency, accountability and responsiveness to public criticism of police functioning.
- Politician-civil service-police nexus must be eliminated to stamp out'politicization of crime and criminalization of politics'.
- Police have to be made accountable.
- "Corruption of civil servants is one of the most damaging consequences of poor governance. It subverts law enforcement and undermines the legitimacy of the State.". For good governance, it is essential"to devise a series of long-range strategies and short -term measures to deal with the menace of corruption. Corruption flourishes because punishment is lacking."
- Community policing assumes police-public partnership.
- "Internal regulation of policing can be more thorough, effective and efficient than external supervision".
- "Any civilian oversight body in order to be effective should have an independent investigative capacity."
- The roots of police deviating from the'Rule of Law' stem from:
  - Ambiguous legislation
  - Vulnerability to legal sanctions

- Occupational culture and
- A desire to produce quick results

HUMAN RIGHTS AND PUBLIC LAW AND ORDER

Universal Declaration of Human Rights, 1948 (UDHR) envisages the following human rights:

- Right to life, liberty and security of person to every human being. (Article 3)
- Right to privacy and security of life. (Article 12)
- Freedom of thought, expression, conscience and religion. (Article 18)
- Freedom of peaceful assembly and association. (Article 20)
- Right to equality and non-discrimination. (Articles 1, 2 & 7)
- Freedom from slavery or servitude. (Article 4)
- Freedom from arbitrary arrest, detention or exile. (Article 9)
- *Criminal procedure rights*:
  - *Right to consult a lawyer*:
  - Right to be presumed innocent unless proved guilty. (Articles 10 and 11)
  - Right not to be subjected to retrospective legislation
- Right to nationality. (Article 15)
- Right to exercise franchise and take part in governance of the country. (Article 21)
- All other rights for preserving human dignity and self-pride

In Sunil Batra case, the SC quoted extensively from the international instruments on Human Rights.

ROLE OF THE GOVERNMENT

- A new spirit emerged in the minds of the framers of the Indian Constitution in the sphere of human rights and human welfare. The Constitution framers referred to the UN Charter on various political, economic and social matters. The fundamental rights and the

Directive Principles of State Policy are based on the principle of humanitarianism and human rights.

- On the basis of the Directive Principles of State Policy, the Union Government enacted a number of Acts related to human rights including:
  - Abolition of Untouchability Act 1955
  - Immoral Traffic (Prevention) Act, 1956
  - Dowry Prohibition Act, 1961 (Amendment 1985, 1986)
  - The Protection Human Rights Act, 1993
  - The National Human Rights Commission (Procedure) Regulations, 1994
  - The Commission of SATI (Prevention) Act, 1987
  - The National Commission for Backward Classes Act, 1993
  - The National Commission for Minorities Act, 1992
  - The National Commission for Safai Karmacharis Act, 1993
  - The Persons with disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995 and Rules, 1996
  - The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994
  - The Protection of Civil Rights Act, 1955 and Rules, 1977
  - The Scheduled Castes and the Scheduled Tribes (Prevention and Atrocities) Act, 1989 and Rules 1995
- To ensure human rights and safeguard the interests of minorities and weaker sections of the society, several independent bodies have been created under provisions of the Constitution, such as:
  - The Minorities Commission
  - The Language Commission
  - The Scheduled Caste and Scheduled Tribes Commission
  - The National Commission for Women
  - The National Human Rights Commission

- State Human Rights Commissions
- The National Commission for Backward classes
- The National Commission for Minorities
- The National Commission for Safai Karmacharis
- The National Commission for Protection of Children's Rights

- The issue of human rights received wide attention in the media during the 1980s because of extremist and separatist activities in Punjab and Assam.

The United Nations asked India to solve the problem by negotiation with the extremists:

- There had been a steady erosion of human rights in Jammu and Kashmir State in the 1990s. Massacres continue to be in the last decade with increasing ferocity being committed by extremists in Jammu and Kashmir State. Pakistan tried many times to internationalize the matter. However, Pakistan had insufficient support from the United Nations. On 17 August 1995 the UN Security Council expressed its concern about the killings of a Norwegian tourist, Hans Christian Ostro, by the terrorists.
- The 1990s have seen the enactment of human rights legislation in India.'The Protection of Human Rights Act', 1993 provided for the constitution of a National Human Rights Commission, State Human Rights Commissions in individual States and a Human Rights Court.
- V.R. Krishna Iyer J, reacting to the establishment of the National Human Rights Commission observed "The mendicancy to which this nation is reduced even in regard to human rights ideology is a matter for pity." He also opined that "we should have the Human Rights Division of the Supreme Court of India. It will be useful. Similarly we may have at the High Court level and then they can operate with infrastructure, which is provided. We really want, therefore, a commission which is vitalized, a commission which has an independent investigating staff not deputed from the police."

- In favour of the NHRC T.K. Thommen J, observed: "The commission is not a court. Its function is to be the watching of human rights. Its procedure is not expected to be adversarial or accusatorial. It must not allow itself to be bogged down by procedural formalities."
- Bureaucracy and administrative law remain as stumbling blocks to genuinely interested individuals or bonafide agencies in obtaining information from government files, regardless of the right of information that can be claimed.
- Authorized snooping and surveillance of the opposition, and even of friends, continues, regardless of the governments in power.
- In a rescue of 450'child sex workers', who were subjected to mandatory testing for AIDS, it was stated that a rare opportunity had been provided'for gathering epidemiological data' that'cannot be lost on grounds of human rights or morality'. Half of the subjects were between 10 and 15 years, and many between 20 and 25 years and above, yet they were all declared minors and were shunted from orphanages to beggars' homes.
- India has the largest number of working children, who have no option but to work for the survival of themselves and the families that find them'usable'.
- The Prevention of Immoral Traffic Act, 1956 as amended in 1986 recognizes the criminality of child prostitution, yet few are convicted.
- The agony is aggravated when, under the Juvenile Justice Act, 2000 as amended in 2006, these children are arrested and rescued as vagrants or missing persons.
- In enforcing 14 different Acts the problem of child labour gets sidelined.
- The National Police Commission in its 8-volume report deals with the rights of the accused under the Criminal Procedure Code and the Evidence Act;

custodial rape is an aggravated offence punishable with a deterrent sentence, and yet it occurs.

- In 1997 and 1998, indiscriminate police firing caused mindless cruelty and deaths. People survive in fear, while cases against police are withdrawn.
- Individuals and organizations run the risk of being labelled as agents of imperialism, as Amnesty International has.
- A career in human rights involves truckling to the powers that be. Human rights activists can blindly buy the versions put across by governments and their allies.
- The Proclamation of Emergency of 1975 and Terrorist and Disruptive Activities (Prevention) Act of 1985 demonstrated how the law-enforcing agencies made room for government lawlessness. Human rights situations were never to be the same again, particularly after the criminalization of politics.
- Militant communalism and fundamentalism have threatened the democratic values being cultivated in society.
- The struggle for the human rights of prisoners goes beyond the Constitution and Jail Manual and, through the media, into homes and hearts of the people.
- The need to enforce human rights goes beyond Constitutional obligations.
- The initiative to create new responses with the introduction of appropriate procedures by NHRC will bring about structural changes that will communicate verifiable results. The status quo in law is being changed, but not at the rate of expectations from NHRC.
- The affirmation of human rights of all people in Constitutional texts is not adequate. The key lies in having a grievance redressal mechanism, and instruments, which are yet to be accepted as pre requisites. We have now arrived at a stage in our political development where people's rights against the State have been legitimised.

- After reviewing all the decisions in respect of the State liability, the Supreme Court of India in Nilabati Behra v. State of Orissa declared that the defence of sovereign immunity is not applicable; it is alien to the concept of guarantee of fundamental rights. Further, the Court stressed that such defence is not available in the Constitutional remedy. The Court declared that award of compensation under Articles 32 and 226 is a public remedy based on the strict liability for contravention of fundamental rights for which sovereign immunity does not apply. This ruling clarifies that sovereign immunity may be defence in the proceedings under private law of torts.

The impact of this historic ruling is that anyone whose fundamental rights are adversely affected by the State action can approach either Supreme Court or High Court under Article 32 and 226 of the Constitution respectively and, in such a case, the State is not entitled to raise the plea of sovereign immunity in public law proceedings. When once the defence of sovereign immunity is made non-applicable in the area of public law, the courts can effectively protect the fundamental freedoms of a person from the unauthorized infringement of such rights of State action and thereby can uphold the Rule of Law.

CASE STUDIES

POLICE EXCESSES CUSTODIAL DEATH

Custodial death of Mohammad Irshad Khan (Case No. 2387/30/2000- 2001-CD)

The Commission received information from the Deputy Commissioner of Police (DCP), North East District, Delhi about the death of Mohammad Irshad Khan. A complaint was also received from Shri Acchan Khan, father of the deceased, alleging that his son had died as a result of brutal beating by the police. Shri Acchan Khan added that the family of the victim had not been informed of the circumstances of the death. The

intervention of the Commission was requested, as also an independent investigation into the case and protection for the complainant's family in view of threats by the police personnel who had been accused of being involved in the death of Mohammad Irshad Khan. In response to a notice from the Commission, the Home Secretary, Government of the National Capital Territory of Delhi, stated that the matter had been investigated by DCP (Vigilance), Delhi. The latter's report indicated that, on 12 October 2000, while the victim was driving his two-wheeler scooter, he had collided with a cycle rickshaw. In a scuffle that ensued, a policeman had intervened and reportedly beaten the victim, who had collapsed on the spot.

The victim was then taken to GTB Hospital, where he was registered at Police Station Usmanpur, and the accused Sub Inspector Vijay Kumar and Constable, Swatantra Kumar had been arrested. A magisterial enquiry had been conducted by the S.D.M., Seelampur. A further report, dated 9 April 2001 from the Deputy Secretary, Home Department, Government of National Capital Territory of Delhi, stated that a charge sheet had been filed against the delinquent police official's u/s 302/34 IPC.

Upon further consideration of the matter, the Commission directed that a show-cause notice be issued to the Government of National Capital Territory of Delhi asking as to why immediate interim relief in the amount of ` 3 lakhs u/s 18(3) of the Protection of Human Rights Act be not granted to the next-of-kin of the deceased. The Government of National Capital Territory of Delhi, in response, stated that ` 3 lakhs had been sanctioned towards the payment of compensation to the next-of-kin of the deceased. It was later confirmed that the amount was paid to the wife of the deceased on 30 May 2001.

TORTURE

Torture of Dayashankar by Police: Uttar Pradesh (Case No. 791/24/2000-2001)

One Dayashankar Vidyalankar, a resident of Haridwar, Uttaranchal submitted a complaint alleging that while he was

propagating the teachings of Swami Dayanand at Haridwar Railway Station on 29 February 2001, he was beaten and manhandled by a Constable and, as a result, his left ear was badly injured and a bone behind his right ear was broken. The reports received from the Superintendent of Police Railways, Moradabad and the Director General, Railway Protection Force, Railway Board, in response to a notice issued by the Commission, indicated that the allegations of the complainant against the Constable were found to be correct.

The Constable was punished by a reduction in his present pay-scale by 3 stages for 3 years, and a case u/s 323/326 IPC and section 145 of Railways Act, 1989 was also registered against him. The Commission after considering the aforesaid reports and giving a personal hearing to the complainant, as well as after obtaining an opinion from a Medical Board of the All India Institute of Medical Sciences, New Delhi, regarding the nature of the injuries suffered by the complainant, recommended a payment of ` 10,000 to the petitioner by the Ministry of Railways. This has been paid.

Illegal Detention and Torture of D.M. Rege: Maharashtra (Case No. 1427/13/98-99)

D.M. Rege, an officer of Shamrao Vithal Co-operative Bank Limited, Versova Branch, Mumbai, complained to the Commission that he was illegally detained and tortured by the police in connection with an incident involving the misplacement of cash in the Bank and requested for an enquiry into the matter. Upon directions of the Commission, a report was received from the DCP, Zone-VII, Mumbai. It indicated that the complainant was indeed innocent, and that his detention and torture were unjustified. The report also mentioned that the guilty Constable had been awarded a minor punishment by way of forfeiture of his increment for one year, while the delinquent Sub- Inspector had been transferred out.

After consideration of the report, the Commission directed the Police Commissioner, Mumbai to have the matter re-examined in order to ensure that the erring police personnel

were suitably punished in a manner that would be commensurate with the wrong that had been done. The Commission also issued a show-cause notice as to why ` 30,000 is not awarded as immediate interim relief to the victim. The State Government, through its letter of 4 January 2001, requested the Commission to reconsider the issue of payment of compensation on the ground that two of the policemen had been immediately transferred, and that the Constable had been awarded punishment of stoppage of his increment for one year for his misconduct.

The Commission, in its order dated 10 April 2001, rejected the plea of the State Government, and held that, since the guilt of the public servants had been established, there were no grounds to justify a re-consideration of this matter and directed that compensation of ` 30,000 be paid by the State Government to the complainant for violation of his human rights.

IMPLEMENTATION OF LEGISLATIVE BACKGROUND

PROVISIONS AT THE STATE LEVEL

- Human rights can be regarded as the civic counterpart (civil society/NGOs) of political power, which is vested in those who govern the State.
- Power of the State, whenever lawless and brute, needs to be counterbalanced by power of the people arising from human rights.
- Democracy is established when people's power ("Lok Shakti") transcends over the power of the State. This is fortified by an independent Indian judiciary which is more or less independent, a fairly investigative and alert media and a fairly good movement for the promotion of human rights in India by advocates of and activists for civil society, as also of the NGOs.
- Awakening of general awareness in Indian people about human rights as their very own, sacrosanct and inherent rights in the country's democratic and participatory governance.
- There is a tendency on the part of the police/the para-

military/the military to disregard human rights while dealing with an alleged terrorist, and this is approved by pro-establishment politicians.

The manifestation of such human rights violations by the law-enforcement agencies are:

- Custodial violence, including the so-called"third-degree methods".
- Custodial death.
- Mass arrests and physical and psychological torture.
- Scorched-earth policies, herding up people in areas under cover of heavy security measures, resembling to some extent open concentration camps with extremely fettered freedom of movement and weak supply line for procuring daily necessities including medicare.
- Disappearance of person's kidnappings and abductions.
- Cooked-up prosecutions and suspicion discoveries by lawenforcement agencies of mass-inciting literature and arms and ammunition, which may as well be implanted by the agencies themselves.
- Rape, molestation, gang rape and custodial rape of women by security forces, law-enforcement agencies and detention camp/prison officials/tough and brutal prison inmates.
- Sodomy, collective beating of such male (including young) detainees/prisoners by hardened criminal inmates encouraged by or unobstructed by security/prison/law-enforcement officials.
- Encounter deaths, which may be fake and just sadistic and bloodthirsty killings of innocent and guilty persons, alike as a crude method of so-called'shock treatment' by security forces.
- Deprivation of the right of the prisoner to obtain adequate food and water, medical assistance, sanitation and toilet facilities, consultation with a lawyer of his choice, media news, interviews with members of family or friends etc.
- Use of handcuffs and/or fetters.

- Solitary confinement.
- Drastic control of communication with fellow detainees.
  - State violence may be committed
- By State officials by overstepping the law.
- By the State in passing "lawless laws" like the TADA.

THE NATIONAL HUMAN RIGHTS COMMISSION OF INDIA (NHRC) AND ITS DIRECTIVES

- Started in 1993.
- Initially it concerned itself with civil rights.
- The issues of custodial deaths as a result of violence perpetrated by the police brought to focus its (NHRC) work.
- Bijbehra village in Kashmir where a BSF unit was alleged to have mowed down 40 civilians. BSF initially refused access to these records to NHRC, but ultimately agreed. From the very BSF records NHRC came to a conclusion and advised the Government to proceed on that basis. The Government accepted these conclusions and courtmartial proceedings were initiated against the perpetrators of this violence.

That was the turning point in the history of NHRC:

- Investigation of the case of suicide in jails due to its high incidence. Each case of suicide or unnatural death, be it in judicial custody or police custody, should be enquired into by a Magistrate or an independent person. Such enquiry should aim at ascertaining whether there was any negligence or dereliction of duty on the part of any public servant and should suggest such appropriate measures and safeguards as may prevent the recurrence of such a tragedy in future. The Commission considers this mode of enquiry to be mandatory.
- The DMs/SPs to ensure prompt communication of incidents of custodial deaths/custodial rapes in police as well as judicial custody to the Commission.
- All post-mortem examinations done in respect of deaths in police custody and in jails should be video-

filmed and cassettes should be sent to the Commission along with the post-mortem report.

- Commission has prescribed the Model Autopsy Form and the additional procedure for inquest to be followed by instructions to be followed carefully for detention or torture.
- Encounter deaths and recommendation of the Commission on the correct procedure to be followed by all the States.
- Commission's guidelines regarding arrest and enforcement of such guidelines.
- Commission's guidelines relating to the administration of Lie Detector Test.

Information collated by NHRC in its Annual Report for 2001-2002 indicate the implementation of the legislative provisions at the State level through the Commission's reporting, investigating and remedial action taken procedure. Similar action is also taken by the State-level Human Rights Commissions.

PUBLIC INTEREST LITIGATION

- Several cases came before the Supreme Court since 1980 where the Court entertained Writ petitions by one on behalf of another on the allegation that fundamental rights of such others had been affected. Sunil Batra V. Delhi Administration (1980) 2 SCR 557.
- The Supreme Court liberalized the rule of maintainability by almost taking away the restriction of locus standi.- Transfer of Judges Case-S.P. Gupta V. Union of India and Ors.

The Court held that" whenever there is a public wrong or public injury caused by an act or Commission of the State or a public authority which is contrary to the Constitution or the law, any member of the public acting bonafide and having sufficient interest can maintain an action for redressal or such public wrong or public injury." In Bandhua Mukti Morcha case the Supreme Court found that State Governments were under an obligation to release bonded labourers. It also directed the

Government of Haryana to draw up a scheme or programme for"a better and more meaningful rehabilitation of the freed bonded labourers" in the light of the guidelines set out by the Secretary to the Government of India, Ministry of Labour, in his letter dated September 2, 1982. The Court also felt unhappy at the denial of minimum wages and pure drinking water to the workmen.

Again, it issued the directions to the Union of India and State of Haryana that so far as implementation of the provisions of the Minimum Wages Act., 1948 was concerned, they should take necessary steps, for the purpose of ensuring that minimum wages are paid to the workmen employed in the stone quarries and stone crushers in accordance with the principles laid down by the Court.

ORIGIN OF THE PUBLIC INTEREST LITIGATION IN INDIA

1976: Roots of Public Interest Litigation in India. In Mumbai Kamgar Sabha vs. Adbul Bhai-A.I.R. 1976-SC 1465 Krishna Ayer J, observed:

- "Test litigation, representative actions, probono publico, broadened forms of legal proceedings are in keeping with the current accent on justice to the common man and a necessary disincentive to those who wish to bypass the real issues on the merits by suspect reliance on peripheral, procedural shortcomings. Public interest is promoted by a spacious construction of locusstandi in our socio-economic circumstances and conceptual latitudinarianism permits taking liberties with individualization of the right to invoke the higher Courts, where the remedy is shared by a considerable number, particularly when they are weaker and less litigant, consistent with fair process, is the aim of adjective law."

Through a process of steady expansion of the doctrine of locus standi, starting with Dhabolkar's case, the Supreme Court enabled access on matters involving public interest even to total strangers to the dispute.

DEVELOPMENT OF PUBLIC INTEREST LITIGATION IN INDIA

There are four stages through which the public interest litigation developed in India or during the last decade, namely:

1. Steady expansion of Locus Standi doctrine;
2. Expansion of epistolary jurisdiction;
3. Democratization of judicial remedies; and
4. New constitutional philosophy for social justice.

STEADY EXPANSION OF LOCUS STANDI

- *Restrictive Rule of Locus Standi*:'Person aggrieved;
- Flexibility introduced in narrow concept.

In writ of Quo-Warranto, any member of public, irrespective of any special injury or damage to him, could challenge the appointment of a holder of public office. A Writ of Habeas Corpus could be moved on behalf of the person illegally detained by his friend or relative but not by a complete stranger.

Justice Shri Krishna Iyer and Justice Shri Bhagwati are undoubtedly acknowledged champions of the new philosophy of judicial activism in India, which has been assimilated by and absorbed in our judicial system.

1976: Need for Liberalization of Locus Standi

In the year 1976 Justice Shri Krishna Iyer, noted for his unconventional approaches and iconoclastic spirit in the cause of social justice and development of public interest litigation, advocated liberal interpretation of Locus Standi in public interest litigation in Dhabolkar's case.

It was felt by the Court that it must be possible for some public spirited individual to seek remedy on behalf of poor, disadvantaged, deprived and dispossessed people. Through this case, a process of steady expansion of doctrine of Locus Standi was set in.

Initial Stages of PIL and Locus Standi

In 1978, in Maneka Gandhi case, the Supreme Court gave a new dimension to the concept of"procedure established by

law in Article 21 of the constitution". This Article was interpreted to confer both substantial and procedural due process, which brightened further the prospects of public interest litigation. The scope of PIL was further enlarged in 1979 when the Supreme Court allowed maintainability of a petition by an advocate based on a newspaper report, which brought out the conditions of undertrials in Tihar Jail.

Through public interest litigation a shock treatment was given to our tardy and bullock cart system of investigation and trial in criminal cases, and the concept of fundamental right of citizens for speedy trial was held necessary as'just and reasonable procedure'.

ROLE OF POLICE VIS-A-VIS UNIVERSAL DECLARATION OF HUMAN RIGHTS

- Law observance by the police is the best form of law enforcement that one can conceive of in a country under the Rule of Law.
- Required in India is an honest, humane and unbrutalised police force whose members are trained to act fairly and within the bounds of law.
- "None should be put to the harassment of a criminal trial unless there are good and substantial reasons for holding it". State of Rajasthan Vs. Gurucharan Das AIR 1979 SC 1895, per Fazal Ali, J:
  - To contribute towards liberty, equality and fraternity in human affairs.
  - To help and reconcile freedom with security, and to uphold the rule of law.
  - To uphold and protect human rights.
  - To contribute towards winning faith of the people.
  - To strengthen the security of persons and property.
  - To investigate, detect and activate the prosecution of offences.
  - To facilitate movement on highways and curb public disorder.
  - To deal with major and minor crisis and help those who are in distress.

- The Governments of States and Union Territories of India need to implement the recommendations of the National Police Commission aimed at freeing the police from external pressures in carrying out day-to-day police work.
- Every policeman is an agent of the Government, who is required to maintain a proper equilibrium between the public and the Government and protect one against the other.
- Increasing crime with a rising population, violent outbursts, growing terrorism and religious fanaticism have added new dimensions to the role of police.
- The police are required to be an efficient and impartial law enforcement agency.
- Abuse of powers by the police gross violation of the Fundamental Rights and Human Rights encroaching upon the personal liberty, dignity, honour and privacy of individual citizens galore and must be curbed and eliminated ruthlessly by the State Organs.
- "A policeman is the axis on which the rule of law rests and rotates. It is he who enforces the law, maintains the public order, keeps the lawless elements in check, brings the offender to book and by his constant vigil preserves the coherence and solidarity of the social structure."
- Police has been degraded by the political system as a State agent in violating Human Rights.
- Police has to be accountable to the people as they represent the law and order of the organized society.
- There must be absolute professional independence of police in the matter of investigation of crime for effective and efficient functioning of criminal justice system.

• Third degree methodology of police investigation only alienates the police from the public. People dread

police, and do all they can to avoid any connection with a police investigation. It brutalizes the police official and degrades him even to the level below the criminal in his custody. Section 29(1) of the Police Act, 1961 and Article 20(3) of the Constitution of India clearly forbid custodial torture of the third degree. Such actions are serious offences punishable under Sections 330 and 331 of the Indian Penal Code. The United Nations in December, 1982 issued a circular entitled"Principles of Medical Ethics Relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment." Social control in the form of approval or disapproval of police action can motivate the police to become just, fair and law abiding.

- Remand in police custody misused to extort a confession from the accused by adopting Third Degree methods is useless as:
  - A confession made under pressure is not at all admissible in evidence under Section 27 of the Evidence Act, in view of the guarantee against testimonial compulsion.
  - Such a confession, even if judicially recorded, is often considered as false, being unverifiable, and is often retracted in court.
- Padding, concoction and fabrication of evidence in police investigation in specific cases with a view to showing a high percentage of conviction in cases investigated by them are contrary to all principles of justice.
- One indirect cause perhaps is that too high a standard of fool-proof evidence is often insisted upon by the Courts from the prosecution. Commenting on this aspect of the matter Krishna Iyer, J of the Supreme Court observed,"Judicial quest for perfect proof often accounts for police presentation of fool-proof

concoction. Why fake up? Because the Court asks for manufacture to make truth look true. No, we must be realistic." Inder Singh Vs. State, 1978, Cr.L.J. 766.

- Concealment and minimization of crime by a large scale"burking of crimes" that is failure to record crimes or not recording a clear picture of the crime. Section 154(1) Cr.P.C. makes it mandatory for an officer in charge of a police station to register an FIR, when information is given to him regarding a cognizable offence. Section 154(2) Cr.P.C. enjoins him to give a copy of the FIR forthwith and free of cost to the informant.
- Non-performance of duties by police due to their involvement in politics or similar affiliations immensely damages the police image. Police in their professional capacity have to be apolitical and impartial in their application of the law.
- Police can cooperate with the aftercare agent, the probation officer or the social worker by doing work of surveillance in a covert fashion, so that the process of rehabilitation initiated by the correctional services are not nullified by hasty and precipitate police action. The police too can give a helping hand in finding employment for exconvicts. This will bring the police close to the public by improving their image.

PRISON REFORMS

Definition of Open Prison:

- "An open prison is characterized by the absence of material or physical precautions against escape and by a system based on self-discipline and the inmates sense of responsibility towards the group in which he lives."

An open prison shall mean a Prison House not surrounded by walls of any kind.

Advantages of Open Prison:

- More favourable to the social readjustment of the prisoners.

- More conducive to their physical and mental health.
- Liberalization of the regulations.
- Tensions of prison life are relieved.
- Discipline improves.
- Conditions of life resemble more closely to those of normal life and this helps to preserve family ties.
- Less costly because of lower building costs.
- Rational organization of cultivation results in higher income.

Objectives of Open Prison:

- Development of self-respect and sense of responsibility.
- Useful preparation for freedom.
- Discipline is easier to maintain.
- Punishment is seldom required.
- Tensions of normal prison life are relaxed.
- Conditions of imprisonment can approximate more closely to the pattern of normal life.
- Importance of the group approach in correctional treatment.
- Success of the correctional process can be greatly enhanced by the energetic, resourceful and organized citizen participation.
- Inculcates among inmates the value of self-help, constructive work and social usefulness.
- Generates a sense of dignity and a positive change in their attitude and behaviour.

TYPES OF OPEN PRISONS (WEST BENGAL JAIL CODE)

Open Prisons shall be of three types as follows:

1. 'A' type open prisons. These prisons shall generally be organized as agricultural farms and prisoners taken in'A' type open prisons shall be given opportunity of learning better and scientific methods of crop production.
2. 'B' type open prisons. In these prisons, the principal industry shall be fruit gardening, but some areas may be earmarked for improved type of agriculture. Dairy

and poultry on scientific methods shall also be established in these prisons under the guidance of experts recruited from outside. If there is sufficient space for excavation of tank, pisciculture may be introduced.

3. 'C" type open prisons. These prisons shall function practically as prerelease parole camps, where prisoners may be allowed to live in Government built cottages along with their respective families. The principal industry in these prisons shall be handicrafts and cottage industry.

Object of open prisons:

- The object of maintaining open prisons is to grant the prisoners more and more freedom so that, on their release, they may easily adapt themselves to community life of the outside world. In'A' type open prisons, the night lock-up shall be opened at such hours in the morning as are provided in the Code. There shall be no day lock-up in open prisons, except in cases where a particular prisoner behaves contrary to jail rules and is found to be uncontrollable.
- The provisions of this rule shall also apply to the prisoners accommodated in'B' type open prisons.

"NEW DELHI CORRECTION MODEL" OF PRISON REFORM-TIHAR CENTRAL JAIL

- The basic emphasis is on humanizing and resocialising the prisoners.
- Emphasis shifted to'creating security'.
- *Three basic features are*:
  - Bringing the community into the prison
  - Formation of a self-contained prison community
  - Participative management-a'Sampark Sabha' is held Staff members and prisoners are involved in decisionmaking in their respective fields
  - Emphasis on spirituality and an innovative way of correction
- Job-work facilities and economic security.

- Recreation and reformation of criminal behaviour.
- Community involvement in prison.
- Social auditing and ventilation of grievances.
- Psychological treatment: meeting the special needs.
- System of segregation: a step towards prevention of further character deterioration.

Constitutional Safeguards and the Supreme Court

- Article 21-no person shall be deprived of his life or personal liberty, except in accordance with the procedure established by law. The Supreme Court has repeatedly held that the procedure must be:
  - Just and fair and
  - Not in any way arbitrary, fanciful or oppressive
  - Satisfying the essence of Article 14, which guarantees to every citizen
  - Equality before law and equal protection of the law
  - Prohibitive of any inhuman, cruel or degrading treatment or punishment
- Article 22-no person detained in custody shall be denied the right to consult or to be defended by a legal practitioner of his choice.
- Article 39A-mandates the State to ensure free legal aid in deserving cases and to ensure that fundamental right through suitable legislation.
- Article 19-the right to liberty of movement and freedom can be curtailed only by a law that imposes a reasonable restriction in the interest of general public.

The Supreme Court has issued a number of important directives to the prison administration that:

- The prisoner must be allowed exercise and recreation
- To read and write.
- minimize creature comforts like protection from extreme cold and heat.
- Freedom from indignities of life like compulsory nudity, forced sodomy and other unbearable vulgarities.

- Movement within the prison campus, subject to requirement of discipline and social security.
- The minimum joy of self-expression.
- To acquire skills and techniques.
- To all other fundamental rights as tailored to the limitations of imprisonment.
- Physical assaults are to be totally eliminated.
- Even pushing the prisoner into a solitary cell, denial of necessary facilities, transferring a prisoner to a distant prison, allotment of degrading labour, putting him with desperate or tough gangs, etc. must satisfy Articles 21,14 and 19 of the Constitution.
- Young inmates must be separated and freed from exploitation by adults.
- *Subject to discipline and security, prisoners must have the right to*:
  - Meet friends and family members, and the facility of interviews
  - Visits and confidential communications with lawyers nominated by competent authorities

The Supreme Court has directed that District Magistrates and Sessions Judges must visit prisons and afford effective opportunities for ventilating legal grievances and for expeditious enquiries and action. The State must bring legal awareness home to prisoners by way of a prisoner, periodical jail bulletins and a prisoners' wallpaper.

Steps to abide by the United Nations Standard Minimum Rules for the treatment of prisoners must be taken, especially with regard to: The Supreme Court has directed that District Magistrates and Sessions Judges must visit prisons and afford effective opportunities for ventilating legal grievances and for expeditious enquiries and action.

The State must bring legal awareness home to prisoners by way of a prisoner, periodical jail bulletins and a prisoners' wallpaper. Steps to abide by the United Nations Standard Minimum Rules for the treatment of prisoners must be taken, especially with regard to:

- Work and wages.

- Treatment with dignity.
- Community contracts.
- Correctional strategies.

The Supreme Court has observed that:

- The Prison Act needs reviews and revision.
- The Prison Manual needs total overhaul.
- The Jail Manual is out of focus with healing goals.

The Supreme Court has developed a new jurisprudence of prisoners right on the basis of Articles 20(1) and (2), 21, 22 (4 to 7) under the Indian Constitution.

The Supreme Court held that:

- A prisoner is entitled to invoke Art 21 for protection of his rights.
- Practice of keeping under trials with convicts in jails offends the test of reasonableness in Act 19 and fairness in Art 21.
- An arrested person or under trial prisoner should not be subjected to handcuffing.
- If the prisoner is subjected to mental torture, psychic pressure or physical infliction beyond the legitimate limits of lawful imprisonment, the prison authorities shall have to justify their action or be liable for the excess.

There are several problems of U.T. prisoners, particularly their number vis-a-vis total prison population and the delay in disposal of cases in the criminal court, which makes the programme of reformation of prisoner more difficult in Indian criminal justice administration.

The problem became more acute due to the fact that most of the under trial of prisoners under continued detention are poor and could not fulfil minimum monetary requirements for bail.

The Supreme Court in Hussainara Khatoon and other cases asserted the need of speedy trial. The Court further laid down that the under trial prisoners who remained in jail without trial for a period longer than the maximum term for which they could have been sentenced, if convicted, was illegal and is a violation of their fundamental right contained in

Article 21 of the Indian Constitution. The Parliament passed a legislation for free legal aid services to indigent persons in deserving cases entitled Legal Services Authorities Act, 1987. The Supreme Court observed that:

- "The literature of prison justice and prison reform shows that there are nine major problems which afflict the system and which need immediate attention.

These are:

- Overcrowding.
- Delay in trial.
- Torture and ill-treatment.
- Neglect of health and hygiene.
- Insubstantial food and inadequate clothing.
- Prison vices.
- Deficiency in communication.
- Streamlining of jail visits.
- Management of open air prisons."

The judges urged that the century old Indian Prison Act, 1894 should be replaced. The National Human Rights Commission has prepared an outline of an All India Statute.

POLICE-PUBLIC RELATIONSHIP: ISSUES

An obsolete and outdated organizational system:

- Governed by Indian Police Act, 1861 which is more or less unchanged despite the end of Colonial Rule and emergence of a radically different socio-political milieu.
- The emphasis still remains on'order' rather than the'law'.
- It is not a service. It is a force.
- No major reform has been launched to make police structure, role, attitudes, etc. compatible with the needs of a democratic polity.
- In British colonial designs police was:
  - A force to suppress people's aspirations
  - Silence their dissent and disobedience
  - Stamp out by any means any problem that threatened the observance of their'laws' and the maintenance of the'order' just as to their

  perceptions. This policing system is the root cause of many malaise
- The police force is reportedly ruthless as before.
- The charges are usually of:
  - Corruption
  - Inefficiency
  - Oppression tantamounting to torture
  - Custodial rapes and deaths
  - Fake encounter killings
  - False arrests
  - Demanding and dehumanizing methods of investigation and interrogation
  - Varied forms of excesses and abuse of authority against police in large number and substantiated in quite a number of official documents including the reports of National Police Commission, Indian Law Commission, National Human Rights Commission and State Human Rights Commissions

The Vestiges of Colonial Police Sub-Culture:

- This sub-culture.
  - Encourages servility to those in authority
  - Induces them not to say'no' to the superiors regardless of the illegality of their orders
- These traits in the Indian Police have encouraged cynicism in their conduct and character.
- The negative overtones of a ruler-responsible police force as evidenced in the discharge of duties and responsibilities.
- The police sub-culture allows handling of the law violators by lawless methods and tramples upon the rights of the accused.

Its parts are:

  - Sadism
  - Barbarity
  - Arrogance
  - Abusive language
  - Corruption and

   – Callousness, with the overall result of lowering them in the esteem of the public
- Given the pervasive influence of this culture, policemen have little respect for human rights principles and philosophies. They are, therefore, squarely accused of gross human rights violations.

The mindset disdains Human Rights:

- The general apprehension or the fear is that if human rights directions and dictates enter into policing, their power will be controlled and'crisis policing' will be impossible.
- It makes police force open to court strictures and compels them to refrain from behaving in a recalcitrant manner.
- In the face of stringent criticism, high-ups in the police force routinely, though reluctantly, order departmental enquiries.

The result is that the human rights violators in the police force get emboldened and merrily believe that they would not be touched whatever be the accusations of human rights NGOs and liberals advocate for a restrained and responsible policing.

Stranglehold of Political Interference in the day-to-day working of police:

- Ruling political parties pressurize the police to enable them to reap political harvest. The result is the practice of torturing political opponents by the police and framing of cooked-up charges against them.
- The interdependence of political authority and police. The result is that the political masters are unable to question the human rights violations by the police.
- The policemen are judged not by honesty or hard work but on considerations of kow-towing the persons in authority.
- The policemen succumb to political pressure because of temptations of recognition, promotion, decoration, reward and favour, threats for not carrying out illegal verbal instructions of the political masters.

- When ends become important and the means redundant, human rights become the first casualty.

Ambivalent Public Attitude:

- The complex nature of crime problems and the painfully slow judicial process make the public desperate and they quite often approve of the police excesses if those restore tranquility and effectively combat the dreaded terrorists, gangsters, dacoits and professional criminals, who let loose terror in the area and victimize thousands of unresourced citizens.
- The policemen who confront these dreaded criminals in real or fake encounters earn people's appreciation. The public is not bothered whether human rights of these criminals are respected or violated.
- The condoning attitude of police high hand is used as an alibi for justifying police excesses.
- The crowd reaction to crime problem is often needed by police force as a legitimate argument to cover up their unlawful conduct.
- The ambivalent public attitude in regard to human rights violations by the police force in crisis situations derails the human rights discourse in:
  - Insurgency or terrorism;
  - In areas where the guns, and goons of thunder; and
  - In areas where the activities of the underworld have undermined people's faith in the rule of law.

The Confused Police Force:

- It faces a crisis arising out of:
  - Pressures of work;
  - Increasing demands from politicians and public;
  - Growing criticism from the media;
  - Unending stream of court verdicts of human rights violations;
  - An undermanned and ill-equipped force is being subjected to daily denigration for:
    i. Its failure to arrest the awesome crime wave,
    ii. Increased lawlessness,

iii. Mounting socio-political tensions,

– The political masters demand:
  i. Quick results on the law and order and direct the police to show instantaneous effects,
  ii. The police to keep the alarming law and order situations of disturbed areas seemingly under control or else face the consequence of transfer, suspension and punishment posting,

– Faced with such order, the police:
  i. Keep the crime figures low by non-registering the cases,
  ii. Resorting to quick-fix solutions to local crime situation, such as by resorting to indiscriminate arrests and other oppressive and unlawful activities.

Most police functionaries at all levels, conveniently forget what is taught in police academies or in training institutions. Once they enter the real field of policing, the malaise of the existing police sub-culture overtake them. The process of unlearning deepens when they see their immediate superiors working more on the basis of experience and expediency than on education and skills imparted in training institutions. Their role models are their superiors who regard human rights discourses entirely utopian and idealistic, and hence unacceptable. The police culture needs to be changed, if training has to make a dent. A civilized policing is all that the ordinary citizen wants.

ATROCITIES INFLICTED BY THE POLICE IN JAIL AND OUTSIDE

POLICE TORTURE AND RIGHTS OF THE ACCUSED WHILE IN CUSTODY

The Supreme Court in Smt. Nandini Satpathy vs. P.L. Dani, AIR 1978 SC 1025

Quoting Lewis Mayers stated:

- "To strike the balance between the needs of law enforcement on the one hand and the protection of the citizen from oppression and injustice at the hands of

the law enforcement machinery on the other is a perennial problem of statecraft."

An undertrial or convicted prisoner cannot be subjected to a physical or mental restraint:

- Which is not warranted by punishment awarded by the court.
- Which is in excess of the requirement of the prisons discipline.
- Which constitutes human degradation.

Public-spirited citizens should be allowed to interview prisons in order to ascertain how far Article 21 of the Constitution is being complied with. But the interview has to be subject to reasonable restrictions which themselves are subject to Juridical review SCEI prisoner agreeable to meet the press should be allowed to interview them unless weighty reasons to the contrary exists 1982, Cr. L.J. SC 148. Persons arrested have right to medical examination AIR 1983 SC 378.

- Voluntary causing hurt to extort or to compel restoration of property is forbidden by Section 330 of the Indian Penal Code. Police is not beyond the reach of law and while performing their duties, they have to bear in mind that, if they transgress their limits and embark upon a situation wherein an offence can be contemplated, they were to suffer the consequences of the same.
- The Supreme Court has urged the Government and superior officers to ruthlessly root out the evil of third degree.

GUIDELINES FOR POLICE

ACCOUNTABILITY TO LAW OF CRIMES

The police is accountable to the law of the land which, in essence, is the expression of the will of the people. Therefore, while enforcing the law, the police is also bound by it. This accountability of the police to the law is ensured by judicial review at several stage. India's principal criminal laws are the Indian Penal Code and the Code of Criminal Procedure. A

police officer is a"Public Servant" as defined under Section 21 of the I.P.C. Various provisions of the I.P.C. make the police accountable for neglect of or failure to perform duty, deliberate and wilful omission of duty, misuse of office or causing harm or injury to others.

These legal provisions are enumerated below:

- Section 119 I.P.C., penalizes a public servant for concerning a design to commit an offence which that person is duty-bound to prevent.
- Section 161 I.P.C., penalizes a public servant for taking any gratification other than the one which is legally admissible.
- Section 164 I.P.C., penalizes a public servant who abets another in taking illegal gratification.
- Section 166 I.P.C., penalizes a public servant who disobeys the law with the intent to cause injury to another person.
- Section 167 I.P.C., penalizes a public servant who frames an incorrect document in order to cause injury to another person.
- Section 169 I.P.C., penalizes a public servant who unlawfully purchases property.
- Section 217 I.P.C., penalizes a public servant who disobeys the law in order to save another person from legal punishment or to prevent property from being forfeited.
- Section 218 I.P.C., penalizes a public servant who deliberately frames an incorrect record in order to protect another person from legal punishment or to save property from forfeiture.
- Section 219 I.P.C., penalizes a public servant, who in a judicial proceeding makes a report or order contrary to law.
- Section 221 I.P.C., penalizes a police officer who intentionally omits to apprehend or intentionally allows or aids to escape any person whom the officer is legally bound to apprehend.
- Section 222 I.P.C., penalizes a police officer who

intentionally omits to apprehend or intentionally permits to escape any person sentenced by a Court of Law.

- Section 223 I.P.C., penalizes a police officer who negligently allows the escape from confinement of a person convicted or charged by law.
- Section 225A I.P.C., penalizes a police officer who negligently or intentionally fails to apprehend or keep in custody any person accused of a jailable offense.
- Section 376B and C I.P.C., penalizes a police officer who has sexual intercourse with a woman in custody.

The provision to Article 311 of the Constitution is also employed by senior police officers to dismiss a subordinate without holding an enquiry. While, on the one hand, the law makes police action and conduct accountable to the judiciary, on the other it also protects police officers from false, vexatious and frivolous complaints.

Section 132 of the Cr. P.C. protects police officers from prosecution for acts committed under sections 129, 130 and 131 of the Cr. P.C. Sub-section 1 of Section 132, no prosecution can be launched against police official except acting in good faith while dispersing an unlawful assembly he; would be deemed to have committed no offence.

Section 197 Cr. P.C. protects all public servants who are not removable from their office, except with the sanction of the Government.

Thus, without the State Governments' sanction, no court is authorized to take cognizance of an offence committed by a public servant if the alleged act has been committed while the official was acting or purporting to act in the discharge of official duties. Sub-section 3 of Section 197 empowers the State Government to make any class or category of the police immune to prosecuting except with the Government's prior sanction.

CONCLUSION

The greatest challenge before the civil society today, globally, is to find out an appropriate strategy of ensuring law and order for the greater good of the community and, in doing

so, not to transgress the basic human rights of the accused and the victim. Anglo-Saxon law presumes every person as innocent unless proved guilty through a judicial process of trial. If every accused is presumed to be a criminal at the outset, the entire edifice of criminal justice evolved through centuries of trial and error crumbles to the ground. There are also other principles which have evolved and have been accepted by the society.

Chapter 3

Terrorism and Human Rights

The contemporary world is passing through unusual movements emanating from the worldwide unrest. There is an intense debate on these eruptions and ways and means to deal with this rapidly changing alarming global context. The central anxiety regarding these movements is that those who are questioning or challenging the system are armed and do believe in using the force to win their point. The State maintains that the ordinary laws meant for regulating the public affairs are not adequate, as most of these laws assume a normal society with citizens whose character, conduct and demeanors are broadly in conformity with the laws of the land and the norms of civility, decency and decorum set by the society for the rest.

It is, therefore, a moot question as to how to strike a balance between these two diametrically opposite tendencies. The success of governance lies in arriving at a workable equilibrium. The jurisprudential equilibrium rests not only on the nature of the State, which is dependent not only on the integrity and character of the ruler but also on the levels of development, quality of life, the nature of social institutions and instruments of civil society in mediating the relationships in the society.

However, it has been the human experience that the'equilibrium' is never everlasting. It is always open to challenge and, therefore, to the possibility of disequlibrium It is also postulated that human beings enjoyed unrestrained freedom in the State of nature. Surrender of a part of the freedom was a part of the contract. This surrender was in

exchange of security. Thus guaranteeing right to security, in a way, has come to define the basic function of the State. It is precisely for these reasons that the State has been given the power to use force, but the force can and should be used only the way that the procedure mandates. The procedure is evolved in pursuance of the objectives for which the State came into being.

Therefore, essence of any law should necessarily be the concern for the right to life and security of the individual. And every law is an expression of that part of human nature which privileges the security. The question that maintenance of law and order rests on mere passing of law is problematic. Many liberal scholars interpret law as an end in itself. It is common sense that where there is wide spread deprivation, there cannot be order.

A hungry man cannot be expected to be a law abiding citizen. There have to be ways and means through which people should be enabled to earn a decent livelihood to start with and opening and widening up of opportunities which will be conducive to improve their quality of life.If such conditions are not created, it is not only that the individual violates the law but the law cannot be enforced because of its poor moral and material base.

Thus'welfarism' becomes a part of the governance warranting passing of several laws. In fact, it is this process that has enlarged the very notion of rights. It is in this backdrop that one has to discuss terrorism, so as to contextualise it. It would be useful to discuss the origin and changing contours of terrorism, but in a paper of this kind, it is not possible. But what is possible is to deal with the way terrorism is interpreted and understood. Broadly, there are two interpretations: one is contextualist and the other is confrontationalist. The contextualists maintain that the origin of the outburst lies not inside the outburst but in the outside larger historical and socio- economic processes. They assume that an average human being craves to live an orderly, peaceful and a dignified life. There are a number of ways through which human beings could be divided, alienated and deprived. These undesirable

processes could be overcome, if only the mainstream political processes strive towards a responsible, responsive and sensitive political system. It is the drift of the mainstream politics from the democratic and transformative visions to one which is insensitive, bordering on exploitative, and one which allows critical situations of drift instead to grappling with and overcoming them within the boundaries of the Constitution and Rule of Law that can be one of the important causes for immediate provocation for protest which can grow into frightful violence. The contextualists hold that those dealing with such situations should get into deeper processes and find the historical alternative possibilities of dealing with the situation more through imaginative political action than use of brute force.

The confrontationalist approach, on the contrary, maintains that human beings are basically peace, loving and, therefore, prefer to lead a peaceful and orderly life. But there are always misconceived causes exposed by the misled and crime-prone individuals and groups whose sole purpose is to disturb the social order, as that is the way they express themselves. Such individuals or groups are not amenable to reason. Since the law is rooted in human reason, such rational ordinary laws cannot deal with explosive situations. They argue that these'distortions' should be put down with iron hand. They dismiss attempts at reasoning out the movements as useless, if not dangerous.

They go one step forward and maintain that contextualists are indirect associates and abettors of violence and disorder. There is also a new trend of cross border terrorism. In a golabalising world order, the States, unable to respond to the internal demands, can shift the balance to the neighbouring countries or generate fear to divert the public attention. Once a State succeeds in tracing the causes for internal crisis to external adversaries, it becomes difficult for the people to put pressure on their government for solving the basic problems. There are also several instances where nations are at loggerheads for various historical reasons breeding violence. Such violence cannot be dealt by the ordinary municipal laws.

It is this contex that gives rise to repressive laws, which could be used not only against the external enemy but also to suppress and repress internal dissent. Thus cross border terrorism contributes in a large measure to arbitrary exercise of power. India is one nation which confronts wide ranging challenges, which have come to assume terrorist forms. How these challenges are dealt and what are the implications for human rights can be a useful exercise.

The laws enacted to cope with the'outbursts' include Armed Forces Special Powers Act, TADA and POTA. It is not that these are only the Acts that postindependent India witnessed. There are about twenty to thirty Acts passed either at the Central or the State levels. If one looks at the history of legislation on terrorism or disturbance, there was the Preventive Detention Act at the advent of Independence, followed by Punjab security Act, 1955, Assam Disturbed Areas Act, 1955, and the Armed Forces Special Powers Act, 1958. In the decades of sixties and seventies, there were two major Acts in each decade, in eighties there were five Acts, in nineties, there were two Acts.

Of all these legislations, three legislations are selected for a critical examination, as they have been not only extensively used or misused but have been very seriously debated. The Armed Forces Special Powers Act, 1958, was one of the earliest to be introduced in the post- independent India. This is a reflection on several emerging developments and trends. Primarily, it is a reflection on Indian Independence which was certainly a landmark in the evolution of democratic governance, as it was the movement that challenged the colonial and imperial forces for their undemocratic and exploitative stranglehold over the sub-continent. The North-eastern India has been problematic, as certain parts have been claiming autonomy, if not, cessation from Indian union.

As there were armed rebellions, there was the Armed Forces Special powers Act, 1958 to deal with the problem. It is characterized as"an Act to enable certain special powers to be conferred upon the members of the Armed Forces in disturbed areas in the State of Assam and the Union Territory of

Manipur" The Act notes"if the Governor of Assam or the Chief Commissioner of Manipur is of the opinion that the whole or any part of the State of Assam or the Union Territory of Manipur, as the case may be, is in such a disturbed or dangerous condition that the use of Armed Forces in aid of the civil power is necessary, he may, by notification in the official gazette, declare the whole or any part to be disturbed area". The Act confers the power to any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the Armed Forces to"fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or the order, if he is of the opinion that it is necessary so to do for the maintenance of public order, after giving such due warning as he may consider necessary".

It also gives the power to these officers for"prohibiting the assembly of five or more persons, or carrying of weapons or the things capable of being used as weapons or firearms, ammunition or explosive substances". The Act also gives the power to the Armed forces to destroy any arms dump or any structure used as a training camp for armed volunteers or utilized as a hide-out by armed groups. The officer can also"arrest without warrant any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to effect the arrest". In addition, the armed forces have the power"to enter and search without warrant any premises, to make any arrest, recover any person to be wrongfully restrained or confined or any arms, ammunition or explosive substances, believed to be unlawfully kept in such premises."

In 1972, the Act was amended, so as to substitute Assam and Manipur the States of Assam, Manipur, Meghalaya, Nagaland and Tripura and Union Territories of Arunachal Pradesh and Mizoram". In 1983, the Armed Forces special powers Act was enacted. This Act also is similar to the earlier Act, except that it enlarges the scope of the power such as"any property reasonably suspected to be stolen property" and

added an additional provision"stop, search and seize any vehicle or vessel reasonably suspected to be carrying any person who is a proclaimed offender, or any person who has committed a noncognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a non-cognizable offence or any person who is carrying any arms, ammunition or explosive substance believed to be unlawfully held by him and may for that purpose use such force as may be necessary to effect such a stoppage, search or seizure as the case may be."

In 1990, the Armed Forces Special Powers Act was enforced in Kashmir. The Act, like the earlier Acts, has all the provisions, but enlarged the disturbed are as and dangerous conditions so as to include"activities involving terrorist acts directed towards overthrowing the government as by law established or striking terror in the people or any section of the people or alienating any section of the people or adversely affecting the harmony amongst different sections of the people" and further enlarged it by adding activities"directed towards disclaiming, questioning or disrupting the sovereignty and territorial integrity of India or bringing about secession of a part of the territory of India from the union or causing insult to the Indian National Flag, the Indian National Anthem and the Constitution of India".

TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT, 1987

In the Statement of Objects and Reasons of TADA Act, it is stated that the 1985 Act was in the background of escalation of terrorist activities, and it was expected that it would be possible to control the situation within a period of two years and, therefore, the life of the said Act was restricted to a period of two years from the date of commencement. However, the statement admits that on account of various factors such as stray incidents in the beginning are now becoming a continuing menace specially in States like Punjab. It is further stated that"on the basis of experience, it was felt that in order to combat and cope with terrorist and disruptive activities

effectively, it is not only necessary to continue the said law but also to strengthen it further". It, therefore, proposed that"persons in possession of certain arms and ammunition specified in the Arms rules 1962 or other explosive substances unauthorisedly in an area to be notified by the State government shall be punishable with imprisonment for a term which shall not be less than five years, but which may extend to imprisonment for life and with fine." It is further proposed to provide that confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or any mechanical device shall be admissible in the trial of such a person for an offence under the proposed legislation or any rules made thereunder.

It is also proposed to provide that the designated court shall presume, unless the contrary is proved, that the accused has committed an offence. It is further proposed to provide that in the case of a person declared as a proclaimed offender in a terrorist case, the evidence regarding his identification by witnesses on the basis of his photograph shall have the same value as the evidence of a test identification parade. It is these objectives that guided the 1987 Act, which was extended to the whole of India and its citizens both within and outside India. While earlier, the duration of the Act was two years, this time it was as many as eight years.

So far as the punishment is concerned, the Act states that"if such an act has resulted in the death of a person, it may be punishable with death or imprisonment for life and shall also be liable to fine". In other cases,"it is punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine". The Act does not stop with the offenders but extends to"whoever conspires or attempts to commit or advocates, abets, advises or incites or knowingly facilitates the commission of a terrorist act or any act preparatory to a terrorist act shall also be punishable in the same manner and with the same quantum of punishment". The Act also includes disruptive activities which are catalogued in a different way

from the terrorist activities. The disruption is defined as"any action taken, whether by speech or through any other media or in any other manner whatsoever, which questions, disrupts or is intended to disrupt, whether directly or indirectly, the sovereignty and territorial integrity of India or which is intended to bring about or supports any claims, whether directly or indirectly, for the secession of any part of India". With respect to conferment of powers, the Central Government can confer on any officer of the Central Government powers exercisable by a police officer such as arrest, investigation and prosecution of persons before any Court.

The Act mandates that all officers of police be required to assist the officers of the Central Government. The officer is empowered"that he has reason to believe that any property derived or obtained from the commission of any terrorist act and includes proceeds of terrorism, he shall, with the approval of Superintendent of Police, make an order seizing such property or attach the property." The Act further empowers the designated Court that in the case of those persons who are convicted of any offence under this Act," can, in addition to the punishment, order for declaring any property forfeited to the government. This Act also makes a major departure from the established practice with regard to the admissibility of evidence.

The Act states"notwithstanding anything contained in the Code or in the Indian Evidence Act 1872, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer in writing or on any mechanical device like cassettes, tapes or sound tracks out of which sounds of images can be reproduced shall be admissible in the trial of such person for such an offence under this Act." In the normal criminal law, the accused is innocent until the guilt is proved, whereas in this Act it states,"the designated Court shall presume, unless the contrary is proved, that the accused had committed such offence". It also provides for impunity when it says that"no suit, prosecution or other legal proceedings shall lie against the Central Government or the State Government or any officer

or authority of the Central or State Government or any other authority on whom powers have been conferred under this Act or any rules made thereunder, for anything which is in good faith done or purported to be done in pursuance of this Act". The Central Government may make such rules that provide for"regulating the conduct of persons in respect of areas the control of which is considered necessary or expedient and the removal of such persons from such areas and also the entry into and search of any vehicle, vessel or aircraft or any place".

THE PREVENTION OF TERRORISM ACT, 2002

In the introduction to the Act, as was the case with the earlier Acts, there is a statement of objects and reason which reflects the context and the' conditions leading to the prevailing state of affairs. The statement points out that"the country faces multifarious challenges to the management of its internal security. There is an upsurge of terrorist activities, intensification of crossborder terrorist activities, and insurgent groups in different parts of the country. Very often, organized crime and terrorist activities are closely inter-linked. Terrorism has now acquired global dimensions and has become a challenge for the entire world.

The search and methods adopted by terrorist groups and organizations take advantage of modern means of communication and technology using high-tech facilities available in the form of communication systems, transport, sophisticated arms and people at will. The existing criminal justice system is not designed and equipped to deal with the type of heinous crimes which the proposed law deals with. The Act extends to the whole of India. The provisions of this Act apply to citizens of India, outside India, persons in the service of the Government, wherever they may be, and persons on ships and aircrafts, wherever they may be. The Act carries the same provisions and similar tone and tenor of the TADA in the case of punishment for and measures for dealing with the terrorist activities. The Act enlarges the scope of offence by including those acts that"cause damage or destruction of

any property or equipment used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies". The more striking feature of this Act, unlike its predecessor TADA, is inclusion not only of Power of Declaration of an organization as a Terrorist organization but there is a schedule listing the organization. The Central Government has been given the power to add or remove an organization from the schedule.

There is a clause that the organizations can approach the Central Government for the removal. This is considered by a review committee which can denotify an organization. The clause on burden of proof is completely contrary to the normal standards. The Act says'a person commits an offence if he belongs or professes to belong to a terrorist organization. A person commits an offence if he addresses a meeting for the purpose of encouraging support for a terrorist organization or to further its activities. It also includes fund raising for a terrorist organization to be an offence.

It says a person commits an offence"if he invites another to provide money or other property and intends that it should be used, or has reasonable cause to suspect that it may be used for the purpose of terrorism. There is also a clause for recording evidence in absence of the accused wherein the Court is competent to try or commit for trial such person for the offence complained of, may, in his absence, examine the witnesses produced on behalf of the prosecution and record their depositions and any such deposition, may on the arrest of such person, be given in evidence against him on the enquiry into or trial for, the offence with which he is charged. The higher Courts can direct any magistrate of the first class to hold an enquiry and examine any witnesses who can give evidence concerning the offence and any deposition so taken may be given in evidence against any person who is subsequent accused of the offence.

That POTA is more stringent than the TADA is no where more striking than in the clauses under the Act relating to interception of communication. The Act gives the power of

interception. A police officer not below the rank of SP supervising the investigation of any terrorist act under this Act may submit an application in writing to the competent authority for an order authorizing or approving the interception of wire, electronic or oral communication by the investigating authority when he believes that such interception may provide or has provided some clues to any offence involving a terrorist act.

The Act also authorizes the concerned authorities to direct that a provider of wire or electronic communication service, landlord, custodian or other person shall furnish to the police forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference of the services that such a service provider, landlord custodian is providing to the person whose communication are to be intercepted". The Act also provides for protection of information. Law enforcing agency is required to preserve the contents of the communication intercepted without any alteration or editing.

The Act also incorporates a provision that the information gathered through interception is admissible as evidence against the accused in the court during the trial of a case. The Judge can waive the ten days condition, if he is convinced that it was not possible to furnish the information to the accused during this period. There is the provision for a Review Committee which should be furnished the details of the interception and be satisfied that the interception was necessary, reasonable and justified. The Review Committee has the power to approve or disapprove the orders of the competent authority authorizing the interception. In cases where it is disapproved, it is not admissible for evidence; it has to be destroyed.

There is also a clause which makes the interception violative of the Act punishable. The Act empowers that if the investigating officer fails to complete the investigation in a period of ninety day, the special court shall extend the said period upto one hundred and eighty days on the report of the public prosecutor indicating the progress of the accused

beyond the said period of ninety days. The normal Cr. P. Code -- of arrest do not apply in these trials, as no person accused of an offence punishable under this Act in custody be released on bail or on his own bond unless the Court gives the public prosecutor an opportunity of being heard and if the latter opposed the bail, the accused cannot be released until the court is satisfied that there are reasons to believe that the accused might have not committed the offence.

The Act further requires that whenever any person is arrested, information of his arrest shall be immediately communicated by the police officer to a family member or relative and the arrested person be permitted to meet the legal practitioner representing him during the course of interrogation of the accused person. As was the case with TADA, even in POTA the presumption of offence as the special court is called upon to draw an adverse inference from any evidence that is brought to its notice. It also provides immunity to the officer as it provides for protection of the action of officer in good faith.

For, it provides that no suit, prosecution or other legal proceedings shall lie against any officer or authority on whom powers have been conferred under this Act for anything done in good faith or purported to be done in pursuance of the provisions contained in this Act. However, any police officer who exercises powers corruptly or maliciously, knowing that there are no reasonable grounds for proceeding under this Act, the Court may award such compensation as it deems fit to the person. The Act also has a provision for impounding the passport and arms licence of person charge-sheeted under this Act. As was the case with TADA, the Act also provides for power for regulating the conduct of persons and the removal of such persons from the area and also the entry into vehicle, vessel or aircraft or any place whatsoever.

These Acts present the ways and means through which the Indian State has been grappling with explosive situations. It is clear that the State organs are provided with extraordinary powers and vests the individual officer with wide discretionary powers, and much depends on the quality and

approach of the concerned officers. From a human rights point of view what is important is whether the officers take the limits imposed on procedures laid down seriously or not. It is in respecting and observing these limitations one should recognize that fairness of procedure and economy in use of force are always positive inputs as they protect and promote democratic values which lend legitimacy to State action. It can be better understood if we take a look at the international thinking on terrorism and human rights and humanitarian concerns.

UN CONFERENCE ON MEASURE TO ELIMINATE INTERNATIONAL TERRORISM

UN in its General Assembly Resolution considered the question of elimination of international terrorism and approved the Declaration on measures to eliminate international Terrorism. It urged the States to take all the measures at the national and international levels to eliminate terrorism. The UN felt deeply disturbed by the worldwide persistence of acts of international terrorism, which endanger or take innocent lives, have a deleterious effect on international relations and may jeopardize the security of States.

It is also concerned by an increase in acts of terrorism based on intolerance or extremism and the growing dangerous links between terrorist groups and drug traffickers and their para-military gangs which have resorted to all types of violence endangering the Constitutional order of States and violating basic human rights.

The UN is also convinced of the desirability for closer coordination and cooperation among States in combating crimes closely connected with terrorism, including drug trafficking, unlawful arms trade, money laundering and smuggling of nuclear and other potentially deadly materials, and stressed the imperative need to further strengthen international cooperation and take and adopt practical and effective measure to prevent, combat and eliminate all forms of terrorism that affect the international community. In this Resolution, the State members of the UN affirmed their

unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable. They constitute a grave violation of the purpose and principles of the UN and pose a threat to international peace and security, jeopardize friendly relations among the States, hinder international cooperation and aim at the destruction of human rights, fundamental freedoms and the democratic bases of the society. The Resolution called upon the States to fulfil their obligations under the UN charter and other provisions of International Law with respect to combating international terrorism and urged the States to take the following measures:

- To refrain from organizaing, instigating, facilitating, financing, encouraging or tolerating terrorist activities and ensure that their territories are not used for terrorist installations or training camps;
- To ensure the apprehension and prosecution or extradition of perpetrators of terrorist acts;
- To endeavor to conclude special agreements to that effect as a bilateral, regional and multi lateral basis and prepare model agreements on cooperation;
- To cooperate with one another in exchanging relevant information concerning the prevention and combating of terrorism;
- To take promptly all steps necessary to implement the existing international conventions on this subject to which they are parties, including the harmonization of their domestic legislation with those conventions;
- To take appropriate measures before granting asylum for the purpose of ensuring that the asylum seeker has not engaged in terrorist activities and see that refugee status is not used in a manner contrary to the provisions of international law.

The States are also urged to review the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all forms with the aim of developing a comprehensive legal framework. The Resolution also urged those states which have not yet become parties to international conventions and protocols relating to

fighting against international terrorism to become parties.

The following measures are suggested to enhance international cooperation:

- A collection of data on the status and implementation of existing multi lateral, regional and bilateral agreements relating to international terrorism, including information on incidents caused by international terrorism and criminal prosecution and sentencing, based on information received from the depositaries of those agreements and from member States;
- A compendium of national laws and regulations regarding the prevention and suppression of international terrorism in all its forms based on information received from member States;
- An analytical review of existing international legal instruments relating to international terrorism, in order to assist States in identifying aspects of this matter that have not been covered by such instruments and could be addressed to develop further a comprehensive legal framework of conventions dealing with international terrorism;
- A review of existing possibilities within the United Nations system for assisting States in organizaing workshops and training courses on combating crimes connected with international terrorism.

The account of growing terrorism and the legal measures that have been initiated from time to time reflects the changing nature of the political capacity of the State to deal with the magnitude of the problem of terrorism. A simple analysis of the legal measures during the five decades after independence shows that no legal measure or no quantum of power in terms of use of force and the severity of punishment has been helpful in totally containing terrorism.

On the contrary, its spread and intensity has been admitted by the State time and again. It was in the decade of seventies that the problem took the form of 'disturbed areas' and'terrorism', calling for far more comprehensive measures.

The story of the decades of eighties and nineties is no different. It was during this period that legislations like TADA and POTA have been introduced. However, the essence of experience of five decades with social turmoil indicates that the use of force and severity of punishment may be necessary from the point of the State but that they are not sufficient is so self-evident that it does not need any further evidence or substantiation.

It is pertinent to raise the question that if a particular Act with increased power for the State proved to be inadequate, does this inadequacy pertain to the power of the State? Or lack of political capacity of institutions and individuals in power needs to be otherwise critically examined. As there has been growing problems emanating from the so called terrorism, correspondingly there has been growing human rights consciousness. There has been substantial documentation of these violations of rights by human rights groups in Punjab, Kashmir, the North East, Andhra Pradesh, Maharastra, Tamil Nadu, West Bengal and other problem States of India.

There has also been documentation of these violations by the International human rights agencies like Amnesty International, Asia Watch, and so on. The violations are also recorded by the enquiry Commissions appointed from time to time by the governments themselves and also State and National Human Rights Commissions. There are also Judicial Pronouncements as a testimony to the blatant violations of the rights of the citizen. The media, with all its limitations, played no less significant role in exposing these excessive actions of the State agencies. However, in the course of handling terrorism the basic position that the State is a product of the law is either ignored or forgotten. For, no law can confer absolute and arbitrary power to any organ of the State. The rule of law should not be mistaken to rule by law.

These two things are qualitatively different: the former deals with objective standards for conduct of the agencies of the State while exercising power, which is both legal and moral, and the latter stands for whims and fancies of the rulers. It is legal to the extent that power is derived from the law,

and it is moral in the sense that the power conferred on the agents of the State is also a product of trust. The trust implies that the power shall not be arbitrarily exercised. The restraints that every law provides for essentially rests on the apprehension that unrestrained power is likely to take not only an arbitrary form but can become ruthless and brutal. The restraints are also necessary to see that at no point force used by the State lose sight of human reason.

It is also built in the logic of the situation that'unleashing of force by an organised State' instead of containing terrorism may aggravate the overall situation at one level and the State machinery itself may start acquiring the methods and habits of the adversary, resulting in disappearance of the qualitative difference between the legally constituted State and emotionally or contextually constituted terrorist. The excessive use of force by the State apparatus not only does harm to the cause of human rights but becomes counter productive to the internal working of the State itself. The beauty of the law is that it not only defines the relation between the State agents and the citizens but structures the internal relations in terms of hierarchy, division of work, unity of command, and so on. The moment there is arbitrariness in the use of force, it has the intrinsic propensity to lead to deinstitutionalisation of behaviour.

This is a process where the controls and regulations built into the system to direct the collective effort and behaviour get eroded, as those working at the cutting edge and subordinate levels fail to make the neat distinction between the inside and the outside. Selective application of legal procedures by supervisory levels or the political masters erode the universality of norms and sanctity of the law.

This, in the ultimate can end up in despotic governance with no regard for any of the human rights standards-national or international. The strength of the human rights depends on the depth of the law, vitality of the society, vision of the rulers, vibrancy of the institutions and discretionary use of discretionary powers. Terrorism is one part of societal experience which calls for unusual abilities and creativity. If

one presupposes that terrorism has its roots in human''unreason' or 'irrationality', the solution to terrorism should spring from human reason and creative potential. The tragedy of the governance has been that instead of bringing in values into a terror stricken society, the State and, more particularly, the law enforcing agencies are ending up initiating and imbibing terrorist methods and culture. That is the crisis of civilized governance.

Chapter 4

Social, Economic and Cultural Entitlements and Legal Rights

Increasingly, since the middle of the twentieth century, in the long and arduous journey for the building up of a just, humane and peaceful world, more and more road-signs and milestones the world over are being articulated in terms of human rights. This document will attempt to unravel the discourse around economic, social and cultural rights, and briefly make out in the end a case for the legal justiciability of these rights.

Rights may be defined as a justiciable claim, on legal or moral grounds, to have or obtain something, or act in a certain way. In other words, rights are entitlements that are backed by legal or moral principles.

Amartya Sen defines entitlements as enforceable claims on the delivery of goods, services, or protection by specific others. This implies that rights exist when one party can effectively demand it from another party that is in a position to provide goods, services or protections, and there is a third party that may take action to secure their delivery. The evolution of human rights has sought to safeguard three aspects of human existence: human integrity, freedom and equality.

Axiomatic to these three aspects is the respect for the dignity of every human being. The growing recognition of human rights since the turn of the 20th century has helped it to evolve from vague, diffused aspirational statements and assertions, to increasingly lucid and unambiguous enunciation

in international and national statutory documents. However, the enforceability of many of these rights, especially by nation States, remains uneven and is particularly weak for social, economic and cultural rights of citizens. The Universal Declaration of Human Rights adopted by the UN General Assembly on 10 December 1948, was a major landmark, because it consolidated for the first time in a single text a whole range of human rights and fundamental freedoms, based on international consensus.

Subsequently, a dispute ensued which remains not fully resolved even up to the present day about the character and relationship between two categories of rights: namely, civil and political rights, and economic, social and cultural rights. The General Assembly in 1950 called upon the UN Commission on Human Rights to adopt a single convention, incorporating both CP and ESC rights, because of the interdependence of all categories of human rights. However, in 1951, most western countries combined to reverse this decision, directing the Commission to divide rights contained in the UDHR into two separate international covenants, one on CP rights and the other on ESC rights.

Supposed contradiction between CP rights on the one hand and ESC rights on the other often took place against the background of competing ideologies particularly during the Cold War with liberal democracies affirming the ascendancy of CP rights and the Socialist bloc declaring that the abridgement of CP rights is tolerable if this is necessary to advance the superior body of human entitlements, that is, the ESC rights. In Socialist countries, and some newly independent countries of the South, it has been often argued that the pursuit of ESC rights should be prioritised over the pursuit of CP rights.

The argument goes on to State that 'realisation of civil and political rights is predicated upon access to economic and social right; without the latter, the former is unattainable. The curtailment of political freedoms may be necessary to attain economic development. Countries such as Singapore, Malaysia, and Indonesia have been cited as examples of the

countries that attained economic growth at the expense of civil liberties'. In liberal democracies of the North, on the other hand, the focus tends to be on CPR rather than ESR.'Economic and social rights are viewed as"second class rights"- unenforceable, non-justiciable, only to be fulfilled progressively" over time. Northern governments and news media quickly and strongly respond to banning of political parties, proscription of newspapers, and detention without trial in developing countries.

However, their responses to poverty, unemployment, famine, malnutrition, and epidemics in the same countries are often informed by charity, not rights concerns'. Most enforceable fundamental rights are CP rights. The result is that many rights, which are critical to the survival with dignity of the poor people, are rarely enforced.

The right to shelter would have protected urban homeless people and slum-dwellers from criminalisation and insecurity to which they are routinely subjected. At another level, there is the more progressive rights of the persons with Disabilities, which for the first time gave legal recognition to the rights of the disabled people in India. But once again most of its provisions do not incorporate penal outcomes for their infringement or non-compliance.

Therefore, ESC rights of a marginalised group like the disabled are enunciated in the statute books, but are put in such a manner that they make little real difference to greater justice in their lives. There is a common pattern with other social justice legalisations in India as well, which seeks to protect the rights of women, dalits and tribal people, agricultural workers, bonded labourers and so on. The ideological resistance to ESC rights has come from diverse sources. It has been opposed by capitalist countries of the North, because of their unshaken faith in economic liberalism, even in some cases a kind of market fundamentalism, and as a corollary, belief in a severely constrained role for the State in welfare and development.

At the same time, it has been resisted by right-wing religious fundamentalism of various faiths, which are

grounded in notions of patriarchal opposition to gender equity, to equal rights of women in the family, to education, wages, employment and inheritance.

ESC VS. CP RIGHTS: IS THE DIVIDE IRRECONCILABLE

Those who believe that human rights ought to be divided into two distinct categories, make several assumptions about the fundamentally diverse character of these two sets of rights.

The major divergences between the four kinds of rights that are elaborated in the literature can be summarised as:

1. CP rights mainly require freedom from State interference for the protection of individual freedoms. ESC rights, on the other hand, require the active agency of the State to provide goods, services or protection to the individual. Therefore CP rights incur only passive obligations of abstention from the State, whereas ESC rights require active measures by the State.
2. Related to this is the belief that CP rights come'free' in the sense that they do not cost much in terms of enforcement. Their main contents are assumed to be individual. The implementation of ESC rights, in contrast, is costly, since they are understood as obliging the State to provide welfare to the individual.
3. CP rights are considered to be'absolute' and'immediate', whereas ESC rights are held to be programmatic, to be realised gradually, and, therefore, not a matter of urgency in terms of their realisation.
4. Another related distinction that is often made is that CP rights are'justiciable' in the sense that people can approach the Courts and other judicial bodies for remedy in situations of right infringement, whereas ESC rights are more political in nature, without judicial remedy.

The present broadly stated consensus in the mainstream of development and rights literature is of the indivisibility of human rights. The principle of the indivisibility of human

rights indicates that ESC rights must be given the same weight as CP rights. Right to health, for example, cannot be realised if people are unable to exercise their democratic right to participate in decision-making processes relative to service provision. Equally, people cannot participate in decision-making processes, if they do not have the health or general economic well being to do so. To take another example, for many poor people, particularly rural people in developing countries, access to land is essential to earn a living, as this is an element of ESC rights. Yet land rights are a judicial matter, requiring protection in the Courts, and this is a CP rights concern.'The efforts to bring torture, arbitrary detention and capital punishment to an end are laudable and have our full support.

But to be somewhat provocative, what permanent achievement is there in saving people from torture, only to find that they are killed by famine or disease that could have been prevented, had the will and the appropriate controls been there? An integrated approach to international human rights as an invisible whole is necessary'. At the close of the Cold War, the ideological edge of this somewhat sterile debate has weakened. In theory, today there is wide international acceptance of the notion that all human rights must be enjoyed by all people, everywhere in the world.

Where humankind continues to flounder now is in its practice. In 1993, representatives of 171 governments gathered at Vienna for the World Conference of Human Rights. They stated unequivocally that"all human rights are universal, indivisible, and interdependent and interrelated". This was a fitting endorsement of the Preamble of the UNHR which stated in luminous words of hope, that'the highest aspiration of the common people is the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want'.

SOCIAL RIGHTS

There are different dimensions in which rights, and their denial, can be analysed. On one axis may be groups whose

rights are vulnerable to denial and, therefore, have to be secured for them, be they agricultural workers, dalits and tribal people, women, disabled people, homeless people and so on. On a second axis, we can look at the problem in terms of the content of rights that are to be secured, such as the rights to food, work, education, health, shelter and so on. And since rights are expected to be enforced by duty bearers, which may or may not be the State, a third axis of rights is the right to good governance. This variation is not merely for academic interest.

It has close bearing on the nature of analysis and the agglomeration to interventions that emerge in a specific context. According to Article 25(1) of the UDHR, every human being by virtue of being a human has a right to a life adequate for the health and wellbeing of her/himself and of her/his family, which is seen to include food, clothing, housing and medical care and necessary social services. It is recognised that people must be enabled to enjoy their basic needs under conditions of dignity. No one shall have to live under conditions whereby the only way to satisfy their needs is by degrading or depriving themselves of their basic freedoms, such as begging, prostitution or bonded labour. Among these rights, indisputably one of the most important is the right of food. The Universal Declaration on the Eradication of Hunger and Malnutrition of 1974, affirmed that"every man, woman and child has the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties", while considering that society today already possesses sufficient resources, organizational ability and technology and hence the capacity to achieve this objective.

Heads of States and governments gathered at the World Food Summit in Rome in November 1996 and adopted a resolution upholding"the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger". The promotion and implementation of the right to adequate food must be a central objective of all States and other

relevant actors in order to end hunger and malnutrition. The right to food has been elaborated to mean that every man, woman and child alone and in community with others must have physical and economic access at all times to adequate food or by using a resource base appropriate for its procurement in ways consistent with human dignity.

The paramount responsibility of the State is to ensure that everyone is, as a minimum, free from hunger. Priority should be given, as far as possible, to local and regional sources of food in planning food security policies, including under emergency conditions.

The State also has a major obligation to secure by law access to food producing resources, including agricultural and common lands, forests and water resources. Another extremely significant social right is the right to adequate housing. The UN Committee on Economic, Social and Cultural Rights has stressed that the right to housing should not be interpreted in a narrow or restrictive sense which equates it with the shelter provided by merely having a roof over one's head or shelter exclusively as a commodity. Rather the norm should be seen as the right to live somewhere in security, peace and dignity.

It has asserted that the following seven components comprise the core entitlements of this right:

- Legal security of tenure;
- Availability of services, materials and infrastructure;
- Affordable;
- Habitable;
- Accessible;
- Location; and
- Culturally adequate.

The UN Global Shelter Strategy to the Year 2000, adopted unanimously by the UN General Assembly in 1988 defines the term adequate housing to mean: adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities-all at a reasonable cost. This right places various obligations on the State. On the negative

side, it requires security of tenure, guarantees against discrimination and harassment in matters related to housing. At the same time, there is a positive obligation to secure progressively the right to adequate housing. There are today more than one billion persons throughout the world who do not reside in adequate housing and that a further one hundred million have no home at all. Positive State action would require greatly enhanced public allocations for housing, government regulation of the land market to secure equitable access of poor people to adequate housing, regulation of land mafias and profiteers and redistributive fiscal measures.

There are State obligations to ensure basic services like water and sanitation. Globally, more than 1.2 billion people still lack access to safe drinking water, and 2.4 billion do not have adequate sanitation services. According to UN-Habitat, the number of urban dwellers not receiving safe water has more than doubled during the last decade, from 56 million in 1990 to an unprecedented 118 million in 2000. It is not always recognised how closely the right to health is related to the social rights already elaborated, particularly the rights to food and housing. This right places obligations on the State to secure the highest attainable State of health of each individual Empirical evidence supports the conclusion that improvements in water and sanitation, nutrition, or housing, can be far more beneficial for the enhancement of health than curative, or preventive, health measures.

The precise nature of State obligations to secure the right to health has been contested strongly among international organisations health activists and State authorities. The influential Alma-Ata declaration of 1978 articulated a global commitment to health for all. The WHO called for making primary health care effective, efficient, affordable and acceptable. However, serious differences persist about whether these services should be free of charge, and should be guaranteed entirely by the public health sector. The WHO has tended not to support such a demand, except for its advocacy of free medical services for pregnant women and for immunisation.

ECONOMIC RIGHTS

There are certain basic economic rights, which is seen both as important freedoms in their intrinsic character as well as necessary vehicles to secure various social rights elaborated earlier. These include the rights to property, work and social security. Arguably, of all social and economic rights, the most contested is the right to property. It is often interpreted as a restraint upon the State from interfering in an individual's right to acquire private property.

This right, often also presented as a civil right, has been defended passionately by countries of the North and has been expanded to include the right to intellectual property. It is seen as an essential component of the'rule of law', along with the protection of contracts. The socialist countries as well as some newly independent nations of the South instead stressed the social nature of property, and justified interference with property rights in what is deemed to be in the public interest. The provisions protecting property rights have been seen by many activists as barriers to redistributive justice, such as land reforms and prevention of excessive concentration of wealth. Housing rights may require rent control measures, and environmental rights may severely restrict the rights of a property owner to use his property.

However, there are also some contexts in which this right may actually benefit disadvantaged people. Various ILO conventions protect the property rights of workers, as well as the land rights of indigenous communities against compulsory acquisition by the State. Some people have also argued for a right not of property but to property. In order for the right to property to be fulfilled and for everyone to really enjoy the right to property, every individual should enjoy a certain minimum of property needed for living a life in dignity, including social security and social assistance.

A far more widely accepted economic right is the right to work. Work is seen much more than a means of economic survival, but also essential to human dignity, freedom, self-esteem, self-realisation and social value. There are many aspects to the right to work. The first is the freedom to choose

work, unencumbered by the State or social coercion, bondage, slavery or social customs like caste taboos. A second aspect relates to rights during employment, such as of adequate and non-discriminatory wages, the right to safe and healthy working conditions, to rest, holiday and social security, and especially for women and young persons to protection at work. A third set of rights relate to the freedom of workers to protect their interests thorough free trade unions. Several activists regard these mainly as rights at work, and suggest that the right to work implies a right to employment, or to be provided with work, if necessary by State intervention.

Advocates of market economics often oppose this right, on the grounds that policies of full employment create economic inefficiencies and over-employment. On the other hand, this right has been legally guaranteed not only in several socialist countries, but also even in mixed economies like India. Keynesian economists also advocate large public works strategies to combat cyclical unemployment in capitalist economies. Overall, the right to work can be the most effective means of not only social security but also a vehicle for many social rights, for all ablebodied adults and members of their families.

Especially for vulnerable groups, the most significant economic right may be the right to social security. The 1948 UDHR, in Article 25, guaranteed every'member of society' the right to social security. Subsequent international covenants have elaborated further this right, and created obligations on both employers and the right to establish and maintain systems of social security. Social security includes firstly social insurance, or the'earned' benefits of workers and their families, such as medical care and assistance during sickness, maternity, disability, old-age, unemployment, accidents at work, and support to survivors after death.

In order that these social benefits are not discretionary and minimum standards are ensured, a legal basic is ensured thorough international covenants and national laws. Social security also includes social assistance, provided to vulnerable people in need thorough tax revenues. The recognition of this

as a human right elevates it from the stigma of charity to an entitlement, a State obligation to the more vulnerable members of society. This obligation stems from the right to life, and extends to widows, orphans, children without adult protection, persons with disability, old people without care, people living with stigmatised ailments like mental illness, leprosy and AIDS and so on. The obligations of the State to these groups is much less disputed in principle, but because of their political powerlessness and invisibility, this right is among the least opertionalised in practice in the majority of countries.

CULTURAL RIGHTS

Cultural rights are the rights of individuals and groups to preserve and to develop their culture. Culture may be understood as the accumulation of material and spiritual products and activities of a social group. These rights place several obligations on the State. The state must itself respect the freedom of an individual to pursue a culture of his/her choice, and at the same time protect his/her from coercion by individuals and groups that are opposed to this cultural orientation. At the same time, the State should actively create conditions under which the right to promote and pursue the culture of one's choice is protected and fostered. Cultural rights also include the right to education, although it can legitimately be seen also as a social right.

The liberal human rights perspective on education tended to place the duty to educate children primarily on parents, but the State had a role by making school attendance compulsory and by regulating the curriculum. It was the Soviet Constitution in 1936 that for the first time guaranteed free and compulsory education at all levels. In this socialist human rights perspective, it became the human right of every person to receive education, and the primary duty of the State to provide it. In fact, in all socialist constitution, the right to education, along with the rights to work and social security, were given greatest importance. This right entails most importantly the entitlement of every human being, and in particular every child, to receive education. There is now wide

international consensus about State obligations to fulfil this right by means of positive action, but not all agree that education should be provided free to promote equality of opportunity. The consensus of international covenants currently about the nature of State obligations for securing the right to education is that these are'progressive obligations', that is, each State party undertakes to take steps'to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights' concerned.

ECONOMIC, SOCIAL, CULTURAL RIGHTS AND JUSTICIABILITY

Especially in the second half of the twentieth century, in the acknowledgement and elaboration of a wide range of ESC rights, especially in historically discriminated groups such as women, children, indigenous communities and minorities. However, the actual practice of national governments, the principal duty-bearers responsible for the enforcement of many of these rights, has tended to be far less encouraging. One major problem has been that unlike CP rights, ESC rights are widely viewed as aspirational moral goals, which are not legally binding.

There is no flaw in human rights practice to declare rights with the aim of establishing standards even if they are not immediately achieved. The obligation for enforcing the human rights contained in various international instruments vests primarily with national governments. Under Article 2 of the International Covenant on Economic, Social and Cultural Rights, States are legally bound to take steps to'achieve progressively' to the maximum of their available resources, the full realisation of the rights contained in the Covenant.

The problem is that most non-socialist States have mirrored within their own Constitutions and laws, this assumed dichotomy between CPR, which are legal and justiciable, enforceable by courts, and ESCR, which are moral rights, not enforceable by courts. In India, most CP rights are contained, in the Fundamental Rights of the Constitution, whereas the majority of ESC rights are contained in a separate

stage, called the Directive Principles of State Policy. Citizens can petition courts for the enforcement of the former, but not the latter. Even ESC rights not contained in the Indian Constitution, but subsequently legislated like the Equal Opportunities have no penal clauses. Therefore, effectively they remain pious statements of intent, but in practice afford a disabled person, whose rights are flouted, no real remedy. However, in India as in many countries, some ESC rights are contained both in the law and the Constitution, enforceable thorough legal remedies.

These include legislation for minimum wages, the rights of workers, the cultural and educational rights of minorities, and restraints on bonded and child labour. A broad distinction is often made between rights that are'justiciable', capable of being invoked in Courts of law and applied by judges, and those that are not. It is argued that many ESC rights, such as the rights to food, housing, health education and social security, are by their very character, not justifiable rights. They are no doubt legally binding in that they create obligations on States. However, they are not legal with regard to their applicability.

It is frequently argued also that Courts cannot intervene to enforce these rights, because States are legally bound to achieve these obligations progressively based on the availability of resources. It is suggested that CPRs require mainly abstentions by State authorities, involving no costs, whereas ESC rights require positive action by the State, including significant programme expenditure. This distinction is overdrawn. Several CP rights do require expenditures, such as for legal aid, regulators and ombudsmen. On the other hand, there are ESC rights that only require the state to abstain from encroachment on people's rights, such as from the compulsory acquisition of the land of indigenous communities or the eviction of urban squatters.

Several laws against discrimination against women, children, socially disadvantaged groups and minorities, involving primarily ESC rights, would also not involve more significant public expenditure as compared to CP rights.

However, in the end, it must still be admitted that some of the most vital ESC rights do involve substantial public expenditure, such as the rights to food, housing, education, social security, work and health care. It is not that most national governments have no absolute resources for public expenditure. What is contested is the priorities attached to this public expenditure. The analysis of budgets of most countries would reveal overwhelmingly large allocations to military expenditure, the salaries and other expenses of public officials, the police and urban infrastructure Allocations to advance the ESC rights are typically low, and even these are inefficiently managed and typically involving major expenditures on salaries of generalist administrators.

Therefore, the progressive achievement of these rights is even more tardy. These trends are further aggravated by the ascendancy of neo-liberal policies of structural adjustment, promoted by the IMF and World Bank, which have resulted in a continuous dilution of the welfare obligations of the State, and a retreat of the State itself from its erstwhile paramount obligation to secure ESCR and development for all its citizens, to facilitating globalised market-led economic growth. In these circumstances, the imperative has never been greater, for human rights activists to press for the inclusion of ESCR in national constitutions and laws, as legal rights that are fully justiciable, on par with CPR. Since these rights seek to safeguard the rights to survival with dignity, development and well-being of large masses of powerless-disenfranchised, oppressed women, men, girls and boys in countries across the world, justiciable social, economic and cultural rights will help strengthen their voices and struggles for a more just and humane social order.

Chapter 5

Child Rights

Administrative life is not just a career: it is a calling. Being ever in the midst of the people, constantly besieged by appeals for assistance and with opportunities for making a difference in the lives and aspirations of people, for the District Magistrate, his calling becomes a mission to be implemented with sensitivity and vision, blending the heart and the mind. Human rights provide the very essence of meaningful living. Children constitute the most tenders human resources known for their pristine purity, innocence, simplicity and guilelessness.

They are our, most succeeding generation and our greatest gift to humanity. Childhood is the most tender, formative and impressible stage of human development. The excitement and joy associated with childhood once cost cannot be regained. Thus administration of child rights is perhaps one of the most important duties of a District Magistrate.

Children have been the focus of planning efforts since the very beginning of the planning process in our country, and it would be seen that the Constitution has anticipated the provisions of the Convention on the Rights of the Child.

In many ways, our Constitution had comprehensively provided for holistic development and decent living conditions of children.

However, legislation without implementation is meaningless, hence the importance of the role of executive machinery of which the District Magistrates is the leader. While discharging regulatory and developmental functions, human rights provide the District Officer with essential articles

of faith that ensure that every individual is entitled to dignity and civil and political rights conferred by the law of the land as well as socioeconomic rights to satisfy basic needs.

CHILD RIGHTS

PRINCIPLES

Children (age group 0-18) account for about 40.5 per cent the population of our country, or, in absolute terms, 408 million.

Of these, children in the age group 0-14 are about 350 million (34 per cent), and children in the age group 0-6 about 158 million (15 per cent). Child protection and development have been central to India's development strategy since independence. The Indian Constitution has specific provisions regarding children and has in many respects anticipated the Convention on the Rights of the Child (CRC).

The major provisions relating to children are:

- *Article* 21A:"The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."
- *Article* 23:"Traffic in human beings and beggar and other forms of forced labour are prohibited and any contravention of this provisions shall be an offence, punishable in accordance with the law."
- *Article* 24:"No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment."

The main provisions of Directive Principles of State Policy relating to children are:

- Article 39(e)"Ensuring that"the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength."
- Article 39(f)"That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood

and youth are protected against exploitation and against moral and material abandonment."

- *Article* 42:"Provision for just and humane conditions of work".
- *Article* 45:"Provision of early childhood care and education for all children until they complete the age of six years".
- *Article* 47:"Duty of the State to raise the level of nutrition and standard of living and to improve public health."

Article 37 lays down that while the Directive Principles shall not be enforceable by any Court, they are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply them while making laws. The CRC is an exceptional instrument in many respects. First, no other human rights instrument was acceded to with such rapidity; it is now near universal in that, with the exception of the United States and Somalia, every Member State has ratified it. The CRC owes its popularity to the emotive appeal of children and the widespread shock at the appalling living conditions of millions of children and their exploitation in many parts of the world.

Even now, in spite of the considerable development that has taken place after the end of colonialism, in the world as a whole, nearly 11 million children still die each year before their fifth birth day, often from readily preventable causes; an estimated 150 million children are malnourished; nearly 120 million are out of school, 53 per cent of them girls; and 0.6 billion children are desperately impoverished, struggling to survive on less than one US dollar a day. And, India accounts for 36 per cent of the poor, 20 per cent of the out-of-school children, 20 per cent of the world's gender gap in elementary education, 23 per cent of world's under-5 child deaths every year, 25 per cent of world's maternal deaths every year, 22 per cent of the world's unsupplied demand for reproductive health services, and 30 per cent of the world's deaths from poor access to water and sanitation. Thus, children's well-being enlists universal support. CRC adopts the second approach. Child

rights are not identical to those of the adult. Thus children do not have the right to determine their residence. Instead,"as far as possible", a child"has the right to know and be cared for by his or her parents" (Article 7), the right to preserve"family relations as recognized by law without unlawful interference" (Article 8). Further, the State shall"ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.

AGE OF CHILD

Article-1 of CRC defines a child as a"human being below the age of 18 years, unless under the law applicable to the child, majority is attained earlier". Thus the age of 18 is a normative ceiling and entitles the State to set minimum ages under different circumstances, balancing the evolving capacities of the child with the State's obligation to provide special protection. Indian legislation has minimum ages defined under various law related to the protection of child rights.

OVERARCHING PRINCIPLES

Primacy of the Best Interests of the Child

Article 3 provides that:

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, Courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform to the standards established by competent authorities, particularly in the area of safety, health, in the number and suitability of their staff, as well as competent supervision.

The principle of best interests of the child also figures in a few other Article e.g.:

- *Separation from parents*: The child shall not be separated from his or her parents against his or her will,"except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child". (Article 9)
- *Parental responsibilities*: Both parents have primary responsibility for the upbringing of their child and"the best interests of the child will be their basic concern" (Article -18).
- *Deprivation of family environment*: Children temporarily or permanently deprived of their family environment"or in whose own best interests cannot be allowed to remain in that environment", are entitled to special protection and assistance (Article 20);
- *Adoption*: States should ensure that"the best interests of the child shall be the paramount consideration" (Article 21).
- *Restriction of liberty*: Children who are deprived of liberty must be separated from adults"unless it is considered in the child's best interest not to do so" (Article 37 (c)).

Non-Discrimination

Article 2 of CRC provides that:

- "State Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's parent's or legal guardian's race, colour, sex, language, religion, political or other

opinion, nationality, ethnic or social origin, property, disability, birth or other status".

- "States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians or family members.

This provision corresponds to Article 14 and (equality before law), Article 15, (prohibition of discrimination under the grace of religion, race, caste, sex, or place of birth) of the Constitution. The principle of non-discrimination needs to be interpreted in a pro-active manner so as to ensure the girls, children of SCs and STs, and other disadvantaged groups and children of disabled persons can exercise their rights.

CATEGORIZATION OF RIGHTS

For analytical purposes, the rights enumerated by CRC can be classified into five categories:

- *Rights concerning the civil status of children*: These includes the right to life (Article 6), the right to acquire a nationality (Article 7), the right to an identity (Article 8), the right to remain with parents, unless the child's best interests dictate otherwise (Article 9), the right to family reunification (Article 10), the ban on torture (Article 37), the right to protection from physical violence (Article 19 and 34), freedom from arbitrary arrest (Articles 37 and 40) and the right to privacy (Article 16).
- *Political rights*: These include freedom of opinion (Article 12), freedom of expression (Article 13), freedom of association (Article 15), religion and conscience (Article 14), and freedom of access to information (Article 17).
- *Rights concerned with development and welfare*: These include the right to survival and development (Article 6(2)), right to a reasonable standard of living (Article 27), right to the highest attainable standard of health (Article 24) and right to education. (Article 28)

- Rights requiring protective measures: These include measures to protect children from abuse and neglect (Article 19), economic exploitation and work that is likely to be hazardous or interfere with the child's education (Article 32), drug abuse (Article 33), sexual exploitation (Article 34), sale, trafficking and abduction (Article 34) and other forms of exploitations (Article 36).

RIGHT TO LIFE, SURVIVAL AND DEVELOPMENT

- Article 18, which recognizes the primary responsibility of both the parents for bringing up their children and also calls upon the State to ensure the development of institutions, facilities and services for the care of children.
- Article 24 emphasizes the responsibility of the State to diminish infant and child mortality, to develop primary health care, to combat disease and malnutrition within the framework of primary health care, to provide clean drinking water, to ensure appropriate pre-and post-natal health care for mothers and to promote health education and basic knowledge of child health and nutrition, the advantages of breast feeding, hygiene and environmental sanitation.

INDIAN LAW AND POLICY

Article 21 of the Constitution, a fundamental right recognizes the right to life. Article 47, a Directive Principle, spells out the duty of the State to raise the level of nutrition and the standard of living and to improve public health. The inclusion of early childhood care and education in the Directive Principles, through the latest amendment to the Constitution is an important landmark. The National Policy for Children, 1974 lays down the framework for actualizing the Constitutional provisions in that"it shall be the policy of the State to provide adequate services to children both before and after birth and through the period of growth to ensure their full physical, mental, and social development. An important piece of legislation having a direct bearing on child survival

is the Pre-Natal Diagnostic Techniques (Regulation and Prevention) Act (PNDT Act).

Because of deep rooted social preferences for sons, neglect of the girl infant and even infanticide is prevalent in some parts of the country. Technological advances like pre-natal diagnostic techniques (amniocentesis) and genetic counseling have come in handy to reinforce the prejudice against a girl child and to resort to foeticide. Combating female foeticide and infant foeticide calls for eradication of deep-rooted social attitudes. Hence media and social mobilization is of particular importance. Among the innovative advocacy efforts are the conclaves of religious leaders organized to condemn the practice of female foeticide. The Akal Takhat has issued a Hukumnama to Sikh community to stop practice of female foeticide. For the District Magistrates, it is a moral imperative as well as duty to put down this heinous practice.

PROGRAMME INTERVENTIONS

Maternal and Child Health

The various initiatives for maternal and child health were integrated in 1997 into a holistic approach embodied in the Reproductive and Child Health (RCH) programme, which aims at:

- Providing need-based, client centered, demand-driven, high quality and integrated RCH services;
- Maximizing coverage by improving accessibility, especially for women, adolescents, socio-economically backward groups, tribals and slum dwellers, with a view to promoting equality;
- Withdrawal of financial incentives to users with the objective of improving the quality of care as the incentive for the utilization of services;
- Introduction of essential Reproductive and Child Health Programmes, which include family planning, safe motherhood and child survival, and the management of reproductive tract infection (RTI) and STD services.

The initiatives for improving child health include:

- To cover all women in reproductive age group with three doses of Tetanus Toxide vaccine.
- To cover all unprotected children up to the age of 3 years with single dose of measles vaccine.
- Eliminate polio incidence and achieving polio eradication.
- Strengthen routine immunization with the aim to raise the percentage of fully immunized children to above 80 per cent.
- To support polio eradication and routine immunization by upgradation of cold chain equipment, ensuring injection safety, training of district managers and cold chain staff, and strengthening of supervision and monitoring.
- Every child under the age of five years to be given oral polio drops during NIDs/SNIDs every year on fixed days.
- Train health workers in Acute Respiratory Infection(ARI) Management.
- To detect cases of polio and effectively treat them.
- To reduce spread of HIV infection in India.
- To administer Hepatitis B to infants along with the primary doses of DPT vaccine.
- To take concrete steps for early case detection and prompt treatment of malaria, selective vector control, promotion of personal protection methods, early detection and containment of epidemic, IEC and management capacity building.
- To provide malaria treatment thorough agencies like hospitals, dispensaries and malaria clinics.

For maternal health, the strategies are:

- To provide basic maternity services to all pregnant women.
- To prevent maternal morbidity and mortality.
- To evolve a National Programme for provision of neo-natal care at the grassroots level.
- To strengthen health interventions under RCH Programme:

- Effective maternal and child health care;
  - To increase access to contraceptive protection;
  - Safe management of unwanted pregnancies;
  - Nutrition services to vulnerable groups;
  - Prevention and treatment of STD;
  - Prevention and treatment of gynecological problems;
  - Screening and treatment of cancers.
- To strengthen National Anaemia Control Programme.

Integrated Child Development Services (ICDS)

Promoting a synergetic approach to health, nutritional well-being and psycho-social development is the best way of promoting holistic early child development and learning.

It aims at holistic development of children (0-6 years) and pregnant and lactating mothers from disadvantaged sections thorough:

- Laying the foundation for proper psychological, physical and social development of the child.
- Improving the nutritional and health status of children below the age of six years.
- Reducing the incidence of mortality, morbidity, malnutrition and school dropouts.
- Achieving effective coordination of policy and implementation among various departments to promote child development.
- Enhancing the capability of the family and mother to look after the health, nutritional and development needs of the child, thorough community education.

Supreme Court's Order

In a Public Interest Litigation-Writ Petition (Civil) No.196/ 2001-PUCL vs. UOI and others, The Supreme Court in its interim order dated 28.11.2002 has given the following directions with regard to the ICDS Scheme.

- Direct the State Governments/Union Territories to

implement the Integrated Child Development Scheme (ICDS) in full and to ensure that every ICDS disbursing center in the country shall provide as under:

- Each child up to 6 years of age to get 300 calories and 6-10 grams of protein.
- Each adolescent girl to get 500 calories and 20-25 grams of protein.
- Each pregnant woman and each nursing mother to get 500 calories and 2-025 grams of protein.
- Each malnourished child to get 600 calories and 16-20 grams of protein.
- Have a disbursement center in every settlement.

National Nutrition Mission

In recognition of the importance of addressing malnutrition with a sense of resolve, the National Nutrition Mission is being set up under the Chairmanship of the Prime Minister to bring about holistic implementation of various schemes as well as launch new initiatives to counter malnutrition.

ROLE OF DISTRICT MAGISTRATE IN CHILD DEVELOPMENT

Health

- Monitor the functioning of primary health centers, quality and hygienic infrastructure and regularity of the workers.
- Ensure registration of all pregnant women in the Primary Health centers.
- Ensure conduct of regular immunization sessions-organized into mother child care days.
- Ensure constitution of health committees and their regular meetings to determine health needs and medical care.

Child Development and Nutrition

- Ensure that the district prepares a comprehensive plan

for integrated early child development, mobilizing convergent programmes such as ICDS, RCH, Elementary Education, in partnership with community/women's groups set up under different programmes (such as Mahila Samakhya), panchayati raj institutions.

- Ensure that there is a decentralized field based plan for training and empowerment of child care functionaries. This is critical to improve their self-esteem, motivation and team work in converging interventions on young children and women from most disadvantaged groups.
- Identify a few most crucial early child care indicators, to be monitored at all levels, from the community/ AWC level upwards to DM's monthly reviews.
- Ensure that all AWCs/Panchayats/village committees (Mother's committees, or VECs can be linked with) have community charts, to track progress on these key indicators and nutritional status of younger children under 3 years.. and have regular discussions.
- Make sure that there is at least one fixed day of the month that is a Mother child care day, in every village, to ensure that comprehensive services are available on that day, in most unreached areas. It is more effective to prevent malnutrition than to treat is after it has occurred.
- Monitor regular and timely supply of food supplements to anganwadis.

RIGHT TO EDUCATION

It is customary to classify education into different stages: early childhood education, elementary classes {(I-VII), often referred to as primary education in international parlance} education, secondary education and higher (also called tertiary) education. The international instruments treat elementary education as a universal entitlement; and access to secondary and higher education are to be progressively made available to all. As already set out, in our Constitution,

free and compulsory education has come to be recognised as fundamental right (Article 21 A).

The National Policy on Education, NPE 1986 (NPE; it was updated in 1992) is a landmark in Indian educational development. Based on an in-depth review of the Indian educational systems and evolved thorough a consensual process, NPE provides a comprehensive framework to guide the development of education in its entirety. Part-II of the NPE spells out the essence and role of education.

The NPE lays special emphasis on the removal of disparities in terms of bringing equity in access to educational opportunity by attending to the specific needs of those who have been denied equality so far. The policy postulates integration of the gender perspective in all aspects of the planning. There is a pronounced policy shift from an equalization of educational opportunity to education for women's equality.

THE INDIAN SCENE: ACHIEVEMENT AND CHALLENGE

At the time of Independence, India inherited a system of education, which was not only quantitatively small but also characterized by the persistence of large intra-and inter-regional as well as structural imbalances. Only 14 per cent of the population was literate and only one child out of three had been enrolled in primary school. The low levels of participation and literacy were aggravated by acute regional and gender disparities. As education is vitally linked with the totality of the development process-education being"the basic tool for the development of consciousness and reconstitution of society," in the words of Mahatma Gandhi, the reform and restructuring of educational system was recognized as an important area of State intervention. The need for a literate population and universal education for all children in the age group of 6-14 was recognized as a crucial input for nation building and was given due consideration in the Constitution as well as in successive Five Year Plans. This has resulted in a manifold increase of spatial spread of schools, their infrastructural

facilities, student enrolment, increased participation of girls; however, the goal of providing basic education to all has not yet been achieved.

SARVA SHIKSHA ABHIYAN (SSA)

SSA builds upon the achievements of the 1990s and achieve the objective of UEE by 2010. Its specific goals are:

- All children in school, Education Guarantee Center, Alternate School,'Back-to-School' camp by 2003.
- All children complete five years of primary schooling by 2007.
- All children complete eight years of elementary schooling by 2010.
- Focus on elementary education of satisfactory quality with emphasis on education for life.
- Bridge all gender and social category gaps at primary stage by 2007 and at elementary education level by 2010.
- Universal retention by 2010.

Education of girls is one of the principal concerns in Sarva Shiksha Abhiyan. Further, there is a focus on the inclusion and participation of children from SC/ST, minority groups, urban deprived children, disadvantaged groups, and the children with special needs, in the educational process.

INTERVENTION FOR ENSURING UNIVERSAL PARTICIPATION FOR GIRLS

- Community mobilization to elicit support for girls' education, both in terms of enrolment of girls and their retention in elementary education, particularly in day to day monitoring of progress and performance and creating a supportive environment in the school and village.
- To focus on disadvantaged sections of girls like those belonging to the Scheduled castes, scheduled tribes, minorities etc.
- Ensuring provision of infrastructure like toilets.
- Gender sensitization and training of planners, teachers

and educational managers to ensure that girls' education remains an area of focus.

- To ensure girl- child friendly classrooms and text books and other teaching learning materials.
- The provision of incentives, such as supply of free textbooks, uniforms, stationery, scholarship, attendance inability etc. should be effectively administered.

INTERVENTION FOR PROMOTING PARTICIPATION OF SCS/STS

- Various incentive schemes such as supply of free textbooks, uniforms, stationery, scholarship, attendance inability etc. should be effectively adjusted.
- Improving access by setting up appropriate schooling facilities in unserved habitations, especially for STs living in difficult terrain and forests.
- Engagement of community organizers from SC/ST communities to work towards raising the level of awareness for education among the community.
- Ensure ownership and management of schools by SC/ST communities by greater representation of SCs/STs in VECs/PTAs.
- Training programmes will need to be organized for VECs/PTAs and other Community Based Organizations among SC/ST population.
- The school calendar in tribal areas may be prepared as per the local requirement and usages.
- Suitably adapt the curriculum and make available locally relevant Teaching Learning materials to tribal students. If need be local language and dialects among the tribals may be used for teaching especially in lower class.
- Ashram schools or residential schools have to be set up if SC/ST habitations are small and scattered.

HARD TO REACH GROUPS

Children who are designated as"hard to reach" are

those who are likely to be left out despite all interventions. They are children living in very small and remote habitations where no form of schooling is available, children of migrant families, children engaged in household chores, children of sex workers, children in juvenile homes, children living in coastal areas and belonging to fishermen communities, etc.

Strategies suggested for hard to reach groups:

- Evolve a mechanism to set up seasonal schools at the site of work of migrants, such as, sugar schools, brick kiln schools etc.
- Provide identity card to children of migrant families to facilitate their entry into schools at different work sites.
- Organize bridge courses, seasonal hostels and mobile schools based on the local needs.
- Open permanent Community Based Schools, Residential Camps and Multi-grade centres for very small-unserved habitations.
- Mainstreaming of older children, especially adolescent girls through bridge courses and transition classes of different duration.
- Intense community mobilization to ensure community based monitoring of all these interventions for quality and sustainability.

CHILDREN WITH SPECIAL NEEDS

It is estimated that there are about 6-10 million children with special needs in India in the 6-14 age group, out of the total child population of 200 million in 2001. Out of these, only about 1 million children with disabilities are attending school. The goal of UEE cannot be achieved unless and until all children with special needs are included in the formal or informal education system.

The Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995 (PWD Act) stipulates that free education would be provided to all the disabled children upto the age of 18.

To achieve this objective, the following approaches and interventions are suggested:

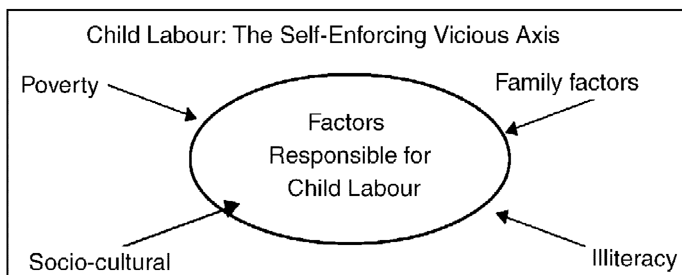
- Every child with special needs, irrespective of the kind, category and degree of disability, should be provided education in an appropriate environment. A zero rejection policy should be adopted so that no child is left out of the education system.
- All disabled children should be identified through surveys and micro planning and functional and formal assessment should be conducted.
- As far as possible, every child with special needs should be in regular schools with needed support services.
- Intensive teacher training should be undertaken to sensitize regular teachers on effective classroom management of children with special needs. This training would be recurrent at block/cluster levels.
- Wherever necessary, special schools may be strengthened to obtain their resource support, in convergence with departments and agencies working in that area.
- Architectural barriers in schools should be removed for easy access. Efforts should be taken to provide disabled-friendly facilities in school and educational institutions. Development of innovative designs for schools to provide an enabling environment for children with special needs would also be a part of the programme.
- Special emphasis must be given to education of girls with disabilities.

CHILD LABOUR

NATURE AND PROFILE OF THE PROBLEM

The 1981 Census, there are 13.60 million working children. In the 1991 Census, this came down to 11.28 million but again went up to 12.26 million in the 2001 Census. The Statewise break up and comparison between 1991 and 2001 Censures.

More than 90 per cent of children in the work force are in rural areas, in agriculture, live-stocks, forestry and fishery. The phenomenon of child labour is a complex and multi-dimensional, with four mutually reinforcing axes: poverty, family factors, socio- cultural factors, illiteracy and failure to universalize elementary education.



Analytically, it would be expedient to classify child labour in the following clusters:

- Child labour in the agricultural and allied sectors.
- Child labour in the manufacturing sector.
  - Hazardous industries
  - Non-hazardous industries
- Child labour in the services sector.
  - Unskilled services with no elements of skill formation
  - Skilled services with children as apprentices
- Children working in households.
  - Household enterprises
  - Domestic work
- Non-domestic, non-monitary work.
  - Bonded labour

ALTERNATIVE APPROACHES TO ERADICATION

A multi-dimensional complex problem like child labour calls for holistic efforts from many sectors, both Governmental and non governmental. There are two schools of thought on child labour. The first holds that school is the only place where the child should be. It treats every child out of school as a child labourer and advocates complete eradication of child labour. The second school suggests a progressive, sequential and legal-

cum-developmental approach to the eventual eradication of child labour.

While the final objective is total eradication, the intermediate objective has five elements:

1. Prohibiting employment in hazardous occupations,
2. Releasing children from work rehabilitating them through education, nutrition, skill training and checkup of health,
3. Improving the working conditions in non-hazardous occupations,
4. Simultaneously providing opportunities for learning to working children through alternatives to schooling, and
5. Progressively, expanding the list of occupations where employment is prohibited.

ROLE OF DISTRICT MAGISTRATES

A complex, deep rooted problem like child labour calls for sustained and holistic action directed at the child itself, the family of the child and the community in which the family is located.

The elements of an effective strategy would comprise:

- Sensitization and mobilization of the community, media, trade unions, youth and youth organizations like Nehru Yuva Kendras and selfhelp groups as they can be valuable partners. Communication and media strategy should be designed to sensitize, mobilize and motivate the stakeholders, community, opinion leaders and the public for achieving the goal of prevention of child labour. The media and communication strategy would be designed to address the following objectives:
  - Sharing and disseminating information about the programme on education for increasing public awareness,
  - Using the media as a platform for advocacy and developing media packages in support of prevention of child labour and enforcement of UEE,

  - Mobilizing opinion makers, legislators and policy makers,
  - Motivating the community, NGOs, local bodies, implementing agencies and all stakeholders.
- Identification of the vulnerable families from which working children are drawn or are likely to be drawn, sensitization of such families with a view to convincing them about the importance of education in the growth and development of children, persuading them to with draw children from work and sending them to formal schools as also targeting of such families for benefits under poverty alleviation programme, so that the economic compulsion for children to work is removed.
- Periodic surveys to identify working children and building up a database to facilitate child-specific action. There can be two complementary surveys: (a) household surveys to identify the school age population and the out-of-school children, and (b) surveys of workplaces.
- Strict enforcement of child labour laws.
- Ensuring more effective functioning of urban basic services.
- Ensuring access to children of poor families to ICDS.
- Vigorous implementation of the National Child Labour Projects (NCLPs), promoting the involvement of other departments, particularly health and education, as well as convergence with other schemes. Convergence with education department would ensure a better learning environment and outcomes, access to teaching-learning material, and to formal schooling after completion of education in the NCLP school. Convergence with health would promote better health care and with welfare department would facilitate access to residential schools.
- In districts where NCLPs do not exist and the number of children in hazardous occupations is not adequate

to launch a NCLP, child specific efforts should be made to rehabilitate them and put them back to school.

- Close monitoring holds the key to successful implementation.

CHILD PROTECTION

While enforcing the law of the land, the District Magistrate has a more complex role to play in rehabilitating these children and preventing them from being pulled into the quagmire of crime.

INSPECTION

- Inspection of children's homes, observation homes and remand homes should be carried out regularly to ensure that hygienic conditions, quality of food and health of the inmates are properly maintained. A patient hearing of children and their problems would help in mainstreaming efforts.
- Educational facilities and health care services for the children in remand home/observation homes etc. must be ensured, if necessary, through integration with education and health programmes.
- The DM may use his good offices to encourage community participation in running and funding special activities for the children in these homes. Daily routine of the inmates may be checked to ensure that there are adequate inputs for vocational training and creativity. Interaction of these children with their more privileged peer groups should be organized as a socialization measure, with the help of local voluntary organizations and community.
- During inspections, particular attention may be given to grievances against personnel and personnel managing the homes. Also the personnel who are sensitive to the requirements of the inmates must be encouraged.
- Staff vacancies should be promptly addressed, so also the requirement of infrastructure like furniture, etc.

- While monitoring Shishu Grihas and orphanages, emphasis should be on quality child care, qualified staff, record keeping, procedures and overall facilities for growth and development of the children.

RUNAWAY/ABANDONED CHILDREN

- The DM should set up special cells/booths at Railway stations/bus stands and other important public places to extend help and guidance for children separated from their families/runaway/abandoned children for their timely protection.
- Ensure that every destitute child/orphan who is admitted to an orphanage or adoption agency is reported to local authorities by the concerned organization within 24 hours with full details.
- Widespread publicity (poster campaigns, radio programmes) should be given with the help of voluntary organizations and community, to spread awareness on availability of Childlike services so that children in distress know where help is available.

STREET CHILDREN

- Tapping the GOI initiatives like Integrated Programme for the Street Children, the DM should encourage voluntary action towards contact programmes, so that all street children in his jurisdiction are covered and their progress towards withdrawal from the street life and mainstreaming monitored.
- The DM could facilitate regular interaction of voluntary organizations with street children by making available suitable accommodation as a meeting place.
- Counseling and health camps for these children should be regularly organized to cover health, emotional, career and financial counseling requirements. Non- formal educational facilities should be made available.

- DM may organize training to sensitize officials in the police, hospitals, remand homes etc. on the special circumstances and needs of street children.
- Special drives like persuading medical institutions (particularly OPDs in government-run hospitals) to reserve one day in the week when they would welcome and treat any street child in need, can be organized.
- Similarly, existing municipal schools and technical training institutions might be sensitized into adopting a flexible approach and opening their doors to street children. This would involve accepting children who might not be able to provide proof of residence.

ADOPTIONS

- Despite adoption procedure being streamlined by legislation in certain States, illegal adoption practices have come to light. There should be monitoring of adoption agencies and orphanages falling within the jurisdiction of the DM. It should be ensured that only such orphanages and adoption centers as recognized by the Government of India are placing children for inter country adoption. The transfers of children from one adoption agency to another should take place only with the prior permission of the authorized officials of the State Government like the District Magistrates.
- The DM should ensure that no orphanage/agency not recognized by CARA indulges in Inter-country adoptions.

CHILD TRAFFICKING

Trafficking, by definition, is illegal trade in a commodity. Trafficking in children is perhaps the most heinous form of commodification.., Starting with slavery and human bondage characteristic of medieval times, trafficking in modern times has been comprehensively defined as -

- "The recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of

force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation".

This definition covers all forms of coercive herding of human beings for forced labour, sexual exploitation, bondage etc. Perhaps the most common form of trafficking is sexual exploitation of women and children. Trafficking is an international phenomenon. It is estimated by international policing agencies that at a minimum of 700,000 persons are trafficked each year across international borders, most of the victims being women and children. It is believed that the actual number may be significantly higher. Child prostitution in India assumes many forms.

Those involved in trafficking take advantage of children from communities that are traditionally tied to prostitution. Orphaned, destitute, and single parent children are particularly prone to falling into the prostitution trap. Sometimes, children and their parents are lured unknowingly into the trade with promises of marriage, wealth, jobs and better living condition. Among some communities such as the Rajnat of Rajasthan, the Bedia of Madhya Pradesh, and the Bachada on the Rajasthan- Madhya Pradesh border, it is socially sanctioned. For girls from certain castes, this is considered a hereditary obligation.

The Jogins, Khudikar, Murloi, and basavi are very much like the devadasis, and are largely concentrated in Karnataka and Andhra Pradesh. Bijapur and Belgaum in Karnataka have long been known as source districts, especially for devadasis. Three major centers of inter-State trafficking: the Agra-Dholpur-Jaipur belt in North India; the Vishakapatnam-Jeypore belt in the east, and the Belgaum-Bijapur-Miraj belt in the west, which serves as a conduit for devadasis to get to Mumbai, Madurai and Salem. Crossborder trafficking is sustained by the powerful underworld-policepolitician nexus. There are major obstacles in trying to estimate the magnitude

of the problem such as social stigma, the stranglehold of criminal gangs and brothel keepers, fear of being hauled up for violation of law, and the abject existential conditions beyond redemption.

There is considerable anecdotal evidence that with the spread of HIV-AIDS, the age of entry into prostitution has come down and children are being forced into trafficking. Legislation is meaningless without enforcement. In the case of trafficking, effective enforcement has to be supplemented by empathy and sensitive interpretation of the law when it comes to handling the victims. This is dictated by the special circumstances of the victim. The enforcement agencies have to be sensitive to the physical and emotional plight of the victims to ensure there is no miscarriage of justice and the victim does not receive the same treatment as the accused, if not worse. The menace of trafficking is so deeprooted that successful implementation of laws is impossible without a multi-pronged strategy that covers:

- The Prevention of the activity.
- Detection of the practice.
- Rescue of the victims.
- Rehabilitation of the victim.
- Breaking the nexus that perpetuates the evil.

DISABLED CHILDREN

There is perhaps nothing more tragic in this world than the mental or physical disability of a child from causes that are prevalent. Children in themselves form the most vulnerable section of any society. However, amongst these children, differently abled children require even more protection as regards survival and rights. Besides families and communities, District Administration has a pivotal role to play in ensuring that the persons with disabilities are given their due rights and opportunities for their development.

Suggested activities are:

- Ensure convergence and synergy among various developmental schemes for persons with disabilities.
- Conduct surveys of persons with disabilities in

districts. This will facilitate the different departments in addressing the needs of different age groups of persons with disabilities and effective delivery of services.

- Ensure that all persons with disabilities have been issued a disability certificate in the standard format prescribed by the Ministry of Social Justice and Empowerment and adopted by the State Governments. For the poor disabled, this document is crucial as it gives access to many facilities.
- Organize recruitment drives to ensure that persons with disabilities get a minimum of 3% jobs in government at the district level, 3% seats in government and aided educational institutions and a minimum of 3% benefit from poverty alleviation scheme.
- Motivate DRDA, District Red Cross Society, local bodies and NGOs to access fund under ADIP scheme to provide necessary aids and appliances to persons with disabilities living in your district.
- Ensure that public places like Collectorate, hospitals, bus stations, schools, parks, banks, post offices, market places etc. are made barrier free.
- Motivate NGOs and associations of parents of disabled persons for setting up special schools, vocational training centers and other support services for education and economic empowerment of persons with disabilities.
- DM can ensure that all the disabled children are brought to the Anganwadi/Balwadi and encouraged to integrate the process of with the other children as this is the most effective way of initiating inclusion of the disabled children. The parents of the children who suffer from any form of disability could be advised and encouraged to bring the child to the Government hospital for treatment.
- Educational institutions should be encouraged to follow a holistic approach of providing rehabilitative

services, so that integration becomes easier. Where this is not possible, referrals to, and linkages with, rehabilitation centers should be provided to ensure access to services. Local authorities and heads of institutions should aim at providing a friendly, barrier free environment to children with disability, the provision of mobility aids and appliances as well as disabled-friendly furniture and transport need special consideration. Vocational training programmes must become part of the school curricula. At the same time, certain concessions and relaxations with respect of examinations should be considered for differently-abled children. Financial assistance should be made available to educational institutions and NGOs to promote integrated cultural and sports activities and events, which contribute significantly to confidence and all-round development.

- Regular training of trainers and teachers orientation with reference to disability and the management of physically challenged children is an imperative. All educational institutions should seek the active involvement of parents.

Chapter 6

Women and Human Rights

India is the 7th largest nation in the world and with a population of 1027.0 million in 2001; it is the second most populous. In India, women and men have had equal voting rights since the inception of the Republic. The 1991 census counted 495.7 million females against the male population of 531.33 million constituting just less than half (48.27%) of the total population of India (1027.01 million). The female population grew at a pace of 21.76% during the decade 1991-2001, against a decadal growth rate of 21.34% of the total population.

The sex-ratio which was 972 females per 1000 males in 1901 has declined to 933 in 2001. There is, however, considerable inter-state variation in the sex ratio. It favours females in Kerala (1058), is exactly even in Pondicherry (1001), and at the lower end is as adverse as 821 in Delhi, 874 in Punjab, 898 in Uttar Pradesh, and 861 in Haryana. The adverse sex ratio and its decline in all age groups right from childhood thorough child bearing ages, has emerged as a matter of concern in India.

While preference for sons, intra household gender discrimination, denial and limited access to health care can perhaps explain this trend, the bridging of gender gaps in infant mortality rates, the increase in life expectancy at birth (which is now higher for women than for men) are factors that should have led to reversal of the trend.

More analysis on the subject is currently underway. In the meantime, India has framed legislation in 1994 banning the use of pre-natal diagnostic techniques for sex determination.

Efforts are currently on to draw up a Master Plan of Action to tackle the problems of violence against girl children, particularly thorough infanticide, sex selection and trafficking. Life expectancy of females which was 23.96 years at the beginning of the century is now 58.1 years (higher than that of males at 57.7 years).

Although female literacy has gone up 5 times since 1951, it still represents an area of major concern. It now stands at 39.2% only, as opposed to male literacy which is almost 64%. Within the country, wide variations exist. While Kerala has near universal literacy, female literacy in Rajasthan is only 20.8%.

Similarly, although girl's enrolment in school has increased considerably and consistently at all levels, the rising rates of drop-outs continue to be the major problem. Thus, while gross enrolment ratio for girls at the primary level is almost 85% (vis-a-vis over 100% for boys), even in 1993-94 over one-third (39%) of the number of girls enrolling at the primary age dropped out before completing primary level, and about 57% dropped-out before completing upper primary levels. Ultimately, only 32% of girls entering the primary stage complete schooling.

Women are mostly found in marginal and casual employment, and that too mostly in agriculture and the growing informal sector. Of the total 22.27% female work participation in 1991, main workers contributed 16.03% and marginal workers 6.24%. Women constitute 90% of the total marginal workers of the country. There are wide regional variations in work participation rates within the country from 4% to 34%. Women's employment in the organized sector, though only 1/6th of men is now around 14.6% of the total employment. 62% of such organized sector employments of women are in the public sector. Of the total employment of women, the organized sector employment only forms 4%.

HUMAN RIGHTS ISSUES RELATED TO THE TOPIC

Article 14 of the Constitution of India ensures to Women the right to equality, and Article 15(1) specifically prohibits

discrimination on the basis of sex. Article 16 of the Constitution provides for equality of opportunity to all, in matters relating to public employment or appointment to any office and specifically forbids discrimination interalia on the ground of sex. These articles are all justiciable and form the basis of our legal-constitutional edifice.

At the same time, the Constitution of India (Article 15(3) provides for affirmative and positive action in favour of women by empowering the State to make special provisions for them. The Directive Principles of State Policy of the Constitution also impose upon the State various obligations to secure equality and eliminate discrimination. These Directive Principles contained in Part IV of the Indian Constitution enjoin upon the State inter alia to direct its policy towards securing the rights to adequate means of livelihood for both men and women equally; equal pay for equal work for both men and women; ensuring that the health and strength of workers, men and women, are not abused and the citizens are not forced by economic necessity to enter avocations unsuited to their age and strength.

Further, a duty is cast on every citizen of India to renounce practices derogatory to the dignity of women. Although these principles are strictly not justiciable, the Supreme Court of India, through its judicial activism, has infused dynamism into these non-justiciable provisions and issued directions to the State to implement them. Three important areas, in which the Supreme Court has of late issued directives, refer to the need for a uniform Civil Code for the entire country, the promise of compulsory education made in the Constitution but not realised and the protection of property rights of women. These have important implications for the personal laws of various minority communities in respect of marriage and property and for government's educational policy.

The struggle for legal equality has also been one of the major concerns of the women's movement in the country. In parental and matrimonial homes, for acquiring education and skills in profession, legal rights are critical for women. The first phase of the movement for women's equality centered around

three major problems they faced: child marriage, enforced widowhood and property rights. The second movement was linked to the freedom struggle and the debate that followed the adoptation of Indian Constitution by the Constituent Assembly. It focused on the Hindu Code Bill and emphasized that women were not being accepted as equal partners of men. Discrimination could only be effectively reduced, if not eliminated, by passing appropriate laws and evolving an effective machinery to implement these laws.

Several important legislations were passed during the early years to ensure equal rights to women, particularly Hindu women. These related to the age of marriage, monogamy, equal property rights for men and women, giving women the right to adapt a child and making the consent of the wife compulsory for the adaption of a child by a married man (Hindu Marriage Act, 1955, Hindu Succession Act, 1956 etc. Hindu Adoption and Maintenance Act, 1956) Special quotas for women in various development schemes constitutes a special feature of Indian planning since the Sixth Five Year Plan in the early eighties.

We thus have 30-40% reservation for women in all our major poverty eradication programmes, including the schemes of asset endowment and wage employment. The State recently used this enabling clause of the Constitution to bring about a major amendment, whereby reservation of seats for women in all institutions of local governance has become a Constitutional mandate. Under these amendments, one third of all elected seats in the Panchayats (local Government bodies in rural areas) and Municipalities will be reserved for women. Further, onethird of posts of chairpersons of these bodies will also be reserved for women.

Through these provisions, a quiet revolution is in its making in terms of women's participation in decision-making. Elections under the new provisions are mandatory in all the States of the country. By a conservative estimate, at least 800,000 women in rural areas alone, have entered public office. In response to the demand from various quarters including women's groups, parliamentarians and political parties a Bill

providing 33.33% reservation for women in the National Parliament and State legislatures by amending the Constitution (proposed 81st amendment of the Constitution) was introduced by the Government. This was referred to the Select Committee, which has since finalized its recommendations and is currently awaiting consideration. There is also a proposal under the consideration of Government, for bringing about a minimum reservation for women in public employment.

This, however, is now being examined in the light of Article 16 of the Constitution, which specifically prohibits discrimination with respect to opportunity of public employment, except in case of categories of classes of disadvantaged people. Women in India were granted equal political rights as men, including the right to vote (universal adult franchise) and the right to hold public office, right from the dawn of independence. Article 326 of the Constitution guarantees political equality to women.

The elections are held on the basis of universal adult franchise. Article 325 prohibits exclusion from electoral rolls on the basis of sex. The Indian Government is constitutionally bound to provide equal opportunity to men and women to represent its interests at the international level. In the 50's itself, India appointed women as ambassadors (in the 50s), Ministers for External Affairs, and leaders of Indian delegations to international conferences. A discriminatory condition, whereby women members of the Indian Foreign Service had to leave the service on marriage, was also struck down as unconstitutional by the Supreme Court.

In India, the Citizenship Act, 1955 provides for the acquisition and termination of Indian citizenship. Under this, women have equal rights with men to acquire, change or retain their nationality. An Indian woman married to a foreigner can continue to retain her Indian citizenship even though she may have acquired the citizenship of the country of her husband by virtue of her marriage *i.e.* by operation of the law of that country and without any voluntary act on her part. An Indian women marrying a foreigner continues to retain her Indian

citizenship till she renounces it or voluntarily acquires the citizenship of her husband's country. As regards the nationality of children, in the past the Indian Citizenship Act provided that in cases of children born outside India, a child will be considered an Indian national only if his or her father was an Indian citizen at the time of his or her birth. This provision acted against the interests of Indian women marrying foreigners and living outside India and provided the right to citizenship by descent only from the father's side In the light of obligations undertaken by the Indian State by ratifying this Convention, the Citizenship Act was amended in 1992 to correct this anomaly.

Under the amended provisions a child born in India or outside would acquire Indian citizenship if either of his or her parents was an Indian citizen at the time of his or her birth. The Equal Remuneration Act, 1976 forbids discrimination against women at the time of recruitment or in their conditions of service subsequent to recruitment. Article 46 of the Constitution directs the State to promote with special care the educational and economic interests of the weaker sections of the peoples. In line with these directives, special clauses in various labour laws provide for the protection and welfare of women workers in factories, mines, plantations and shops and commercial establishments.

By law, men and women have equal rights to all family benefits such as housing allowance, child and education allowances, travel allowance, etc., wherever they are applicable. The principle, however, is that where such a benefit is available to the family as a whole it can be claimed by either the husband or the wife. In addition, there are many benefits, which are only available for women. For working women, an additional income tax rebate has now been made available by raising the amount of" Standard Deduction". Within government, there are a large number of special concessions and relaxations specially available for women including those related to posting of husbands and wives together at the same station, maternity benefits etc. Rural women constitute nearly 80% of the female population. Although they are major

contributors to the country's agriculture based economy, the preservers of fragile eco-systems and providers of fuel, food and water within households, their role was explicitly recognized as actors (and not just as objects of welfare) for the first time in the 6th Five Year Plan in early eighties. The basic strategy since then has been to try and ensure women a fair share in rural development and agricultural programmes through quotas as well as women specific programmes.

The Constitution of India contemplates attainment of an entirely new social order, where all citizens are given equal opportunities and rights and no discrimination takes place on the basis of race, religion, caste, creed or sex. Family relations in India have been governed traditionally by religious personal laws. The five major religious communities: Hindu, Muslim; Christian, Jews and Parsis have their separate personal laws. They are governed by their respective religious laws in matters of marriage, divorce, succession, adoption, guardianship and maintenance.

Hindu personal law has been extensively reformed in order to apply the Constitutional provisions to a considerable extent. The personal laws of other minority communities, except Parsi personal laws, have been left virtually untouched, because the GOI has adopted a policy of non-interference in the personal laws of any community unless the demand for change comes from within those communities. The Parsi marriage and Divorce Act has been amended to give equal rights to Parsi women. The demand for the change came from the Parsi community itself.

CONSTITUTIONAL PROVISIONS

The Constitution of India was ahead of its time, not only by the standards of the developing nations but also of many developed countries, in removing every discrimination against women in the legal and public domain of the Republic.

While Article 14 conferred equal rights and opportunities on men and women in the political, economic and social spheres, Article 15 prohibited discrimination against any citizen on the grounds of sex and Article 15(3) empowered the

State to make affirmative discrimination in favour of women and children. Article 39 enjoined upon the State to provide equal means of livelihood and equal pay for equal work and Article 42 directed the State to make provisions for ensuring just and humane conditions of work and also for maternity relief. Article 51A (e) imposed a fundamental duty on every citizen to renounce the practices derogatory to the dignity of women.

CONSTITUTIONAL GUARANTEES TO INDIA'S WOMEN

Fundamental Rights:

- Article 14:"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."
- Article 15(1):"The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them".
- Article 15(3):"Nothing in this article shall prevent the State from making any special provision for women and children".
- Article 16(2):" No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

Directive Principles of State Policy:

- Article 39:"The State shall, in particular, direct its policy towards securing:
  - (a) That the citizens, men and women equally, have the right to an adequate means of livelihood;
  - (d) That there is equal pay for equal work for both men and women;
  - (e) That the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;"

- Article 42:"The State shall make provision for securing just and humane conditions of work and for maternity relief".

The Indian Constitution was drafted around the same time as the Universal Declaration of Human Rights and was, therefore, strongly influenced by the latter. The principle of gender equality is firmly embedded in our Constitution. It provides for equality before law and equal protection of the law, prohibition of discrimination, and equality of opportunity in matters of public employment. The Indian Constitution further provides for affirmative action and for positive discrimination by empowering the State to make special provisions for women.

The Constitution also contains certain provisions, called Directive Principles, which enjoin upon the State inter-alia to secure the right to adequate means of livelihood for both men and women equally, equal pay for equal work for both men and women, the health and strength of workers, for both men and women, and ensuring that the citizens are not forced by economic necessity to enter vocations unsuited to their age and strength. Further a duty is cast on every citizen of India to renounce practices derogatory to the dignity of women. The elimination of gender based discrimination is one of the fundamentals of the Constitutional edifice of India. In fact the Constitution empowers the State to adopt measures of positive discrimination in favour of women for neutralizing the cumulative discriminations and deprivations which women have faced from generation.

Further as explained earlier, the four basic provisions of the Constitution *viz.* the Fundamental Rights relating to the provisions on equal rights and opportunities of men and women in political, economic and social spheres, the prohibition of discrimination on ground of religion, race, caste, sex etc., the provision enabling the State to take affirmative action in favour of women and the equality of opportunities in public employment for men and women are themselves justiciable claims and can be redressed thorough the writ jurisdiction of the High Courts and the Supreme Court of India.

The notion of affirmative action or positive discrimination in favour of women is not only an essential feature of Indian political thinking since independence, but it derives from what is essentially an enabling clause in the Constitution itself. Article 15(3) of the Constitution thus lays down that special measures in favour of women and children will not be construed as violative of the principle of equality. Having said this, the Constitution, however, prohibits in Article 16, any discrimination with respect to opportunity of public employment, except in case of categories or classes of disadvantaged people.

INTERNATIONAL COVENANTS TO WHICH INDIA IS A SIGNATORY

The most significant International Covenants to which India is a signatory are:

- Vienna Declaration-The Universal Declaration of Human Rights.
- Convention on Elimination of All Forms of Discrimination Against Women.
- Convention on Rights of the Child.

The Vienna Declaration for the first time recognized Women's Rights as Human Rights. It is a little known fact that an Indian lady lawyer Hansa Mehta was on the drafting Committee of the Declaration. Our Constitution coming immediately after the Declaration enshrined all those rights for women. It is also relevant to note that women in India got the right to vote without having to agitate for it, whereas in the West women had to struggle and agitate to get the right to exercise their franchise.

India is a signatory to CEDAW (the Convention on the Elimination of All Forms of Discrimination Against Women), having ratified it on 25.6.1993. The Convention defines discrimination against women as'any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and

fundamental freedoms in the political, economic, social, cultural, civil or any other field. Declaratory Statement in this connection reads as under:-"With regard to Article 16(1) of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent" Article 16(2) calls for making the registration of marriage in an official registry compulsory.

The Declaratory Statement for this Article reads as under:

- "With regard to Article 16(2) of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that it agrees to the principle of compulsory registration of marriages. However, failure to get the marriage registered, will not invalidate the marriage, particularly in India with its variety of customs, religions and level of literacy."

Article 29(1) of the Convention establishes compulsory arbitration or adjudication by the International Court of Justice of disputes concerning interpretation.

The reservation proposed by the Government of the Republic of India reads as under:

- "With regard to Article 29(1) of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that it does not consider itself bound by paragraph 1 of this Article."

Under Article 18 of the Convention, a State Party to the Convention has to submit a report on the legislative, judicial, administrative and other measures which it has adopted to give effect to the provisions of the Convention within a year after the entry into force of the Convention for the State Party and thereafter at least every four years. India's initial report in this regard was submitted in 1997/98. The report was compiled from the information supplied by the concerned Ministries/Departments of the Government of India as well

as inputs from women's organizations and activists. India's initial report was considered by the Committee on the Elimination of Discrimination Against Women in January 2000. The specific issues raised in the' Concluding Comments of the Committee are required to be responded to by India in its next periodic report. In the Concluding Comments, the Committee commended the following positive aspects of India's efforts to end the discrimination against women and to empower them:

- The recognition of fundamental rights to gender equality and non-discrimination.
- The contribution made by the Supreme Court of India to the provision of equality to women.
- The range of policies and programmes for women.
- The establishment of the National Commission for Women and State Commissions for Women.
- The affirmative action of the 73rd and 74th Constitutional Amendments-reservations for women in Panchayats and urban local bodies.
- Banning of sex determination tests.
- Amendments to the laws on Nationality.

The principal areas of concern identified and the recommendations made by the Committee in its Concluding Comments are broadly the following:

- Gender empowerment should have a rights-based approach.
- There should be allocation of sufficient and targeted resources for women's development.
- The National Commission for Women should be entrusted with the task of developing working papers on legal reform in a time-frame.
- India should withdraw its Declarations to Articles 16(1) and 16(2) of the Convention-relating to marriage and family relations and registration of marriage respectively.
- A Uniform Civil Code should be enacted in pursuance of the directions of the Supreme Court.
- There should be compulsory registration of marriages and births.

- Make primary and secondary education compulsory.
- Introduce a sex-discrimination act applicable to non-state action and inaction.
- Strengthen law and enforcement and introduce reforms proposed by NCW and women activists in laws on rape, sexual harassment and domestic violence.
- Women be given an opportunity to make their contribution to peaceful conflict resolution.
- Undertake greater gender sensitization and human rights programmes.
- Introduce affirmative action programmes to provide life chances to Dalit women.
- Adopt a holistic approach to women throughout the life cycle with provision of matching the resources.
- Elicit support of the medical profession in enforcing professional ethics and preventing sex-selective abortions.
- Affirmative action may be taken to increase women's participation in the judiciary and lok adalats.

JUDICIAL INTERPRETATION MAINTENANCE

The judiciary has been demonstrably progressive and protective in interpreting the law relating to maintenance. In the Shah Bano case, the Supreme Court upheld the maintenance right of divorced Muslim women (AIR 1985 SC 945). Under Section 125 of Cr.P.C., any man, who deserts or divorces a wife who cannot support herself, is liable to pay a stipulated compensation.

Despite the Supreme Court verdict in Shah Bano case, however, the Muslim Women (Protection on Divorce) Act was enacted in 1986.

This law generated considerable controversy on the argument voiced in many quarters that this was a retrograde measure. In the context of the Shah Bano Case, Justice Y. V. Chandrachud even observed that it was high time that the Government implemented Uniform Civil Code. The pronouncement of the case also called upon the Prime

Minister"to have a fresh look at Article 44" of the Constitution. The Government were also advised to ask the Law Commission to draft a comprehensive law in consultation with the Minorities Commission incorporating the"present day context of human rights for women." The, punishment for rape of a minor below 12'years of age has been enhanced to the minimum of 10 years. Nonetheless, several inadequacies have been pointed out.

- Infliction of sex on a girl under 16 years of age with or without her consent is child rape. Under Section 376 of IPC, when the wife is below 12 years of age, the penalty is the same as provided for rape generally. But, where the wife is 12 or 12+ years of age, but below 15 years, it is construed as a lesser offence and the punishment is milder. In such cases, the penalty is imprisonment which may extend to 2 years or fine or both. Under Section 375 of the Indian Penal Code, in the case of child wife, if she is above 15 years of age, infliction of sex on her against her will by the husband is not construed as rape at all. There is patent contradiction between the Child Marriage Restraint Act, 1929 and the Indian Penal Code.
- Definition of rape and molestation does not cover several kinds of perverse sexual assault of girl children. Where S.354 IPC concerning sexual assault gets applied instead of the substantive provision relating to rape on account of its technical non-applicability, the culprits could get away with lesser penalties-imprisonment for 2 years or lesser.
- On account of absence of special provisions relating to evidence by minor girls, the environment for presentation of evidence by them tends to be hostile.
- The child victim is invariably inadequate in understanding or explaining the trauma of sexual assault on her.
- There are serious logistical difficulties. Due to the scattered nature of habitations in the country, especially in rural areas, and inaccessibility of police

stations often there are delays in the lodging of the First Information Reports and this could have adverse impact on the prosecution. Inaccessibility of medical doctors is yet another serious problem.

Kirti Singh, having extensively reviewed judicial decisions concerning dispensation of criminal justice in rape cases, has found that factors impacting on the nature of disposal of rape cases, are largely the attitude of the Courts, Court procedures, approach to the evidence of the rape victims, and investigation procedures.

Courts have tended to be impacted by conventional notions of morality in handling cases relating to rape-notions of honour and chastity of women rather than the physical violation of the victim involved. Disposal of cases usually takes enormous time-time taken by the various Courts, the Trial Court, the High Court and Supreme Court. Frequent adjournments on behalf of the accused are moved for and also granted. Investigation is normally expected to be completed in 90 days. But this does not happen. Consequently the accused get entitled to bail. The cross-examination could traumatize the victims.

EVIDENCE OF RAPE VICTIMS, QUESTIONS OF CORROBORATION AND CONSENT

Courts do insist on the corroboration of victim's evidence despite landmark rulings that such corroboration is not required. In the famous Mathura case, the Court held that no rape had been committed on the ground that no physical injuries were found on the victim. The victim's past history and conduct are also given much importance by the Courts, though this is not appropriate.

SPECIAL PROGRAMMES FOR THE TARGET GROUP

The pre-independence planning document had addressed women's economic, civil and social rights. However, despite the provisions of the Directive Principles of State Policy, economic rights and needs were not really built into the First Five year Plans. Labour laws, valid only for the organized

secondary sector, had incorporated most of the ILO Conventions before planning started. Maternity benefits were enacted in 1961, but not equal remuneration. While, both these principles were incorporated into public service rules (with a few exceptions), child care support for women was not included. Service rules were the responsibility of the Home Ministry while labour laws were that of the Labour Ministry. Some sectors of government continued discriminatory and exclusionary practices against women, because there was no comprehensive policy or law applicable to all categories of women workers.

On the other hand, the growing emphasis on population control highlighted women's reproductive, rather than their productive roles, influencing'populationist' approach to women's development needs. The United Nations General Assembly adapted a Resolution on the"Declaration on Elimination of Discrimination against Women" in 1967 and requested all Member States to prepare Reports on the Status of Women in their countries. This had not been followed up for long in India. A reminder, sent especially in the context of the International Women's Year scheduled for 1975, to the Government of India in the Ministry of External Affairs from the UN Commission on the Status of Women towards the end of the decade geared them into action.

Since there was no Ministry or Department of the Government dealing exclusively with matters relating to women, the letter was referred to the Department of Social Welfare. The first Minister of State in the Department of Social Welfare, Smt. Phulrenu Guha, proposed the constitution of a Commission of Enquiry to study the status of women in the country. After General Elections in 1971, the Government constituted the"Committee on the Status of Women in India" (CSWI) in September of that year. The Committee submitted its Report entitled "TOWARDS EQUALITY" in December, 1974. It served as an eye opener to the Government, law makers, experts and activists in the field and the community as a whole on the low status of women on many counts and on the wide gulf between what was intended in the

Constitution of India and what prevailed on ground in terms of laws, conventions and practices. Equality seemed to be a very distant goal. The Committee observed:

- "The review of the disabilities and constraints on women, which stem from socio-cultural institutions, indicates that the majority of women are still very far from enjoying the rights and opportunities guaranteed to them by the Constitution. Society has not yet succeeded in framing the required norms or institutions to enable women to fulfil the multiple roles that they are expected to play in India today. On the other hand, the increasing incidence of practices like dowry indicates a further lowering of the status of women. They also indicate a process of regression from some of the norms developed during the Freedom Movement. We have been perturbed by the findings of the content analysis of periodicals in the regional languages, that concern for women and their problems, which received an impetus during the Freedom Movement, has suffered a decline in the last two decades. The social laws, that sought to mitigate the problems of women in their family life, have remained unknown to a large mass of women in this country, who are as ignorant of their legal rights today as they were before independence."
- We realise that changes in social attitudes and institutions cannot be brought about very rapidly. It is however, necessary to accelerate this process of change by deliberate and planned efforts. Responsibility for this acceleration has to be shared by the State and the community, particularly that section of the community which believes in the equality of women. We, therefore, urge that community organizations, particularly women's organizations should mobilize public opinion and strengthen social efforts against oppressive institutions like polygamy, dowry, ostentatious expenditure on wedding and child marriage, and mount a campaign

for the dissemination of information about the legal rights of women to increase their awareness. This is a joint responsibility which has to be shared by community organizations, legislators who have helped to frame these laws and the Government which is responsible for implementing them."

There is no doubt that the Report of the CSWI - "TOWARDS EQUALITY" has been a landmark in the social history of India heralding a conscious change in attitudes, behaviour, law, establishment of special institutions and creating both infrastructure and environment for equality for women.

The quarter century that has passed by since the report has indeed created a lot of waves of activity and awareness:

- A whole National Machinery including the National Human Rights Commission and the National Commission for Women has been established with a number of institutions to play enabling roles to create the environment for the advancement of women and realization of gender justice.
- Several amendments to existing statutes have been made and new statutes enacted by the Parliament to incorporate gender perspectives.
- The National Policy on Education (NPE), 1986 and the National Plan of Action (NPA), 1992 have brought focus on girls' education.
- The National Literacy Mission (NLM) was launched as a"Technology and Societal Mission" with strong orientation to women's participation. It has contributed to women's literacy and empowerment.
- The"Tenth Plan" is attempting a gender focus, with the announcement of the National Policy on Empowerment of Women.
- The Constitution has been amended to make space for women in a mandatory way in decision making in the Local Bodies.
- Several International Conventions have been ratified.
- A large number of programmes and Schemes have

been incorporated in the Five-Year Plans targeting women.

- The Women's Movement has gathered strength and is relentlessly fighting to place women's issues-now understood as'gender issues' on social, economic and political agenda of the nation. Indeed, there has been a whole perspective change in the understanding of women's lives in all their dimensions. The democratic deficit on account of exclusion of women from political life acknowledged in the reservation of seats for women in Panchayats and Municipalities has been a justification for the priority given by the Women's Movement to this issue.
- Grassroots mobilization of women into Self-Help Groups (SHGs) emerged, interalia, as a dynamic consequence of activities of organizations like Self-Employed Women's Association (SEWA), Working Women's Forum (WWF), Annapurna Mahila Mandal, etc. The self-help model has received universal recognition in the country and has also been incorporated as a strategy specifically in the National Policy on Empowerment of Women.
- A continuous search for the'missing women', not only in date and action at various levels but also in the various"Policies' of the Government and in the'mindset' of the society, is on with different momentum in different quarters.

It was only between 1977 and 1980 that some serious exercises in policy review were taken up. Amongst these, the three most significant exercises were the Report of the Working Group on Employment of Women, 1977-78; Report of the Working Group on Development of Village Level Organizations of rural Women, 1977-78, Report of the Working Group on Functional Literacy for Women, (FLAW) 1977-78 and Report of the National Committees on the Role and Participation of Women in Agriculture and Rural Development, 1979- 80. These exercises definitely marked a watershed in conceptualizing basic problems and strategies

for women's development in India. In fact, the Indian agenda even got incorporated into the United Nations and Mid-Decade Programme of Action-thorough the mediacy of the Non-aligned Movement at the special Conference on Women and Development (Baghdad, 1979) and India's Membership of the Commission on the Status of Women (1978-80) as well as the Preparatory Committee for the Mid-Decade, Copenhagen Conference (1980) and Programme of Action.

The Secretary General of the Mid-Decade UN Conference acknowledged India's contribution to the emphasis on third world perspectives on development and the adoption of employment, health and education as a sub-scheme of the decade's agenda. The conceptual approach evolved through these few years identified women's developmental needs as having multiple dimensions-cutting across economic, social and political sectors-requiring explicit examination of women's situation in various sectors (agriculture and allied fields, industry, labour and employment, power, environment, energy, science and technology as well as the social and infra-structural sectors.

Such explicit examination called for three operational strategies:

- Of establishing cells within various sectoral development/planning agencies at different levels.
- Earmarking of a share of various sectoral allocations for investment in women rather than relegate women to only women-specific programmes and women-specific agencies; and promoting rural employment and development through women's own collective organizations, at the grassroots.

Strengthening of voluntary organizations of women at the grassroots was advocated" for creating a proper climate for the introduction of social legislation as well as for its effective implementation and the provision of legal aid. Such grassroots organizations were also necessary"as channels for women to participate effectively in decisions that affect their lives and for promoting adequate development efforts for women at different levels". There were definite suggestions for active promotion of such collectives by the government and linking them with institutions which could provide support in various

forms. The planning process for the development of women has evolved through' welfare' to 'development' to' empowerment' to'participation'. Despite the dynamism of the approach, the Constitutional and legal provisions for affirmative action, the institutional build up and attendant step up in investments, gender discrimination continues to be a daunting challenge.

The National Policy for Empowerment of Women, announced by the Government in April 2001, has laid down a number of policy prescriptions for the national, State and local governments. The policy includes creating an environment thorough positive economic and social polices. The de-jure and de-facto enjoyment of all human rights, equal access to participation and decision making of women, equal access to women to health care, quality education at all levels career and vocational guidance, employment, equal remuneration, occupational health and safety, social security and public office etc. strengthening legal systems aimed at elimination of all forms of discrimination against women and violence against women and the girl child.

LEGAL RIGHTS

To uphold the Constitutional mandate, the State has enacted various legislative measures intended to ensure equal rights, to counter social discrimination and various forms of violence and atrocities and to provide support services especially to working women. Although Women may be victims of any of the crimes such as'Murder', 'Robbery', 'Cheating' etc, the crimes which are directed specifically against Women are characterised as'Crime Against Women'. These are broadly classified under two categories.

THE CRIMES IDENTIFIED UNDER THE INDIAN PENAL CODE (IPC)

i. Rape (Sec. 376 IPC)
ii. Kidnapping and Abduction for different purposes (Sec. 363-373 IPC)
iii. Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B IPC)

iv. Torture, both mental and physical (Sec. 498-A IPC)
v. Molestation (Sec. 354 IPC)
vi. Sexual Harassment (Sec. 509 IPC)
vii. Importation of girls (upto 21 years of age) (Sec. 366-B IPC)

THE CRIMES IDENTIFIED UNDER THE SPECIAL LAWS (SLL)

Although all laws are not gender specific, the provisions of law affecting women significantly have been reviewed periodically and amendments carried out to keep pace with the emerging requirements.

Some acts which have special provisions to safeguard women and their interests are:

i. The Employees State Insurance Act, 1948
ii. The Plantation Labour Act, 1951
iii. The Family Courts Act, 1954
iv. The Special Marriage Act, 1954
v. The Hindu Marriage Act, 1955
vi. The Hindu Succession Act, 1956
vii. Immoral Traffic (Prevention) Act, 1956
viii. The Maternity Benefit Act, 1961 (Amended in 1995)
ix. Dowry Prohibition Act, 1961
x. The Medical Termination of Pregnancy Act, 1971
xi. The Contract Labour (Regulation and Abolition) Act, 1976
xii. The Equal Remuneration Act, 1976
xiii. The Child Marriage Restraint (Amendment) Act, 1979
xiv The Criminal Law (Amendment) Act, 1983
xv. The Factories (Amendment) Act, 1986
xvi. Indecent Representation of Women (Prohibition) Act, 1986
xvii. Commission of Sati (Prevention) Act, 1987

INCIDENCE OF CRIMES AGAINST WOMEN-ALL INDIA (1998-2000)

The Crime head-wise incidence of reported crimes

during 1998 to 2000 along with percentage variation is presented below.

It is observed that Crimes Against Women reported an increase of 4.1 per cent and 3.3 per cent over previous years 1999 and 1998 respectively.

Sl.No.	**Crime Head**	**Year**			**Percentage Variation in 2000**
		1998	**1999**	**2000**	**Over 1999**
1	**2**	**3**	**4**	**5**	**6**
1.	Rape	15,151	15,468	16,496	6.6
2.	Kidnapping and Abduction	16,351	15,962	15,023	–5.9
3.	Dowry Death	6,975	6,699	6,995	4.4
4.	Torture	41,376	43,823	45,778	4.8
5.	Molestation	30,959	32,311	32,940	1.9
6	Sexual Harassment	8,054	8,858	11,024	24.5
7.	Importation of Girls	146	1	64	63
8.	Sati Prevention Act	0	0	0	—
9.	Immoral Traffic (P)Act	8,695	9,363	9,515	1.6
10	Indecent Rep. of Women(p)Act	190	222	662	198.2
11	Dowry Prohibition Act	3,578	3,064	2,876	–6.1
	Total	**1,31,475**	**1,35,771**	**1,41,373**	**4.1**

The available data indicates an increasing trend during the last three years for cases registered under IPC crimes such as'Rape', 'Torture', 'Molestation' and 'Sexual Harssment' and under SLL crimes such as'Immoral Traffic (Prevention) Act' and'Indecent Representation of Women (P) Act'.

The cases under' Kidnapping and Abduction of Women and girls'and'Dowry Prohibition Act,' however, decreased during last few years.

Table. Proportion of Crime Against Women (IPC) Toward Total IPC Crimes

Sl.No	Crime Head	Total IPC	Crime Against Women (IPC cases)	Percentage to Total IPC Crimes
(1)	(2)	(3)	(4)	(5)
1.	1998	17,78,815	1,19,012	6.7
2.	1999	17,64,629	1,23,122	7.0
3.	2000	17,71,084	1,28,320	7.2

CRIME RATE (STATES AND UTS)

All India Crime rate *i.e.* number of crimes per lakh population for crimes against women reported to the police worked out to be 14.1. This rate of crime which does not appear alarming at first sight may be viewed with caution, as a sizable number of crimes against women go unreported due to social stigma attached to them.

Uttar Pradesh State reported highest incidence (13.4%) of these crimes followed by Madhya Pradesh (12.7%). Rajasthan, which shared 9.2 per cent of these crimes and was fifth in the order of incidence, however, reported highest crime rate at 24.0 followed by Madhya Pradesh 22.3, as compared to national rate of 14.1.

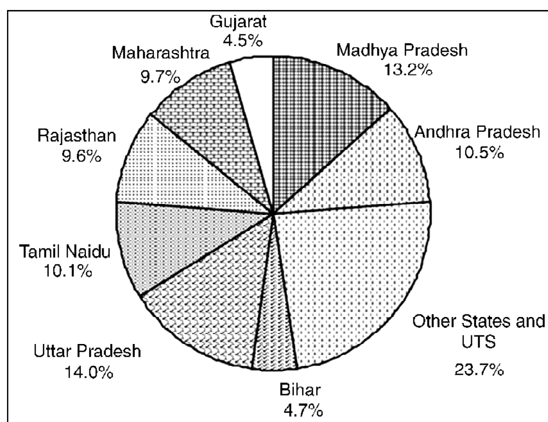


Fig. State-wise Percentage Contribution to Total Crime Committed Against women During 200

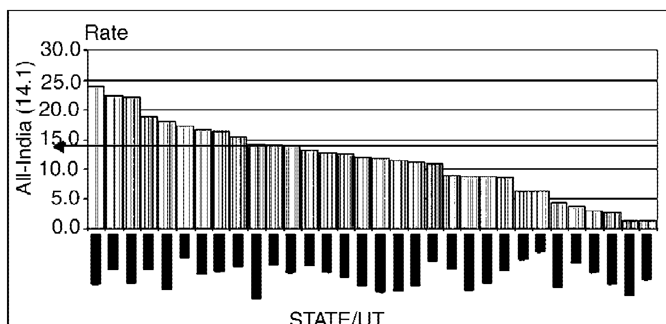


Fig. Rate of Total Crime Committed Against Women During 2000 State & UT-Wise

ENDEMIC AREAS

All over the world women prisoners form a small minority of those imprisoned. The proportion is generally around 5 per cent, that is, one in twenty of all prisoners; although a feature of the past decade has been a steeper rise in the number of women in prison than the rise in the number of men. Women in prism are entitled to the equal enjoyment and protection of all human rights in political, economic, social, cultural, civil and all other fields in the same manners their male counterports.

Women prisoners shall not suffer discrimination and shall be protected from all forms of violence or exploitation. Women prisoners shall be segregated from male prisoners. Women prisoners shall be supervised and searched by female officers and staff. Pregnant women and nursing mothers who are in prison shall be provided with special facilities which they need for ameliorating their condition. Whenever practical, women prisoners should be taken to outside hospitals for delivery.

DOMESTIC VIOLENCE

Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Platform of Action (1995) both have acknowledged this. The United Nations Committee on CEDAW (Convention on Elimination of All Forms of

Discrimination Against Women) in its general recommendation No. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family. Prevention of Domestic Violence Act, 2005 has since been passed by both houses of Parliament, and has received the assent of the President. The Rules under the Act have also been framed. The phenomenon of domestic violence is widely prevalent, but has remained largely invisible in the public domain. Presently, where a woman is visited with cruelty by her husband or his relatives is an offence under section 498A of the Indian Penal Code, 1860. The civil law does not address this phenomenon in its entirety. With a view to providing a remedy under the civil law, which is intended to preserve the family and at the same time provide protection to victims of domestic violence, a legislation is being proposed.

The main features as contained in the Bill are as follows:

i. It is being provided that any conduct of relative of the victim, which subjects her to habitual assault, or makes her life miserable, or injures or harms, or forces her to lead an immoral life would constitute domestic violence;
ii. The Judicial Magistrate of the first class or the Metropolitan magistrate may take the cognizance of domestic violence and pass a protection order requiring the relative of the woman to refrain from committing an act of domestic violence, or pay monetary relief which is deemed fit in the circumstances or pass any other direction as the Magistrate may consider just;
iii. The Magistrate may even require as an interim and urgent measure from the relative of the woman in question to execute a bond, with or without sureties, for maintaining domestic peace;
iv. The violation by the relative of the order made by the Magistrate would constitute an offence punishable with imprisonment up to one year, or with fine, or with both;

v. It is being proposed to set up an institution of Protection Officer to help the victims of domestic violence in making an application to the Magistrate and in availing of her other legal rights;
vi. A provision is being made for the appointment of Protection Officers by State Governments and they shall possess such qualifications as may be prescribed by the Central Government; and
vii. Protection Officer shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860, and if he fails or refuses to discharge the duties as directed by the Magistrate, his act shall amount to an offence punishable with imprisonment up to one year, or with fine, or with both.

Definition of Child Marriage Restraint Act, 1929- In this Act, unless there is anything repugnant in the subject or context:

a. "Child" means a person who, if a male, has not completed twentyone years of age, and if a female, has not completed eighteen years of age;
b. "Child marriage" means a marriage to which either of the contracting parties is a child;
c. "Contracting party" to a marriage means either of the parties whose marriage is or is about to be thereby solemnised; and
d. "Minor" means a person of either sex who is under eighteen years of age.

TRAFFICKING

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (Trafficking Protocol) that was adopted in the year 2000 and came into force in December 2003. Trafficking and commercial sexual exploitation of women and children is a fundamental violation of the rights of women and children. The social, physical, psychological and moral consequences of commercial sexual exploitation on women and child victims are serious, life-long and even life

threatening. The Right against exploitation is a fundamental right guaranteed by the Constitution of India. Under Article 23, traffic in human beings and"begar" and other similar forms of forced labourare prohibited and any contravention of this provision shall be an offence punishable in accordance with the law.

The Immoral Traffic (Prevention) Act, 1956 (ITPA) supplemented by the Indian Penal Code (IPC) prohibits trafficking in human beings including children and lays down severe penalties. Under Section 5 of the ITP Act procuring, inducing or taking a child or a minor for the sake of prostitution is punishable with rigorous imprisonment for a term of not less than seven years, but which may extend to life. Under Section 6 where a child is found with a person in a brothel, there is a presumption of guilt for detaining the child on the person and he shall be punishable with imprisonment. Under Section 7 where a person commits the offence of prostitution in respect of a child or minor, he shall be punishable with imprisonment for not less than seven years or for life for a term which may extend to 10 years and fine. The Juvenile Justice Act, 2000 provides for the care, protection, treatment and rehabilitation of neglected or delinquent juveniles including girls.

The enforcement of the ITPA, IPC and the Juvenile Act is the responsibility of the State Governments. This has been further amended and new Act"The Juvenile Justice (Care and Protection of Children Amendment Act 2006)" has been enacted. The Ministry of Law and Justice has come up with the"Commission for Protections of Child Rights Act 2005". The rules of same Act have also been framed. An Act provide for the Constitution of a National Commissions State. Commissions for Protection of Child Rights and Children's Courts for providing speedy trial of offences against Children or of violation of child rights and for matters connected therewith or incidental thereto. The National Commission for Protection of Children's Rights has been Constituted with Smt. Shanta Sinha, as Chairpersons and four other members. In Madhu Kishwar and others v. State of Bihar and others (1996)

5 SCC 125 the public interest petition challenged the customary law operating in the Bihar State and other parts of the country excluding tribal women from inheritance of land or property belonging to father, husband, mother and conferment of right to inheritance to the male heirs or lineal descendants on grounds of sex discrimination.

The contention of the Petitioner was there is no recognition of the fact: that the tribal women toil; share with men equally the daily sweat, troubles and tribulations in agricultural operations and family management. It was alleged that even usufructuary rights conferred on a widow or an unmarried daughter become illusory due to diverse pressures brought to bear brunt at the behest of lineal descendants or their extermination. Even married or unmarried daughters are excluded from inheritance, when they are subjected to adultery by non-tribals; they are denuded of the right to enjoy the property of her father or deceased husband for life. The widow on remarriage is denied inherited property of her former husband.

They elaborated further by narrating several incidents in which the women were either forced to give up their life interest or became target of violent attacks or murdered. Therefore, the discrimination based on the customary law of inheritance was challenged as being unconstitutional, unjust, unfair and illegal. In the judgment in this case the Supreme Court of India laid down some important principles to uphold the rights of inheritance of the tribal women, basing its verdict on the broad philosophy of the Indian Constitution and said:"The public policy and Constitutional philosophy envisaged under Articles 38, 39, 46 and 15(1) & (3) and 14 is to accord social and economic democracy to women as assured in the Preamble of the Constitution.

They constitute core foundation for economic empowerment and social justice to women for stability of political democracy. In other words, they frown upon gender discrimination and aim at elimination of obstacles to enjoy social, economic, political and cultural rights on equal footing." It was held that the tribal women would succeed the estate of

their parent, brother, husband, as heirs by intestate succession and inherit the property with equal share with male heir with absolute rights as per the general principles of Hindu Succession Act, 1956, as amended and interpreted by the Court and equally of the Indian Succession Act to tribal Christian.

SCOPE FOR DISTRICT OFFICERS

CUSTODIAL JUSTICE FOR WOMEN

- While women have been provided all kinds of Rights under the Constitution and legal safefuards have been provided, we still find the woman marginalized, outside the mainstream, deprived of her rights.
- The District officers are the cutting edge level, the pivot on whom hinges implementation and coordination of all programmes of Government. Therefore, listed are some issues, which, though provided for already, are observed in the breach, where the District Officers can ensure implementation and play the role of a catalyst and mobiliser. These are based on recommendations made by women's organizations, National Commission for Women, and other institutions at various fora.
- District Officers should ensure, that Women are not arrested between sun set and sun rise and shall not be arrestee except in the presence of a women.
- In all cases of bailable offences, bail on her bond shall be granted forthwith by the police themselves. As far as possible, in non-bailable cases also, bail should be granted unless special circumstances warrant a different course, in which case, the arrested women shall be remanded to judicial custody with utmost expedition.
- On arrest, the police should immediately obtain from the arrestee the name of a relative or friend to whom the intimation of her arrest should be promptly given.
- If considerations of arrestee's own safety and freedom from ensnarement by anti-social elements, demand

detention in public institutions, bail shall be refused to the women in her own interest, unless she specifically States her willingness to be thus released even after being alerted to the above considerations.

- The person of a woman shall not be searched except by a woman duly authorised by law in a manner strictly in accordance with the requirement of decency. Whether in custody or in transit, the arrestee woman must always be guarded by a woman police or a female surrogate. While escorting, a relative may be permitted to accompany the female arrestee.
- Whenever a woman is to be examined by the police or other investigative agency as a witness it should be done only at her residence.
- Nor should she be summoned to the police or investigative station unless she expresses her preference to be examined in the station.
- No female prisoner shall be liable to any form of corporal punishment or use of handcuffs, fetters or isolation as a form of disciplining.
- When women are examined in Court as accused or as witnesses, due courtesy and decency shall be shown. If circumstances so warrant in the interest of modesty and privacy of women, the trial may be held in camera or the women may be examined on commission thorough women advocates.

EXCLUSIVE CUSTODY FOR WOMEN

- Separated space for female arrestees in every police lock-up and complete segregation of women prisoners in jail and other custody should be maintained.
- Such custody shall only be in a separate police lock-up for women and, where such facility is not available, in a special home or institution designated under any law for the time being in force to receive women. At no time shall a woman arrestee be left unguarded by a woman guard or surrogate.
- Prisoner's Counsils or Bandi Sabhas should be set up

for every prison to help airing prisoner's grievances and difficulties.

- Socio-legal counselling cells should be set up in every prison for women inmates.
- In exceptional circumstances, when a woman arrestee is taken to a police lock-up, the police should immediately give intimation to the nearest Legal Aid Committee or recognized legal services body which must render all necessary legal services at State expense.
- Legal aid and counselling through professional bodies, assisted by para-legal and social workers, should be institutionalized for all prisons, and custodial institutions. Law schools and schools of social work should be encouraged and permitted to render socio-legal counselling service to the inmates.
- Released Prisoner's Aid Societies should operate in every district to provide a single-window assistance towards habilitation and mainstreaming of the released women prisoners.
- Before a female prisoner is released, her relatives shall be informed, and where no relative exists or shows up, the released prisoner shall be sent with a female escort to her destination.
- Right to legal aid in criminal proceedings is a fundamental right. In the case of women, free legal aid shall be given from the time of arrest and Magistrate shall ensure that adequate legal services are provided.
- Magistrate shall inform women, when first produced, of their right to legal aid at State expense and direct the provision of necessary services. They shall also explain the nature and scope of the proceedings against her and her rights in it.
- Appropriate assistance shall be rendered to every female prisoner on release, whether during or after completion of sentence. For this purpose, a centre for assisting released prisoner shall be set up to service a

cluster of prisons and custodial institutions on an area-wise basis. Even without the center, the prison authorities shall take necessary steps to arrange the rehabilitation of the released prisoner either through the family, the relief centre or a voluntary organization.

- After-care and short-stay homes for women prisoners may be established in every District to serve those prisoners who are homeless or rejected by their families.

CHILDREN ACCOMPANYING WOMEN IN POLICE CUSTODY/JAIL CUSTODY

- When arresting a woman, proper arrangements for the protection and care of her children shall be the responsibility of the State. Children who need to be kept in custody jointly with their mothers shall enjoy rights justly needed, while in custody, in terms of food, living space, health, clothing and visitation.
- In the disposition of women to custody or otherwise the Magistrate must enquire and direct that suitable arrangements for the welfare of her children be made in a manner that protects the rights of children.
- Expectant mothers in custody shall be shown special consideration by way of medical and nutritional care, education in child rearing and mother craft.

WOMEN’S ASSISTANCE POLICE UNIT

- Women's Assistance Police Unit containing cadre of men and women police with specific task of crime prevention work and assistance to women should be set up in each district.
- In endemic female crime areas, or wherever otherwise desirable, exclusive police stations or booths and counters within police stations, shall be set up to deal with women needing protection of, or coming in conflict with, law. Such booths and Counselling Centres shall be managed by an integrated cadre of

men and women, specially trained and sensitized to deal with women, and under the aegis of an NGO.

- Setting up of Family Counselling Centres and Short Stay Homes in high supply areas to provide counseling and guidance to single women, which is a high risk group, who are deserted, widowed, divorced, socially ostracized, to parents of missing girls, illegally adapted girls, street children, child brides, bonded labourers etc., so that they get shelter and counseling.
- Formation of Committees for the Protection of Rights of women and children at District level, block level and Mohalla/Village/Panchayat level with membership of the public. These committees may be vested with the function of monitoring the registration and investigation of crimes against women, expediting measures for the defence of the rights of women and children, providing assistance to women for legal-aid and/or assisting women to defend themselves against criminal proceedings.
- Formation of Watchdog Committees, Community Surveillance Groups, Neighbourhood Policing for mobilizing all sections of society to counter crime against girls and women. Students and youths in neighbourhood and campuses should take responsibility for safety of girl students in the campus, prevent violation of women's rights within the campus and protect and defend victims of such violation.
- Village Saksharata Samities, Neighbourhood Development Committees, Community Development Societies, Gram Mahila Mandals, Balika Mandals, Yuvak Mandals and the Gram Panchayats may be mobilized and activised to provide support services or assistance for the care and protection of women and children.
- The local administration in the high areas of supply and (red light) areas, where brothels are located, would be made responsible for ensuring the safety and

security of victims by taking speedy and effective action on reports about trafficking and commercial sexual exploitation. Heads of Schools, of institutions and of work places would be made aware of the risks of trafficking and their services enlisted to prevent such occurrence in their institution/work place.

- Migrant girls and women in search of employment, who have run away or are driven away from their home or those who are lost, are in the danger of falling prey to commercial sexual exploitation. Contact centres should be established in major cities near railway stations and bus stations to give guidance and information to women in need of temporary shelter about addresses of short stay homes, reception centres, shelter homes, etc.
- Self defence training should be given as part of physical education to girl students, to enable them to develop self confidence and defend themselves from being harassed, trafficked or exploited.
- Training and programmes of activities for Youth organizations and local bodies should include a strong component of gender sensitization and the role of gender in daily life.
- Programmes of advocacy and information through the media, awareness generation camps, education work etc. would also sensitise citizens to the plight of women and child victims and the need to change social attitudes of stigmatizing them and their children.
- Special modules of sensitization for probation officers, personnel manning homes, police officials, judicial officers, border police, health personnel and NGOs towards the causes of commercial sexual exploitation and the situation of women and child victims would be prepared and used for training and orientation. Institutions like the National Institute of Social Defence and the proposed National and State Resource Centres for Women would be utilized for this purpose.

- The Press Council of India and the broadcast media should be requested to adapt and strictly implement a code of conduct that protects the women/child victims right to anonymity and privacy, since these two factors are critical for their survival. Publishing of photographs and naming women arrestee, etc. should not be done, except with their written consent. Media should also highlight the exploited and victimized State of women and child victims, the fact that they have themselves become victims of AIDS due to contact with an infected male person and their role in the prevention of HIV infection.
- Programmes for spreading legal literacy should be given greater assistance. Legal literacy components should be incorporated in all projects for human resource development and poverty alleviation in rural and urban areas.
- Health cards could be issued to women and child victims ensuring free medical treatment, provision of adequate drugs and medications in Government institutions.
- Health Care Centres could be set up, in or near red light areas, which would provide immunization, primary health care, first aid, health Tuberculosis/ HIV/AIDS education, gynaecological care facilities, free contraception and counseling. The timings of these centres should be convenient to the women and child victims.
- Unethical, illegal and uninformed medical testing of women and child victims for HIV/AIDS/STD etc., which tends to violate their rights, should not be encouraged.
- Psychological health of the women and child victims as well as children of the women victims is endangered due to the circumstances of their exploitation. Psychological counseling services should be provided on a part time basis in the health care centres. This could be done under the Family

Counselling Centres Scheme of CSWB with specially trained counselors.

- Women victims suffering from terminal stages of AIDS would require separate shelter homes to be set up in major cities. NGOs and charitable organizations should be encouraged to set up such homes.
- Women victims should be assisted for inclusion of their names in electoral rolls and to obtain electoral photo identify cards to help them exercise their franchise.
- Women victims as women heading households, should be given ration cards under the Targetted Public Distribution System as a separate eligible category.
- Since shelter is the main requirement for women victims, who wish to be reintegrated in society, they should get preferential allotment of sites and houses reserved for Economically Weaker Sections in urban and rural areas, under schemes of the Central Government like Indira Awas Yojana and schemes of the State Government as well as housing projects of local bodies and development authorities.
- Girls and women subjected to violence should be provided well funded shelters and relief support as well as medical, psychological and other counseling services and free of cost. Legal aid, where it is needed, as well as appropriate assistance should be provided to enable them to find means of subsistence.
- Special Short Stay homes which are set up near red light areas should allow women victims who are pregnant to stay there during pregnancy and after delivery. Existing Short Stay Homes will set apart some seats for women victims of sexual exploitation.
- Women victims should be guided and assisted to form self help groups to take up, among other activities, savings and credit activity. Once they have gained sufficient experience and accumulated savings, they could be assisted by RMK, banks, cooperative banks

etc. for micro credit for income generating activities. Durbar Mahila Samanwaya Committee is a good example to be followed.

- Women Development Corporations, NGOs and other agencies would be encouraged to take up training cum employment/production projects in both traditional and non-traditional trades in red light areas and high supply areas to train women and child victims and children of victims. Assistance could be provided for purchase of assets, infrastructure, raw material supply, technical inputs and marketing tie ups. Such projects could be assisted under existing schemes of the Central and State Governments.
- In all projects assisted by Governmental agencies, by NGOs and the private sector, women victims who are rescued should be given employment to the extent of at least 50% of the total number of full and part time staff.
- The public and private sector should be encouraged to take part in the rehabilitation of rescued women and child victims through providing income generating training and employment/self employment opportunities for them including piece-work, sub contracting, assembly units.
- Government and local bodies could appropriately facilitate NGOs to locate night shelters and Child Development and Care Centres in or near red light areas.
- Women's organizations should be involved in monitoring of remand, protective and other homes.
- Local communities, NGOs and other interested individuals could be mobilized and encouraged to be involved in identification, rescue and rehabilitation of women and child victims.
- A consultative process should be followed in preparing plans and programmes for the rescue, rehabilitation and reintegration of women and child victims, with victims and with organizations working for their benefit.

- In implementing the plans, programmes and projects for the welfare and development of women and child victims, the participation of elected local bodies, NGOs, Community Based Organisations, should be ensured.

RECOMMENDATIONS ON SOCIAL WELFARE MEASURES

- Grants should be committed to eligible institutions for a minimum period of three years, through it may be released on an Yearly Basis. Some flexibility on heads of expenditure should be available to institutions without having to go to the sanctioning authority, which may withdraw grant on the basis of periodical performance evaluation. An evaluative profile based on correctional and rehabilitative accomplishments rather than money spent should be evolved or national application to all government aided correctional institutions. The system suitably adapted should be applied to mental health custodial institutions as well.
- SANSTHA SABHAS or Inmates Councils should be set up to democratize the administration, streamline participative arrangement and to improve custodial environment in these institutions. An escort corps with necessary Police Powers should be developed to assist these institutions and to operate under the jurisdiction of social welfare departments of the State. This corps will meet the escorting requirements of inmates of these institutions.
- People's participation being an essential value in democratic, custodial justice, the committee recommended a variety of organizational and structural innovations at the State and Central levels as a necessary follow-up of the action proposed. This is desirable equally in the preventive programmes as well.
- The main input from people and the voluntary organizations is invigilation. For that role to be effective, there must be access for recognized individuals to custodial institutions along with right

to information, access to records and interview facility with willing inmates.

- Selection of visitors to institutions must be based on past performance, commitment and willingness to devote time and effort Women should form the dominant group among such visitors. Selection must also represent a broad mix of all relevant disciplines and professions. Setting up of such Boards of Visitors must be mandatory for all custodial institutions such as prison, Police lockups, Remand Homes, social Welfare institutions and mental health hospitals. The approach of the Visitors ought to be co-operative and constructive rather than adversarial.
- The younger generation in colleges and Universities, particularly in law schools and social work schools, provide the ideal material for developing structures for invigilation and audit of custodial institutions. Socio-legal cells in such institutions can be jointly run by social work and law schools.
- Public participation should also function as a motivating force for the functionaries of the system. The new social philosophy and scientific knowledge for custodial treatment and justice can be injected by public-spirited volunteers in appropriate doses to the officials and their subordinates. Women's groups have a special responsibility for activising change, influencing the directions and imparting the education needed for dignity and status of women in custody.
- The mentally ill, separated/divorced women constitute a vulnerable group in society who, sans adequate protective systems, could become subjects of physical, emotional, sexual abuse and in the process suffer considerable neglect. Therefore, they must be the beneficiaries of welfare programmes designed to respond to their special needs.
- Setting up at-least a few centres for such women who have no protective umbrella, where they can also be trained in some vocation.

- Some existing centres for disadvantaged women should be sensitized to this problem and requested to include this group among their residents.
- The increasing trend of crime against women can be arrested only through a package consisting inter-alia a concerted campaign with social support, legal safeguards and protection and progressive reforms in the criminal justice administration, apart from socioeconomic development programmes and sensitization of all concerned on women's issues.
- The forensic examination of rape victims be made available within 72 hours of the occurrence of the crime.
- Strict instructions be issued to all hospitals that in rape cases the observations of doctors must be precise and as far as possible, conclusive and compatible with the facts on record. Vague and imprecise opinions often help rapists during the trial proceedings in the Court. Whenever it is found that the report is vague and inconclusive, the possibility of a second examination should not be ruled out.
- Examination of rape victims must always be conducted by women doctors to give greater confidence and a feeling of'comfort' to the victims.
- The District Officers, as a first step in all rape cases, act as a bridge between the victim and the administration and ensure that, while the Police investigated for speedy justice, the priority should be give to emotional support to the victim by providing the much needed counseling.
- Legal awareness camps should be held in sensitive areas to apprise the women about their legal rights and the legal remedies available to them and the steps that can and ought to be taken by them, even if the police or State officials are apathetic.
- Ugly publicity, tormenting tensions, exorbitant expenses, humiliating cross-examinations and the unbearable suspense and endless waiting, could be the

reasons responsible for offenders not being scared of the law in this regard (Dowry Prohibition Act). A change in the mindset of people with economic independence of women is needed, without which neither laws, legislations, police nor jail can solve the menace.

- Dowry, one of the main causes of atrocities on women, and laws alone are not enough to deal with them; the society has a distinct reformative role.
- The Family Counselling Centre, Jabalpur is a rare example in which local administration, the judiciary and eminent citizens were cooperating in solving family disputes, which should serve as a model for the entire country.
- Role-models should be encouraged in society, so that new attitudes could be fostered in a much more effective manner.
- The deserted women should be given legal rights as well as old-age Pension.
- Employment opportunities and the availability of health facilities for tribal women in remote parts of the country were not adequate. There was also a general need to encourage traditional systems of medicines by providing facilities in the health sector.
- There was lack of awareness amongst women and the NGOs regarding the facilities being provided by the government for minority women. Efforts to dessiminate information to all section of people must be made.
- There are several schemes of the Government-both at the Central and State levels-run by various State agencies for the socio-economic advancement of Minority women. Information about them is not available at the ground level. It is essential that this situation should be corrected and information about such programmes/schemes, whether run by the Central Government or the State Government, should be compiled at one place made available to NGOs and disseminated widely.

- The reason for widows getting isolated and leaving homes is their utter and cruel marginalisation from the mainstream, and the fact that many do not consider them as a target group when addressing the problems of women. Awareness programmes need to be launched so that widows know their rights.

MATERNITY AND CHILD CARE SERVICES

- The major concerns of special needs groups such as sexually exploited women and their children; children in institutions specially those awaiting adaption; unwed mother/single parent and adolescent girls.
- Awareness, especially on the importance of compulsory registration of marriages, emphasizing that education was an important means for women's empowerment, must be spread thorough all modes of channels.

Chapter 7

Bonded Labour and Migrant Labour: Rights

CONCEPT AND DEFINITION

Labour implies service. Bonded labour implies service which is rendered under forced or compulsory conditions and which arise out of mortgaging oneself to another for some economic consideration. Such consideration may be loan/debt/advance or any other. A bonded labourer implies one who renders bonded service, *i.e.* service arising out of certain obligations flowing from economic considerations like loan/debt/advance. The bonded labour system represents essentially the relationship between a creditor and a debtor. When a debtor incurs loan/debt/advance from the creditor, he undertakes to mortgage his services or the services of any of his family members to the creditor for a specified or for an unspecified period with certain consequences, such as:

- Service without wages or with nominal wages (*i.e.* without minimum wages fixed by the appropriate government, or wages lower than the market wages for the same or similar nature of work in the locality).
- Denial of choice of alternative avenues of employment.
- Denial of the right to move freely as a citizen in any part of the territory of India.
- Denial of the right to sell ones labour or the product of ones labour at market value.

These consequences may exist individually or collectively. It is, however, not at all necessary that all the 4 consequences should be together in existence to prove the existence of bonded labour system. Existence of creditor-debtor

relationship with one of the consequences is enough to determine the existence of bonded labour system. This is the quintessential provision relating to definition of bonded labour system, as contained in Section 2 (g) of the Bonded Labour System (Abolition) Act. In April, 1985 an explanation was added by way of amendment of Bonded Labour System (Abolition) Act that contract and migrant labourers may also be brought under the purview of the bonded labour system, if they fulfilled the ingredients of that system as defined in Section 2 (g) of the Act.

In the historic judgement delivered on 16.12.1983 on the Writ Petition No.2135, Justice Sri. P.N.Bhagwati, former Chief Justice of the Supreme Court has given a very broad, liberal and expansive interpretation of the definition of'bonded labour system'. It is not necessary to prove beyond doubt the element of loan/debt/advance in the creditordebtor relationship. Such an element can always be implied or assumed.

This is on account of the fact that the creditor and the debtor represent two diametrically opposite sections of the society. Traditionally, the debtor is poor, resource less and in need of defence, whereas the creditor is rich, resourceful and dominant. Thus, their relationship is an unequal exchange relationship. If the debtor is rendering certain services to the creditor without any wage or with nominal wage, it is to be presumed that he is doing it not out of any charity but out of some economic consideration. It is on account of this that it is not necessary to prove beyond doubt the element of loan/debt/advance. The judgement of the Supreme Court dated 16.12.1983 and the interpretation of the definition of'bonded labour system' contained in that judgement is law and has a binding effect on all concerned under Art. 141 of the Constitution of India read with Art 144.

CONSTITUTIONAL AND LEGAL PROVISIONS

The Constitution of India guarantees to all its citizens social, economic and political justice, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity, fraternity, assuring the dignity of the individual

and the unity and integrity of the nation. It prohibits forced labour.

Article 23 of the Constitution reads as under:

- Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.
- Nothing in this article shall prevent the State from imposing compulsory service for public purposes and in imposing such service, the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

There are several provisions in the Constitution, which are in consonance with the spirit of Article 23. These are article 19 (right to freedom), article 21 (protection of life and personal liberty), article 24 (prohibition of employment of children in factories, mines and other forms of hazardous work), article 38 (the State to secure a social order for the promotion of the welfare of the people). The scope and purpose of article 23 came in for judicial interpretation by the Supreme Court of India in a judgement (AIR 1982 Supreme Court 1473) dated 18.09.2002 while disposing of the Writ Petition No.8143 of 1981. It makes no difference whether the person who is forced to give his labour or service to another is remunerated or not. Even if remuneration is paid, labour supplied by a person would be hit by Article 23 if it is forced labour *i.e.* service has been rendered by force or compulsion. Article 23 strikes at all forms of forced labour even if it has its origin in a contract voluntarily entered into by the person obligated to provide labour or service.

INTERNATIONAL COVENANTS/AGREEMENTS TO WHICH INDIA IS SIGNATORY

Government of India ratified the ILO Convention No. 29 of 1930 in 1954 and ILO Convention No.105 of 1957 in 1999. However, long before these initiatives and both before and after independence several initiatives were taken at the Central and State level for enactment of laws on the subject.

LEGAL PROVISIONS-CENTRAL AND STATE

Central level (before independence):

1. The Abolition of Slavery Act, 1843 (Act No. V of 1843)
2. The Breach of Contract Act, 1859 (Act No. XIII of 1859)
3. The Usurious Loans Act, 1918 (Act No.10 of 1918)
4. The Children (Pledging of Labour) Act, 1933 (Act No.2 of 1933)

Provincial level (before independence):

1. The Andhra Pradesh (Andhra Area) Compulsory Labour Act, 1858 (Act No.1 of 1858)
2. The Andhra Pradesh (Telangana Area) Bhagelas Contract Act, 1853 F
3. Madras-Compulsory Labour for irrigation works, 1858 (Act No.1 of 1858)

Provincial level (after independence):

1. Orissa Debt Bondage (Abolition) Regulation, 1948
2. Rajasthan Sagri System (Abolition) Act, 1961
3. Kerala Bonded Labour System (Abolition) Act, 1975

While at the provincial level a number of isolated legislative efforts had been made, actuated by a host of varying considerations, the laws so enacted did not deal with the issues of identification, release and rehabilitation of bonded labourers in their entirety for the whole country. Following the Constitutional directive (Article 23) and in the wake of the obligation emanating from ratification of ILO Convention No.29 in November, 1954, the need for a national legislation had been felt long since.

The process was facilitated by declaration of a Stateof National Emergency on 25.06.1975 and announcement of a 20 point economic programme for national reconstruction on 01.07.1975. Item No.5 of the programme read thus:'Bonded Labour System is abolished and shall be declared illegal wherever it exists'. The developments at the Central level reflective of the political will, commitment and determination proceeded with a rapid pace, starting with a Labour Ministers' Conference on 19.07.1975 and followed by an exercise on law making, first through an Ordinance and latter converted to an Act. The Bonded Labour System (Abolition) Ordinance was

promulgated by the President of India on 24.10.1975 and the Bonded Labour System (Abolition) Act was passed by both Houses of Parliament on 09.02.1976, but given retrospective effect from 24.10.1975, the day the Ordinance had been promulgated. The Bonded Labour System (Abolition) Act has a Statement of Objects and Reason.

It can be broadly divided into the following:

- Definition.
- Consequences which follow on the date of commencement of the Act.
- Relief to the aggrieved.
- Structure of implementing authorities.
- Legal and penal provisions.

These are analysed seriatim as below:

- *Definition*: The Act defines advance, agreement, ascendant or descendant, bonded debt, bonded labour, bonded labourer, bonded labour system, family and nominal wages.
- Consequences which follow on the date of commencement of the Act. The following consequences follow:
  - With abolition of bonded labour system w.e.f 24.10.1975, bonded labourers stand freed and discharged from any obligation to render bonded labour.
  - All customs, traditions, contracts, agreements or instruments by virtue of which a person or any member of the family dependent on such person is required to render bonded labour shall be void.
  - Every obligation of a bonded labourer to repay any bonded debt, shall be deemed to have been extinguished.
  - No suit or any other proceeding shall lie in any civil Court or any other authority for recovery of any bonded debt.
  - Every decree or order for recovery of bonded debt not fully satisfied before commencement of the Act shall be deemed to have been fully satisfied.

- Every attachment for the recovery of bonded debt shall stand vacated.
- Any movable property of the bonded labourer, if seized and removed from his custody, shall be restored to him.
- Any property possession which was forcibly taken over by the creditor shall be restored to the possession of the person from whom seized.
- Any suit or proceeding for the enforcement of any obligation under the bonded labour system shall stand dismissed.
- Every bonded labourer who has been detained in Civil Prison shall be released from detention forthwith.
- Any property of a bonded labourer under mortgage, charge, lien or any other encumbrance, if related to public debt, shall stand freed and discharged from such mortgage.
- Freed bonded labourers shall not be evicted from the homestead land.

• *Relief to the aggrieved*:
  - The aggrieved person may apply to the prescribed authority for restoration of possession of property (if it is not restored within 80 days from the date of commencement of the Act).
  - The prescribed authority may pass an instant order directing the creditor to restore such property to the possession of the aggrieved.
  - Any order by the prescribed authority to this effect shall be deemed to be an order by a Civil Court.
  - The aggrieved party may apply to have the sale of his property set aside, if the property was sold before commencement of the Act.
  - If the mortgaged property is not restored to the possession of the bonded labourer or there is some delay, the bonded labourer shall be entitled to recover such profits as may be determined by the Civil Court.

- *Structure of implementing authority*: The law provides for the duties and responsibilities of the District Magistrate and every officer specified by him. They have to ensure that the provisions of the Act are properly carried out. The law also provides for the constitution of Vigilance Committees at the district and sub-divisional level, duties and responsibilities of such Committees in the area of identification and rehabilitation of freed bonded labourers.
- *Legal and Penal Provisions*: The Act provides for punishment for compelling any person to render any bonded labour.

It also provides for:

- Punishment for advancement of bonded debt.
- Punishment for extracting bonded labour system.
- Punishment for omission or failure to restore possession of property of bonded labourers.
- Abatement. The Act provides for appointment of Executive Magistrates for trial of all such offences and also provides for vesting them with powers of a judicial magistrate, first or second class for summary trial of all offences under the Act. The law also bars the jurisdiction of Civil Courts in respect of any matter to which the provisions of the Act are applicable.

JUDICIAL INTERPRETATIONS

Article 32 of the Constitution of India confers on every Indian Citizen the right to move the Supreme Court by appropriate proceedings for the enforcement of fundamental rights. Similarly, every High Court has power under Article 226 of the Constitution within its jurisdiction to issue to any person or authority within that jurisdiction orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo-warrants and certiorari for the enforcement of fundamental rights. Under the Anglo-saxon system of jurisprudence, it is only a person to whom a legal injury is caused has a locus standi to move the Court for judicial redress;

no one else can do so on his behalf. This doctrine effectively blocked the concerns of the poor, deprived and disadvantaged sections of the society being brought before the Courts for judicial redress for the wrongs caused to them. In a seminal decision, the Supreme Court reformed its procedural and jurisdictional rules relating to locus standi making it easier for social action groups to bring social action litigation on behalf of the poor. It held that any member of the public or social action group acting bonafide in a situation of denial of Constitutional or legal rights to the poor can approach the Court for judicial redress, and this can be done by addressing a letter even thorough a post card to a judge of the Court.

This is how the doors of the Courts were thrown open to a large new class of litigants. Through such Public Interest Litigation (PIL) not only have the rights of the poor and the deprived been vindicated and timely Constitutional and legal relief provided, but a very broad, liberal and expansive interpretation of the law has been made possible without changing the framework of the law. Several important judgements have been pronounced at the end of such public interest litigations admitted as a Writ Petition by the Supreme Court under Article 32 of the Constitution. Clear, precise and authoritative directions have been issued by the apex Court to competent authorities responsible for the enforcement of the provisions of the Bonded Labour System (Abolition) Act, 1976.

IDENTIFICATION OF BONDED LABOUR SYSTEM

There are 2 aspects in the entire process of identification. One is the machinery and second is the methodology to be followed. The Bonded Labour System (Abolition) Act speaks of Vigilance Committees as the machinery responsible for identification, but it has not laid down any precise methodology for identification. Sri.S.R.Shankaran (who retired as Secretary, Ministry of Rural Development, Government of India in October, 1992) had conceived one such methodology, when he was Principal Secretary, Social Welfare, Government of Andhra Pradesh in 1976-77, in a very imaginative and telling

form and had circulated it to Collectors of all districts in Andhra Pradesh for their guidance. The questionnaire referred to comprises a few simple and leading questions to be addressed to one or a group of agricultural labourers by an officer or an investigating team of officers or a social worker, as the case may be, in the harijan basti of a village.

Questions will have to be put in a simple and intelligible language in the most informal and unorthodox fashion so that the answers which are received provide some clue to the existence of the bonded labour system. In its true sense and ultimate analysis, it is the discovery of a nonbeing, an exile of civilization who tends to withdraw from the scene at the very sight of officials approaching him, thinking that they are agents of the landlord or moneylender or quarry contractor who have come to extract something out of him. Considerable time and effort will be needed to take him into confidence, to assure and reassure him that the whole exercise is meant for his wellbeing only.

As these persons perceive naturally the identity of interests between them and the investigator, the artificial barriers of region, origin and language will disappear, they will open up like sluice gates and will come forward to answer the questions with freedom and spontaneity. Past experience, however, has shown that a very formal, stereotyped and routinised approach has been adopted for identification of bonded labour system.

The task of identification has been left mostly to the lower echelons of bureaucracy (Tahasildar, Naib-Tahasildar, Revenue Supervisor, Revenue Inspector etc.). There are examples, which go to show that these functionaries put the landlord/moneylender (the bonded labour keeper) on a high rostrum, the landless agricultural labourers (bonded labourers) on the floor and put a lot of inconvenient questions to the latter. It is quite unlikely that such questions would evoke any meaningful response.

Despite the limitations and odd practices, it is possible to overcome them with patience and resilience backed by a humane and sensitive handling of the situation. Household

surveys or establishment-wise surveys can be conducted in a planned and coordinated manner.

A few stages in the process of conducting such a survey are:

- Design of a simple questionnaire.
- Orientation and sensitization of team members on the methodology of the survey through a workshop.
- Collection, compilation and analysis of data and drawing of conclusions.

Simultaneously, and by an order of immediate priority, pockets in different parts of India which are dry, drought prone and poverty stricken and which are also prone to migration, could be identified and surveys undertaken on a selective basis by the Vigilance Committees of those districts/sub-divisions in collaboration with a team of good NGOs and student volunteers. The services of special rapporteurs of the National Human Rights Commission (NHRC) as well as those of the Socio-legal Investigating Commissioners, appointed by the Supreme Court (both past and present), should also be made use of in carrying out surveys on a larger scale.

RELEASE OF BONDED LABOURERS FROM BONDAGE

It has been observed that hitherto a very formal, rigid and legalistic approach has been followed while releasing bonded labourers from the fetters of bondage. Every case of release of bonded labourers is tried by a formal process of trial by the Executive Magistrate appointed by the State government and vested with the powers of a Judicial Magistrate under section 21 of the Bonded Labour System (Abolition) Act. Such trial and recording of evidence in course of the trial under the Indian Evidence Act, 1872 is an endless process which can only be to the detriment of the bonded labourer.

Such a process would be totally futile and, as the apex Court had observed in its judgement dated 16.12.1983 while allowing the writ petition No.2135 of 1982 (Bandhua Mukti Morcha Vs Union of India and Others).'A bonded labourer can never stand up to the rigidity and tyranny of the legal process due to his/her poverty, ignorance, illiteracy, social and economic backwardness'. The only way out of this impasse

would be adoption of a summary trial immediately on receipt of a report from the concerned agencies, so that identification and release could be simultaneous.

This could also be the only practical solution to the problem of securing faster release. There have been instances where a stand has been taken by the bureaucracy that a person may not be released from debt bondage and rehabilitated until and unless the bonded labour keeper has been convicted. This is contrary to the spirit of the judgement of the Supreme Court in Santhal Pargana Antyoday Asram Vs State of Bihar (1987 supplementary) Supreme Court cases 141, where the apex Court had clearly observed'implementation of rehabilitation programme should not wait on account of the pendency of the present proceeding in the apex Court'. Any resistance from a bonded labour keeper to the release of the bonded labourer must, therefore, be struck down as ultra virus of the provisions of the Constitution and the law and should not be allowed to stand on the way of release.

REHABILITATION OF FREED BONDED LABOURERS

Rehabilitation of freed bonded labourers is an extremely complex and difficult task. Past experience has show that freedom from bondage would be meaningful only when the uncertainty and insecurity associated with that freedom have been removed thorough productive and income generating schemes. Such schemes are not easily implementable for freed bonded labourers who are steeped in a world of pervasive ignorance, illiteracy, lack of skill and confidence arising out of years of servitude.

This is what late Sri K.V. Raghunath Reddy, the then Labour Minister had clearly stated while introducing the Bonded Labour System (Abolition) Bill on 27.01.1976 in Parliament:'He will not have inputs for production or any supply of credit. He will neither have any professional skill that would enable him to pursue an independent livelihood. Even where installed in a profitable activity, he will have no income during the period of gestation. The bonded labourer, who is used to a world of domination and servitude, will not

obviously be aware of his right. At times he may not even like to undergo the strenuous process of economic rehabilitation and may even prefer reversion to thraldom'.

Rehabilitation has two distinct components such as:

a. Psychological rehabilitation
b. Physical and economic rehabilitation

The two are closely interrelated. Physical and economic rehabilitation may in turn bring about psychological rehabilitation. There may at the same time be cases where due to a sense of mental depression arising out of years of bondage, no physical and economic rehabilitation will be possible without first bringing about psychological rehabilitation.

PSYCHOLOGICAL REHABILITATION

The freed bonded labourer needs to be assured and reassured that he is first a human being, a free citizen, is entitled to earn a decent livelihood as any other human being and citizen and that, in time of need, he need not have to fall back upon the usurious money lenders, as alternative agencies are available to meet his need in a non-intrusive manner. This is an extremely difficult and delicate task and has to be attended to with a lot of imagination and diligence.

The provisions of the law, the role of Vigilance Committees, the various need based and development oriented poverty alleviation and rural employment programmes will have to be brought home to the freed bonded labourers. Demonstration of all pilot development schemes which are beneficial to the freed bonded labourers will have to be organized. In all programmes and activities meant for the poor and the deprived, the freed bonded labourers should be the focal point of attention. Special orientation programmes need to be organized for police, magistracy and development functionaries, so that traditional mindsets are replaced by positive attitudes and approaches which bring them closer to the target groups, which enable them to exercise the best possible option and discretion for the latter, who are often unable to exercise them and make them feel for the latter with a wave of empathy and sensitivity.

PHYSICAL AND ECONOMIC REHABILITATION

In order to be meaningful, physical and economic rehabilitation will have to be multi-dimensional. It should start with payment of subsistence allowance (lump sum) and proceed to allotment of house site and agricultural land, land development (thorough provision of irrigation, integrated watershed planning, management and development), provision of low cost dwelling units, provision of all inputs and back up services under agriculture (including horticulture) animal husbandry, dairy, poultry, piggery, fodder cultivation, facilitating easy access to credit for meeting ceremonial, consumption and development needs, training for acquiring new skills, refining, sharpening and upgrading existing skills, promoting traditional arts and crafts, provision of stable and durable avenues of productive employment, payment of need-based minimum wages, collection and processing of minor forest produce and procurement of the same at remunerative prices, ensuring health and medical care (including immunization of pregnant mothers and children in 0-3 age group), ensuring supply of essential commodities at controlled prices in an uninterrupted manner, providing free basic education to all children of school going age of freed bonded labourers, protection of civil rights, etc.

After recognizing the limitations of various ongoing schemes and keeping in view the special needs of freed bonded labourers, the Planning Commission approved in May,1978 the idea of having a centrally Sponsored Scheme. The contours of that scheme have undergone a sea change.

The original per capita subsidy of ` 4,000/- has been enhanced to ` 20,000/- w.e.f. 1.5.2000, powers for scrutiny and approval of project proposals have been delegated to the State governments and funds are being released in one single installment as against four, as was provided in the beginning.

Besides, funds are now available for conducting household and establishment-wise surveys, for awareness generation as also far imparting orientation and training to functionaries at various levels and for monitoring and evaluation of the pace and progress of implementation of

rehabilitation programmes. A grantin- aid schemes for NGOs has also been introduced by the Ministry of Labour since 1986-87.

STATISTICS AND PRESENT STATUS OF IDENTIFICATION, RELEASE AND REHABILITATION

Inclusion of elimination of bonded labour system as one of the items in the old 20 Point Programme announced to the nation on 01.07.1975, enactment of a central law w.e.f. 24.10.1975 and introduction of a Centrally Sponsored Scheme for rehabilitation of freed bonded labourers in May, 1978 are historic developments, marked by a sense of urgency and seriousness of concern to put an end to the social scourge.

These were followed by a series of other important developments, such as:

- Organization of a national survey jointly conducted by the Gandhi Peace Foundation and National Labour Institute for estimation of the number of bonded labourers (1978-79).
- Inclusion of rehabilitation of freed bonded labourers as an item in the new 20 Point Economic Programme announced to the nation on 14.01.1982, holding a national seminar on identification, release and rehabilitation of bounded labourers in Febuary 83.
- Amendment of Section 2(g) of Bonded Labour System (Abolition) Act, 1976 in April, 1985 to add an explanation to bring contract and migrant labour within the purview of bonded labour system.
- Opening a cell in Lal Bahadur Shastri National Academy of Administration in 1986-87 for taking up documentation exclusively on bonded labour with involvement of members of Indian Administrative Service, the future administrators of the country.
- Deputing senior officials of the Ministry of Labour to different parts of the country for an on the spot review of the pace of implementation of programmes of rehabilitation of freed bonded labourers.
- Involvement of the Programme Evaluation

Organisation (PEA) of the Planning Commission and Centre for Rural Development, Indian Institute of Public Administration (IIPA) for content, process and impact evaluation of the programmes of rehabilitation of freed bonded labourers.

- The latest involvement of the National Human Rights Commission with the work of identification, release and rehabilitation of bonded labourers w.e.f 11.11.97 at the behest of the Supreme Court and pronouncement of a good number of landmark judgements by the apex Court setting the tone and pace of work relating to elimination of forced/bonded labour are some of the notable developments.

While the Central Government enacts the law, formulates the schemes, provide the budget and issues guidelines, the actual responsibility for implementation rests on the shoulders of the State governments (28) and Union Territories (7). The incidence of bonded labour system has been reported primarily from Andhra Pradesh, Bihar, Karnataka, Kerala, Madhya Pradesh, Orissa, Rajasthan, Tamil Nadu and Uttar Pradesh. These States had taken timely initiatives, though on a varying scale, for identification, release and rehabilitation of bonded labourers.

States like Haryana and Gujarat had taken a stand right from the beginning that there are no bonded labourers in those States. Government of Maharashtra had adopted a similar stand from the beginning. A welcome change in the stand of the Government of Haryana and Gujarat was brought about in the wake of directions from the apex Court and High Court while a similar change in the stand of Government of Maharashtra was facilitated largely on account of outstanding work done by two Thane based NGOs called Sramajeebi Sangathan and Samarthan. There are a number of innovative features emanating from the experience of some of these States. In Andhra Pradesh, for the first time a set of imaginative guidelines were issued in 1975-76 for identification of bonded labour system and they continue to be relevant even today. An integrated and community approach was adopted for

rehabilitation of freed bonded labourers. Efforts were made to pool resources from a number of sources and integrate them imaginatively and skilfully for a purposeful rehabilitation of freed bonded labourers. Under the scheme of Community Poultry Complexes, sincere efforts were made to bring a group of beneficiaries (mostly belonging to SC, ST and other backward classes) to a common point, provide orientation and training to them in the art of rearing birds, feeding them, giving them medicines and injections, marketing of eggs so that they may become mini animal husbandry men, eventually assume ownership of the sheds in the Poultry Complex (one beneficiary one shed) and become economically self-sufficient.

The scheme of economic rehabilitation of the rural poor in Orissa in 1980s represented a similar model of integration. The scheme envisaged rehabilitation of 5,00,000 beneficiaries from amongst the rural poor who have no income yielding asset of any kind. Under the land based component of ERRP, a compact patch of land (10 acres and above) was selected, beneficiaries (landless and assetless rural poor) were brought to a common point where the said patch of land was located, land @ 1.5 to 2 acres per person was allotted, land development and reclamation of wasteland was taken up with complete back up services provided by the State Agriculture department and irrigation facilities were provided either by sinking dug wells or by installing a lift irrigation point with provision for energisation and laying of pipeline.

As the bonded labourers are at the bottom layer of poverty, clear instructions were issued to all Collectors to accord the highest priority for identification and rehabilitation of bonded labourers under ERRP.'Administration to villages' was a novel experiment in 1980s in Rajasthan which brought the District Administration closer to the people at the grass root level and which provided an outlet for ventilation and redressal of grievances of such people and which also ensured peoples participation in the process of development. The experiment of Tribal Project Authority in Dehradun, Uttar Pradesh (now Uttaranchal) with 54 project workers drawn mostly from the community of SC and ST provided a fillip to

implementation of schemes for rehabilitation of freed bonded labourers. These project workers acted as the'friend, philosopher and guide' of the freed bonded labourers and provided a prop for their psychological rehabilitation. The experiment of rehabilitation of freed bonded labourers under the Land Colonization Scheme implemented thorough a cooperative society in Kerala and the scheme of rehabilitation of freed bonded labourers through agricultural estates in Bangalore in Karnataka were innovative experiments which in addition to bringing a number of beneficiaries to a common point for rehabilitation promoted social integration and integration of a number of departments and agencies and made their functionaries to work with one voice, one energy and one conscience.

These silver linings notwithstanding, there are areas of continuing concern which need to be clearly noted. As on 31.03.2006 2,80,411 bonded labourers have been identified and released, 2,51,569 bonded labourers have been rehabilitated and 28,842 are left to be rehabilitated. In view of the long waiting period, it is not known as to how many out of 28,842 persons left to be rehabilitated are actually available on the ground for rehabilitation. Besides, it is reported that of the 2,51,569 bonded labourers rehabilitated, whereabouts of about 20,000 persons are yet to be traced.

Either they have left their hearth and home and migrated to other parts of the country or are dead. It is necessary that an accurate and authentic account of all bonded labourers-identified, released and rehabilitated is available. This is also a statutory requirement (Rule 7 of Bonded Labour System (Abolition) Rules). Equally important and urgent is to have an accurate and authentic picture of the number of Vigilance Committees constituted at the district and sub-divisional level reconstituted wherever such reconstitution was due and the number of committees functioning. This has attracted the adverse attention of the Supreme Court and clear and repeated directions have been issued to all State Governments/Union Territories by the apex Court from time to time. A long interregnum continues to persist between the date of identification and date of release on the one hand, and date of

release and date of rehabilitation on the other. Such long interregnum results in relapse of many freed bonded labourers to bondage. This is a highly undesirable phenomenon which has also attracted adverse attention of the Supreme Court and repeated directions have been issued to all State Governments/ Union Territories by the apex Court to ensure simultaneity in all the 3 operations. There is a mindset that with the enactment of the law, the bonded labour system has been abolished lock stock and barrel, and there is no possibility of recurrence of the system. Labouring under this mindset, many State Governments assume, without even setting up Vigilance Committees, that there are no bonded labourers in their States. They have not taken any initiative to conduct fresh surveys for identification of the bonded labour system and have not made any budget provision for rehabilitation of released bonded labourers.

In such a situation, if bonded labourers are identified in the destination State(s) and repatriated to the originating State, they would find it extremely difficult, without proper rehabilitation, to eke out a decent livelihood. Such mindsets have contributed to defeat the very objective of the law as well as the national policy and programme.

The mindsets notwithstanding, the apex Court and the National Human Rights Commission have played a clear, firm and decisive role in:

- Issuing positive directions to State governments for strict compliance.
- Appointment of Socio-legal Investigating Commissioners to conduct spot enquiries for unearthing the problem.
- Deputing special rapporteurs (by the NHRC) to have a periodic dialogue and discussion with the State Governments and District Administration for finding a practical solution to the problem.
- Constitution of a task force by the NHRC for in-depth discussion of the various aspects of the multi-dimensional problem and to formulate concrete programmes of action (both preventive and corrective).

- Chairperson, NHRC has written to the Chief Ministers of defaulting States impressing on them the urgency and seriousness of concern with which the problem deserves to be viewed.

CENTRALLY SPONSORED SCHEME ON REHABILITATION OF FREED BONDED LABOURERS

There are essentially two roles envisaged for the District Magistrates (DM). One is envisaged under the statute, and other outside the statute.

While the first is largely corrective, the second is essentially preventive. The law provides for certain duties and responsibilities of the District Magistrate and every officer specified by him.

These are:

Statutory duties and responsibilities of the D. M.:

- The D.M., as far as possible should try to promote the welfare of the freed bonded labourer by securing and protecting his economic interests, so that he may not be have any occasion or reason to contract any bonded debt.
- The DM should enquire whether the bonded labour system is being enforced and if any person is found to be enforcing the system the DM shall take such action as may be necessary to eradicate the enforcement of such forced labour.
- The DM as Chairman of Vigilance Committee at the district level is to preside over its meetings and to conduct its proceedings. This function should ordinarily not be delegated to anyone else. Proposals for constitution and reconstitution of Vigilance Committees should originate from the DM.
- He should organize field visits for the members of the Committee to conduct field investigations in an objective and dispassionate manner as would help identification of bonded labour system.
- The DM has to provide for the economic and social rehabilitation of the freed bonded labourers. The various components of that responsibility would be:

- Identification of preferences, felt needs and interests of the potential beneficiaries thorough survey.
- Formulation of schemes-land based, non-land based, art/craft/skill based for rehabilitation.
- Approval of the schemes by the State level Screening Committee.
- Implementation of the schemes in a time-bound, cost effective and result oriented manner.
- Close monitoring, supervision and coordination of the schemes under implementation.
- Process and impact, ongoing and summative evaluation of the schemes.
- Submission of Utilisation Certificates in support of expenditure under the centrally sponsored scheme.

- The D.M. has to ensure proper coordination of the functions of rural banks and cooperative societies with a view to canalizing adequate credit for the freed bonded labourers.
- The DM has to organize periodic surveys-which could be both household-wise and establishment-wise to satisfy himself, if there is any offence arising out of prevalence of bonded labour system of which cognizance ought to be taken under the Act. He has to exercise vigilance on the number of offences of which cognizance has been taken under the Act.
- The DM has to provide legal defence to defend any suit instituted against a freed bonded labourer.
- The DM has to ensure that all records and registers which are required to be maintained under Rule 7 of Bonded Labour System (Abolition) Rules are maintained at the district level.

Non-statutory responsibilities:

- Being the Magistrate of the district, the DM may oversee the process of disposal of all cases instituted under the Act and being tried by the Executive Magistrate appointed by the State Government under

Section 21 of the Act. He should ensure that all year old pending cases are disposed off through a summary trial.

- Similarly he should ensure that:
  - All freed bonded labourers are issued a release certificate.
  - All freed bonded labourers who are awaiting rehabilitation for many years are permanently and effectively rehabilitated without further delay.
  - All cases of relapse to bondage are identified and the identified persons are rehabilitated afresh without delay.
- Training is an important input for human resource development. It imparts knowledge, information and skills. It removes cynicism and skepticism. It carries strength and conviction that a socially relevant programme (like elimination of bonded labour system) is possible, feasible and achievable. The DM has to organize such training for the police, magistracy, officers of revenue, community development and other departments whose involvement with programmes for identification, release and rehabilitation of bonded labourers is crucial for its success. Such training has to be communicative and participative and conducted in an unorthodox fashion. For this the software has to be designed with imagination and sensitivity.

PREVENTING OCCURRENCE AND RECURRENCE OF DEBT BONDAGE

Landless agricultural labourers, share croppers, persons below poverty line level, who are landless and assetless turn to money lenders and other middlemen for loan/debt/ advance, partly for biological survival and partly for ceremonial and other needs. In the process they get indebted and bonded to their creditors due to their inability to repay the loan which gets compounded due to usurious rates of interest. Such contingencies will have to be handled with a lot

of imagination and circumspection. Occurrence and recurrence of debt bondage will have to be prevented and the same can be prevented thorough adoption of the following strategies:

- Access to micro-credit.
- Implementation of land reforms.
- Access to avenues of full, freely chosen and productive employment.
- Enforcement of the law on minimum wage and strengthening the public distribution system.
- Access to skill training.
- Strengthening and activating the labour law enforcement machinery.
- Strengthening and activating the grievance ventilation and redressal machinery.
- Strengthening and activating Vigilance Committees.

The DM, as the head of the District Administration, is responsible for maintenance of law and order and public order on the one hand and promoting all round development of the district including special development of the weaker sections, women and children on the other. He is the Chairman of District Rural Development Agency (DRDA), Chairman of Integrated Tribal Development Agency (ITDA), Chairman of Modified Area Development Agents (MADA), Chairman of District Development Committee (DDC), Chairman of Lead Bank Coordination Committee and Chairman of numerous other Committees associated with development of women and children, SC & ST, OBCs, minorities. Through his intimate familiarization with the geography and topography of the district as also with the working and living conditions of the people, he can identify the pockets in the district which are dry, drought prone and prone to migration and bondage and can thorough special development schemes preempt recurrence of bonded labour system in those pockets. Being the captain of the team in a situation where all functionaries look upto him for leadership and guidance he can pool resources from a variety of sources and integrate them imaginatively and skilfully for putting an end to landlessness, assetlessness, indebtedness and bondage.

CONCLUSION

The existence and continuance of bonded labour system is a crime and outrage against humanity. It is a negation of inalienable human rights. It is a negation of all the values and principles reflected in the ILO Constitution and Constitution of India, Philadelphia Declaration (1944) and Declaration on the Fundamental Principles and Rights at Work (1998). It is anathema to civilized human coscience and cannot be tolerated in any manner, in any form and in any part of the territory of a country. India is a sovereign democratic republic with a free press, a Parliament and an independent judiciary. It has clear constitutional and legal provisions relating to elimination of bonded labour system.

The Supreme Court of India has taken cognizance of the issue on more than one occasion, has given a broad, liberal and expansive interpretation of the definition, has issued a number of directions to the Central and State Governments on the subject and has now entrusted the responsibility for overseeing the extent of compliance with its directions to the National Human Rights Commission. The latter is now directly monitoring the pace and progress of implementation of these directions and will be reporting to the apex Court. These are positive developments. The magnitude of the problem, however, remains very large. The problem of debt bondage which is a hangover from ancient and medieval India got accentuated on account of the faulty land tenurial policy introduced by the Colonial rulers (1757-1947) and has now acquired myriad forms in the wake of globalization of the economy. Even though a number of positive steps have been taken, a lot more remains to be done by way of planned, coordinated, concerted and convergent efforts. This cannot be the task of one Ministry or Department or Agency; it has to be the concern of the whole nation.

Besides, in view of the onerous magnitude and complexity of the problem, State government and District Administrations cannot single handedly do justice to it. They would do better by enlisting the involvement and support of voluntary agencies and social action groups which are non-political or

apolitical, which are grass root level oriented, which have flexibility of structure and operations and which have the clarity of perception and depth of social commitment to complement and supplement the efforts of government. It is only through such an alliance between government and NGOs on the one hand and introduction of structural reforms in land, labour and capital on the other that it would be possible to strike at the roots of the problem.

It is necessary and desirable that this problem be approached thorough non-formal or unconventional strategies at all stages and with recognition of the importance of human dignity, decency, security, equality and freedom. Presence of a kind, compassionate, considerate and caring civil society with all sections being naturally imbued with a firm determination to put an end to the social scourge would make all the difference.

MIGRANT WORKERS

Freedom of movement in any part of the territory of India and freedom to pursue any avocation of ones choice is a fundamental right guaranteed by Article 19 of the Constitution of India. Migration is a social and economic phenomenon through which human beings move from one part to another in pursuit of certain cherished objects like avenues of better employment, better wages, better working and living conditions and better quality of life. Such movement being a normal and natural process, there is nothing wrong or objectionable in migration per se.

Migration becomes objectionable only when:

- The element of freedom in movement is replaced by coercion.
- All the normal hopes and expectations associated with migration are belied and the migrant workers are subjected to exploitation culminating in a lot of misery and suffering and deprivation of the irreducible barest minimum to which every worker as a human being and a citizen is entitled.

It becomes objectionable when human greed, rapacity and

aggressively selfish and acquisitive instincts overtake the finer aspects of human character such as kindness, compassion and commiseration and when human beings are driven to a situation characterized by the denial of human dignity, decency, justice, equity, security. Such denial becomes all the more a matter of grave anxiety and concern when the persons affected come from the lowest strata of the society and are in need of social protection most. It is not difficult to identify certain parts of India, which are associated with distress migration on account of harsh geography and topography such as dry and arid landscape, low productivity and acute scarcity conditions.

These are:

- *Eastern Uttar Pradesh*: (Banda, Balia, Basti, Deoria, Ajamgarh, Gorakhpur)
- *Bihar*: (Palamau, Gadwa, Singhbhum and Santhal Parganas region)
- *Madhya Pradesh*: (Satna, Rewa, Sidhi, Sahadol, Guna, Jhabua)
- *Chattisgarh*: (Durg, Rajnandgaon, Raigarh, Bilaspur, Raipur)
- *Maharashtra*: (Marathwada region)
- *Gujrat*: (Panchmahal, Kutch, Dang, Valsad, Sabarkantha, Banaskantha)
- *Karnataka*: (Raichur, Bidar, Gulbarga and Bijapur)
- *Andhra Pradesh*: (Adilabad, Hyderabad, Karimnagar, Khammam, Medak, Mahaboobnagar, Nalgonda, Nizamabad, Warangal which constitute the Telangana region and Anantapur, Chittoor, Cuddapah, Kurnool and Nellore which constitute the Rayalseema region)
- *Orissa*: (Kalahandi, Balangir, Nawapara, Koraput, Malkangiri, Naurangpur, Rayagada, Keonjhar, Mayurbhang)
- *Rajasthan*: (Jodhpur, Jalore, Sikar, Jaisalmer, Barmer, Jhunjhunu, Bikaner and Banswada)

DEFINITION

Migration could be voluntary or it could be induced by recruiting agents. The Inter-State Migrant Workmen

(Regulation of Employment and Conditions of Service) Act, 1979 recognises migration for the purpose of statutory protection only in a situation where a minimum number of five persons are recruited by a recruiting agent to move from one part of the territory of India to another for employment. It does not recognize cases of voluntary migration or even migration involving less than five persons. Migration is always with the consent of the migrant worker; if not, it would amount to forced/indentured labour.

It is quite possible that in a situation of colossal ignorance and illiteracy as also dire need for biological survival such a consent may often be taken for granted, but recruitment of persons without their consent would be an exercise in human trafficking punishable by law. Bulk of the migration in actual practice takes place under economic compulsions and for economic considerations (on receipt of loan/debt/advance from the recruiting agents) and has all the nuances of debt bondage as migrant workers cannot of their own accord leave the worksite at the destination point until and unless they have repaid the loan/debt/advance (taken from the recruiting agents). Migrant workers working under such bonded or slave-like conditions at the destination point are seldom identified as bonded labourers or released from captivity of the middlemen who have recruited them. The only correct solution to this mind-boggling issue is to create conditions both through political will as through enforcement of legal provisions which would ensure just, fair and human treatment for the migrant workers on the one hand and decent income and livelihood on the other.

LEGAL PROVISIONS

The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act (Act No.30 of 1979) was passed by Lok Sabha on 09.05.1979 and by Rajya Sabha on 21.05.1979 and received the assent of the President on 11.06.1979. The Central Rules were framed by the Ministry of Labour in September, 1980 and the Provisions of the Act came into force w.e.f 02.10.1980. The Act which is intended to

regulate the employment of inter-state migrant workmen and to provide for their conditions of service is the outcome of the recommendations of a Compact Committee constituted in the year 1977 under the Chairmanship of Sri D.Bandopadhyay, the then Joint Secretary in the Ministry of Labour.

The Committee came to the conclusion that, although there are legislations like Payment of Wages Act, Minimum Wages Act, Workmens' Compensation Act, Contract Labour (Regulation and Abolition) Act etc., the provisions of which are also applicable to inter-state migrant workmen, in view of the peculiarity of conditions, of recruitment and employment and working in an unfamiliar setting these provisions of the laws may not fully protect and safeguard the interests of the migrant workers.

The Committee had, therefore, recommended enactment of a separate legislation to regulate the terms and conditions of their recruitment and to provide for conditions of service and welfare measures at the worksite to which they were drafted. The law enacted on the basis of the report of the Compact Committee (submitted in January, 1978) incorporated most of the recommendations of the committee.

THE ROLE OF A DISTRICT MAGISTRATE

In operationalisation of all this-both corrective and preventive strategies-the District Magistrate has to play a key role. Being the Chairman of the DRDA (District Rural Development Agency), he has to internally and continuously review the pace and progress of programmes for generation of rural employment and assess their effectiveness in terms of absorption of the surplus rural manpower.

He has to introduce qualitative changes and improvements in all programmes meant for employment promotion and skill formation in rural areas, so that they are area specific, cost effective, time bound and result oriented. Areas which are prone to migration (being dry and arid prospects of agriculture are bleak and alternative avenues are not readily available) should deserve his special attention in terms of:

- Intensification of public works.
- Enforcement of minimum wage.
- Linkage with public distribution system.

The situation in such areas would also require to be closely monitored, so that there is no leakage and wastage of resources and optimal utilization of the latter is ensured thorough close supervision and coordination. With launching of National Rural Employment Guarantee Scheme at Anantpur in AP in Feb 06 and coverage of 200 districts by the responsibility of Collector and D.M.of a district covered by the scheme in ensuring that all BPL families in a district get 100 days of minimum employment in his/her district has been onerous. If, despite all planned, coordinated and concerted efforts, migration is an inescapable phenomenon, a lot of corrective measures would be needed to protect and safeguard the interests of migrant workers who have been driven to a desperate situation which is not entirely of their making.

Some of these specific corrective measures are:

- The District Magistrate of the originating Stateshould ensure that all workers who are being recruited through recruiting agents/placement agencies are properly accounted for thorough a foolproof system of licensing.
- Since the registration and licensing functions are being carried out by officers of Labour Department of the State, the District Magistrate needs to maintain a vigil over these operations so that no loopholes are left. The District Magistrate should bring gaps and omissions in the process to the notice of Labour Secretary and Labour Commissioner of the State for prompt corrective action.
- Similarly, the D.M. of a destination district (to which migrant workmen go for work) has to ensure that Principal employers of estts in that district who employ migrant workers obtain a registration certificate under 1SMW(ROE&COE) Act, 1979.
- The District Magistrate of the originating State should maintain a close and constant liaison with his

counterpart in the destination State to protect and safeguard the interests of migrant workers. He should have a complete command over information relating to the number and names of workmen, place of work, duration of employment, working conditions, names of principal employers, contractors/subcontractors. As and when complaints of maltreatment of these workmen and their family members (in brick kilns the recruitment and movement is done by taking the family as one unit) reach him, he should depute a trustworthy officer for prompt investigation at the worksite and for providing such relief as necessary in consultation with his counterpart.

- All complaints relating to non-payment of wages, delayed payment, non-payment of workmens' compensation should receive the urgent personal attention of District Magistrates of both the originating and recipient State for their expeditious settlement and disbursement.
- If there are factories (as powerlooms in Surat in Gujarat), which have sprung up in an unplanned and unregulated manner, and which are carrying on their activities in a clandestine manner and yet have employed a large number of migrant workmen, the District Magistrate of the destination State would have a special responsibility in discharge of statutory accountability of such enterprises. He has to establish close liaison and coordination with the Chief Inspector of Factories of the State, bring to the latter's notice cases of all such unregistered enterprises (if they are registrable) and ensure that they are amenable to the same discipline of law as others.
- 'United we stand and divided we fall'. Such an aphorism could not have been more relevant than in the case of migrant workers. District administration would be doing yeomen's service in protecting and safeguarding the interests of migrant workers, if it could promote and encourage formation of association

in shape of self-help groups, thrifts and credit groups etc., among them. Adult literacy programmes should also be launched to make migrant workers literate and numerate, more aware, agile, alert and united thorough literacy. District administration should promote and encourage formation of neoliterate's groups among them.

- The plight and predicament of women migrant workers who are employed in brick kilns and stone quarries along with their husbands and children should warrant the urgent personal attention of the District Magistrate as with the movement of women and children from one habitat to another and their deployment along with men is likely to result in a colossal wastage of human resources if not checked in time.

Chapter 8

Scheduled Castes and Scheduled Tribes

This stage is arranged in six sections. After the introduction of the stage, the second section deals with the main features of the international covenants and the Indian Constitution; the third section delineates the context of this stage, that is, the status of Scheduled Castes and Scheduled Tribes as well as the denotified and nomadic tribes; the fourth section outlines the major human rights issues and the corresponding laws, rules and regulations; and the fifth section sets out the role and, to some extent, the specific responsibilities of the District Magistrates in relation to the human rights of the Scheduled Castes and Scheduled Tribes against the overall background set out in the earlier sections. The last section contains the concluding observations. It may be mentioned that the term Dalit is being increasingly used to denote the Scheduled Castes and, sometimes, the Scheduled Tribes as well. Though the original meaning of the word Dalit encompasses all the oppressed people, it has, over a period of time, become almost synonymous with the Constitutional category of Scheduled Castes, signifying an assertive expression of untouchable heritage and a rejection of oppression. However, in this stage, the terms Scheduled Castes and Scheduled Tribes have been adopted in conformity with the terminology adopted in the Constitution of India.

CONCEPTS, COVENANTS AND THE CONSTITUTION

A compendium of human rights has evolved, over time,

emerging from a liberal humanist formulation at the time of the Universal Declaration of Human Rights 1948 to a comprehensive framework, reflecting the rise of democratic consciousness of people all over the world. The Universal Declaration of Human Rights adopted about half a century ago, was followed by two separate Covenants, namely, the International Covenant on Civil and Political Rights 1966 with entry into force on 23 March 1976; and the International Covenant on Economic, Social and Cultural Rights 1966 with entry into force on 3 January 1976, which were generally ratified by India in March 1979.

The Universal Declaration of Human Rights along with the Covenants lays down universal standards, among others, in relation to freedom, equality, dignity, nondiscrimination, right to life and liberty, education, employment and remuneration, development, social security, equality before law, equal access to public service; and participation in social, political and cultural aspects of society.

A Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted by the United Nations General Assembly in 1979 and ratified by India in June 1993.

The International Convention on the Elimination of All Forms and Racial Discrimination (CERD) was ratified by India, thereby agreeing to principles of dignity and equality of all human beings irrespective of race and descent. India is also a signatory to Convention 107 of the International Labour organization concerning indigenous, tribal and semi-tribal people which places on the Government the primary responsibility for developing coordinated and systematic action for the protection of the tribal population and their progressive integration into the life of their respective communities fostering individual dignity.

A comprehensive concept of human rights thus forms part of a global compact and a large number of instruments of human rights have been evolved within the United Nations system and ratified and reaffirmed by India. Human rights are indivisible and interdependent. The Universal Declaration

recognizes freedom from fear and freedom from want as two sides of the same coin. People cannot advance their economic, social and cultural rights without the political space and civil freedom to do so. Article 11.2 of the International Covenant on Economic, Social and Cultural Rights recognizes the fundamental right of everyone to be free from hunger.

It was recognized at the World Conference on Human Rights held at Vienna that the existence of widespread extreme poverty inhibits full and effective enjoyment of human rights and therefore its immediate alleviation and eventual elimination must remain a high priority for the international community. The World Conference on Human Rights also affirmed that extreme poverty and social exclusion constitute a violation of human dignity and urgent steps are necessary to promote the rights of the poorest. The emphasis in the Universal Declaration of Human Rights as well as the pronouncements at the various conferences of the United Nations has been on the obligation of the member States to promote and protect the human rights.

The Vienna Declaration and Programme of Action adopted in June 1993 at the World Conference on Human Rights, reaffirmed the solemn commitment of all States to fulfil their obligations to promote universal respect for and observance and protection of all human rights. More specifically, it has been declared that the protection and promotion of human rights is the first responsibility of the Governments. In turn, this obligation and responsibility devolves on the agencies of the State. The Indian Constitution, as set out in its Preamble, is a testament to secure to all its citizens Justice, social, economic and political, Liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and fraternity, assuring the dignity of the individual and integrity of the nation. The founding fathers of the Constitution were fully aware of the iniquitous forces embedded in the social systems, economic institutions and political organizations in India in relation to the weaker and vulnerable sections of the society and, therefore, considered it necessary to provide for specific corrective

measures and mandates in the Constitution in their favour. The safeguards for the members of the Scheduled Castes relate to the removal of the disabilities as well as positive measures to enable them to acquire a dignified position in the national life.

The major concern about the members of the Scheduled Tribes has been that of protecting and preserving their command over resources and the best in their tradition. The Constitution incorporates a number of commands for the elimination of the inequities and inequalities prevalent in the Indian society and for promoting equality and social justice. Article 14 of the Constitution guarantees equality before law and equal protection of laws. Article 15 prohibits discrimination on the grounds of religion, caste, sex or place of birth as well as disabilities in regard to access to public places and also specifically provides that nothing shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

Article 16 provides for equality of opportunity in the matter of public employment with specific provision for reservation of appointments or posts in respect of any backward class of citizens. Article 17 abolished untouchability forbidding its practice in any form and making the enforcement of any disability arising out of untouchability a punishable offence. Article 21A (recently added) lays down that the State shall provide free and compulsory education to all children of the age of six to fourteen years. Article 23 prohibited traffic in human beings and forced labour. Article 24 bars the employment of children below fourteen years in any factory or mine or hazardous occupations. An important part of the Constitution and of great significance to the poor is the Directive Principles of State Policy which are fundamental in the governance of the country. Article 38 of the Constitution envisages a social order in which justice, social, economic and political shall inform all institutions of national life and requires the State to endeavour to minimize

inequalities in income, status and opportunities. Article 39 visualizes, among others, the right to adequate means of livelihood; the equitable control and ownership of the material resources of the community and that the operation of the economic system does not result in concentration of wealth and means of production to the common detriment. It also envisages equal pay for equal work for men and women as well as opportunities for children to develop in a healthy manner and without exploitation.

Article 41 stipulates that the State shall within the limits of its economic capacity and development make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want. Article 43 calls upon the State to endeavour to secure a living wage to all the workers. Article 46 mandates the State to promote with special care the educational and economic interests of the weaker sections of the people and in particular of Scheduled Castes and Scheduled Tribes and protect them from injustice and all forms of exploitation.

The Indian Constitution thus provides for a comprehensive framework for the socio-economic advancement of the Scheduled Castes and the Scheduled Tribes in order to achieve the objective of a just and humane society. The Constitutional perspective combines both the positive notion of rights guaranteed through the State and law as well as the notion of natural rights and includes horizontal rights applicable to all citizens and vertical rights to enhance the life chances of vulnerable groups, such as Scheduled Castes and Scheduled Tribes.

The fundamental rights set out in Part III of the Constitution contain not merely a corpus of limitation on the power of the State, guaranteeing State free spaces for the pursuit of individual and collective life, but also as an onslaught on the entrenched intransigent attitudes and behaviour in society and culture. Through Article 17 (outlawing of untouchability) and Article 23 (proscription of many forms of serfdom and traffic in human beings) the

Constitution directly addresses and confronts the oppressive formations in civil society and mandates State action in this respect to secure basic human rights. The Indian Constitution is unique in that it designates violation of these human rights of Scheduled castes and Scheduled Tribes as offences created by the Constitution itself and casts a Constitutional duty on Parliament to enact legislations, regardless of federal distribution of legislative powers provided in the Constitution. Special provisions were also incorporated in the Fifth Schedule and the Sixth Schedule of the Constitution for the Scheduled Tribes.

While the Sixth Schedule contains provisions as to the administration of tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram, the Fifth Schedule sets out provisions as to the administration and control of Scheduled Areas and Scheduled Tribes in other States. It may be added that the division of rights and principles into Part III and Part IV of the Constitution has been substantially, though not wholly, erased over time by adjudication.

The Supreme Court through its corpus of active jurisprudence has enunciated many judicially created fundamental rights such as the right to dignity; right to livelihood, right to compensation and rehabilitation for injuries caused by State agents or agencies, right to speedy trial, right to health; and right to gender equality.

More recently Part IX and Part IXA of the Constitution based on the Seventy-third and the Seventy-fourth amendments of 1992 have, among other things, provided for the reservation of seats as well as reservation of the posts of Chairpersons in the Panchayats at all levels and the urban local bodies in favour of the Scheduled Castes and Scheduled Tribes.

Following the provisions in the Seventy third amendment, the Provisions of the Panchayats (Extension to the Scheduled Areas) Act was also enacted by Parliament in December, 1996. The Protection of Human Rights Act, 1993 defines human rights as the rights relating to life, liberty, equality and dignity of individual guaranteed by the Constitution or embodied in the international covenants and enforceable by Courts in India.

The expression human rights thus denotes and describes a wide range of rights, some of them enunciated.

International declarations and Covenants, some directly and specifically guaranteed in the Constitution of the country, some others incorporated in the laws, rules and regulations made by the Central and State Governments in accordance with the Constitution; some laid down by Courts through the elaboration of legal and Constitutional provisions and some that yet exist only at the level of a democratic value system.

SCHEDULED CASTES AND SCHEDULED TRIBES

The concept of universal human rights makes no exception or compromises in its appeal to an indivisible humanity bound together by a universal code of human rights. At the same time, it has to be recognized that while human rights are indeed universal and indivisible, in unequal and hierarchical societies as in India, equal treatment and protection are not available to all human rights nor are all human rights violations given equal attention. This is especially true of weaker and vulnerable sections of society such, as Scheduled Castes and Scheduled Tribes and hence the need for a proper understanding of the context in which human rights are available, safeguarded infringed or violated in relation to these sections of the people.

Defining prominent features of human rights issues in relation to Scheduled Castes and Scheduled Tribes is difficult in as much as these do not often fall in the same categories as the kinds of human rights categories more commonly addressed in normal human rights discourse. Even at the beginning of the twenty first century, the Scheduled Castes who constitute a substantial section of the Indian population suffer from varying degrees of denial of dignity, decency, equality, security and freedom. The Scheduled Castes represent a constitutionally declared collective of castes, communities or groups, their defining characteristic being the suffering from the traditional practice of untouchability. The Scheduled Castes are subjected to the inhuman practice of untouchability, which is the most extreme form of the denial

of human dignity and social oppression. The discrimination against the Scheduled Castes is not merely the kind of treatment suffered by the poor in general but the unique kind of discrimination in the form of untouchability, and this is the primary basis for regarding them as a distinct grouping, even among the poor within India. In terms of the provisions in Article 341 of the Constitution, the Scheduled Castes have been specified separately in relation to each of the States and Union Territories.

The population of Scheduled Castes in India just as to the 1991 Census is 13.82 crores which is about 16.48 per cent of the total population of the country. Eight States, namely Uttar Pradesh, West Bengal, Bihar, Tamil Nadu, Andhra Pradesh, Madhya Pradesh, Rajasthan and Karnataka account for more than 75 per cent of the total Scheduled Caste population of the nation. On the basis of the trend in decadal growth rates, the population of the Scheduled Castes is likely to be around 17.9 crores, representing 17.5 per cent of the population in 2001. The Scheduled Castes live mostly in rural areas, with only about 14 per cent of them living in urban agglomerations. The habitations of the Scheduled Castes are scattered all over the country, generally in parts of villages or small villages.

The proportion of poor among the Scheduled Castes and the Scheduled Tribes is higher than in the case of the rest of the society, indicating poor resource base and denial of access. Almost three fourths of the bonded labourers in the country are from Scheduled Castes and Scheduled Tribes. The observations of the Working Group on the Development of the Scheduled Castes (1980- 85) are worth recalling. "Notwithstanding this extremely adverse situation, the Scheduled Castes contribute significantly to the sustenance and growth of the production systems of the country and the nation's economy. The largest single group among the agricultural labourers in the country are the Scheduled Castes. Footwear and other leather products are mostly contributed by the Scheduled Castes. A variety of handicraft and handloom products are made by the Scheduled Castes. They have a considerable share in the fishing activity of the country.

Moreover they are the people who keep the country clean. The Scheduled Castes constitute, in the main, the bedrock on which the society and economy rest.

Rarely has any section of the society contributed so much for so long in return for so little. Indian society owes to the Scheduled Castes a heavy moral and material debt yet to be discharged." The Scheduled Tribes were identified on the basis of certain well defined criteria, including the traditional domain of a definite geographical area, distinctive culture including shyness of contact, occupational traits, such as preagricultural modes of cultivation and general lack of development. The list of Scheduled Tribes was notified by the President of India in accordance with the provisions of Article 342 of the Constitution.

About 350 tribal communities, besides a number of subgroups have been scheduled in India, whose population is 6.8 crores just as to 1991 census comprising 8.08 per cent of the population. Six States-Bihar, Gujarat, Madhya Pradesh, Maharashtra, Orissa and Rajasthan-account for about 75 per cent of the total tribal population. On the basis of decadal growth rate, the population of Scheduled tribes is estimated at about 8.8 crores in 2001 representing 8.6 per cent of the total population. Special provisions have been incorporated in the Fifth and the Sixth Schedules of the Constitution for the administration of the tribal areas.

For the tribal population, there has always been a close traditional association with a territory or a tribal domain, with the tribal community enjoying a collective command over the natural resources, mostly in hilly or forest regions. They are often self-governing and guided by their own customs and tradition. Many of them have their own languages. Their size may vary from just a few hundreds to a million and more, located at different stages-hunters and gatherers, pastorals, shifting cultivators and settled agriculture. While bulk of the tribals live in tribal majority tracts, a substantial population is dispersed. The tribal economy revolves largely around land and land based resources; but land is more than a source of livelihood for the Scheduled Tribes. A large number of tribal

families dwell in the forests or live close to the forests and their economy is closely interlinked with the forest resources. The tribal tracts are often rich in minerals and natural resources. The Scheduled Castes and the Scheduled Tribes are at the bottom rungs of the society-in assets, social status, education, health or even in living conditions.

The welfare and development of the members of the Scheduled Castes and Scheduled Tribes should be viewed at not merely in terms of material needs but equally or even more so in relation to nonmaterial needs, such as the right to live with freedom, human dignity and selfrespect. The people belonging to Scheduled Castes and Scheduled Tribes, are indeed the labouring classes, on whose strength, sweat and toil the nation survives. But almost all of them suffered and continue to suffer from varying degrees of unfreedom denial of human dignity and human rights. Throughout the whole of rural India, Scheduled Caste habitations are, even today, usually segregated, mostly on the outskirts of a village. The Scheduled Caste families in many villages are in permissive possession of housesites or homesteads with constant threats of eviction by the landowners or even the State.

In the urban areas, the problem is of living space itself, with just token space in unhygienic conditions and perpetual insecurity. The low levels of literacy of the Scheduled Castes and Scheduled Tribes are a particularly potent indicator of the denial of access to education in the past, leaving its mark on the present and future social situation. They have little land and lose their land and even when title over a small piece of land has been conferred, they have, often, been prevented from occupying the land and cultivating it.

The social category, generally known as the Denotified and Nomadic Tribes (DNTs), covers a large number of communities spread over different States, such as Pardhis, Sansis, Kheria Sabars, Lodhas, Bedias, etc. The estimate of their population in the country varies from 2 crores to 6 crores. Many of them were notified as Criminal Tribes under the Criminal Tribes Act 1871 and were"denotified" when the Act was repealed in 1952 after Independence. It was rightly

considered, to quote the words of Jawaharlal Nehru"The monstrous provisions of the Criminal Tribes Act constitute a negation of civil liberty.

No tribe can be classed as criminal as such and the whole principle is out of consonance with all civilized principles". Most of these communities now figure in the list of Backward Classes or sometimes, even the list of Scheduled Castes and Scheduled Tribes in relation to specific States. But the schemes for economic upliftment do not seem to have benefited them. The rate of literacy among them is very low, malnutrition more frequent and provisions for education and health care almost negligible, since many of them have remained nomadic. Bereft of their earlier occupations, with very little assets, they are even today suspected of being desperate criminals by the administration and by public, subjected to atrocities by the State agencies and the society. Very often the Habitual offenders Act which was enacted in 1959 is invoked against them.

HUMAN RIGHTS ISSUES, INSTRUMENTS AND LAWS

RIGHT TO HUMAN DIGNITY AND EQUALITY

The defining characteristic for Scheduled Castes is untouchability which is the denial of human dignity in its most extreme form. It is a socially and economically exploitative practice, constituting a gross derogation of the very existence as a human being. But the fact remains that notwithstanding the Constitutional and legal provisions as well as some sociopolitical and administrative efforts, untouchability is still prevalent on a large scale, particularly in rural India, barring perhaps some of the north eastern parts of the country. Even the spread of education has not been able to reduce the scourge of untouchability. On the basis of untouchability, in tens of thousands of villages which comprise nearly 80 per cent of the population of the country, almost every village is segregated into a Scheduled Caste locality and the non-Scheduled Caste locality. The continued prevalence of this evil and inhuman practice of untouchability constitutes the denial of basic human

dignity and equality. It is worth recalling in this context the words of Babasaheb Ambedkar, expressed many years ago, on the 25 December 1927, at the Conference of the Scheduled Caste people for asserting their right to take water from the Chowdwar tank in Mahad in Maharashtra."It is not as if drinking the water of Chowdwar lake will make us immortal. We have survived well enough all these days without drinking it. We are going to the tank to assert that we too are human beings like other.

It must be clear that this meeting has been called to set up norms of equality". The abolition of untouchability is a key Constitutional provision for securing basic human dignity to Scheduled Castes. Article 17 of the Constitution declared its abolition and criminalized its practice in any form whatsoever. Following the stipulation in Article 17 of the Constitution, the Untouchability (offences) Act was enacted in the year 1955. As this law was found to be inadequate, this was replaced by the comprehensive Protection of Civil Rights Act 1955 comprehensively amended in 1976 (19.11.76), a quarter of a century after the Constitution. The Protection of Civil Rights Rules were formulated in 1977.

The Act defines Civil Rights as any right accruing to a person by reason of the abolition of untouchability under Article 17 of the Constitution. The Act aims to punish the preaching and practice of untouchability and the enforcement of any disability arising from untouchability. Untouchability was made a cognizable and non-compoundable offence and a minimum punishment was stipulated for enforcing religious disabilities, social disabilities, refusal to sell goods or render services as well as other offences such as insult, molestation, obstruction, boycott, unlawful compulsory labour, to do scavenging or sweeping or removing carcass or job of similar nature on the ground of untouchability. The Act also provides for cancellation or suspension of licences of convicted persons under Section 6, as well as suspension of grants of land or money to a place of public worship or educational institution or hostel guilty of an offence. Section 10A empowers the Government to impose collective fines. Section 15A of the Act

places a duty on the State Government to ensure that rights accruing from the abolition of untouchability are made available to and are availed of by the persons subjected to any disability arising out of untouchability including legal aid, setting up of special Courts, supervision of prosecution, periodic surveys, identification of untouchability prone areas and steps for removal of untouchability in such areas.

A special law-the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act was enacted in the year 1989 (which came into effect from 30 January 1990), necessitated by the continuing predicament and plight of the Scheduled Castes. The Statement of Objects and Reasons of the Act summed up the position of Scheduled Castes and Scheduled Tribes as follows.

- "Despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable. They are denied a number of civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons. Because of the awareness created among the Scheduled Castes and Scheduled Tribes, through spread of education etc, they are trying to assert their rights and this is not being taken very kindly by others. Occupation and the cultivation of even the government allotted land by the Scheduled Castes and the Scheduled Tribes is resented and more often these people become victims of attacks by the vested interests. Under the circumstances, the existing laws like the Protection of Civil Rights Act 1955 and the normal provisions of Indian Penal Code have been found to be inadequate to check these crimes. A special legislation to check and deter crimes against them by non-Scheduled Castes and non-Scheduled Tribes has, therefore, become necessary".

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 created, for the first time, a whole new range of offences termed as"atrocities" and provided for stiff sanctions. The underlying spirit of the Act and Rules (which were framed in 1995) is that the Scheduled Castes and Scheduled Tribes by their very location in the oppressive social system are extraordinarily vulnerable and that their human rights should be protected by law and its implementing agencies from the onslaught by others against them. The Act cast a statutory duty on Government to take concrete steps to prevent atrocities and ensure the feeling of security among the Scheduled groups.

As pointed out by the distinguished jurist Upendra Baxi, the bulk of these offences were directed against the patterns of behaviour which shatter the self image of the members of the Scheduled communities and related forms of public humiliation. First, there are the modes of destroying self esteem such as forced feeding of obnoxious matter, forcible public parades after stripping the victims, throwing obnoxious objects in the living spaces; forcing people to leave the places of residence; denying them traditional access to places of public resort and all other related forms of public humiliation. Under the Act, all these constitute atrocities. Second, atrocities have a clear economic dimension.

The Act therefore criminalizes beggar, bonded labour, wrongful occupation, possession, cultivation, transfer and dispossession of land belonging to or notified as such to the Scheduled groups. Gender based aggression forms the third group of offences. Assaulting the women of Scheduled groups with an intent to outrage or dishonour their modesty is an offence. So is their sexual exploitation by those in a dominant position. Deliberate abuse of legal and administrative processes constitutes the fourth class of atrocities. This includes false, malicious and vexatious legal proceeding and even laying a false information before a public servant (which includes the police). Fifth, in a far-reaching addition to the Indian Penal Code, the Act prescribes that any offence carrying a sentence of ten years or more if carried out against the person

or property of the member of Scheduled Caste or Tribe on the ground of her belonging to these communities will attract a life sentence. Sixth, the use of force or intimidation of any member of the Scheduled Caste or Tribes affecting the decision not to vote or vote for a particular candidate in a manner other than that provided by law is an atrocity. This provision restores the democratic honour of the Scheduled Caste and Tribes. Public servants are liable to punishment for atrocities and those who, including the police, who default in their statutory duties stand exposed to a substantial prison term.

The Special Courts are empowered to presume abetment if the fact of rendering financial assistance to the perpetrators of such offence is proved. Also, if atrocities are committed in pursuance of conspiracy, The Act provides even for externment of anyone likely to commit an atrocity under the Scheduled and Tribal areas specified under Article 244 of the Constitution. The Act also provides for the appointment of special public prosecutors. The Act also provides for severe penalties-atrocities carry a minimum jail sentence of six months and a maximum of five years.

The Act provides for expeditious trial and disposal of cases pertainingo ST Communities through the agency of special Courts, denial of anticipatory bail, penalty for neglect of duties by public servant, as well as a duty to take concrete steps for preventive action against atrocities and restore the feeling of security among the Scheduled Castes and Scheduled Tribes. The Act is not only a penal policy measure; it envisages effective measures for the prevention of atrocities and for assistance in various ways to the victims of atrocities. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules were issued by Government of India in 1995. The Rules are exhaustive and provide for precautionary and preventive measures, supervision and spot inspection by District Magistrate, setting up of Scheduled Castes and Schedule Tribes Protection Cell, Relief and Rehabilitation of victims, State Level and District Level Vigilance and Monitoring Committees. Rule 3 specifically provides for the identification of atrocity prone areas by the State Government

and order to the District Magistrate, Superintendent of Police or any other officer to visit the area and review law and order situation, cancelling arms licences of non-Scheduled Caste and Scheduled Castes and Scheduled Tribes, constitution of High power State level Committee, District and divisional level Committees, setting up of Vigilance and monitoring Committees, setting up of awareness centers and organizing workshops to educate Scheduled Castes and Scheduled Tribes about their rights and protection, encouraging Non Governmental Organizations for establishing and maintaining awareness centers and deploying special police force in the identified area.

Rule 6 provides for spot inspection by District Magistrate and others. Rule 7 requires that the offences shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. Rule 8 envisages the setting up of the Scheduled Castes and Scheduled Tribes Protection Cell by the State Government. The Rules make provisions for travelling allowance, maintenance expenses, etc. to the victims or the dependents. Rule 12 lays down specific measures to be taken by the district administration, including mandatory visit by the District Magistrate and the Superintendent of Police, registration and investigation of the offence as well as relief and rehabilitation.

Rules 16 and 17 provide for the setting up of State level Vigilance and Monitoring Committee and a District Level Vigilance and Monitoring Committee with the District Magistrate as the Chairman. The scales of relief for victims of atrocities have also been set out in detail in the Rules. As reported in Crime in India 2000 (National Crime Records Bureau, Ministry of Home Affairs, Government of India June 2002) the total number of crimes against Scheduled Castes was 25,638 in 1998; 25,093 in 1999 and 25,455 in 2000. The number of offences under Protection of Civil Rights Act in regard to Scheduled Castes was 724 in 1998; 678 in 1999 and 672 in 2000. The offences under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act were 7,443, 7,301 and 7,386 respectively. The total number of crimes against Scheduled

Tribes was 4276 in 1998; 4450 in 1999; 4190 in 2000. The number of offences under the Protection of Civil Rights Act in relation to Scheduled Tribes was 50 in 1998, 45 in 1999 and 31 in 2000. The offences under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act was 709, 574 and 502 respectively. It is obvious that these numbers represent only the tip of the iceberg, as it is well known that a large number go unreported or unregistered. The rates of conviction by Courts are also very low.

The dehumanizing practice of manual scavenging is yet another blot on the Indian society and an affront to human dignity of the Scheduled Castes and the Scheduled Tribes. It is also interlinked to untouchability. Almost all those engaged in this occupation of manual scavenging-there are about 7 lakhs of them in the country-are from the Scheduled Castes and Scheduled Tribes. The continuance of manual scavenging constitutes a gross violation of human rights and worth of the human person that flies in the face of the Constitutional guarantee of a life with dignity for every human being in the country. A scheme known as National Scheme for Liberation and Rehabilitation of Scavengers and their Dependents was launched in 1991- 1992.

A special programme of scholarships for education of the children of those engaged in unclean occupations was also taken up. However, it was only four decades after the commencement of the Constitution that a statutory prohibition of manual scavenging was attempted through the enactment of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act in 1993. It took another four years to bring the Act into force in six States in 1997. Even now, some of the States are yet to adopt the law. The Statement of Objects and Reasons of this legislation is worth noting."Whereas fraternity assuring the dignity of the individual has been enshrined in the Preamble to the Constitution, and whereas the dehumanizing practice of manual scavenging of human excreta still continues in many parts of the country and whereas it is necessary to enact a uniform legislation for the whole of India for abolishing

manual scavenging by declaring employment of manual scavengers for removal of human excreta an offence and thereby ban further proliferation of dry latrines in the country". Section 3 of the Act prohibits employment of manual scavengers as well as construction or maintenance of a dry latrine from a date to be notified by State Government. Under Section 5, the State Government is required to appoint a District Magistrate or a Sub divisional Magistrate as the Executive Authority for the purpose of the Act.

The Act provides for various powers and functions of the Executive Authority and penalties for contravention of the Act. A National Commission for Safai Karmacharis was also set up in August 1994 under the National Commission for Safai Karmacharis Act, 1993 to monitor and oversee the programmes. A National Safai Karmachari Finance Corporation was set up in 1997. The Tenth Five Year Plan aims at total eradication of manual scavenging by Mission Mode approach by 2007. In some of the States like Andhra Pradesh, a Mission for eradicating manual scavenging and rehabilitation of Safai Karmacharis has been initiated, with specific time frame for demolition of community dry latrines and conversion of private dry latrines.

RIGHT TO LIVELIHOOD AND EQUALITY-LAND

There were certain parts of India where, historically, the so called untouchable communities were prohibited from owning any landed property. A unique feature of the Indian rural situation is thus the close interrelationship between the caste hierarchy and the agrarian structure. While the large landowners invariably belonged to the so-called upper castes, the cultivators belonged to the middle castes and the agricultural workers largerly to the Scheduled Castes, Scheduled Tribes and other extremely backwared communities. The picture of the landless labourer continues to remain the dominant motif of Scheduled Castes even today. Their social position is inescapably bound up with their condition as a predominantly landless people working on the land of others. Land control is the basis of the agrarian

hierarchy and often the caste hierarchy and, therefore, any scheme of development which fails to address the issue of land control is unlikely to produce any systemic transformation. It has been pointed out by perceptive observers that the small number of success stories of Scheduled Caste families often reveal the acquisition of a plot of land as the crucial asset which builds the base for advancement.

Small resources like a home site of ones own and even a very small part of productive land can operate as a powerful tool of liberation of the Scheduled Castes from total and arbitrary dependence on the dominant. Soon after Independence and during 1960s and 70s, there was widespread support to land reforms on grounds of both equity and efficiency. The first phase of land reforms after Independence consisted of the abolition of intermediaries and this brought about 20 million peasants, many of them belonging to the Scheduled Castes and Scheduled Tribes, in direct relationship with the State. Under the land ceiling laws enacted by various States, about 53.79 lakh acres of land have been distributed by the end of 2001 to 55.84 lakh beneficiaries; of these beneficiaries 36 per cent were from the Scheduled Castes and 15 per cent from the Scheduled Tribes to whom about 18 lakh acres and 7.8 lakh acres were assigned.

In addition, in a number of States efforts were made to allot lands at the disposal of the Government to the Scheduled Castes and the Scheduled Tribes on a preferential basis. The tenancy reforms also resulted in the conferment of ownership rights for about 124.22 lakh cultivators in respect of 156.30 lakh acres of land and the tenants belonging to the Scheduled Castes and Scheduled Tribes benefited from this measure. Programmes such as Operation Barga in West Bengal resulted in the recording of sharecroppers and ensuring a fair share of produce to them. Since a majority of the poor Scheduled Castes and Scheduled Tribes live in rural areas, the issue of land is of fundamental importance to them. The distribution or redistribution of the land in favour of the poor frees them from exploitation, strengthens labour and credit markets, provides a source of sustenance and confers economic and social status.

In short, it serves to empower the poor within the rural structure. The protection, preservation and enlargement of the control and command over land is thus one of the crucial issues in relation to the Scheduled Castes and the Scheduled Tribes in rural areas. It is land that is at the center of poverty, parasitism, exploitation, misery and iniquitous relationship and to the rural poor, ownership of land denotes enhanced social status and equality means equality in the ownership of land, endowing them with self-respect, self-confidence and a sense of equality.

The longing for a piece of land on the part of the rural poor is well known. There are a number of States where there is a legal prohibition on the transfer of lands belonging to members of the Scheduled Castes and Tribes to others. More specifically, for the Fifth Schedule areas, there are Regulations for protecting the lands of the Scheduled Tribes under the Fifth Schedule of the Constitution, prohibiting the transfer of land to non-tribals. The Sixth Schedule envisages a large measure of autonomy for the tribal areas, providing for the setting up of Autonomous District Councils which will exercise control and administration over land. The Panchayats (Extension to the Scheduled Areas) Act 1996, along with the conformity legislations of the States vests the Gram Sabhas in these areas with the power to prevent alienation of land and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe.

RIGHT TO LIVELIHOOD- LABOUR

The most marginalized groups of poor in rural areas, the Scheduled Castes, consist of unorganized labourers located precariously on the brink of subsistence, depending on uncertain employment and wages. The largest segment of unorganized labour is engaged in agriculture and related activities. Out of about 369 million workers in the unorganized sector in 1999-2000, about 237 million were engaged in agriculture sector alone and nearly half of them belong to Scheduled Castes and Scheduled Tribes. Employment opportunities for members of agricultural labour households

outside local agricultural sector are negligible. Social problems for them emanate from their low status in the rural hierarchy and economic problems arise due to inadequacy of employment opportunities, low income and inadequate diversification. One of the laws which is of great significance to the unorganized labour is Minimum Wages Act 1948.

The Act empowers both Central and State Governments to fix minimum wages for agriculture and other Scheduled employments and revise them periodically. So far about 1200 Schedule employments in the State sphere and 40 employments in the Central sphere have been brought with in the preview of the Act. Minimum wages can be fixed either by the Committee method or direct notification method. They are required, to be reviewed and revised once in five years. Clams can be filed with the competent authority for adjudication u/s 20 of the Act in the event of nonpayment or short payment. Advisory Boards have been given the power to assist the appropriate govt (Central and State) in the matter of fixation, review and revision of minimum wages.

The object of the Minimum Wages Act is to ensure that market forces and the laws of demand and supply are not allowed to depress wages of workmen in employments where the workers are poor, vulnerable, unorganized and without bargaining power. The Act helps unorganized workers in scheduled employments and if properly enforced, ensuring minimum wages can offer great potential for income transfers in favour of the poor. Experience shows that the nonpayment of minimum wages is widespread due to the absence of a proper mechanism for enforcement and the rates of minimum wages are not regularly revised within the specified period.

RIGHT TO FREEDOM AND LIBERTY

Slavery converging with landlessness and Scheduled Castes was deep rooted in Indian society. Slavery in its acute form declined in most regions in India and with the enactment of Anti-Slavery Act in 1843 and Sections 370 and 371 of the Indian Penal Code 1860, it stood abolished and became punishable. But hereditary or long-term servitude

institutionalized as bondage continued to be the condition of large proportion of agricultural labour, a majority of them Scheduled Castes and Scheduled Tribes. It is possible that some of the orthodox forms of agrestic bondage have undergone changes over a period of time, but they have not been eliminated altogether. There are also large number of bonded labourers in brick kilns, stone quarries, limestone mines, match factories, carpet weaving, irrigation works and a variety of other occupations.

Nearly 75 per cent of the bonded labourers belong to Scheduled Castes and Tribes. Article 23 of the Constitution prohibits begar and other similar forms of forced labour and declares it a punishable offence. It was only in 1975 that the Bonded Labour System (Abolition) Ordinance was promulgated on 24 October 1975 followed by the Bonded Labour System (Abolition) Act 1976. The Bill was passed by both houses of Parliament on 9.2.76 but given retrospective effect from 24.10.75, the date when Bonded Labour System (Abolition) Ordinance had been promulgated.

The Preamble to the Act mentions that the Act is to provide for the abolition of bonded labour system with a view to preventing the economic and physical exploitation of the weaker sections of the people. The Act abolishes bonded labour system and frees every bonded labourer, discharging the bonded labourer from any obligation to render any bonded labour. The liability to repay any bonded debt is also extinguished. While authorizing the State Government to confer powers on District Magistrates, the Act also specifically and directly lays down in Section 12 that it shall be the duty of every District Magistrate to enquire and take action to eradicate bonded labour.

Vigilance Committees with the District magistrate as chairman at the district level and SDM as chairman at the subdivisional level duly vested with powers have also been provided for. The cases under the Act can be tried by Executive Magistrates. It may be noted in this context that some States like Tamilnadu have brought out a detailed Manual on the identification, release and rehabilitation of Bonded Labour. It

is also necessary to note that the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 apply if the bonded labourer happens to belong to the Scheduled Castes or Tribes, as most of them are. Section 3 (vi) of this Act lays down"whoever compels or entices a member of the Scheduled Caste or a Scheduled Tribe to do begar or other similar forms of forced or bonded labour shall be punishable with imprisonment for a term which shall not be less than six months but may extend to five years and with fine."

RIGHTS OF CHILDREN

While estimates of the number of working children vary, a dependable estimate of that number can be arrived at if elimination of working children and primary education are taken together and it is considered that the children currently not attending school are working in some form or another. In 1991, there were as many as 72.9 million out of school children. It is the poorest and the most disadvantaged sectors of the society *i.e.* the Scheduled Castes and the Scheduled Tribes that supply the vast majority of working children. Eleven States, that is U.P., Bihar, Rajasthan, Gujarat, Maharashtra, Madhya Pradesh, Andhra Pradesh, Karnataka, Tamil Nadu, Orissa, West Bengal, account for more than 90 per cent of working children.

The largest number of working children are in agriculture and agriculture related activities. There is also a wealth of documentation of child labour in the diamond industry of Surat in Gujarat State, Carpet industry of Mirzapur, Bhadohi and Varanasi belt and glass units of Firozabad in Uttar Pradesh, match factories of Sivakasi in Tamilnadu, gemstone polishing units of Jaipur in Rajasthan, Slate industry of Markapur in Andhra Pradesh, etc. Children in domestic servitude may well be the most vulnerable and exploited children of all, as well as the most difficult to protect.

RIGHT TO EQUAL ACCESS

An important measure which has its origin in pre-independence days but pursued with greater vigour in

independent India is the reservation in appointments in public services and in higher educational institutions in favour of the Scheduled Castes and Scheduled Tribes. Some of the States have legislations providing for such reservations, while in many States this has been done by executive orders.

It may be seen that in the case of the Scheduled Castes, there is still a significant shortfall in Group A and Group B posts. The position in regard to the Scheduled Tribes shows shortfalls in all categories. While this reflects the picture in respect of the posts under the Central Government, the position is similar in regard to the posts under the State Governments as well as the Central and the State public sector undertakings. The reservation in admission to higher educational institutions, such as engineering and medical colleges, has served to improve the opportunities of the Scheduled Castes and Scheduled Tribes to pursue professional careers. The issue of reservation has to be viewed one of equal access and equitable sharing in the public administration and emerging opportunities.

RIGHT TO DEVELOPMENT

Initially, the approach to the development of the Scheduled Castes and the Scheduled Tribes took the form of a few limited schemes of ameliorative nature by the Centre and the States. In the various States, in the first quarter of Independence, schemes for the Scheduled Castes and Scheduled Tribes consisted largely of programmes of education, housing, distribution of government waste land/ Gair Mazrua land and opening of hostels for the students. Over the successive Five Year Plans, particularly from the beginning of the Fifth Five Year Plan (1974-79), the approach to the development of the Scheduled Castes and the Scheduled Tribes underwent a basic change with the emphasis shifting to ensuring of adequate flow of benefits from all the sectors of development in favour of the Scheduled Castes and the Scheduled Tribes. A systematic institutionalized effort in planning for the development of the Scheduled Castes was

initiated late in the year 1978 in the nature of Special Component Plan (SCP) for Scheduled Castes. The Special Component Plan (SCP) was designed to channelise the Plan outlays and benefits in all the sectors to the Scheduled Castes, at least in proportion to their population in order to secure their integrated development.

It is intended to be a plan for the development of the Scheduled Castes in relation to their resource endowments and their needs in all the areas of social and economic activity including agriculture, animal husbandry, poultry, fisheries, education including scholarships, hostels, and midday meals, provision of drinking water, electrification of Scheduled Caste localities, development of sericulture, minor irrigation including construction and energisation of irrigation wells, programmes for specially vulnerable groups, housing and house sites, link roads, self employment schemes, social forestry, allotment of land as well as schemes for development of lands and allotment of shops and stalls in public places.

The Special Component Plan is an important and integral part of the planning process intended to secure the rapid socio-economic development of the Scheduled Castes. In the year 1980, the Special Central Assistance (SCA) was also introduced as an additive to the Special Component Plan. Thus, the strategy for the development of the Scheduled Castes is anchored on the Special Component Plan formulated and implemented by the Centre as well as the States supported by the central scheme of Special Central Assistance. It was also in the seventies that the State Governments created specific institutional mechanisms for providing assistance for economic development of the Scheduled Castes.

The Governments in the States with substantial Scheduled Caste population have set up the Scheduled Caste Development Corporations (SCDC) to enable the members of the Scheduled Castes to take up viable income generating activities. In the year 1979, the Government of India also introduced the centrally sponsored scheme of assistance to the State Governments for investing in the share capital of their corporations. The National Scheduled Caste Finance and

Development Corporation (NSFDC) was established in 1989 to provide support to the economic development programmes for the Scheduled Castes. A National Safai Karamcharis Finance and Development Corporation was also set up in January 1997to facilitate all round socio economic development of Safai Karamcharis and their dependents and to extend financial assistance for the establishment of income generating viable projects. In respect of the Scheduled Tribes, the basic principles that should guide the approach to the development of the Scheduled Tribes were clearly set out by the Prime Minister Pandit Jawaharlal Nehru in the form of five principles known as'Tribal Panchsheel' which was later endorsed by the Renuka Ray team (1959), Dhebar Commission (1961) and the Shilu Ao Committee (1969).

The Panchsheel laid down specifically that:

- The tribal people should develop along the lines of their own genius and we should avoid imposing anything on them but rather try to encourage in every way their own traditional arts and culture.
- Tribal rights in lands and forests should be respected.
- We should try to train and build up a team of their own people to do administration and development.
- We should not overadminister these areas or overwhelm them with multiplicity of schemes; we should rather work through and not in rivalry to their own social and cultural institutions.
- We should judge the results not by statistics or the amount of money spent but by the quality of human character that is evolved.

The tribal situation in the country was gone into indepth before the concept of Tribal Sub Plan was evolved in the year 1974-75. The Tribal Sub Plan (TSP) strategy took note of the fact that a clearer approach to the tribal problems was necessary in terms of their geographic and demographic concentration, if faster development was to take place. The tribal areas of the country were classified into three broad categories-first, the States and Union Territories having a majority of Scheduled Tribes population; second, the States

and Union Territories having a substantial tribal population with major tribal population concentrated in particular administrative units such as Blocks and Tehsils; and thirdly, the States and Union Territories having dispersed tribal population. In the light of this approach, it was considered that tribal majority States like Arunanchal Pradesh, Meghalaya, Mizoram, Nagaland and Lakshadweep may not need a Tribal Sub Plan as the entire Plan of these States was meant for the Scheduled Tribe population.

For the second category of States and Union Territories, the Tribal Sub Plan strategy was adopted after delineating areas of tribal concentration. A similar approach was adopted in the case of States and Union Territories having dispersed tribal population by focusing special attention on the pockets of tribal concentration keeping in view the nature of their dispersal. In order to effectively administer the programmes, the Tribal Sub Plan strategy adopted the Integrated Tribal Development Projects (ITDP) for tribal areas with substantial tribal population, the Modified Tribal Development Approach (MADA) as well as clusters for pockets of tribal concentration and special projects for Primitive Tribal Groups (PTG) along with administrative, financial and functional integration and equally all necessary measures to eliminate exploitative relationships.

The Special Central Assistance supplements the Tribal Sub Plan. A number of States have set up Tribal Marketing Corporations for securing a fair price for the minor forest produce and the agricultural products procured and sold by the tribals. The Government of India also set up the Tribal Cooperative Marketing Development Federation (TRIFED) in 1987 as the apex coordinating body for the State Tribal Marketing Corporations in order to ensure remunerative prices for minor forest produce and agricultural items produced or collected by tribals and to protect them against exploitation by private trades and middlemen. A National Scheduled Tribe Finance and Development Corporation has also been set up to support the Scheduled Tribe Finance and Development Corporations in the States. The Government of India had also

issued guidelines in 1975 in regard to excise policy in the tribal areas emphasizing the banning of commercial vending of the liquor in the tribal areas, while permitting the tribals to brew their own liquor for consumption at home and for religious and social occasions. The tribal communities particularly those who live within forests or in close proximity to them are victims of unimaginative application of forest laws and loss of traditional rights in forest produce, apart from being confronted with the problem of displacement.

The National Forest Policy 1988 reiterated the symbiotic relationship between the tribals and forests and stressed the need for associating the tribal people closely in the protection, regeneration and the development of forests as well as providing gainful employment to the people living in and around the forests. The policy also provided for the full protection of the traditional rights and concessions enjoyed by the tribals. In the year 1991, a series of policy instructions were issued by the Government of India to ensure harmony and to avoid conflict between the local tribal community and the forests, including regularization of occupations by landless poor and the tribal people, conversion of forest villages into revenue villages and joint forest management.

The Tenth Five Year Plan (1997-2002) envisages the continuance of the process of empowering the socially disadvantaged groups through a three-pronged strategy-social empowerment through removal of all the still existing inequalities, disparities and other persisting problems besides providing easy access to minimum services; economic empowerment through employment cum income generating activities with ultimate objective of making them economically independent and self-reliant; social justice through elimination of all types of discrimination with the strength of constitutional commitments, legislative support, affirmative action, awareness generation, conscientisation of target groups and change in the mindset of people through renewed commitment to a National Charter for Social Justice based on the principle of social harmony with social and gender justice and necessary legal measures.

RIGHT TO EDUCATION

Article 46 of the Constitution directs the State to promote with special care the educational and economic interests of the Scheduled Castes and Scheduled Tribes. Article 21 A of the Constitution has laid down the fundamental right to education for children in the age group of six to fourteen years. The National Policy on Education 1986 placed special emphasis on the removal of disparities and equalization of educational opportunities.

The Policy laid down that the central focus in the educational development of the Scheduled Castes is their equalization with the non-Scheduled Caste population at all levels and states of education in all areas and in all the four dimensions-rural male, rural female, urban male and urban female. The Programme of Action (POA) 1992 accorded priority to the opening of primary and upper primary schools to meet the needs of Scheduled Caste habitations and hamlets, provision of nonformal distance education, adequate incentives; coverage of the Scheduled Castes localities and tribal areas under the Operation Black Board and the programme of Universalization of Elementary Education. While there has been an increase in the percentage of literacy among the Scheduled Castes and Scheduled Tribes, the levels are still perilously low and there is a need for intensive efforts to achieve a reasonably high rate of literacy as also to remove the disparity in the levels of literacy in relation to the general population.

One of the earliest efforts of the State in regard to the development of Scheduled Castes and Tribes has been in the field of education. The schemes taken up include scholarships for prematric studies and post matric studies, free supply of school uniforms, stationery and text books, opening of hostels for the Scheduled Caste and the Scheduled Tribe students, establishment of residential schools as well as the setting up of Ashram Schools for the tribal students. The Post Matric Scholarship Scheme is particularly noteworthy, because of its open ended nature making all the eligible Scheduled Caste and Scheduled Tribe students entitled to scholarship at all levels

of post matric education. The scheme has contributed significantly to the access and retention of Scheduled Caste and the Scheduled Tribe students in higher education.

RIGHT TO LIFE AND LIBERTY

It has to be said that, barring some exceptions, the role of the police in relation to human rights is widely perceived as being negative and as an institution, it turns out to be no respector of human rights, more particularly in relation to the poor and downtrodden Scheduled Castes and Scheduled Tribes. Nothing tarnishes the image of the police more than the brutality directed against the persons in their custody. Deaths in police lockup and encounters occur frequently. The facts that the majority of the victims are from weaker sections of the society such as Scheduled Castes and Scheduled Tribes and these deaths are the outcome of third degree methods and flagrant violation of human rights of citizens are causing concern.

RIGHTS OF WOMEN

Almost all the women from Scheduled Castes and Scheduled Tribes are women workers. Taking women workers as a whole, they have an overwhelming presence only in unorganized sector-nearly 85 per cent of women work in primary sector-and women's share in organized sector employment is only about 17 per cent and mostly in lower rungs in hierarchy. Even though the Constitution lays down equal remuneration to men and women as part of the Directive Principles and the Equal Remuneration Act was enacted in 1976, it is well known that in a majority of instances women are being paid much lower remuneration than men for the same work.

The position of women belonging to Scheduled Castes and Scheduled Tribes is all the more deplorable compared to their male counterparts, struggling, as they do, for basic survival and vulnerable as they are to various forms of sexual abuse. They are"thrice alienated" on the basis of class, caste and gender. Although sexual violence is a problem from which

women in general suffer, in the case of women from Scheduled Castes and Scheduled Tribes, it is far more intense and widespread as, due to the lower social attitude towards women from these communities and their economic dependence, they become victims of the sexual violence on a larger scale.

The so called unclean occupations are performed mostly by women from the Scheduled Caste and Scheduled Tribe communities. Another social evil is that of dedicating girl children to local deities and letting them get sexually exploited as they grow up. This practice, which is a part of the wider Devadasi system, is widely prevalent in parts of the country, known by local names such as Jogin, Jogati, Basavi, Mathamma in Andhra Pradesh, Maharashtra and Karnataka. Most of the people subjected to such exploitation are from Scheduled Castes and Scheduled Tribes. Some of the States, such as Andhra Pradesh, have passed enactments prohibiting such practices and for punishment for those who abet such practices.

ROLES AND RESPONSIBILITY OF THE DISTRICT MAGISTRATES

The Indian Constitution has been based on the values of equality, human dignity and justice and incorporates most of the human rights embodied in the international covenants. The laws and policy prescriptions emanating from the Constitution provide form and content to these mandates. In countries such as India, the State has an overarching presence and there are areas of legal and administrative action where the State alone is called upon to act in public interest. Illustrations of this nature are the Protection of Civil Rights Act or the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act or the Bonded Labour System (Abolition) Act, apart from the general laws.

The State Governments and in a number of specific cases, the District Magistrates have been conferred with special and well defined powers and functions under such laws and rules to exercise them in public interest. Keeping in view, the situation in which the Scheduled Castes and Scheduled Tribes are located in the society and the range of human rights issues

that arise in their context, the District Magistrate, as the legally empowered authority under the general laws as well as different specific statutes and as the Head of the district administration, has the duty and responsibility, not merely to prevent the violation or infringement of human rights of the Scheduled Castes and Tribes but to uphold promote, protect and preserve human dignity, decency, equality and freedom as well. The role and the responsibility of the District Magistrates in respect of the human rights of the members of the Scheduled Castes and the Scheduled Tribes are thus wide ranging.

UNTOUCHABILITY AND ATROCITIES

One of the inhuman forms of indignity and violation of human rights is the practice of untouchability. The different overt and covert manifestations of untouchability include denial of access to public places, places of worship, shops, fields, road and pathways, land and water, refusal of services, denial of seats in public transport, abuses in the name of caste and a variety of other acts of discrimination. The Scheduled Caste often depends on the mercy of the so called upper castes even to take drinking water from public water supply sources for their use. A common practice in hotels in rural areas is that they have to eat and drink from separate vessels in which they must wash themselves.

In some schools, the children belonging to the Scheduled Caste are made to sit on the floor or at the back of the classroom. The practice of social boycott is a virulent form of untouchability, because of the economic vulnerability and dependence, social boycott operates as a devastatingly effective means for the dominant community to starve the Scheduled Castes into submission. Many District Magistrates assume or tend to believe that untouchability does not exist or that it is a thing of the past. On the other hand, the district Magistrate should be acutely conscious of the widespread and varied, open and covert, forms of untouchability in the district and make full use of the entire district machinery to put down this practice firmly and effectively. It is the duty of the District

Magistrate to strive towards its eradication as mandated under Article 17 of the Constitution and as provided for in the Protection of Civil Rights Act 1955. The barbaric acts of atrocities is another crucial area which constitutes a gross violation of the right to life with dignity and equality of the Scheduled Castes. A special legislation, the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act was enacted in 1989 to supplement the existing laws.

The District Magistrate has been accorded specific powers, duties, functions and responsibilities under this statute. It is unfortunate that Governmental agencies, especially the magistracy and police authorities who are directly charged with the implementation of this Act do not have a proper understanding of the spirit and contents of the Act and Rules. It is seen that the police are unwilling to acknowledge that an atrocity has occurred or simply refuse to register a case or bring about a compromise on the terms dictated by the dominant people. Quite often, only trivial sections of the Act are invoked irrespective of the gravity of the crime.

The District Magistrate must ensure the proper and effective implementation of this Act in all its aspects and in the spirit in which it has been enacted. A prompt visit to the places of occurrence along with the Superintendent of police as mandated in the statute should be ensured. This will not only provide for proper action in specific cases but also generate a climate of confidence and adherence to human rights. The District Level Vigilance and Monitoring Committee with the District Magistrate as the Chairman should be active and a close monitoring and review should be undertaken. The supervision of the investigation and prosecution as well as the review of the performance of the Special Public Prosecutors as provided for in Rule 4 should be regular and probing.

Immediate steps should be taken for providing relief and rehabilitation to the victims as set out in detail in the Rules. During the periodical elections to the local bodies, legislative assemblies or Parliament, the dominant sections intimidate and frighten the Scheduled Castes and Scheduled Tribes from voting just as to their free will. This has been specifically

brought within the definition of Atrocities under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. As District Magistrates as well as returning officers, it is their duty to ensure that the voting rights of these sections of people are fully safeguarded. Yet another specific form of denial of human rights is the prevention of the Scheduled Caste and scheduled Tribe persons from availing of the elective positions in Panchayat institutions or to function as elected members or Sarpanches or heads of Panchayat bodies.

There are some Panchayats in some of the States where even nominations have not been allowed to be filed for the posts reserved for the Scheduled Castes. Firm and effective action has to be taken in all such cases under the normal criminal laws as well as the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act. The right of the Scheduled Castes and the Scheduled Tribes to participate in the Panchayati Raj and other democratic institutions should be fully protected.

The Protection of Civil Rights Act 1955 as well as the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989 and Rules 1995 have to be read together and acted upon. These laws are powerful tools available to the District Magistrates to safeguard the human dignity and human rights of these Constitutional categories. Atrocities are a symptom of a deeper malady in the society and, therefore, simultaneously, efforts are needed to strengthen the overall socio economic position of the Scheduled Castes and the Scheduled Tribes through educational and economic development.

MANUAL SCAVENGING

The dehumanizing practice of manual scavenging continues in most parts of the country, particularly in urban and semi-urban areas. As pointed out earlier, the District Magistrates are the Executive Authorities for this purpose under the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act 1993. Action should be taken by the District Magistrates to get the dry

latrines demolished in a time bound manner. While doing so, it is necessary to see that this does not result in retrenchment and loss of livelihood to any one. As a large number of those engaged in this work are actually employed by the Municipalities or other local authorities, they should be reallocated to dignified work in the same organization. In respect of those who are private workers, suitable alternative means of livelihood should be worked out and implemented, utilizing various schemes which are available. The children of the Safai Karmacharis should be enrolled into the schools and hostels.

LAND-LAND REFORMS AND LAND DISTRIBUTION

The District Magistrates who are also District Collectors or Deputy Commissioners incharge of land administration enjoy enormous powers and functions in regard to land administration and hold a special responsibility in this respect. There are still large extents of lands available for allotment to the Scheduled Castes and Scheduled Tribes-whether it is Government wasteland/Gair Mazrua lands; lands declared surplus under land ceiling laws; Gram Sabha lands; Bhoodan lands; or temple lands. In some States like Madhya Pradesh, a part of the grazing (Charnoi) land has been released for assignment to the landless poor Scheduled Castes and Scheduled Tribes.

In most of the States, there are rules for preferential allotment of land to them as they constitute the largest group of agricultural labour. The land ceiling laws in many States also provide for an overriding preference in the allotment of ceiling surplus land in favour of Scheduled Castes and Scheduled Tribes. The effective implementation of land reforms and the allotment of land at the disposal of Government and ensuring uninterrupted possession of such lands can secure a substantial improvement in the conditions of living of the rural Scheduled Castes and Scheduled Tribes. There is also scope for purchase of private lands and allotting them to landless Scheduled Castes and the Scheduled Tribe families under the Land Purchase Schemes introduced in many

States. Selection and allotment of good cultivable land and supporting the land allotment with irrigation and other inputs would enable the landless to become independent cultivators. There are also a number of instances where the Scheduled Castes and Schedule Tribes who have acquired land through land reform laws or other legal means are harassed on this account. Many of them have lost their land due to acts of violence and intimidation by dominant communities who take forcible possession of land that legally belong to Scheduled Castes and Scheduled Tribes.

Physical attacks by dominant sections and denial of employment are also not uncommon. Where they are sharecroppers, there are severe problems faced by them in enjoying the fruits of their own labour. Hence, apart from formal allotment of land and issue of documents such as title deeds, it should be ensured that the allottees are placed in effective possession of the land. In case of any obstruction or threat by the dominant sections, necessary protection by police should be given to the allottee. As many of the atrocities against Scheduled Castes and Scheduled Tribes have their source in their struggle to obtain land, action should be taken in such cases under the provisions of Section 3 (iv) and 3 (v) the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

LAND-LAND ALIENATION AND RESTORATION

Unfortunately, land alienation has been going on unchecked and restoration process remains feeble, thwarted by the propertied sections either through force or manipulation of law. Even the Survey and settlement of lands by Government agencies has caused large scale loss of tribal land due to unimaginative and sometimes motivated steps by the local persons. There are many States where the lands of both Scheduled Castes and Scheduled Tribes are protected from alienation by law. In certain States, lands had been reserved exclusively for the Scheduled Castes. In the States where tribal areas have been notified under the Fifth Schedule, there are specific Land Transfer Regulations relating to tribal lands

promulgated under the schedule. In many States, the District Magistrates have been designated as Agents to Government in relation to the Scheduled Areas. It will be the responsibility of the District Magistrates to ensure the effective implementation of the Land Transfer Regulations and enactments to protect as well as restore the lands of the members of the Scheduled Castes and the Scheduled Tribes.

LAND-IRRIGATION AND INPUTS

The lands of the Scheduled Castes and the Scheduled Tribes and even the lands allotted to them are usually of low quality and bereft of irrigation facilities. Steps should be taken to provide irrigation facilities under various minor irrigation schemes.

LAND-LIVING SPACE

The poor Scheduled Caste and Scheduled Tribe people struggle for securing house sites. In many villages, they have been in permissive possession of housesites and homesteads with a constant threat of eviction. The allotment of a house site will go a long way to release them from the grip of the dominant rich. In urban areas, the problem is even more difficult. The term slum clearance or encroachment removal is often an euphemism for uprooting powerless migrants from their homes and shifting them to low value sites, usually at the periphery, leading to their virtual economic extinction. Most of them belong to the weaker sections, particularly Scheduled Castes and Scheduled Tribes. The District Magistrates should take care to safeguard the interests of these vulnerable people in adequate measure.

CONCLUSION

The District Magistrate has a leadership role in the district as the head of the district administration. A professional, competent and sensitive District magistrate can ensure justice, human rights and human dignity for all sections of the society but in particular, members of SC and ST. The least that can be done is to prevent injustice to the Scheduled Castes and the

Scheduled Tribes-indeed all the poor in the society-in the various arenas of administration such as public offices, including police stations where they are often humiliated. It should be ensured that the law enforcing machinery itself respects the right giving legislation adequately and with earnestness. In all issues that concern the Scheduled Castes and Scheduled tribes, sensitization and motivation, providing proper guidelines, high level review and monitoring, a simple redressal mechanism, close supervision, regular flow of information and more than anything else, accessibility to these disadvantaged groups will serve to secure positive results.

The overall national and state policies are, no doubt, not amenable to changes at the district level. But they have to be creatively and imaginatively applied in actual implementation. Public servants such as District Magistrates to whom powers and functions are delegated in public interest have an area of relative autonomy and exercise considerable independence and freedom within the overall power structure. It is also open to the District Magistrates to suggest changes and seek modifications in laws and state policy in the interests of the weaker sections. Indeed, many policy changes have taken place on the basis of suggestions based on the experience of field level officials.

The District Magistrates themselves should accept imbibe and internalize the values of human rights, equality, non discrimination, human dignity, justice and democratic practices and consider themselves as part of the mechanism for protection of human rights. The urge to respect human rights should largely come from within District Magistrates, representing the State, should uphold and enhance human rights of the Scheduled Castes and the Scheduled Tribes; ensure there is no violation or infringement and take immediate remedial that measures as any such derogation takes place. As a general rule and practice, the District Magistrates must make efforts to visit and stay in the Scheduled Caste and Scheduled Tribe localities, thus reaching out to them and interacting with them to enable them to overcome their economic and social disabilities and to address

their basic needs. They should win their trust, confidence, and respect. Finally, it should be kept in mind that the social and economic situation of the Scheduled Castes and the Scheduled Tribes varies from State to State and often, even within a State. The Constitution has made special provisions for the administration of the fifth Scheduled and the Sixth Schedule areas in view of their distinct features.

It is also to be noted that while the Constitution and Central laws prevail all over the country, there are, in addition, many State specific laws, regulations and rules which vary from State to State. In respect of development programmes also, there are nationwide schemes as well as State specific and local programmes. It is therefore necessary for the District Magistrates to act with a proper contextual understanding and analysis of the specific situation in each district.

Chapter 9

Human Rights of Minorities

INTERNATIONAL CONTEXT

TREATIES, CHARTERS AND COVENANTS

The world community today faces not only the question of how to ensure democratic majority rule but also the growing problem of guaranteeing respect for the rights of various under privileged minority groups. Although the existence of'Minorities' is an ancient phenomenon, it has taken its present form only during Nineteenth and Twentieth Centuries, particularly with the formation of'League of Nations' after the World Wars. Thereafter, various international treaties, charters and covenants have come into existence as a response to the problems of different minorities (religious, linguistic, cultural and ethnic), establishing clearly that problems of the Minorities constitute one of the most burning issues on the international human rights agenda.

Most of the countries, including India, are the signatories to most of the charters and covenants. In Europe, the question of ethnic minorities arose because of their importance in politics during the nineteenth century, and the rise of nationalism based upon the idea of a uniform lifestyle of the majority brought the life of the minorities into the mainstream. Such an idea was opposed by minority groups, particularly those living in the border areas in different countries. The treaties signed between different European countries were intended to address the immediate problems of the countries in which they were made, but then they formed the basis for a

positive understanding and response in future to the problems of minorities in general. Thereafter, the development of modern human rights philosophy has occurred in such a way that it passed over from the ideas of a simple majority rule and political rights for all to taking into consideration the interest of those who are distinct in some respects from the majority. Also, being in minority they find it difficult for themselves to make the bodies of power consider their special position and interest. After League of Nations, the United Nations vigorously pursued the task of dealing with the problems of minorities. The specific action taken by U.N. in this regard came first in the form of charter and covenants and then in the form of declaration and convention.

The most important amongst these are:

i. Universal Declaration of Human Rights 1948
ii. Convention on the Prevention and Punishment of the Crime of Genocide 1948
iii. International Convention on the Elimination of all forms of Racial Discrimination, 1965
iv. International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights 1966
v. Declaration on the Elimination of all forms of Intolerance and Discrimination based on Religion or Belief, 1991
vi. Declaration on the Rights of Persons belonging to National or Ethnic, Religion and Linguistic Minorities 1992

It is not possible here to deal with the contents of all those documents, except to quote Article 27 of the'International Covenant of Civil and Political Rights of 1966', which reads as follows:

- "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or use their own language".

Capotozti, Francesco, Special U.N. Rapporteur in his report on the implementation of Article 27 of the International Covenant on the civil and political rights formulated the definition of the minority just as to which"a minority is a group numerically inferior to the rest of the population, in a non-dominant position, consisting of nationals of the state, processing distinct ethnic, religious or linguistic characteristics and showing a sense of solidarity aimed at preserving these characteristics". The U.N. General Assembly adopted the'Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities' on 18th December 1992 and reaffirmed a number of its concerns relating to the rights of Minorities. A perusal of the text clearly reveals that certain rights of Minorities are universally accepted and it is incumbent on the States to protect the existence of the ethnic, cultural, religious and linguistic identity of the minorities under their respective territories and encourage conditions for the promotion of that identity.

Moreover, the State is required to adopt appropriate legislative and other measures to achieve those ends. The U.N. Declaration spells out the following rights of all categories of Minorities in all parts of the World to be exercised individually as well as in community with other members of their group, without any discrimination:

i. Right to enjoy their own culture;
ii. Right to profess and practise their own religion;
iii. Right to use their own language;
iv. Right to effectively participate in cultural, religious, social, economic and public life;
v. Right to effectively participate in taking decisions concerning themselves;
vi. Right to establish and maintain their own associations;
vii. Right to establish and maintain free and peaceful contacts with other Minorities within their country; and
viii. Right to establish and maintain free and peaceful contacts with similar Minorities in other countries.

The Declaration also directs all the States of the World to take special measures for the Minorities to achieve the following objectives:

i. To protect the existence and ethnic, cultural, religious and linguistic identity of the Minorities and to encourage conditions for the promotion of that identity;
ii. To ensure that the Minorities fully and effectively exercise all their human rights and fundamental freedoms without any discrimination and in full measure of equality before law;
iii. To create favourable conditions to enable them to express their characteristics and to develop their culture, language, religion, traditions and customs;
iv. To let them have adequate opportunities to learn their mother tongue and have instructions in it;
v. To encourage knowledge of their history, traditions, languages and cultures;
vi. To assure them adequate opportunities to gain knowledge of the society as a whole;
vii. To enable them to fully participate in the economic progress and development of their country.

It is, thus, absolutely clear that the rights of minorities are an internationally accepted social norm. The UN Declaration is, therefore, intended to extend these rights to the minorities world-wide.

HUMAN RIGHTS AND MINORITY RIGHTS

The distinction and relation between human rights and minority rights is very important, particularly in the context where a large section of people have been expressing doubts regarding the validity of minority rights as distinct from the human right. It is, therefore, important to understand minority rights in its proper perspective. The historical context in which the concept of human rights emerged in the western countries over a long period made it more'individualistic' in nature than collective. The scope of human rights internationally is determined by the UN Declaration of 1948, which envisages respect for human rights of all without distinction on the basis

of race, language or religion. Thus, even when the concept encompasses all human beings, there has been a general feeling that in the Universal Declaration of Human Rights, the protection of minorities has been more or less integrated into the wider concept of human rights.

It is only in some of the latter major instruments of international law that a new system of human rights has been introduced and the rights of minorities recognized. The best example of these instruments is the Article 27 of the UN Covenant on Civil and Political Rights (1966).

The other important international instruments have been listed earlier in this stage. Article 3 of the Declaration of 1992 clearly specifies that persons belonging to minorities may exercise their rights individually as well as in community with other members of their group without any discrimination. Thus individual and collective rights have been accepted simultaneously. This fact, of individual as well as collective rights as a special category has been accepted in the'Manual on Human Rights Reporting of UN', which says:

- "Human rights are formulated in a way that makes the individual human being the main beneficiary. Some human rights combine individual and collective aspects. For instance, freedom to manifest religion or belief can be exercised either individually or in a community with others. But there are also rights which by their very nature and their subject are rights of large collectiveness. Cases in point are the rights of minorities, comprising considerable number of persons with common ethnic, religious or linguistic ties, as well as people's rights. The latter includes the right to self-determination, the right to development, the right to peace and security, and the right to a healthy environment."

The 1992 Declaration not only recognizes both individual and collective rights; it also directs (Article 4) the member states almost protecting the human rights and fundamental freedom of the minorities. So, as it stands today,'minority

rights' are enjoying a special status along-with the human rights in general.

MINORITIES-INDIAN CONTEXT

There are five religious groups in India, which have been given the official status of National Minorities, namely the Muslims, Christians, Sikhs, Budhists and Parsis. The Census of India, 1991, the percentage and population of minorities in the country is as follows:

Name of the Minorities	Percentage	Number
Muslims	12.12	101,596,057
Christians	2.34	19,640,284
Sikhs	1.94	16,259,749
Buddhists	0.76	6,387,500
Parsis	—	76,383

Thus, in total, the majority community comprises 82 per cent of the total population of the country, as per 1991 Census. There are certain other religious minority groups, which do not enjoy the official status of National Minority, but are still recognized by certain State Governments as minority at the State level. Jains are one such example, which have been recognized by the State of Madhya Pradesh as a minority, while Digambar Jains are recognized as a minority by the State Govt. of Karnataka. The recognition of above five minorities as national minorities has been done through a notification issued by the Ministry of Social Justice and Empowerment, Government of India, under the provisions of the National Commission for Minorities Act, 1982, while recognition of State level minorities has been done by the State Governments under their respective statutes.

PROVISIONS IN THE CONSTITUTION

The Constitution of India provides special safeguards for minorities. These are general rights established in articles 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28, which are applicable to all citizens including the minorities. Besides, the Constitution guarantees special rights to the minorities under article 29 and 30.

There are also special provisions made for the linguistic minorities in the following articles of the Constitution of India:

- *Article* 350A:-Facilities for education in the mother tongue at primary stage.
- *Article* 350B:-Provision for a special officer of linguistic minorities.

The Provision in the Constitution that have a bearing on Minorities and their rights can, in no way, be regarded as'special rights'; rather they are in the form of specific provisions/safeguards for the protections of the rights of the Minorities which are even otherwise available to them as citizens of the country. Provision for the protection of these rights has been considered imperative by the framers of the Constitution in the context of the'Democratic Polity' of the country, which we adopted for ourselves after Independence. Each provision related to Minorities in the Constitution was debated at length in the Constituent Assembly, and our experience of over 50 years has clearly shown how right was their'vision' of the situation that they envisaged in this regard. A brief review of the Constitutional provisions that are related to Minorities needs to be undertaken here to appreciate the nature and scope of the rights of Minorities in the country. At the outset, an extremely significant excerpt from Babasaheb B.R. Ambedkar's speeches and writings is given, which gives the background of the basic understanding of the framers of our Constitution in this regard.

- "The British system of government imposes no obligation upon the Majority to include in its Cabinet the representation of Minorities. If applied to India, the consequences will be obvious. It would make the Majority a governing class and the Minority a subject race. It would mean that the Majority will be free to run the administration just as to its own ideas of what is good for the Minorities. Such a State of affairs could not be called democracy. It will have to be called imperialism".

In fact the concept of'secularism' has been the guiding factor behind various provision in the Constitution. Although the word'secular' was inserted in the Constitution through an

amendment much latter, but the concept has been the deciding factor for determining the nature, scope and implications of the principles of religious tolerance enshrined in the Constitution. The concept of'secularism' in the minds of the framers of our Constitution is somewhat different from the Western concept. Secularism is not negation of any religion. It is neither anti-religious nor irreligious. It implies positive respect for all religious, inter-religious understanding, complete neutrality of the State in all matters of religion with no support for any particular religion but equal respect to all religions. No disrespect or abhorrence to any religion, no discrimination between various individuals or communities on the ground of their religion and various provisions for this purpose have been incorporated in our Constitution at different places.

The Constitutional provisions regarding Minorities essentially revolve round the twin concept of Democracy and Secularism. All religions in the country have, therefore, enjoyed some Constitutional and legal status and all persons and communities have absolutely the same individual and collective rights. The two concepts can, in no way, be misused to establish hegemony of any particular faith in the Nation's affairs. It has, therefore, been an endeavour in the Constitution to make the Minorities an equal partner with the Majority in the task of Nation-building.

The architect of the Constitution, therefore, envisaged certain sensitive provisions to enable the minorities to enjoy freedom, effective political participation and protection of law and well-being. The provisions are intended to ensure protection of religious, cultural, linguistic and other rights of the minorities and providing widest scope to the minorities for their development and participation in political, economic, social and cultural spheres. The Constitution gave its citizens equal right and protection of religious freedom thorough articles 5, 14, 15, 16 and 25 to 30.

RIGHT TO EQUALITY, EQUALITY OF OPPORTUNITY AND NON-DISCRIMINATION

The concept of'Equality' and'Equality of opportunity' as

enshrined in Article 15 & 16 of the Constitution is not only intended to end the discrimination on the basis of religion, race, caste etc., but also gives a scope for'positive discrimination', *i.e.* making of special provision for advantages of certain socially and educationally backward classes of citizens. If we look at the background history of the present provision in the Constitution regarding minorities in the context of the debates in the'Constituent Assembly', the genesis lies in the 1909 Minto Morley Reforms during the British days which introduced the system of communal electorate for Indian Muslims.

The principle of separate electorate for Muslims aroused similar demand from other minority group and consequently the Government of India Acts 1919 and 1935 had separate electorate for Muslims, Sikhs, and Christians, etc. The Advisory committee on the Fundamental Rights of Minorities set up by the'Constituent Assembly' opposed the communal reservation and agreed to reservation only for backward classes and not for religious or linguistic minorities.

The Constitution, however contains a programme for social reconstruction of Indian society based on the concept of individual nationalism and secularism. Thus, an individual entitled to equal access and equal opportunity to compete for valuable resources and opportunities in society irrespective of his religion or caste. The religion or caste can, however, be taken into account by the State for the purpose of achieving substantial equality. The policy of compensatory discrimination under Article 15 & 16 of the Constitution is, therefore, intended not to protect separate identity or integrity or religions or communal group but to reduce social inequalities and historic backwardness.

RIGHT TO RELIGIOUS FREEDOM

Impartiality of the State towards all religions is secured by Articles 25 & 26 of the Constitution. Article 25 guarantees right to freedom of conscience and the right to profess, practise and propagate religion, subject to certain specified conditions. Article 25 is thus an article of faith in the Constitution as it

amounts to recognition of the principle that real face of the democracy is the ability of even an insignificant minority to find its identity under the country's Constitution. The right guaranteed under article 25 and 26 is not absolute, rather is must be reconciled into the sovereign power of the State to ensure peace, security and orderly living.

Under Article 25 (i) a person has two-fold freedom *i.e.*

i. Freedom of conscience
ii. Freedom to profess, practise and propagate one's religion

The freedom of conscience is an absolute inner freedom of the citizen to mould his own relation into God in whatever manner he likes and to declare freely and openly one's faith and belief; to propagate means to spread and publicize his religious view for the edification of others. The word'propagate' involves exposition, without any element of coercion. Propagation is thus concerned with right to communicate belief to another person or to expound the tenets of one's religion but does not include right to forcible conversion. This rules out all conversion by fraud, misrepresentation, coercion, intimidation or even influence.

In fact, a good number of princely States in the pre-independence period enacted laws for protection against conversion activities and in many cases these laws required individual converts to register their conversion with specified Govt. agencies by filing an application or affidavit. Such agencies were also legally empowered to ascertain if conversion in any case was bonafide and wilful. Major anticonversion laws during the pre-independence period were the Raigarh State Conversion Act 1936, the Patna freedom of Religion Act 1942, the Sarguja State Apostasy Act 1945, Udaipur State Anti Conversion Act 1946 etc. After independence attempts were made, to enact a legislation aimed at checking conversion and in 1979 one such major attempt was made for official curbs on inter religius conversion, but the Freedom of Religion Bill introduced for this purpose fell. However, during 1967-68, two Indian States Orissa and Madhya Pradesh enacted local laws entitled Orissa Freedom

of Religion Act, 1967 and Madhya Pradesh Dharam Swatantra Adhiniyam 1968. Arunachal Pradesh latter enacted similar legislation act. All these State laws have more or less identical provisions and prohibit conversion by force, allurement, inducement and fraud. Contravention of the act is a cognizable offence punishable with imprisonment, fine or both.

Those who convert a person by performing/participating in necessary'ceremony' are required to send an intimation of conversion to the District Magistrate of the locality and failure to do so is also a cognisable offence. The right to freedom of religion guaranteed under Article 25 of the Constitution is subject to certain restrictions as well. It is subject to public order, morality and health. Similarly, under clause (2) of Article 25, the State is also empowered to make laws for social welfare and reforms. As such, social evils cannot be allowed to be protected in the name of religion. Similarly, the regulatory powers of the State under this Article also means that the secular activities associated with the religious practices can also be regulated by State laws.

The right to practise religion and the power of the State to regulate any secular activity associated with religious practices and its power to restrict religious procedure in the interest of public order, morality and health has been interpreted in different judgements of the Courts. Courts have been taking a view that the rites and ceremonies of the religion, which were considered as essential in accordance with the tenets of that religion, should not be interfered by the State. Certain judgements in this regard have distinguished the'essential' elements of religion from other non-essential aspects. Although they remained conscious of the difficulties in determining essentiality of religious practices by secular authorities, Courts, while maintaining the distinction between'essential' and non-essential, have taken many decisions, *e.g.*

i. Validity of the law prohibiting cow-slaughter was upheld on the ground that sacrifice of a cow was not an obligatory act enjoyed by the Muslim religion.
ii. Holding Friday prayers on public street was held to

be a bad practice and State found competent to prohibit the use of road or any public place for praying.

iii. Banning use of loud speaker for prayers in a busy and crowdy locality was held valid being detrimental to public health.

Similarly, in a recent case, the right of Hindus to take out a procession for immersion was found valid as constituting an essential part of their religion. The right to religious freedom guaranteed under Article 25 indicates the positive aspects of religious freedom. The Courts are expected to play a significant and important role in providing objective interpretations of the relevant provisions, in order that such a freedom is not unnecessarily restricted or restrained. Minorities are always alert and conscious that no uncalled for interference is made in regard to matters divine.

If no favour is to be shown to them, no discrimination is to be made either. The rights guaranteed under Article 26 are individual rights; whereas the right guaranteed under Article 26 are the rights of an organised body.

According to clause:

a. Of Article 26, a religious denomination has right to establish and maintain institutions for religious and charitable purpose. The words'establish' and' administer' need to be read together, as only those institutions which are established by the religious denominations can be maintained by them. Under Article 26.

b. A religious denomination or organisation is free to manage its own affairs in the matters of religion and State cannot interfere in exercise of its rights, unless they run counter to public order, health or morality. Here again the secular activities connected with the religious institutions can be regulated by State laws. Thus, the places of worship cannot be used for hiding criminals or for carrying on anti-national activities; similarly, they cannot be used for political activities. Under clause (c) & (d) of Article 26, a religious denomination has right to acquire and own property

and administer such properties in accordance with the law. Regarding administration of such religious properties the particular principle is that the State can make laws to regulate the administration of property of religious endowment, but such laws cannot take away the right of administration altogether.

CULTURAL AND EDUCATIONAL RIGHTS OF MINORITIES

Article 29 & 30 of the Constitution deals with the cultural and educational rights of the Minorities. Article 29, protects interests of the Minorities regarding their'language, script ad culture Article 30 gives the Minorities the right to establish and administer educational institutions. Article 30 in fact can be regarded as Magna Carta of the basic fundamental right of the Minorities through which they can preserve their identities as religious or linguistic communities. Article 29, though not exclusively for the Minorities, includes in its purview the Minorities.

Article 29 deals with the right to conserve the distinctiveness of language, script and culture of any section of citizens residing in the territory of India. The legalistic part of the right of Article 29 is common to Article 30, but still it is the Article 30, which gives the right to establish and administer educational institutions of their choice exclusively to all the religious or linguistic Minorities. Sometimes, it is said that the right given to Minorities in Article 30 (i) is restricted to the establishment and administration of institutions of their choice in order to conserve their'language, script or culture' only, but this is not true. This innocuous view is a result of the mixing of the contents of the Article 29, which should not happen as the two Articles are different in four respects.

- Article 29 (I) grants fundamental right to all sections of the citizens of our country, which include the majority also, whereas Article 30 (I) grants such a right to religious and linguistic minorities only.
- Article 29 deals with language, script or culture, while Article 30 (I) deals with Minorities based on religion or language alone.

- Article 29 (I) is concerned with the right to conserve language, script or culture, while Article 30 (I) deals with right of Minorities to establish and administer educational institutions just as to their choice.
- Article 29 relates to conservation of language, script or culture which can be undertaken through any means without unnecessarily establishing institutions. Similarly, institutions established under Article 30 (I) may not be for the purpose of conserving language, script or culture.

Thus Article 29 (I) and Article 30 (I) overlap but the former cannot limit the width of the latter. The scope of Article 30 is restricted to linguistic or religious Minorities, and no other section of the citizen has such a right. However, since Article 30 (I) gives the right to linguistic Minorities irrespective of their religion, it is not possible to exclude secular education from Article 30. Ever since the Constitution came into existence, Article 30 has been subject to too much debate amongst sections of the society and also in the Supreme Court.

The following aspects of Article 30 needs to be discussed in detail:

- *The right to establish*: The simple meaning of'to establish' is to bring into existence; a detailed discussion on the meaning of this expression has taken place in a well known case which came before the Supreme Court of India in October 96. Since the AMU, Aligarh was established in 1920 through a Central Legislative Act, the Supreme Court took a view that University came into existence through this Act and, therefore, Muslims as a Minority could not have the right to administer it. It felt that'establishment and administration' must be read conjunctively and so, in real sense, it gives the right to Minorities to administer educational institutions, provided it has been established by it. Thus the right to establish means to bring an institution into being by a Minority community and it does not matter whether a single philanthropic individual funds the institution or the community at large contributes the funds.

- *The right to administer*: Administration means management of affairs of the institutions. Thus, management must be free of control, so that the founders could mould the institution as they think fit and in accordance with their ideas of how the interests of community in general and the institution in particular will be best served. No part of its management can be taken away and vested in another body. This explanation to the expression'administer' has been given in case of State of Kerala vs Very Rev. Mother Provincial. In the same case the word of caution to the Minorities has been given in the areas in which Universities or Government can intervene for advancement of maintenance of standard of education. Thus prescribed syllabus of the Universities needs to be followed by Minority institutions with the freedom that they may teach special subjects, which the institution may like. To some extent, State can also regulate the condition of employment of teachers and health and hygiene of students. On the basis of various Supreme Court judgements, the rights covered under Article 30 can be summarized as follows:
  - To choose its management or governing body.
  - To choose its teachers.
  - Not to be compelled to refuse admission to students.
  - To use its properties and assets for the benefit of the institutions.
  - To select its own medium of instructions; hence a legislation which would penalize the institution by dis-affiliation from the University which uses a language as the medium of instruction other than the one prescribed by it, offends Article 30 (I).
- *Of their choice*: The Minorities both religious and linguistic are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best general education. General secular education is,

therefore, covered under the phrase'of their choice' and Minorities have right to establish such institution.

- *The right to compensation of property*: Clause 1 (A) of Article 30 was inserted thorough Constitutional amendment in 1978 with a purpose to provide protection to the properties of Minority educational institutions. Thus no individual or educational institution belonging to the majority community shall have a justiceable fundamental right to compensation in case of compulsory acquisition of its property by the State, while in case of educational institutions belonging to the Minority Community the compensation is justiceable and part of the fundamental right.
- *Granting aid for recognition*: Under Article 30 (2) the State is under obligation to make equality of treatment in granting aid to education institutions, but minority institutions are to be treated differently while giving financial assistance. They are entitled to get financial assistance, the same way as the institutions of the majority community. The receipt of the State aid does not impair their rights in Article 30 (1) as the State can lay down reasonable conditions for obtaining grant-in-aid for its proper utilisation. But the State has no power to compel minority institutions to give up their right under Article 30 (I). Recognition is thus a fundamental right of the minorities and in fact is a necessity as without recognition no educational institution established or to be established by a minority Community can fulfil the real object guaranteed under Article 30 (1).

The minority organisations/institutions complain about the infringement of their rights guaranteed under Article 30 of the Constitution. In large number of cases, the minority institutions are not distinguished, as permission for opening the institution/granting recognition/affiliation is denied. The existing minority educational institutions also complain about denial of freedom to them to administer their institutions freely. Undue interference from the Education Department

officials with scant regard for the rights of the minority institutions is reported.

In case of large number of States, the educational code of the State has no provision for the manner in which the minority educational institutions are required to be treated. There are very few States like Tamil Nadu, where a separate educational code for minority institutions exists. In a number of cases of educational codes of the States, the provisions run contrary to the Constitutional guarantees/rights given to the minorities. The Ministry of Human Resource Development, Department of Education, Government of India, formulated and notified vide letter No.F.7- 51/89-PM(DIII) dated 5.10.98, the Policy Norms and Principles for recognition of minority managed educational institutions and for regulating other matters related to the educational rights of minorities guaranteed under Article 29 and 30 of the Constitution.

A text of these policy guidelines are enclosed. These policy norms are important and needs to be taken into account by civil administration, while dealing with the matters related to the minority managed educational institutions established and administered under Article 30 of the Constitution. In a recent judgement, the 11 Judges Constitutional Bench of the Supreme Court of India clarified the following issues that were earlier formulated on the basis of various Court judgements:

- Linguistic and religious minorities are covered by the expression'minorities' and since reorganization of the States in India has been on linguistic lines for the purpose of determining the minority, the unit will be States and not whole of India.
- In regard to the use of the word'of their choice' under Article 30(i), even the professional educational institutions would be covered.
- Admission to unaided minority educational institutions *viz.* schools, where scope for merit based selection is practically nil, cannot be regulated by the State or country (except for providing the qualifications and minimum conditions of eligibility in the interest of academic standard).

- In case, aid is received or taken by a minority educational institution, it would be governed by Article 29(2) and would then not be able to refuse admission on the grounds of religion, race, caste, language or any of them.
- A minority institution may have its own procedure and method of admission as well as selection of students, but such procedure must be fair and transparent and selection of students in professional and higher educational colleges should be on the basis of merit. The procedure adopted or selection made should not tantamount to mal-administration.
- In case of unaided minority educational institutions, regulatory measures of control should be minimal. Thus, while conditions of recognition and affiliation would apply, in matters of day-to-day administration like appointment of staff and control over them, the management should have freedom, without any external control. However, rational procedure for selection and for taking disciplinary action has to be evolved by the management itself.
- In case of minority educational institutions, where aid is provided by the State, regulation can be framed governing service conditions for teaching and other staff, without interfering with overall administrative control of management.
- The right to establish and administer educational institutions is guaranteed under the Constitution to all citizens under Article 19 (g) and 26 and to minorities specifically under Article 30.

SAFEGUARD OF MINORITY RIGHTS-INSTITUTIONAL ARRANGEMENT

The Government of India has provided a number of instruments to look into the implementation of minority rights and to safeguard the same. The need for this institutional arrangement was explained in the Resolution issued by Government of India in 1978, while constituting the Minorities

Commission. The Resolution issued by the Govt. of India while constituting the Minorities Commission in 1978 through an Executive order reads:"Despite the safeguards provided in the Constitution and the law in force, there persists amongst minorities a feeling of inequality and discrimination.

In order to preserve secular tradition and to promote national integration, the Govt. of India attaches the highest importance to the enforcement of the safeguards provided for minorities and is of the firm view that effective institutional arrangements are urgently required for effective enforcement and implementation of all the safeguards provided for the minorities in the Constitution, in Central and State laws, and in Government policies and administrative schemes enunciated from time to time".

The text of the Resolution determines the basic framework of the status of Constitutional rights of the Minorities in the country. It amounts to recognizing that minorities are increasingly feeling insecure and isolated with regard to their religion, personal safety and protection of their property. Studies on the status of various minorities show that there is an ample evidence to justify the feeling amongst the minority communities. The scope of the present reading forbids an attempt to give details about their status, particularly about their economic and educational status, their representation in services particularly in police, military and para-military forces.

THE NATIONAL COMMISSION FOR MINORITIES

In an attempt to make suitable institutional arrangements for the protection of the Constitutional and civil rights of the Minorities, the Government of India notified a Government Resolution to set up a Minorities Commission. The Resolution also said that all the Central Government Ministries and Departments will furnish to the Commission all information, documents and assistance required by the Commission. The Resolution also expected the State Governments to do the same. The Commission was expected to submit its Annual Report to the President of India detailing its activities and

recommendations. The Annual Reports of the Commission were required to be laid before each House of Parliament with Action Taken Memorandum, also explaining the reasons for non-acceptance of a recommendation, if any. Later, the Commission was given statutory status through the passage of the National Commission for Minorities Act, 1992. This Act more or less retained the provision of the 1978 Government of India Resolution. The Act empowered the Commission to exercise"all powers of a Civil Court trying a suit", while discharging its statutory functions namely:

i. Evaluating progress of development of minorities under the Union and the States.
ii. Monitoring working of the safeguards for minorities provided in the Constitution and State Laws.
iii. Looking into specific complaints regarding deprivation of rights and safeguards of the minorities. The word'minorities' has been defined in clause-C of Section 2 of the National Commission for Minorities Act, 1992, and it says that'Minority' for the purpose of this Act means,'a community notified as such by the Central Government'.

The Central Government, therefore, officially notified 5 communities as minorities in terms of provision of this Act. The National Commission for Minorities is essentially a human rights organization overseeing the enforcement of the human rights of a particular section of the people, *i.e.* religious minorities. This fact has also been recognized under the Protection of Human Rights Act 1993, wherein the Chairman of National Commission for Minorities has been declared as ex-officio Member of the National Human Rights Commission. The importance of the Commission and its essential nature has been recognized by the Supreme Court of India in one of its recent judgements *Viz.* Misbah Alam Shaikh Vs State of Maharashtra, wherein Justice K Ramaswamy and Justice G. T. Nanavati held.

- "By operation of Section 3 read with Section 9, it is the duty of the Central Government to constitute a National Commission, and it shall be the duty and the

responsibility of the National Commission for Minorities to ensure compliance with the principles and programmes enumerated in Section 9 of the Act, protecting the interests of the Minorities for their development and working of the safeguards provided to them in the Constitution and the laws enacted by Parliament as well as the State Legislatures. The object thereby is to integrate them in the National mainstream in the united and integrated Bharat, providing facilities and opportunities to improve their economic and social status and empowerment."

The NCM Act 1992 can be perused. Section 9 of this Act specifies the functioning of the Commission. The functions are comprehensive and are related not only to the protection of the Constitutional rights of the persons belonging to minorities but also the development of minorities including conduct of studies and research on the issues relating to their socioeconomic development.

STATE MINORITIES COMMISSION

The idea of a Minorities Commission first originated in the State of Uttar Pradesh, when a one-man Minorities Commission was established in Lucknow in 1960. Later in 1974, the Commission was expanded to include a Chairman and nine Members. Similarly, Govt.of Bihar set up a Multi-Member Minorities Commission in 1971. Now a good number of State Governments in India have established State Minorities Commissions *e.g.* Andhra Pradesh, Bihar, Delhi, Karnataka, Madhya Pradesh, Maharashtra, Rajasthan, Tamil Nadu, Uttar Pradesh, West Bengal. The Governemnt of Assam and Gujarat have established Development Board for this purpose and they have the status of a registered Society.

NATIONAL MINORITIES FINANCE AND DEVELOPMENT CORPORATION (NMFDC)

The second instrument in the Central Government, which came into existence on the recommendation of the National Commission for Minorities and which needs a special mention

is National Minorities Finance and Development Corporation (NMDFC).

It was established on 30.9.1994 with the following objectives:

- To promote economic and developmental activities for the benefit of'backward sections' amongst the minorities, preference being given to occupational groups and women;
- To assist, subject to such income and/or economic criteria as may be prescribed by the Government of India from time to time, individuals or groups of individuals belonging to the minorities by way of loans and advances, for economically and financially viable schemes and projects;
- To promote self-employment and other ventures for the benefit of minorities;
- To grant loans and advances at such rates of interest as may be determined from time to time in accordance with the guidelines or schemes prescribed;
- To extend loans and advances to the eligible members belonging to the minorities for pursuing general/ professional/technical education or training at graduate and higher levels;
- To assist the State-level organisations dealing with the development of the Minorities by way of providing financial assistance or equity contribution and in obtaining commercial funding or by way of refinancing;
- To work as an apex institution for coordinating and monitoring the work of the Corporation/Boards/ other bodies set up by the State Governments/Union Territory Administrations for, or given the responsibility of assisting the minorities for their economic development; and
- To help in furthering the Government policies and programmes for the development of minorities.

15-POINT PROGRAMME FOR MINORITIES

Besides these two instruments, there is also a special programme known as the'Prime Minister's 15-Point

programme for Minorities', which is in existence since 1983. On 11th May 1982, the then Prime Minister, Smt. Indira Gandhi had addressed a letter to the Home Minister, containing certain suggestions for immediate action by way of measures to prevent the recurrence of communal violence and improve the economic conditions of minorities.

This was communicated to all the Ministries of the Central Government and to State Governments, and are known as'15-Point Programme for Minorities Welfare' since then. The range of points covered under the programme relates to almost all important minority rights discussed pre-page. All the District level officers are expected to regularly monitor the progress on implementation of the Prime Minister's 15-Point programme and ensure that regular reports on each point are sent to the State Government where it need to be consolidated for sending it to the Ministry of Home Affairs, Ministry of Social Justice and Empowerment.

Chapter 10

Human Rights of Disabled, Old and Physically Challenged

This stage attempts to discuss social work and human rights of those persons with disabilities who, temporarily or permanently, experience physical, intellectual or psychological impairment of varying degrees. Most often, their lives are handicapped by social, cultural and attitudinal barriers which hamper their full participation and enjoyment of equal rights and opportunities.

DEFINITION OF DISABILITY

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, while defining disability in Section 2(t) stipulates,"person with disability means a person suffering from not less than forty per cent of any disability as certified by a medical authority." The disabilities that have been listed in Section 2 include blindness, low vision, hearing impairment, locomotor disability/cerebral palsy, mental retardation, mental illness and persons cured of leprosy.

In addition, autism and multiple disabilities have been covered under the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.

AUTHORITIES TO GIVE DISABILITY CERTIFICATE

As per rule 4.1 of the Implementing Rules of the Disabilities Act, 1995,"A Disability Certificate shall be issued

by a Medical Board duly constituted by the Central and the State Government."

COMPOSITION OF THE MEDICAL BOARD

Rule 4.2 of the Implementing Rule lays down that,"The State Government may constitute a Medical Board consisting of atleast three members out of which atleast one shall be a specialist in the particular field for assessing Locomotor/ Visual including low vision/hearing and speech disability, mental retardation and leprosy cured, as the case may be."

TYPES OF DISABILITY CERTIFICATE

The Rule 5(1) of the Implementing Rules of Persons with Disabilities Act, 1995 provides that,"The Medical Board shall, after due examination, give a Permanent Disability Certificate in cases of such permanent disabilities where there are no chances of variation in the degree of disability."

The Medical Board shall indicate the period of validity in the certificate, in case where there is any chance of variation in the degree of disability 5(2).

RELEVANCE OF A DISABILITY CERTIFICATE

Rule 6 of the Implementing Rules of the Disabilities Act, 1995 clearly states that,"The Certificate issued by the Medical Board under Rule 5 shall make a person eligible to apply for facilities, concessions and benefits admissible under the schemes of the Government or Non-Governmental organizations, subject to such conditions as the Central or the State Government may impose."

HUMAN RIGHTS ISSUES

A cursory analysis of the case law available and the reports of national and international organizations indicate that, worldwide, persons with disabilities are subjected to certain common forms of discrimination.

The most common ones are the following:

- Denial of equality of opportunities in earning livelihood.

- Denial of just and fair conditions of work.
- Denial of equal access to the programmes of education.
- Denial of access to public transport, built infrastructure and information systems.
- Denial of participation in family, social, cultural, and political life.
- Emotional, sexual and physical harassment.
- Denial of right in the family property and to own property.

The stated forms of violations can be identified as violations of economic, social, cultural, civil and political rights of persons with disabilities. Disability tends to be couched within a medical model, identifying people with disabilities as ill, different from their non-disabled peers and in need of care. Because the emphasis is on the medical needs of persons with disabilities, there is a corresponding neglect of their wider social needs. This has resulted in their severe isolation.

In the UN Standard Rules on the Equalization of Opportunities for Persons With Disabilities, 1993,'disability' summarizes a large number of different functional limitations occurring in any population in any country of the world. People may be disabled by physical, intellectual or sensory impairment, but a distinction has been made between disability and handicap meaning"handicap is the loss or limitation of opportunities to take part in the life of the community on an equal level with others". The purpose of the term handicap is to emphasize the focus on the shortcomings in the environment and in many organized structures of society.

A coherent programme of"equality of opportunity" entails tackling deeprooted social attitudes to disability. Besides that, equality entitles each person to equal membership in society. This calls for critical reorientation of all the structures and processes which have important implications in the lives of all citizens including those with disabilities."In essence, the human rights perspective on disability means viewing people as subjects and not as objects. It entails moving away from perceiving the disabled as problems towards viewing them

as holders of rights. Importantly, it means locating problems outside the individual and addressing the manner in which various economic, social, cultural and political processes accommodate the difference of ability."

THE CONSTITUTION

DISABILITY: A STATE SUBJECT

The Constitution of India is premised on the human rights values which recognize that all persons are born free and equal in rights and dignity. The Preamble, the Directive Principles of State Policy and the Fundamental Rights enshrined in the Constitution, stand testimony to the commitment of the State to its people. These provisions envisage a very positive role for the State towards its vulnerable citizens. As per Entry 9 in the List 11 of Schedule 7 of the Constitution, the subject of'Relief to the Disabled and Unemployable' is the responsibility of the State Governments. Despite the Constitutional mandate, most of the State Governments have neither introduced any law nor have introduced the State Policy on Disability so far. Some schemes have been introduced to provide scholarships, pensions, assistive devices, braille books, out of turn houses etc. But, their impact has been insignificant perhaps due to inadequacies in the scheme.

Article 41

This Article enjoins that,"The State shall, within the limits of its economic capacity and development make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement." These provisions, to a certain extent, reflect the traditional values of Indian culture that accord great importance to organized response by the State towards its disadvantaged and vulnerable members.

Article 15

Article 15 of the Constitution enjoins that,"no citizen shall, on grounds only of religion, race, caste, sex, place of birth or

any of them, be subject to any disability, liability, restriction or condition with regard to -

- Access to shops, public restaurants, hotels and places of public entertainment; or
- The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public".

The public facilities mentioned in this Article are designed on an assumption that all people can walk, see, hear, and can use hands, but may be discriminated on other grounds. It is recognized that people are handicapped not so much due to their disabilities as they are on account of environmental barriers and, therefore, it is necessary to create barrier-free facilities for persons with disabilities under Section 44 of the Disabilities Act 1995. It, therefore, enjoins on the establishments in the transport sector to adopt rail compartments, buses, vessels and aircrafts in such a way as to permit easy access to PWDs.

Section 45 calls for installation of auditory signals at intersections for the blind, curb cuts to be replaced with gentle slopes for wheel chair mobility, engravings on zebra crossing, railway platform etc for the safety of the blind and for persons with a low vision. Section 46 provides for ramps in public buildings, hospitals and schools, braille symbols and auditory signals in the elevators, etc.

However, precious little has been done by the governments to translate these provisions into reality, so much so, that even necessary amendments in the light of the Disabilities Act have not been carried out in building bye-laws, fabrication standards for buses, rail coaches, vessels etc. As a result, barriers for equal participation in the mainstream systems and processes continue to persist. Javed Abidi filed a Civil Writ petition bearing No 812 of 2001 Vs Union of India and Ors before the High Court of Delhi. He was aggrieved on the removal of temporary wooden ramps from the Red Fort, Qutub Minar, Humayan's Tomb, Jantar Mantar and other similar monuments of historic importance. These ramps were

fabricated and fixed by the Ministry of Social Justice and Empowerment and Archaeological Survey of India during the visit of Mr. Stephen Hawkins, the renowned physicist (Wheelchair User), who wanted to see these monuments.

After his visit the Archaeological Survey of India decided to remove these ramps. Abidi filed the case seeking justice in accordance with Section 46 of the Disabilities Act, 1995, which mandates ramps in public places for wheelchair access. The petitioner urged the Court for directing the respondent not to remove the wooden ramps and instead to erect permanent ramps ensuring barrier-free access to persons with disabilities.

Mahesh Sharma and Shivani Gupta Vs Ministry of Railways 2000 was a complaint case before the Chief Commissioner for Persons with Disabilities. Complainants were aggrieved on account of barriers to access trains and related facilities such as railway stations, waiting rooms and toilets. The relief was sought as per Section 44 of the Disabilities Act, 1995. The Chief Commissioner recommended Ministry of Railways to evolve a longterm plan with short and medium term objectives for making railway stations, rail coaches and other facilities accessible for wheelchair users and for persons with other types of disabilities.

In pursuance of the recommendations, Ministry of Railways drew up a plan with a modest budget for:

- Making ramps at the major railway stations at 155 locations in the first phase.
- The Railways also decided to convert 20-proto-type Guard-cumsleeper coaches with wider doorways and modified toilets to permit direct access by wheelchair.
- For New Delhi, Hazarat Nizamudin and old Delhi railway stations, the respondent set aside a sum of Rupees 33.42 lakhs for providing ramps, accessible waiting rooms, accessible toilets, accessible parking space etc.

Article 16

This Article guarantees that"no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth,

residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State."

- The silence of the Constitution regarding discrimination in employment on grounds of physical or sensory disability should not have caused exclusion of persons with disabilities in matters of employment and appointment to any public office; as most people with disabilities possess the capacity to productively contribute and be self-reliant provided the conditions of work are just and fair. However, people on grounds of disability have encountered rampant discrimination due to inadequate safeguards in the law. The medical fitness criteria for entry and retention of government service outrightly discriminates people on grounds of disabilities. A petition was filed under Article 32 in the Hon'ble Supreme Court of India by one Narendra Kumar Chandla vs State of Haryana and Ors. AIR 1995, S.C.519. Chandla was aggrieved on account of being reduced in rank on acquiring disability during service. The Supreme Court, however, at that stage refused to entertain the petition under Article 32. The petitioner, therefore, approached the Punjab and the Haryana High Court, which dismissed his petition. Chandla again filed a Special Leave petition in the Supreme Court. Though the Supreme Court by its Order appointed him as L.D.C. (clerk), which was lower in rank but protected his salary in the pay scale of `.1,400-2,300. However, he was deprived of his right to promotion to the next higher grade forever. No doubt, to a great degree the Supreme Court removed the injustice and protected his livelihood but it did not lay down the law prohibiting discrimination in the matter of career enhancement on acquiring disability during service. In order to prevent discrimination on grounds of disability extra legal safeguards have now been provided, for example, Section 47 of Persons with Disabilities Act, 1995 lays down that"No establishment

shall dispense with, or reduce in rank, an employee who acquires a disability during his service. Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefit. Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. No promotion shall be denied to a person merely on ground of his disability."

- The medical fitness criteria for entry in the government service and in the public sector undertakings are so provided that it outright denies opportunity of entry in the service on grounds of disability even if the post in question is the one already identified for PWDs and the candidate in question has already qualified the selection criteria. In the case of Nandakumar Narayanarao Ghodmare Vs. State of Maharashtra and Ors., a physically handicapped candidate was rejected because of colour blindness. When it was pointed out to the Court that only 5 posts out of 35 posts required perfect vision, the Supreme Court directed the Government to consider the case of the appellant and to appoint him to any of the posts of the Agricultural Class II Service post, other than the posts which required perfect vision. But unfortunately, the medical fitness standards laid down by most governments and public sector undertakings still are unfair and are in violation of law.

INTERNATIONAL COVENANTS AND AGREEMENTS FOR PERSONS WITH DISABILITIES

DECLARATIONS

In the 1970s, the evolution in thinking on disability issues at the United Nations manifested itself in a number of UN initiatives, which embraced the growing international concept

of human rights of persons with disabilities and equalization of opportunities for them. For instance, in Resolution 2856 (XXVI) of 20 December 1971, the General Assembly proclaimed the Declaration on the Rights of Mentally Retarded Persons. The declaration"the mentally retarded person should enjoy the same rights as other human beings, including the right to proper medical care, economic security, the right to training and rehabilitation, and the right to live with his own family or with foster parents.

Furthermore, the Assembly declared that there should be proper legal safeguards to protect the mentally retarded person against every form of abuse if it should become necessary to restrict or deny his or her rights". In 1975, the General Assembly of the UN adopted the Declaration on the Rights of Disabled Persons, which proclaimed that"disabled persons have the same civil and political rights as other human beings." The Declaration states," Disabled persons should receive equal treatment and services, which will enable them to develop their capabilities and skills to the maximum and will hasten the process of their social integration or reintegration". This Declaration is a comprehensive instrument with a clear focus on the rights of persons with disabilities.

RULES AND RESOLUTIONS

The world community observed 1981 as the International Year of the Disabled Persons. Its central theme was -"Full Participation and Equality." It set the trend of human rights in the disability arena, as the State was held responsible to guarantee enjoyment of full citizenship and fundamental rights by persons with disabilities. Subsequently, the UN General Assembly adopted the World Programme of Action (1982-the most comprehensive global strategy which placed'equalization of opportunities' as a central theme and as its guiding principle for the achievement of full participation of persons with disabilities in all aspects of social and economic life. To give recognition to economic, social and cultural rights of PWDs the period 1983 -1993 was observed as the UN Decade of Disabled Persons. The Decade intensified debate on equal

opportunities and non-discrimination. Recognition of the inherent equality of all human beings as well as the entitlement of each individual to all human rights forms the core of human rights law. In International Human Rights Law, equality is founded upon two complementary principles: non-discrimination and reasonable differentiation.

The principle of non-discrimination seeks to ensure that all persons can equally enjoy and exercise all their rights and freedoms. Discrimination occurs due to arbitrary denial of opportunities for equal participation. For example, when public facilities and services are set on standards out of the reach of persons with disabilities, it leads to exclusion and denial of rights. Such exclusion has several adverse consequences on the psyche, development and growth of the individual. It saps initiative.

It cripples the will to contribute ones very best to any productive endeavor. It demoralizes and demotivates people to come up with the best of their imagination and ingenuity which would promote quality of work. Equality not only implies preventing discrimination (example, the protection of individuals against unfavourable treatment by introducing antidiscrimination laws), but goes much beyond in remedying discrimination against groups suffering systematic discrimination in society. In concrete terms, it means embracing the notion of positive rights, affirmative action and reasonable accommodation.

MATERIAL EQUALITY

Commonly, the notion of equality manifests in two distinct ways: legal equality and material equality. In the material equality perspective, society is obliged to modify those differences that deny or impair the right of each individual to be an equal member of society."Policy research demonstrates that building codes, principles of barrier-free design, adapted curricula, targeted policy and funding commitments are useful mechanisms to reduce discrimination and increase equal participation". The UN Standard Rules on the Equalization of Opportunities for People with Disabilities,

1993 is an instrument based on the principle of material equality. The principle of'equal rights' in the Standard Rules is described as implying"that the needs of each and every individual are of equal importance, that those needs must be made the basis for the planning of societies and that all resources must be employed in such a way as to ensure that every individual has equal opportunities for participation."

STANDARD RULES

The UN Standard Rules imply a strong moral and political commitment on behalf of States to take action for the equalization of opportunities for persons with disabilities. States are required under the Rules to remove obstacles to equal participation and to actively involve disability NGOs as partners in this process. In the first operative paragraph of resolution, the Human Rights Commission recognizes the UN Standard Rules as an evaluative instrument to be used to assess the degree of compliance with human rights standards concerning disabled people. The Commission further recognizes that any violation of the fundamental principle of equality or any discrimination or other negative differential treatment of persons with disabilities inconsistent with the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities is an infringement of the human rights of persons with disabilities.

ASIAN AND PACIFIC DECADE

The Governments of the ESCAP region, proclaimed, the Asian and Pacific Decade of Disabled Persons, 1993-2002, by resolution 48/3 of 23 April 1992, at Beijing. The resolution was intended to strengthen regional cooperation in resolving issues affecting the achievement of the goals of the World Programme of Action concerning Disabled Persons, especially those concerning the full participation and equality of persons with disabilities. The Meeting held at Bangkok in June 1995 examined the progress made since the introduction of the Decade and adopted 12 targets and 78 recommendations concerning the implementation of the Agenda for Action,

including the gender dimensions of implementation. Of the 12 policy areas under the Agenda for Action, ESCAP has focused its efforts on areas that were not covered by the mandates of other United Nations instruments and bodies.

The policy areas include:

- Better coordination among various ministries at national and State level.
- Enactment of comprehensive legislations for the protection and promotion of rights of the disabled.
- Establishing accessible information systems for wider dissemination of critical knowledge.
- Removal of barriers from built environment, transport system and public facilities.
- Production, maintenance and distribution of assistive devices to overcome various impairments.
- Strengthening self-help organizations of persons with disabilities, their parents and of women with disabilities.

A comparative advantage of the ESCAP disability programme was the development of active inter-divisional collaboration, including the ESCAP Human Settlements Section, in the promotion of non-handicapping environments; the rural development section, in poverty alleviation among rural disabled persons; the general transport, coordination and communications section and the tourism unit, in the promotion of accessible public transport and the promotion of barrier-free tourism.

However, despite the achievements of the Decade, persons with disabilities remain the single largest sector of those least-served and most discriminated against in almost all States in the region. Much remains to be done to ensure the full participation and equality of status for persons with disabilities. In May 2002, ESCAP adopted the Resolution"Promoting an inclusive, barrier-free and rights-based society for people with disabilities in the Asian and Pacific region in the twenty-first century". The Resolution also proclaimed the extension of the Asian and Pacific Decade of Disabled Persons, 1993-2002, for another decade, 2003- 2012.

The Biwako Millennium Framework"outlines issues, action plans and strategies towards an inclusive, barrier-free and rights-based society for persons with disabilities." To achieve the goal, the framework identifies seven priority areas for action, in each of which critical issues and targets with specific time frames and actions follow. In all, eighteen targets and fifteen strategies supporting the achievement of all the targets are identified.

THE UN HUMAN RIGHTS INSTRUMENTS AND DISABILITY

There has been an increasing international recognition that disability is a human rights issue. There is also recognition that disability and disabilityrelated exclusion and marginalization is a concern for the UN human rights bodies. In August 1984, the Sub-Commission on Prevention of Discrimination and Protection of Minorities appointed a Special Rapporteur, Mr. Leandro Despouy, to conduct a comprehensive study on the relationship between human rights and disability. In his report, Mr. Despouy made it clear that disability is a human rights concern, with which the UN monitoring bodies should be involved.

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)

The Committee on Economic, Social and Cultural Rights under International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1994 assumed the responsibility for disability rights by issuing a General Comment No 5, in which the Committee makes an analysis of disability as a human rights issue. The General Comment states:"The Covenant does not refer explicitly to persons with disabilities. Nevertheless, the Universal Declaration of Human Rights recognizes that all human beings are born free and equal in dignity and rights and, since the Covenant's provisions apply fully to all members of society, persons with disabilities are clearly entitled to the full range of rights recognized in the Covenant. Moreover, the requirement contained in Article 2 of the Covenant that the rights enunciated will be exercised

without discrimination of any kind based on certain specified grounds or other status clearly applies to cover persons with disabilities". To illustrate the relevance of various provisions of ICESCR, a few articles can be examined.

For instance:

- Article 7 refers to the"right of everyone to the enjoyment of just and favourable conditions of work which ensures adequate remuneration". The just and favourable conditions of work have been interpreted and translated into the domestic labour standards by several governments. The concept of reasonable accommodation and barrier-free work environment is in fact premised on the notion set out in Article 7 of the Covenant. Reasonable accommodation can be defined as"providing or modifying devices, services, or facilities, or changing practices or procedures in order to afford participation on equal terms". Examples of"reasonable accommodation" include installation of a wheelchair ramp and elevators for people with mobility impairments, the introduction of part time work schedules for workers with severe conditions, availability of readers for visual impairments, and sign translation for people with hearing impairments.
- Article 11 recognizes that everyone has the"right to an adequate standard of living for himself and his family, including adequate food, clothing and housing". Available statistics show that world over this article is violated grossly in the case of persons with disabilities. High correlation between disability and poverty, and disproportionate number of disabled children in orphanages, visible presence of maimed, blinded and mentally ill persons amongst beggars are some examples.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

The Quinn and Degener study on the use of human rights

instruments in the context of International Covenant on Civil and Political Rights, suggests that out of 114 States party reports reviewed, 76 (67%) made some reference to disability. Other than addressing social welfare measures and equality laws, States party reports tend to refer to disabled persons in connection with civil commitment and the compulsory treatment of mentally ill or intellectually impaired persons. The State parties with reference to disabled persons do not extensively cover treatment of disabled defendants and prisoners, voting rights, marriage and divorce laws, and immigration laws and bioethics issues.

With the exception of the initial report of the Czech and the second periodic report of Ireland, which frankly acknowledge that State prisons are unable to accommodate disabled prisoners. Denmark reports that the State has established a training programme for police officers on how to deal with disabled prisoners. UK reports that a common standard of conduct has been laid down for all the staff working in prisons, which also refers to disabled inmates. These trends reflect greater respect for civil and political rights of PWDs in a much broader context.

The norms laid down in the International Standards are predominantly protective in nature and do not exclude any individual or class of individuals. In General Comment No 8, the Committee on Human Rights establishes that physical disability can never be a legitimate ground for restricting the right to vote. Neither may any intellectual disability be considered a reason for denying a person the right to vote or to hold office. The Comment further states that persons assisting disabled voters must be neutral, their only task being to preserve the independence of the voter. The Comment highlights the importance of participation in the political process by persons with disabilities who constitute a sizeable minority but have been an insignificant political constituency due to unfavorable circumstances. From the approach adopted by the Treaty Monitoring body, it is evident that people may be different from a physical and intellectual standpoint but so far as their civil and political rights are concerned, all people are the same.

CONVENTION ON RIGHTS OF THE CHILD (CRC)

There's yet another important international instrument *viz.* Convention on Rights of the Child (CRC) which establishes the rights of a disabled child to effective access and reception of education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development (Article 23). In fact, this is the only instrument, which has comprehensive and exclusive provisions regarding rights of the disabled children, although Article 2 of this Convention prohibits any discrimination in respect of the enjoyment of Convention rights on the ground of disability.

In paragraph 2 of Article 23, States parties are encouraged and required to ensure assistance to children with disabilities who are eligible and who apply for such services. The Committee on the Rights of the Child has identified four general principles that should guide the implementation of all Convention rights:

i. Non-discrimination,
ii. Best interests of the child,
iii. Right to survival and development,
iv. Right to be heard and to participate.

"The Committee on the Rights of the Child considers the self representation and full participation of children with disabilities as central to the fulfilment of their rights under the Convention. Article 12 may thus be viewed as the Convention's backbone. It encourages States parties to give a face to the invisible and a voice to the unheard, thereby enabling children with disabilities to enjoy a full and decent life in accordance with Article 23. Furthermore, the Committee has expressed its determination to do all it can to encourage governments to prioritize the rights of children with disabilities, and in line with Article 12 to ensure that disabled children participate in devising solutions to their problems." The CRC is unique in explicitly addressing the issue of disability, and it, therefore, has a great potential in advancing the rights of children with disabilities.

TORTURE CONVENTION

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is of particular relevance to millions of people with disabilities, who are subjected to inhuman and degrading treatment in the institutions meant for their care and development. The imbalance of power is the root cause of such violations which happen due to poor supervision and arbitrary standards in the special institutions for PWDs. Mental health institutions, homes for severely and multiple disabled are the breeding grounds of such unlawful practices.

Torture has aroused profound concern in all quarters. Article 5 of the overarching Universal Declaration on Human Rights and Article 7 of ICCPR prevent inhuman and degrading treatment including medical treatment without the consent of the individual in question. The fact that the Convention only covers torture committed by or with the consent of public officials may be thought to limit its significance in the context of disability.

Since, increasingly, countries in the developing world and some in the developed are routing services thorough private voluntary organizations, it becomes all the more necessary for the States to regulate standards and working of these institutions to check instances of abuse as States parties are under an obligation to prevent torture. Persons with disabilities, who are institutionalized, rarely take recourse to legal remedies.

It is mainly due to their total dependence for survival on these institutions and State sponsored care providers. In this respect, the disability related discrimination is an outcome of inadequate regulations and indifference to the problems faced by the disabled. Article 4 of the Convention requires each State party to ensure that all acts of torture and criminal offences are covered under the domestic law and their record is maintained category wise. Reports should, therefore, provide detailed information on criminal laws that prohibit torture. Emphasis should be placed on their applicability to persons with disabilities.

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) is a human rights treaty with the focus on women in general and marginalized and vulnerable women in particular. Recognizing that disability combined with gender stereotype causes multiple disadvantages, the Treaty Monitoring Body under this Convention adopted General Recommendation No 18, which urges State parties to include information on women with disabilities in their periodic reports with respect to their exercise of several rights contained in the Convention.

This makes it amply clear that all provisions contained in this Convention are very much applicable to women with disabilities as they are for other women. The purpose of adopting a General Comment is to assist State parties in fulfilling their reporting obligations.

The attention of the State parties thorough a General Comment is drawn to the insufficiencies and to the neglected areas. The Treaty Monitoring Body not only analyses the shortcomings in the report but also provides useful suggestions to stimulate appropriate response from the State parties. Most importantly, the General Comments offer authoritative interpretation of the Covenant and its application in domestic law.

DISABILITY CONVENTION

The UN General Assembly in its Resolution 56/168, 2001 recognizes that Governments, UN bodies and NGOs have not been successful in promoting full and effective participation and opportunities for persons with disabilities in economic, social, cultural and political life.

Expressing deep concern"about the disadvantages faced by 600 million disabled around the world" the General Assembly passed a resolution to establish an Ad-hoc Committee to consider a proposal for a comprehensive and integrated international Convention taking into account the recommendations of the Commission for Human Rights and

the Commission for Social Development. While arguing for the Disability Convention, the Asian and Pacific forum of Human Rights institutions emphasize that"a coherent and integrated human rights approach to disability cannot be developed under the present treaty system" and an exclusive Convention would give"status, authority and visibility" to disability in the human rights area which cannot be achieved through the process of reform of existing instruments and monitoring mechanisms.

Adding a new treaty would also complement existing international standards for the rights of the disadvantaged. Favouring thematic treaty on disability rights Gerard Quinn states"It would make much more sense to encapsulate the relevant human rights standards in a single legal instrument.

It would clarify State parties obligations and it would give disability NGOs a clear target-one that is dedicated to disability rights in a holistic sense. This, in turn, could potentially enable international law to accelerate positive developments within states." A human rights and social justice approach enables the use of various categories of rights and also recognizes how rights have to be a concern in thinking about approaches to disability and social policy that enhance, rather than diminish, the status of those with disabilities.

In conclusion, international and domestic laws are a reliable vehicle that can aid transformation in material conditions and mental attitudes towards disabilities. The contemporary international law recognizes that all States have a duty under Article 56 of the Charter of the United Nations to ensure respect for and to observe human rights, including the incorporation of human rights standards in their national legislation.

The Constitution of India empowers the government to take measures necessary to honour India's commitment to any international treaty or agreement. In the last 10 years government has adopted special laws, policies and schemes which are briefly analysed here.

LEGAL PROVISIONS

THE MENTAL HEALTH ACT OF INDIA, 1987

There is a general agreement that among persons with disabilities, those with intellectual and psychological impediments are most vulnerable and are discriminated both outside and within the families. To afford protection to the rights of this section, the Government of India repealed the outdated and inadequate Indian Lunacy Act, 1912 and the Lunacy Act, 1977 and enacted the Mental Health Act of 1987. Conditions conducive to protect autonomy, freedom and dignity of the mentally ill persons should have been created since the Act lays down comparatively rational criteria for admission in psychiatric hospitals and psychiatric nursing homes, and for the custody of his person, his property and its management.

Under this Act, a District Mental Health Authority has been provided. Until 1995, many mentally ill persons were consigned to jails and those living in mental health institutions were no better as the conditions both in prisons and in mental institutions are far below the stipulated standards."In the Chandan Kumar Banik Vs State of West Bengal, 1995 Supp. SEE 505, the Supreme Court went into the inhuman conditions of the mentally ill patients in a mental hospital at Mankundu in the District of Hooghli.

The Supreme Court deprecated and discontinued the practice of tying up of inmates with the iron chain who were unruly or not physically controllable and ordered drug treatment for these patients. The administration of the Hospital was also removed from the Sub-Divisional Officer and replaced by a competent doctor with requisite administrative ability and powers. The Supreme Court gave directions to remove other deficiencies in the care to ensure that the patients now detained in the mental hospitals would receive appropriate attention in all respects in a humane manner." Due to deep-rooted prejudice and insufficient understanding of the Mental Health Act, the menace of committing people to jail did not stop for many years after the Mental Health Act

became the law. Sheela Barse Vs. Union of India and Anr. 1993 4 SEE 204 was a case of detention of noncriminal mentally ill persons in the jails of West Bengal.

Their appalling condition were noted by the Supreme Court, which observed:

- That admission of non-criminal mentally ill persons to jails is illegal and unconstitutional.
- The Court directed that the function of getting mentally ill persons examined should vest with Judicial Magistrates and who, upon the advice of mental health psychiatrists, should assign the mentally ill person to the nearest place of treatment and care.

The NHRC has been deeply concerned with the unsatisfactory conditions prevailing in mental hospitals in the country, many of which function as custodial rather than therapeutic institutions. In the light of problems like overcrowding, lack of basic amenities, poor medical facilities, little or no effort at improving the awareness of family members about the nature of mental illness, or of the possibilities of medication and rehabilitation, the Commission came to the view that there was great need for it to take up this issue which, if not redressed, would result in the continuing violation of the rights of those greatly in need of understanding and support. Subsequently, an operational research project was undertaken in collaboration with NIMHANS. Based on the findings of this project, a comprehensive set of guidelines has been developed and widely disseminated with a view to ensuring quality in the Mental Health Institutions. The Commission is monitoring the performance of State governments in the light of guidelines and directions of The Hon'ble Supreme Court Supreme Court of India.

THE REHABILITATION COUNCIL OF INDIA (RCI ACT)

The Rehabilitation Council of India was set up by the Government of India in 1986, initially as a society to regulate and standardize training policies and programmes in the field of rehabilitation of persons with disabilities. The need of minimum standards was felt urgent as majority of persons engaged in education, vocational training and counselling of

PWDs were not professionally qualified. Poor academic and training standards adversely affect the chance of disabled in the world of work.

Therefore, an Act of Parliament in 1993 enhanced the status of the Council to a statutory body with an aim:

- To regulate the training policies and programmes in the field of rehabilitation of people with disabilities.
- To standardize training courses for professionals dealing with people with disabilities.
- To prescribe minimum standards of education and training of various categories of professionals dealing with people with disabilities.
- To regulate these standards in all training institutions uniformly throughout the country.
- To recognize institutions/organizations/universities offering Certificate, Diploma, undergraduate and postgraduate degrees in the field of rehabilitation of persons with disabilities.
- To promote research in rehabilitation and special education.
- To maintain Central Rehabilitation Register for registration of professionals.

Sixteen categories of professionals and para-professionals are covered under the RCI Act. The Council has so far developed and standardized 85 different courses, which are offered by 203 academic institutions. The Council has accorded importance to both pre-service and in-service training, as inclusion of disability-perspective is vital to the integration of persons with disabilities in all facets of community life. In the Central Rehabilitation Register, about 21,000 professionals have been registered so far. The Manpower Development Report prepared by the RCI estimated that in the 9th plan period 3,63,000 trained persons would be needed. But the total output has not exceeded above 25,000. To accelerate the human resource development the distance education mode is now being explored.

THE NATIONAL TRUST ACT

The National Trust for Welfare of Persons with Autism,

Cerebral Palsy, Mental Retardation and Multiple Disabilities Act was passed in 1999 and became operational in 2001. This Act provides for the constitution of a national body for the welfare of persons covered under this Act.

The main objectives of the Act are:

- To enable and empower persons with disability to live as independently and as fully as possible within and as close to the community to which they belong.
- To strengthen facilities to provide support to PWDs to live within their own families.
- To extend support to registered organizations to provide need based services during the period of crisis in the family of PWDs.
- To deal with problems of PWDs who do not have a family support.
- To promote measures for the care and protection of PWDs in the event of death of their parent or guardian.
- To evolve procedures for the appointment of guardians and trustees for PWDs requiring such protection.

The Act mandates the creation of Local Level Committees comprising District Magistrate or the District Commissioner along with one representative from a registered organization and one person with disability. The Local Level Committee is vested with the authority to decide upon the applications of legal guardianship received from parents, relatives or registered organizations duly authorized by the natural guardians of persons. The Committee is required to maintain inventory and annual accounts of the property and assets, claims and liabilities submitted by the legal guardians to it. The Local Level Committee can remove a guardian so appointed for negligence or for misappropriating the property of the person with disability.

Activities	**Number**	**States**	**Union Territories**
Formal awareness programmes	100	24	4
Local level committees formed	347	25	4
Organizations registered	277	25	1
State level master trainers trained	43	25	
District level master trainers trained		11	

DISABILITIES ACT, 1995

To give effect to India's commitment to the Proclamation on the Full Participation and Equality of Opportunity for the Persons with Disabilities 1993, in the Asian and Pacific Region the Parliament of India, enacted a very comprehensive piece of legislation known as"The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995". The Act spells out the responsibilities of the various organs of the State and provides policy guidelines in the area of education, employment, manpower development, housing, social security, research and training.

It aims to promote creation of barrier free environment for persons with disabilities. The Act also lays down specific provisions for the development of specific services and programmes for equalizing the opportunity for the enjoyment of right to education, work, housing, mobility, communication and public assistance in case of severe disability and unemployment. For the translation of intended aims Central Coordination Committee and State Coordination Committees have been envisaged in a multi-sectoral mode with representation to persons with disabilities, Members of Parliament, professional bodies and eminent citizens. To counteract problems of discrimination, prejudice, neglect and non-compliance to mandated responsibilities the institution of Chief Commissioner in the Center and Commissioner for persons with disabilities in the States have been provided. These quasi-judicial bodies are vested with the powers of a civil Court. This mechanism has been quite effective in redressing individual grievances on account of deprivation of rights, facilities and guarantees.

The wide-ranging provisions of this Act are compiled under 14 different stages. The stage on Prevention and Early Detection of Disabilities, Education, Employment, Affirmative Action, Non-Discrimination, Research and Manpower Development, Institution for Persons with Severe Disabilities contain substantial provisions of the Act. Despite having a sound legal framework and a plethora of programmes, schemes, rules, regulations etc., corresponding improvements

in the circumstances of persons with disabilities are not visible. The rate of illiteracy, unemployment and poverty among persons with disabilities is alarming. The transport, buildings and information systems are designed on same old standards though the law demands creation of barrier-free facilities. The State governments, local authorities and panchayats have taken little care in fulfilling their obligations under various laws so much so that funds committed by the Central Government thorough a number of schemes have remained grossly underutilized. The recruitment rules and service regulations still have discriminatory provisions.

Some improvements could be achieved with Court interventions. Fifty Five per cent of the complaint cases before the Chief Commissioner for PWDs pertain to service matters. Similarly, the barriers to education are deep rooted. Many institutions, despite mandatory provision of 3% reservation of seats in educational institutions, have denied admission to students on grounds of their disability. Hon'ble Supreme Court of India in the Rekha Tyagi versus All India Institute of Medical Sciences and Ors has given a clear verdict to the academic institutions to provide 3% reservation to students with disabilities as per Section 39 of the Disabilities Act, 1995.

ENDEMIC AREAS AND IMPORTANT STATISTICS

POVERTY AND MALNOURISHMENT

In general, people with disabilities are estimated to make up 15 to 20 per cent of the poor in developing countries. Poor families often do not have sufficient income to meet their basic needs. Inadequate shelter, unhygienic living conditions, lack of sanitation and clean drinking water combined with poor access to health facilities breed disability. It is estimated that currently 515 million Asians are chronically undernourished, accounting for about two thirds of the world's hungry people.

Common micronutrient deficiencies that affect disability include:

- Vitamin A deficiency-blindness
- Vitamin B complex deficiency-beri-beri (inflammation or degeneration of the nerves, digestive system and

heart), pellagra (central nervous system and gastro-intestinal disorders, skin inflammation) and anaemia

- Vitamin D deficiency-rickets (soft and deformed bones)
- Iodine deficiency-slow growth, learning difficulties, intellectual disabilities, goitre
- Iron deficiency-anaemia, which impedes learning and activity, and is a cause of maternal mortality
- Calcium deficiency-osteoporosis (fragile bones) (All Caps), 2002b)

Due to the lack of food and nutrition security for the poor, about 30 per cent of all infants born in India are born weighing less than 2,500 grams, which is the WHO cut-off level to determine low birth weight with a lower chance of survival and high risk of disability.

CRIME AND DISABILITIES

Violent crimes underline shortcomings in the social, political and economic arrangements. Such crimes not only leave people with a sense of insecurity and fear but also deprive them of their life and liberty. During 1999, the percentage share of the violent crimes reported in India was 13.5 per cent of the total 2,38,081 reported cases under IPC (Crime in India 1999). Many children and women are abducted to be used in prostitution, slavery and beggary. The risk of emotional, mental and physical disabilities increase manifold. In the mid nineties, the government of Saudi Arabia repatriated more than 500 maimed Indian children who were used for begging. The case of female domestic workers with amputed fingertips, nose and earlobes also surfaced during the same time. They too were smuggled into Arab countries by powerful mafia gangs operating in various parts of India, Philippines and other developing countries.

There are hardly any studies that have analysed the nexus between disability and crime, though at every nook and corner one can't escape the sight of maimed, blinded and mentally ill persons begging and wandering. Unfortunately, even the law enforcement agencies themselves commit acts of torture and

inhuman treatment particularly to persons in detention. Custodial crimes, which include death, rape and disability, have drawn attention of public, media, legislature and human rights organizations. Bhagalpur blinding case is the illustration of this menace.

ACCIDENTS AND DISABILITY

As per the Central Bureau of Health Intelligence Report of 1997-98, the number of deaths due to road accidents was 69,800 and railroad accident deaths were approximately 15,000. An expert in the field, Dr Leslie G Norman of London, estimates that for every road accident death there are 30-40 light injuries and 10-15 serious injuries, which may lead to disability. Improvements in vehicle design and medical facilities, as well as stronger enforcement of traffic regulations concerning the compulsory use of seat belts (car use) and helmets (motorcycle use), and restrictions on alcohol consumption and other intoxicants need to be treated more seriously than it has been."It is estimated that by 2020, road traffic accidents will be ranked as the third leading cause of disability in the Asian and the Pacific region. Quadriplegia, paraplegia, brain damage and behavioral disorders are some disabilities common among survivors of such accidents.

OCCUPATIONAL HAZARDS AND DISABILITY

To maximize profits, production is often located wherever costs are lowest, regulations are loose and workers least likely to organize for better working conditions and fairer wages. This often results in high rates of accidents, poisoning from toxins, loss of hearing and vision, and health deterioration. Occupation-related health problems of workers employed in stone quarrying, leather industry, glasswork, weaving, diamond cutting, hand embroidery, etc. children employed in the carpet, cracker and match industry, have not received appropriate and sustained attention, as occupational health has not been perceived important enough both by the corporates and those responsible to regulate work standards. Even in the western countries, permanent disablement as a result of

industrial and highway accidents outnumbers war causalities, for example, 44,000 people lost their limbs in industrial accidents, while 17,000 American soldiers became disabled in the Vietnam war. Similarly, poor farmers and peasants are very vulnerable to disability as they work for long hours exposed to sunlight, dust and smoke. Wheat harvesting and amputations, paddy sowing and muscular diseases, coconut picking and spinal cord injuries are some common hazards associated with agricultural activities. The efforts to improve the design of agricultural implements have been quite successful in preventing disabilities. However, parallel improvements in the primary health system have not been achieved, as it lacks the capacity to deal with agricultural accidents which occur at the village level.

EMPLOYMENT OF THE DISABLED

Creation of opportunities for gainful employment is a task which governments all over the world perform. The development index is indicative of the employment in a given country. What makes a developed country different from a developing nation is its capacity to create and maintain unemployment as low as possible and on the other hand, sustain a level of growth which takes care of the employment needs of young adults. As per the 1991 National Sample Survey, there were over 70 lakh persons with disabilities in India in the employable age group.

The disabilitywise break-up is as follows:

Type of disability	Number of persons (in lakhs)
Locomotor disability	43.87
Visual disability	10.54
Hearing disability	12.48
Speech disability	10.47
Any other physical disability	68.81
Total	**146.17**

The employment scenario regarding PWDs presents a rather discouraging picture. Underemployment and unemployment continues to be rampant among the disabled, despite efforts made to improve employment opportunities

for PWDs by the Government of India, State Governments and UT administrations. As per the sample survey, conducted by NSSO in 1991, the rate of employment among the PWDs in rural areas was 29.1% and in the urban areas 25.2%. The table below gives classified information:

Sr. No.	Status	Rural	Urban	Total
1	Self-Empt. Agriculture	1.65	0.07	1.72
2	Self-Empt. Non-Agricultural	0.52	0.37	0.89
3	Regular Employee	0.25	0.28	0.53
4	Casual Labour	1.18	0.20	1.38
	Total	**3.60**	**0.92**	**4.52**

EDUCATION

The first school for hearing impaired children was established at Mumbai in 1884, and for the blind at Amritsar in 1887. Between then and now we have not been able to create an educational infrastructure that can cater to the needs of children with disabilities. As a result, more than 80% of them remain deprived of educational opportunities, even lacking basic literacy skills. Of the children dropped out in 1991 43% are reported to have acquired disability. This highlights the inadequacies of the education system. The NSSO 1991 yielded 42 per cent are rate of education covering blind, hearing, speech and locomotor impaired persons. If 3 per cent population of mentally retarded and mentally ill persons is added to 1.9 per cent of other four disabilities, the coverage of 42 per cent comes down to approximately 20 per cent, in fact, even less.

TYPES OF VIOLATIONS

The nature of violations to the rights of persons with disabilities is also reflected in the annual reports of Chief Commissioner for Persons with Disabilities. Subject-wise complaints in the year 2000-2001 was as follows:

Sr. No.	Subject	Percentage
1	Employment	52
2	Education	14
3	Concession/Entitlement	9

4	Harassment	8
5	Housing and Property	4
6	Barrier-Free Environment	2
7	Miscellaneous	12

Coordination:

- The District Magistrates coordinate various development programmes in the district. Therefore, they can ensure that people with disabilities benefit from all the developmental schemes particularly those aimed at women, children, elderly persons, unemployed and socially disadvantaged sections.
- Better coordination among authorities in health, education, rural development, urban development, transport, traffic is vital to the translation of laws and policies and schemes for the disabled into reality.
- All the district committees, programme heads and officers in charge of schemes meant for persons with disabilities can form a District Coordination Committee. The District Magistrates can chair meetings of such a Coordination Committee and review its performance in a most effective and least time-consuming manner.

Affirmative Action:

- The competent authorities in urban development, rural development, revenue deptt. etc. may be advised to ensure that people with disabilities are given preference in the allotment of houses, shops, kiosks and agriculture and industrial land pattas including houses under Indira Awas Yojana and likewise as per Section 40 and 43 of the Disabilities Act, 1995.
- Scholarships to students with disabilities, pensions to the elderly disabled persons and unemployment allowance to those disabled whose names are registered for more than two years in the employment exchange must be given and any hurdles causing delay should be reduced by eliciting monthly progress report from the concerned authorities as per Section 30(d) and 68 of Disabilities Act, 1995.

Certificates:

- The District Chief Medical Officer and District Hospital should be advised to constitute a Medical Board which should meet on one fixed day atleast twice a month for looking after the need for the Disability Certificate as per rule 4, 5, and 6 of the Implementing Rules under Disabilities Act, 1995.
- Through a quarterly camp-approach at the block level, Disability Certificate, Income Certificate, Caste and Domicile Certificate, Free Bus Pass, Railway Concession Forms can be distributed to PWDs. Pension, scholarship and unemployment allowance can be disbursed in these camps to ensure efficiency, transparency and to check delay and malpractice.

Block level activities:

- Ensure that 3% of JGSY works are allocated for the disabled in your block as per the Government of India directions and in accordance with Section 40 of the Disabilities Act, 1995.
- The BDOs can also ensure that each disabled person is given a house under Indira Awas Yojana.
- Credit assistance can be given for economic upliftment to a large number of disabled people under SGSY (Swarna Jayanthi Gram Swaraj Yojana) Scheme as 3% budget is earmarked for PWDs in this scheme.
- The panchayats can be encouraged to facilitate creation of barrierfree school, post office, health center, rail and bus stand, panchayat building and religious shrines from the Swaran Jayanti funds.

Education:

- All the heads of the educational institutions at school, college, university, technical and professional level should be advised not to refuse admission on grounds of disability as per Section 26 of the Disabilities Act, 1995.
- All educational institutions, government and government aided, should reserve 3% seats for students with disabilities as per section 39 of the Disabilities Act, 1995.

- All written tests, exams and interview procedures must be modified to ensure that persons with disabilities can participate without any discrimination and in accordance with the provisions referred to under the stage of Education in the Disabilities Act, 1995.
- The NGOs and district education authorities engaged in integrated education of disabled children must be helped in accessing funds under the scheme of Integrated Education of the Disabled Children (IEDC, Government of India, thorough the Ministry of HRD). Similarly, the schools covered under DPEP must be monitored closely to see the performance of disabled children and the teachers in these schools.
- Orientation and sensitization programmes should be introduced for the teachers, co-curricular staff and administrators of the regular school system, so that integration of the disabled children can be achieved more effectively. The Rehabilitation Council of India can provide assistance in this regard.
- The school authorities and medical authorities should coordinate the school health check-up programme to identify disabilities and for their prevention and treatment as per Section 25©.
- The District Social Welfare Officers should be encouraged to bring all the disabled children to the Balwadis and Anganwadis for early integration. Sensitization of the Balwadis and Anganwadis workers can be looked after by NIPSID.

Accessibility:

- All the educational institutions and health institutions can be advised to provide ramps, barrier-free toilets and other facilities as per Section 45 and 46 of the Disabilities Act, 1995.
- The Municipal Corporation and competent authorities should be advised to adopt model-building byelaws developed by the Ministry of Urban Affairs, Government of India. All the new buildings, private

and for public use, thus, would be built on accessible norms as prescribed in Section 45 and 46 of the Disabilities Act, 1995.

- All the renovation activities and commissioning of new buses and other means of transport should be approved only if they comply with accessible standards laid down in Section 44, 45 and 46 of the Disabilities Act, 1995.
- The Municipal Commissioners can ensure that all the shops, commercial establishments, cinema theatres, bus stops etc. are provided with facilities like ramps, hand railings, barrier free toilets and accessible drinking water facility for the disabled people.

Employment:

- For starting a business enterprise like provision stores, tea shops, vegetable and fruit stalls, STD booth etc. the SC/ST unemployed disabled people can be covered under the schemes for SC/ST.
- Under PMRY (Prime Minister's Rozgar Yojana) Scheme a number of disabled youth can be helped to set up STD booths, Xerox centres, computer internet browsing centres etc.
- You can ensure that the Government local bodies and Government undertakings furnish information to employment exchanges about vacancies reserved for disabled people. This would ensure proper utilization of 3% quota in jobs for the disabled as per Section 33 of the Disabilities Act, 1995. Government, public sector undertakings and all the institutions receiving aid from any government is obliged to appoint disabled persons on 3% posts in all the categories as per Section 33 and 2(k) of the Disabilities Act, 1995.
- All the State Governments and the Government of India have compiled a list of identified jobs in various services and sectors for different categories of the disabled. This list is in pursuance of Section 32 of the Disabilities Act and thus can be used by the district authorities and all those requiring to employ PWDs.

- All the appointing authorities in the Government and governmentaided sectors must not dispense any employee from service, reduce in rank, deny promotion to an employee on merely grounds of disability. Instructions to this effect must be issued as per Section 47 of the Disabilities Act, 1995.

Women with disabilities:

- You can ensure that all the disabled women are made members in the local self-help group of women (SHG) under the women development programme of the Government, so that they can become recipients of the Government assistance under the revolving fund and the economic activity assistance under SGSY.

The Nilgiri District in Tamil Nadu and Anantpur in Andhra Pradesh are examples of good practice and District Magistrates can always rely upon these model disability-friendly districts.

RIGHTS FOR SENIOR CITIZENS OF INDIA

We have started living in the age of ageing, but it is only the dawn of that Age. From 12 million in 1901, we rose to be 20 million in 1951, and there are now nearly 77 million older persons in India today. This figure is projected to be 177 million in 2025, about 11% of these are above 80 years. By 2025, we would have 25% of these who would be above 80 years. The population statistics do not mean anything useful unless we sufficiently consider what these numbers add up to.

About 90% of older persons today are from the unorganized sector, that just means that at the age of 60, they have no regular source of income, no worthwhile form of social security, *i.e.* no provident fund, no gratuity, no medical insurance, after formally or informally retiring from active earning. About 80% of the older persons live in rural areas and have limited access to health care and other services. Ageing has important implications, both at the macro and micro levels.

While at the micro level, it affects individuals and their families, at the macro level it affects the entire nation. With

about 33% of the elderly living just below the poverty line, and another 33% just above it, but belonging to the lower income group, the financial situation of about 66% of the older persons today is fragile. This relates to serious livelihood insecurities caused by factors including growing incidence of prolonged old age ailments, disabilities, dysfunctions, lack of opportunities in gainful activities and little or no familial support. Old age poverty in India would be a permanent feature, if today we don't cope with it by setting aside substantial resources and ensure that public health and social services are up to the task. Situation of Older Women is an area of serious concern. While 48.2% of the older persons today are women, this proportion is likely to rise further and, in a few years, we would have a feminine India. This feminization of ageing has further consequences.

The older woman in India faces a triple jeopardy-being a woman in a largely patriarchal society, economically dependent and aged. And to add to that, if she is a widow, which is the case with 55% of elderly women today, the world may not be a pleasant place to live.

This is a situation very few perceived decades ago and, therefore, very little or no action was taken at various levels to correct it. We anticipate that ageing populations will drain our resources, but that cannot be a ground to throw them by the wayside for the simple reason that, when the old were young, they had made significant contribution to the family, society and the nation. Time has, therefore, come for the young to repay even a millionth part of that debt which they owe to the old.

Family plays a major role in looking after the elderly. Family is viewed as one of the most unique entities; it holds together dynamic relationships of members of different ages and generations. The concept of respecting the elders was ingrained in children during their younger years of upbringing. However, the influence of demographic changes on the family is very evident today.

With the shift of household platform from extended families to nuclear families, there is an increased demand on

family resources, making it necessary for individual family members to have more than one job. This reduces the time family members spend together. With the migration of working members in search of employment, the older persons are left behind-alone too. This just means that they have to look after themselves. So, the welfare of older persons is gradually shifting for family to community and government.

LEGAL PROVISIONS

CODE OF CRIMINAL PROCEDURE, 1973

Section 125(1) (2) makes it incumbent for a person having sufficient means to maintain his father or mother who is unable to maintain himself or herself and, on getting proof of neglect or refusal, may be ordered by a first class magistrate to make a monthly allowance not exceeding ` 500/-. It is applicable to all, irrespective of their religious faith and religious persuasion, and includes adoptive parents. This section has been interpreted by the Supreme Court in its ruling, so as to make daughters and sons, married or unmarried, equally responsible to maintain their parents.

HINDU ADOPTION AND MAINTENANCE ACT, 1956

By Section 20(1) of the act, every Hindu son or daughter is under obligation to maintain aged and infirm parent. Amount is determined by the Court taking into consideration the position and status of the parties.

LEGISLATION BY THE HIMACHAL PRADESH GOVERNMENT

The Himachal Pradesh Mata-Pitah aur Arthrik Pariposhan Vidhayak 1996 passed by Himachal Pradesh Vidhan Sabha makes it mandatory for children to look after their aged parents and other dependents or pay a maintenance allowance. The amount of maintenance is to be commensurate with the family's status. The status of Government through this legislation has tried to bypass the Courts. Complainants can simply go to a Sub-Divisional Magistrate or any other appellate

authority to seek redress of their grievances. The Government of Maharashtra has passed a Bill on similar lines.

INCOME TAX REBATE (SECTION 88B OF FINANCE ACT, 1992)

This provides for rebate in Income Tax to senior citizens. The rebate is available in the case of a resident individual (s/he may be an ordinary resident or a non-ordinary resident; he may be an Indian citizen or a foreign citizen) who has attained the age of 65 years at any time during the relevant previous year.

From the assessment year 2001-2002, tax rebate under section 88B shall be:

- The amount of income-tax before giving any rebate under sections 88, 88B and 89(a).
- Additional tax rebate of 100% of tax on total income subject to a maximum limit of ` 15,000 (men and women) under section 88B.
- Tax rebate of 15% is given under section 88 for income between ` 1.5 lakhs to ` 5 lakhs.
- Ceiling on savings for tax rebate is now raised from ` 80,000/- to ` 1,00,000/-.
- Investment of up to ` 2 lakhs in the Relief Bonds issued by RBI have been declared tax-exempt for Senior Citizens or employees retiring under VRS.

INCOME TAX REBATE (SECTION 88C)

This provision relates to the additional rebate of ` 5000/- to women taxpayers.

- Senior Citizens are excluded from"One by Six" scheme for filling income tax return under proviso to section 139(1), if they own immovable property exceeding a specified floor area, whether by way of ownership, tenancy or otherwise (clause 1) or are a subscriber to a telephone (clause 3). The conditions specified in both the clauses above do not apply to any senior citizen who has attained 65 years of age but is not engaged in any business or profession during the previous year.