



## CRIMINAL JUSTICE ADMINISTRATION AND HUMAN RIGHTS INTERNATIONAL AND NATIONAL PERSPECTIVE

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Today, however, human rights provide a standard of moral legitimacy that has been incorporated into the rules of the international society of states. But human rights concerns have been only incompletely incorporated into the contemporary international relations and usually remained subordinated to considerations of power and sovereignty. This tension is characteristic of the current state of international human rights. The future of international human rights activity can be seen as a struggle over balancing the competing claims of sovereignty and international human rights and the competing conceptions of legitimacy that they imply.<sup>2</sup> There are three models regarding the State position vis-à-vis of human rights in International relations, each with its own conception of the international community and its role in international human rights.

- ❖ Statist Model insists that the human rights remain principally a matter of sovereign national jurisdiction and of a largely peripheral concern in international or interstate relations. For this model there is no significant, independent international community. In particular, there is no international body with the right to act on behalf of human rights.
- ❖ Cosmopolitan Model starts with the individuals rather than the states, which are often “the problem” for cosmopolitans. Cosmopolitans focus on challenges to the state and its powers both from below, by individuals and NGOs, and from above, by a truly global community, not merely international organizations and other groupings of states. They often see international organizations, and even some transnational NGOs, as representatives of global community of humankind above the society of states. International action on behalf of human rights is relatively unproblematic in such a model.
- ❖ Internationalist Model stresses upon the evolving a consensus, among states and non-state actors alike, on international human rights norms. Without denying the continued centrality of states, internationalists focus attention on the international society of states, which imposes only limited restrictions on states. The “international community,” in an internationalist model, is essentially the society of states, supplemented by NGOs and individuals. International human rights activity is permissible only to the extent authorized by the formal or informal norms of the international society of states.<sup>3</sup>

Each model can be viewed as resting on descriptive claims about the place that human rights do have in contemporary international relations or prescriptive claims about the place they ought to have. Statist might argue (descriptively) that human rights are in fact peripheral in international relations. The cosmopolitan model, however, revolves around the issue of human rights.

### INTERNATIONAL PERSPECTIVE:-

With the emergence of new era of international relations, the concept of International Law emerged to regulate international relations. After the two world wars, the UN concern for Human Rights has also become a major issue of International agenda. This evoked response for International law and the concept of “International Human Rights Law” has also developed. The most fundamental point about International Human Rights Law is that it establishes a set of rules for all the people of all the states. It derives from the varieties of sources which are as follows:-

- ❖ International Treaties relating to Human Rights which are legally binding to those states which are party to them. The most important among them is UN Charter itself. There are regional treaties on Human Rights such as European Convention of Human Rights, American Convention on Human Rights & African Charter on Human and People’s Rights.
- ❖ International Customs: Certain International Human Rights have acquired the status of customary International Law by their widespread practice by states and they are, therefore, binding on all the states, whether they have expressed consent or

not. The 1987 Restatement (Third) of the Foreign Relations Law of the United States takes the position that Customary International Law protects at least certain basic Human Rights. Section 702 of the Restatement provides, “ A State violates International Law if, as a matter of state policy, it practices, encourages, or condones (a) genocides (b) slavery or slave trade (c) the murder or causing the disappearance of individuals (d) torture or other cruel, inhuman or degrading treatment or punishment (e) prolonged arbitrary detention (f) systematic racial discrimination or (g) a consistent pattern of gross violation of International recognized Human Rights.”<sup>8</sup>

❖ Other International Instruments like International declarations, resolutions and recommendations relating to Human Rights have been adopted under the auspices of UN which have established the broadly recognized standards in connection with the human rights issues, despite the fact that they are not legally binding on the states e.g. UNDHR (1948) Declaration of the Tehran Conference (1968) and Vienna Conference (1993). **Judicial Decisions:** Decisions of the various judicial bodies like International Court of Justice, European Court of Human Rights, Inter-American Court of Human Rights, are relevant in the determination of rules on the issues of Human Rights. In addition to the judicial decisions, the opinions of the arbitral bodies function is to mediate on the complaints on Human Rights violations, under the various treaties which also assist in the determination of these rights, relevant to International Human Rights. Official Documentations: Official Documents of UN and its subsidiary bodies have produced a vast amount of documentation relating to human rights matter. Human Rights Law Journal, Human Rights Review and European Law Review are of considerable value in this regard. The development of the concept of International Human Rights Law was gradual and coupled with the debate on Human Rights, it has acted as a check on State Sovereignty. The Covenant of the League of Nations was silent on the issue of Human Rights with respect to the provisions of International Law. The Institute of International Law in 1929 issued a proclamation of the Rights of the man against the state. However, instead of enumerations the rights of human beings, it laid down the duties of the states towards human beings and to protect their rights.<sup>9</sup> The turning point for the traditional approach in International Law came in 1940's in the midst of the extreme human rights abuses in war-torn Europe. It was realised that the restoration of the freedoms and rights to the people is one of the essential conditions for the establishment of International peace and security. President Roosevelt's proclamation of 1941 which came to be known as 'Four Freedoms', namely, freedom of speech, religion, freedom from want and fear, declared, “Freedom means the supremacy of human rights everywhere. Our support goes to those who struggle to gain these rights or keep them”.<sup>10</sup> The “Atlantic Charter” signed by Roosevelt and Churchill cherished the hope for a peace which will afford assurance that all the men in all the lands may live out their lives in freedom from fear and war.<sup>11</sup> The Declaration of UN signed on 01 January, 1942 was the first document which used the term “Human Rights” as it recognized the need “to preserve human rights and justice in our land as well as in other lands.”<sup>12</sup> Therefore, it confirmed the principle of the protection of Human Rights in all the countries. Later the Allied powers established the ‘Nuremberg Trial’<sup>13</sup> which tried the persons involved in the violation of Human Rights during the World War-II. The UN has protected and promoted the Human Rights in a number of ways which are as follows:-

❖ Human Rights Consciousness: UN has made the people and states conscious about the issue of Human Rights by various steps like declarations and other propaganda means.

❖ Codification of Human Rights by making treaties for all sections of the people such as women, children, migrants, workers, refugees and stateless persons.

❖ Monitoring of Human Rights: Procedure and mechanism of monitoring the Human Rights situation through various treaty bodies, special rapporteurs and working groups. These mechanisms are of two types, conventional and non-conventional. Conventional mechanism includes bodies like a Human Rights Committee, Committee on Economic, Social and Cultural Rights, Committee on Elimination of Discrimination Against Women, Committee Against Torture, Committee on Rights of Child, Committee on Racial discrimination etc. Non or extra Conventional Mechanism includes experts entrusted with special Human Rights mandates act in their personal capacity and are designated as special rapporteurs, it also includes non governmental agencies and similar bodies. Procedures for individual complaints: Number of Human Rights treaties permit individuals to make petitions before the appropriate International Bodies regarding violation of their rights. Numerous complaints are also submitted by NGOs. The Economic and Social Council in 1970 adopted resolution 1503 entitled “Procedure for Dealing with Communication Relating to Violations of Human Rights and Fundamental Freedoms”.<sup>14</sup> A communication or complaint (by individual or NGO) can be sent to the office of UN High Commissioner for Human Rights in Geneva. The Commission has focused mainly on Civil and Political Rights. These individual petitions help to provide some checks on Governmental violations of Human Rights as they provide a source of Information to International Organisations.

### **Compilation of Information on Violation of Human Rights:-**

❖ Examination of Human Rights situations. The Secretary General can intervene or send an expert to examine a Human Rights situation in any state with a view to prevent flagrant violations.

❖ Coordination of Human Rights activities - The post of High Commissioner for Human Rights was created in 1993 for strengthening the co-ordination and impact of UN Human Rights Activities.

❖ Providing Advisory Service to Governments seeking to improve Human Rights performance by assisting in drafting Constitution, to improve electoral laws, establish Human Rights Institutions, preparing new Criminal codes or overhauling the

Judiciary. However, in the International arrangements regarding Human Rights on Criminal Justice Administration, the UN has its own significance as it plays a central and vanguard role in this regard.

### **UNITED NATIONS CRIMINAL JUSTICE ADMINISTRATION**

As in the case of economic, social and cultural rights, a large number of United Nations organs are engaged in the activities aimed at ensuring the realization of civil and political rights under the general obligations undertaken by all Member States in accordance with the Charter. These include the General Assembly, the Economic and Social Council, the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Commission on the Status of Women. In addition, the Human Rights committee has now, for more than a decade, monitored the realization of the rights set out in the International Covenant on Civil and Political Rights, whereas the Committee against Torture was established to monitor the realization of the provisions of the Convention. Several specialized agencies also play a part in ensuring the realization of civil and political rights, including the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization, the Food and Agriculture Organization of the United Nations and the World Health Organization.

### **UNITED NATIONS AND HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE**

For a number of years, the United Nations organs have dealt with various aspects of human rights in the administration of justice. Having incorporated the principle of equality in the administration of justice in the Universal Declaration of Human Rights and many other international instruments, these organs studied and formulated the norms to be applied with a view to eliminating all forms of discriminations, and also developed strategies for the practical implementation of those norms, and in recent years, has even focused on the issues of the independence and impartiality of the judiciary.

### **PROVISIONS OF UNITED NATIONS INSTRUMENTS:**

- ❖ *Article 3, 5, 9, 10 and 11 of the Universal Declaration of Human Rights read as follows:*
- ❖ *Article 3: Everyone has the right to life, liberty and security of person.*
- ❖ *Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*
- ❖ *Article 9: No one shall be subjected to arbitrary arrest, detention or exile.*
- ❖ *Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.*
- ❖ *Article 11: Every one charged with a penal offence has the right to be presumed innocent until proved guilty, according to law, in a public trial at which he has had all the guarantees necessary for his defense. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.*
- ❖ *Article 6, 14 and 15 of the International Covenant on Civil and Political Rights<sup>15</sup> read as follows:*

**Article 6: 1.** Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. **2.** In countries which have not abolished the death penalty, the sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court. **3.** When deprivation of life constitutes the crime of genocide, it is understood that nothing in this Article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide. **4.** Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases. **5.** Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women. **6.** Nothing in this Article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

### **Article 14:**

- ❖ All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The media and the public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except

where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

- ❖ Everyone charged with a criminal offence shall have the rights to be presumed innocent until proved guilty according to law.
- ❖ In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
  - ❖ To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
  - ❖ To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
  - ❖ To be tried without undue delay;
  - ❖ To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
  - ❖ To examine, or have examined, the witness against him and to obtain the attendance and examination of witness on his behalf under the same conditions as witness against him;
  - ❖ To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
  - ❖ Not to be compelled to testify against himself or to confess guilt.
  - ❖ In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
  - ❖ Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
  - ❖ When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
  - ❖ No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

**Article 15:**

- ❖ No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.
- ❖ Nothing in this Article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

**Article 7 of the Declaration on the Elimination of All Forms of Racial Discrimination reads as follows:**

- ❖ Everyone has the right to equality before the law and to equal justice under the law. Everyone, without distinction as to race, colour or ethnic origin, has the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution.
- ❖ Everyone shall have the right to an effective remedy and protection against any discrimination he may suffer on the ground of race, colour or ethnic origin with respect to his fundamental rights and freedoms through independent national tribunals competent to deal with such matters.<sup>16</sup>Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination reads as follows: In compliance with the fundamental obligations laid down in Article 2 of this Convention, before the law, notably in the enjoyment of the following rights: right to equal treatment before the tribunals and all other organs administering justice.

**Article 16 of the Convention relating to the Status of Refugees entitled "Access to courts", reads as follows:**

- ❖ A refugee shall have free access to the courts of law on the territory of all Contracting States.
- ❖ A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from *cautio judicatum solvi*.
- ❖ A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.<sup>17</sup>

**The corresponding Article 16 of the Convention relating to the Status of Stateless Persons provides that:**

- ❖ A stateless person shall have free access to the courts of law on the territory of all Contracting States.
- ❖ A stateless person shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from *cautio judicatum solvi*.
- ❖ A stateless person shall be accorded, in the matters referred to in paragraph 2, in countries other than that in which he has his habitual residence, the treatment granted to a national of the country of his habitual residence.<sup>18</sup>Article 15 of the

Convention on the elimination of all forms of discrimination against women reads as follows:

- ❖ States Parties shall accord to women equality with men before the law.
- ❖ States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity, In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally at all stages of procedure in courts and tribunals.
- ❖ States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
- ❖ States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.<sup>19</sup>

**Article 11** of the Convention on the Prevention and Punishment of the Crime of Genocide, approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948, defines genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- ❖ Killing members of the group;
- ❖ Causing serious bodily or mental harm to members of the group;
- ❖ Deliberately inflicting on the group, conditions of life, calculated to bring about its physical destruction, in whole or in part;
- ❖ Imposing measures intended to prevent births within the group;
- ❖ Forcibly transferring children of the group to another group.<sup>20</sup>

**Article 2** of the International Convention on the Suppression and Punishment of the Crime and of Apartheid, adopted and opened for signature and ratification by General Assembly resolution of 30 November 1973, defines the term “the crime of apartheid” as applying “to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group or persons over any other racial group or persons and systematically oppressing them:

- ❖ Denial to a member or members of a racial group or groups of the right to life and liberty of person:
- ❖ By murder of members of a racial group;
- ❖ By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;
- ❖ By arbitrary arrest and illegal imprisonment of the members of a racial group or groups;
- ❖ Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part.<sup>21</sup>

**Article 6** the International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution of 16 December 1966, reads as follows:

- ❖ Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
- ❖ In countries which have not abolished the death penalty, the sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.
- ❖ When deprivation of life constitutes the crime of genocide, it is understood that nothing in this Article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
- ❖ Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
- ❖ Nothing in this Article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.<sup>22</sup>

#### **b) Measures taken by United Nations bodies**

❖ Capital punishment The question of capital punishment, with which *Article 6* of the International Covenant on Civil and Political Rights is largely concerned and has been considered in United Nations bodies since 1959. Although some slight movement towards the eventual world-wide abolition of the death penalty has been recorded from time to time, it is not at all certain that there is a uniform progression in this direction. In 1968 through Resolution number 2393 (XXIII), the General Assembly invited attention of the Governments of the member states:

❖ **To ensure the most careful legal procedures and the greatest possible safeguards for the accused, in capital punishment cases, in countries where the death penalty obtains, inter alia, by providing that:**

A person condemned to death shall not be deprived of the right to appeal to a higher judicial authority or, as the case may

be, to petition for pardon or reprieve; A death sentence shall not be carried out until the procedures of appeal or, as the case may be, of petition for pardon or reprieve have been terminated; Special attention be given in the case of indigent persons by the provision of adequate legal assistance at all stages of the proceedings;

❖ To consider whether the careful legal procedures and safeguards referred to in sub-paragraph (a) above may be further strengthened by the fixing of a time-limit or time-limits before the expiry of which no death sentence shall be carried out, as has already been recognized in certain international conventions dealing with specific situations. In the same resolution, the General Assembly called upon Governments to supply information on their attitude towards possible further restriction of the use of the death penalty or its total abolition.<sup>23</sup>

In 1985, the Secretary-General submitted to the Economic and Social Council, a periodic report on the situation, trends and safeguards concerning capital punishment. The report indicated that:

- ❖ The laws of 29 countries did not provide for the death penalty;
- ❖ In 12 countries, the death penalty was imposed only in case of exceptional crimes;
- ❖ In two countries no one had been executed for at least 40 years;
- ❖ In nine countries, no one had been executed for at least 10 years; and
- ❖ In the remaining countries, the capital punishment had been retained.

One of the reasons, cited in the report of abolishing capital punishment by several Governments, was that such punishment could not be reconciled with observance of the fundamental right to life; in their view it was the duty of government to ensure the full protection of life by not taking it even in the name of the law. Another was that no evidence had been found to prove that capital punishment had any perceptible effect on the overall crime rate or on rates of specific types of crime.<sup>24</sup>

In 1987, a second optional Protocol to International Covenant on Civil and Political Rights has been concluded which puts additional obligations on State parties to abolish the death penalty. It came into force in 1991 and by 2003, it had 49 State parties<sup>25</sup>

### **SUMMARY OR ARBITRARY EXECUTIONS:-**

The General assembly in its resolution 36/22 of 9 November 1981, strongly deplored “the increasing number of summary executions as well as the continued incidence of arbitrary executions in different parts of the world”.<sup>26</sup> The Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders adopted a resolution condemning extra-legal executions, and thereby convinced the Commission on Human Rights and the Economic and Social Council about the need to deal with that question urgently. Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders met to consider the safeguards against such executions and establishing an implementation mechanism for the same. The safeguards are as follows:

- ❖ In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.
- ❖ Capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.
- ❖ Persons who are below 18 years of age, at the time of the commission of the crime, shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or a new mothers, or on persons who have become insane.
- ❖ Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence, leaving no room for an alternative explanation of the facts.
- ❖ Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure that a fair trial, as contained in *Article 14* of the International Covenant on Civil and Political Rights, has taken place which includes the right of anyone suspected of or charged with a crime for which capital punishment may be imposed, to adequate legal assistance at all stages of the proceedings.
- ❖ Any one sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.
- ❖ Anyone sentenced to death shall have a right to seek pardon, or commutation of sentence; and a pardon or commutation of sentence may be granted in all cases of capital punishment. Capital punishment shall not be carried out pending any appeal or other recourse/ procedure or other proceeding relating to pardon or commutation of the sentence.
- ❖ Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.

The Special Rapporteur, Mr. S. Amos Wako, submitted five reports to the Commission on Human Rights between 1983 and 1987.<sup>27</sup> In these reports some principle causes were identified responsible for such killings. The first one is the situation of armed conflict in number of territories in which largest loss of life was that of those persons which were not directly involved in such conflicts. The second major cause is indiscriminate violence known as “terrorism”, the victims of which are very often innocent civilians. The third cause of the non-respect of right to life is lack of affordability of adequate safeguards to protect the accused. Another cause is the inability of the authorities to control the group concerned and to enforce order

and respect for the right to life. In its last report in 1987 the Special Rapporteur presented a series of recommendations, as follows.

❖ That Governments: Ratify international human rights instruments, such as the International Covenant on Civil and Political Rights, including the Optional Protocol thereto, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Review national laws and regulations with a view to strengthening the preventive measures against death caused by illegal or excessive use of force by security, law enforcement or other government officials; Review the machinery for investigation of deaths under suspicious circumstances in order to secure an impartial, independent investigation on such deaths, including an adequate autopsy; Review the trial procedures of tribunals, including those of special tribunals, in order to ensure that they embody adequate safeguards to protect the rights of the accused in the trial proceedings, as stipulated in the relevant international instruments; Emphasize the importance of the right to life in the training of all law enforcement personnel and inculcate in them respect for life;

❖ That international organizations: Strengthen their co-ordination in dealing with the immediate problems and the root causes of summary or arbitrary executions, in particular by sharing information, publications, studies, expertise, etc.; Make a concerted effort to draft international standards designed to ensure proper investigations by appropriate authorities into all causes of suspicious death, including provisions for adequate autopsy. It also recommends that Government should support and encourage peace initiative and political solutions to the situations of armed conflict. It should also have appropriate and effective measures to combat terrorism.

❖ **Hostage-taking** In the International Convention against the Taking of Hostage, the General Assembly adopted resolution (34/146, 1979), establishing the taking of hostage as “an offence of grave concern to the international community” and provided that “a person committing an act of hostage-taking shall be either prosecuted or extradited”. For this it established the need for international cooperation between state.<sup>28</sup>

❖ International Terrorism In the 27<sup>th</sup> session of the General Assembly a 35 member Ad Hoc committee on International Terrorism was established in 1979. It also adopted a number of recommendations relating to practical measures of co-operation for the speedy elimination of the problem of international terrorism. The Assembly, unequivocally, condemned all acts of international terrorism which endanger or take human lives or jeopardize fundamental freedoms, and condemned the continuation of repressive and terrorist acts by colonial, racist and alien regimes in denying peoples their legitimate right to self-determination and independence and other human rights and fundamental freedoms. The Assembly has since reviewed the situation periodically on the basis of reports by the Secretary General on the implementation of the recommendations of the Ad Hoc Committee.<sup>29</sup>

❖ Protection against torture and other forms of cruel, inhuman or degrading treatment or punishment Over the years, the United Nations organs and agencies have endeavoured to ensure to everyone, adequate protection against torture and other forms of cruel, inhuman or degrading treatment or punishment. They have formulated universal standards applicable to everyone, and codes applicable to those in certain occupations, and have prepared an international declaration and an international convention on the subject all designed to make a reality of the prohibition which exists, in national and international law, of any form of treatment or punishment which violates the human rights or fundamental freedoms of its victims.

**Article 5 of the Universal Declaration of Human Rights provides that:** No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.<sup>30</sup> **Article 7** of the International Covenant on Civil and Political Rights, of 1966, reads as follows: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation. **Article 4**, paragraph 2, of that Covenant provides against any derogation from **Article 7**. **Article 10** of the same Covenant reads as follows:

❖ All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

❖ Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as un-convicted persons;

❖ Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

❖ The penitentiary system shall comprise treatment of prisoners; the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.<sup>31</sup> Paragraph 5 of the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, of 1974, reads as follows: All forms of repression and cruel and inhuman treatment of women and children, including, imprisonment, torture, shooting, mass arrests, collective punishment, destruction of dwellings and forcible eviction, committed by belligerents in the course of military operations or in occupied territories shall be considered criminal.<sup>32</sup> Apart from these provisions, UN bodies took following measures in this regard:

❖ In 1950, the corporal punishment was abolished by the General Assembly in all the Trust Territories under Trusteeship Council.<sup>33</sup>

❖ In 1957, the Economic and Social Council in its resolution 663 CI(XXIV) approved certain rules for the *treatment of prisoners*. One of these standard minimum rules is that the corporal punishment, punishment by placing in dark cell, and all cruel, in-human or degrading punishment shall be completely prohibited as punishments for disciplinary offences.<sup>34</sup> In the resolution 2076 (LXII) of 1977, the Economic and Social Council added a new rule to these Standard Minimum Rules

providing that “without prejudice to the provisions of *Article 9* of the International Covenant on Civil and Political Rights, persons arrested or imprisoned without charge, shall be accorded the same protection” as that accorded to the prisoners under arrest or awaiting trial or prisoners under sentence.<sup>35</sup>

❖ By the resolution 3452 (XXX) of 1975, the General Assembly adopted the Declaration on protection of all persons from being subjected to torture and other cruel, inhuman or degrading treatment or punishment. The Declaration contains twelve *Articles*.

❖ In *Article 1*, “torture” is defined, for the purpose of the Declaration, as meaning “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person, information or confession, punishing him for an act he has committed or its suspected of having committed, or intimidating him or other persons”. Torture, the Article states further, “does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners”. It consists of an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.

❖ *Article 2* characterizes any act of torture or other cruel, inhuman or degrading treatment or punishment as an offence to human dignity and states that it should be condemned “as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights”.

❖ *Article 3* provides that no State may permit or tolerate, torture or other cruel, inhuman or degrading treatment or punishment even in exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency.

❖ *Article 4* calls upon each State to “take effective measures to prevent torture and other cruel, inhuman or degrading treatment or punishment from being practiced within its jurisdiction”.

❖ *Article 5* proposes that the prohibition against these practices should be taken fully into account in the training of law enforcement personnel and others involved in the custody or treatment of persons deprived of their liberty.

❖ *Article 6* calls for systematic review of interrogation methods and practices.

❖ *Article 7* calls for all acts of torture, as defined in *Article 1*, to be made an offence under the criminal law of each State.

❖ *Article 8* gives the victim of torture or other cruel, inhuman or degrading treatment or punishment “the right to complain to, and to have his case impartially examined by, the competent authorities of State concerned”.

❖ *Article 9* provides that an impartial investigation should be made by the competent authorities of the State concerned when there is reasonable ground to believe that an act of torture has been committed, even if there has been no formal complaint.

❖ *Article 10* provides for criminal proceedings to be instituted against an alleged offender or offenders if an investigation establishes that an act of torture appears to have been committed, and for criminal, trial, if the allegations prove to be well – founded.

❖ *Article 11* calls for redress and compensation to be paid to the victims when it has been proved that torture has occurred.

❖ *Article 12* provides that statements “made as result of torture or other cruel, inhuman or degrading treatment or punishment may not be invoked as evidence against the person concerned or against any other person in any proceedings”.<sup>36</sup>

In resolution 32/64 of 8 December 1977, the General Assembly called upon all Member States “to reinforce their support of the Declaration on the protection of all persons from being subjected to torture and other cruel, inhuman or degrading treatment or punishment by making unilateral declarations against torture and other cruel, inhuman or degrading treatment or punishment”, along the lines of a text annexed to the resolution, and depositing it with the Secretary-General. Member States were urged to give maximum publicity to such unilateral declarations and the Secretary General was requested to inform the General Assembly, in annual reports, of such declarations. The Secretary-General subsequently submitted to the General Assembly all such reports, reproducing the unilateral declaration received.

In 1987, Committee Against Torture (CAT) was formed when the Convention entered into force. In addition to this, the Commission on Human Rights through Resolution 1985/33 appointed a special Rapporteur to examine the questions relevant to torture and to receive credible and reliable information on such question and to respond to that information. In 2002, an Optional Protocol to the Convention Against Torture has been endorsed by the Economic and Social Council to General Assembly. It is likely to be an important step towards the establishment of new international mechanism to prevent torture and other cruel, inhuman or degrading treatment or punishment.<sup>37</sup>

**Code of Conduct for Law Enforcement Officials:-** In resolution 34/169 of 17 December 1979, the General Assembly adopted a Code of Conduct for Law Enforcement Officials and transmitted it to Governments with the recommendation that favorable consideration should be given to its use within the framework of national legislation or practice as a body of principles for observance by law enforcement officials.

**Article 5 of the Code reads as follows:** No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.<sup>38</sup>

The Economic and Social Council, in resolution 1986/10 of 21 May 1986, section IX, invited Member States;

❖ To take into account and respect the Code of Conduct for Law Enforcement Officials within the framework of their national legislation and practice and to bring it to the attention of all persons concerned, particular attention, in informing the Secretary-General of the extent of the implementation and the progress made with regard to the application of the Code, to the use of force and firearms by law enforcement officials;

❖ To provide the Secretary General with copies of abstracts of laws, regulations and administrative measures concerning the application of the Code, as well as information on possible difficulties in its application.<sup>39)</sup>

**Principles of Medical Ethics:-** In resolution 31/85 of 13 December 1976, the General Assembly invited the World Health Organization to prepare a draft code on medical ethics relevant to the protection of persons subjected to any form of detention or imprisonment against torture and other cruel, inhuman or degrading treatment or punishment. The Twenty Ninth World Medical Assembly held in Tokyo in 1975 made a declaration in this regard which included following principles of medical ethics:

Principle 1 of the Principles of Medical Ethics provides that “health personnel, particularly physicians, charged with the medical care of prisoners and detainees, have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained”.

Principle 2 states that “it is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment”.

Principle 3, 4, 5 state that it is a contravention of medical ethics for health personnel, particularly physicians: To be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health; To apply their knowledge and skills in order to assist in the interrogation of prisoners and detainees in a manner that may adversely affect the physical or mental health or condition of such prisoners or detainees and which is not in accordance with the relevant international instruments; To certify, or to participate in the certification of, the fitness of prisoners or detainees for any form of treatment or punishment that may adversely affect their physical or mental health and which is not in accordance with the relevant international instruments, or to participate in any way in the infliction of any such treatment or punishment which is not in accordance with the relevant international instruments; or to participate in any procedure for restraining a prisoner or detainee unless such a procedure is determined in accordance with purely medical criteria as being necessary for the protection of the physical or mental health or the safety of the prisoner or detainee himself, of his fellow prisoners or detainees, or of his guardians, and it presents no hazard to his physical or mental health.

Principle 6 states that “there may be no derogation from the foregoing principles on any ground whatsoever, including public emergency.”<sup>40)</sup>

**Inhuman or Degrading Treatment or Punishment, and the Standard Minimum Rules for the Treatment of Prisoners:-**

Concerned about alarming number of reported cases of torture and other cruel, inhuman or degrading treatment or punishment taking place in various parts of the world, the Commission on Human Rights in resolution 1985/33 of 1985 decided to appoint for one year a special rapporteur to examine questions relevant to torture. The first report of this special rapporteur was presented in the 42<sup>nd</sup> session of the Commission in 1986 and the second report was presented in 1987. Among the suggestions and recommendations put forward were: the imposition by governments and medical associations of strict measures against all persons belonging to the medical profession who have in that capacity had a function in the practice of torture; the establishment at the national level of independent authorities empowered to receive and deal with complaints made by individuals; the strict limitation of incommunicado detention under national law; and the establishment of international and regional systems, based on periodic visits by the committee of experts, to places of detention or imprisonment, to monitor the occurrence of torture and other cruel, inhuman or degrading treatment or punishment. In resolution 33/174 of 20 December 1978, the General Assembly established the United Nations Trust Fund to receive contributions and distribute, through established channels of assistance, humanitarian, legal and financial aid to persons, whose human rights had been violated by detention or imprisonment in Chile, to those forced to leave the country and to relatives of persons in the above mentioned categories; and requested that annual reports should be submitted to the Assembly and, as appropriate, to the Commission on Human Rights, later on, the sphere of this fund was broadened.<sup>41)</sup> Since it began operations, in 1983, the Fund has received contributions from 19 governments as well as from non-governmental organizations and individuals. On 26 November 1987, representatives of the States parties to the Convention against torture and other cruel, inhuman or degrading treatment or punishment held their first meeting at Geneva and elected ten members of the Committee against Torture. The state parties are to submit their reports on the measure they have taken to give effect to their undertaking under the convention to the committee.<sup>42)</sup>

**Provisions regarding Protection against arbitrary arrest and detention:-** Article 9 of the International Declaration of Human Rights provides that: No one shall be subjected to arbitrary arrest, detention or exile.

Article 9 of the International Covenant on Civil and Political Rights reads as follows:

❖ Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one

shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

- ❖ Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
- ❖ Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and should an occasion arise, for execution of the judgment.
- ❖ Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
- ❖ Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

### **Protection of the human rights of certain categories of detainees or prisoners:-**

On several occasions, the General Assembly has adopted special measures for the protection of certain categories of detainees or prisoners, including (i) persons detained or imprisoned as a result of their struggle against violations of human rights; (ii) persons arrested or detained on account of trade union activities; and (iii) persons detained in mental institutions on account of their political beliefs or on other grounds. The assembly has recommended that all Governments guarantee to persons within their jurisdiction, the full enjoyment of the right of *amparo* i.e. enforcement of Constitutional rights, habeas corpus or such other legal remedies to the same effect as may be applicable in their legal systems. In resolution 32/121 of 1977, General Assembly requested Member States:

- ❖ To take effective measures to safeguard the human rights and fundamental freedoms of the above-mentioned persons;
- ❖ To ensure, in particular, that such persons are not subjected to torture or other cruel, inhuman or degrading treatment or punishment;
- ❖ Also to ensure that such persons, in the determination of any criminal charge against them, receive a fair hearing by a competent, independent and impartial tribunal established by law.<sup>43</sup>

The Assembly also expressed its concern about the detained trade union activists. In resolution 33/169 of 1978 the Assembly reaffirmed the importance of protecting the right to freedom of association as an essential pre-requisite for the conduct of any trade union activities, and recommended that special attention should be paid to violations of the right to freedom of association such as the arrest, detention or exile of persons who had engaged in trade union activities consistent with the principles of freedom of association. The Commission of Human Rights in its resolution 10A (XXXIII) of 1977, expressed its concern about the Protection of persons detained on grounds of mental ill- health or suffering from mental disorder.

### **Structural Arrangements in United Nations**

Apart from various provisions in the charter, declarations, conventions and treaties, UN has made structural arrangements or mechanisms to address the problems regarding Human Rights at International level. Such institutional arrangements are many but followings are significant enough to be mentioned here. The Economic and Social Council (ECOSOC), principal organ of the United Nations was most directly concerned with the question of Human Rights. The Council under *Article 68* of the UN Charter was empowered to set up commissions for the promotion of Human Rights and such other commissions as may be required for the performance of its functions. Accordingly, it appointed a commission on Human Rights which was approved by the General Assembly on February 12, 1946. Human Rights Commission formed on February 12, 1946 includes member states which select their respective representatives. Since 1990, the commission had 53 members. It meets annually in Geneva for 6 weeks beginning in March. The Commission began its working in January 1947 and under its terms of reference, it prepared recommendations and reports on following items: On international bill of rights. International declarations and conventions on civil liberties, the status of women, freedom of information and similar matters. The protection of minorities. The prevention of discrimination on grounds of race, sex, language or religions. This commission drafted the Universal Declaration of Human Rights which was adopted by General Assembly on December 10, 1948. It also prepared International Covenant on Civil and Political Rights and International Covenant on Economic Social and Cultural Rights in 1966. In 1990, the commission had turned its attention to provide advisory services and technical assistance to the needy case so that they may overcome the obstacles in securing and enjoyments of rights by all. Sub Commission on Prevention of Discrimination and Protections of Minorities was established under the authority of ECOSOC resolution 9(11) of June 21, 1946 to make studies and recommendations to the Human Rights Commission concerning the prevention and discrimination against racial, religious and linguistic minorities. This sub commission had four standing working groups 1) The working group on Communication which examines complaints of human rights violations; 2) The working group on Contemporary form of Slavery; 3) The working group on indigenous population; 4) The working group on minorities. The name of Sub Commission has been changed to Sub Commission on the promotion and protection of Human Rights by a decision of ECOSOC in 1999. Commission on the Status of Women is a functional commission of Economic and Social Council and was established in 1946. It meets once in two years in Vienna to examine women progress

to equality throughout the world. It prepares recommendations and make reports to ECOSOC on the promotion of women's right in Political, Economic, Social and Educational fields. In 1952, a Convention on Political Rights of women, prepared by this commission was adopted by General Assembly. It also helped in adopting Convention on Elimination of All Forms of Discrimination Against Women by General Assembly in 1979. Centre for Human Rights provides staff for the Human Rights Commission and its sub commissions and other committees. It is located at Geneva. It coordinates all the Human Rights activities in UN. This centre also provided assistance in drafting of national laws and preparation of national reports regarding Human Rights. The Vienna declaration and Programme of Action adopted by the World Conference on Human Rights in 1993 stressed the importance of strengthening of Human Rights. UN High Commissioner for Human Rights: On December 20, 1993, the General Assembly created the post of UN High Commissioner for Human Rights "through Resolution 1237-XLII" in order to promote and protect the effective enjoyment by all, of all civil, political, economic, social and cultural rights. The High Commissioner is appointed by the Secretary General but his name is approved by General Assembly. The basic function of the High Commissioner are:

- ❖ To promote and protect the effective enjoyment by all, of all civil, cultural, economic, political and social rights, including the right to development.
- ❖ To provide advisory services, technical and financial assistance in the field of human rights to the States that request them;
- ❖ To co-ordinate United Nations education and public information programmes in the field of Human Rights.
- ❖ To play an active role in removing the obstacles to the full realization of Human Rights and in preventing the continuation of Human Rights violations throughout the world.
- ❖ To engage in a dialogue with Governments in order to secure respect for Human Rights.
- ❖ To enhance international cooperation for the promotion and protection of Human Rights.
- ❖ To Co-ordinate human rights promotion and protection activities throughout the United Nations System;
- ❖ To rationalize, adapt, strengthen and streamline the United Nations machinery in the field of Human Rights in order to improve its efficiency and effectiveness.

The commissioner is also required to report annually to the Commission Human Rights. In 1994, this office established a Human Rights 'Hot Line'. This is a twenty four hours facsimile line that allows the office of the High Commissioner in Geneva to monitor and react rapidly to Human Rights emergencies. The Hot Line is available to the victims of human rights violations, their relatives and non governmental organizations. International Criminal Court: In July 1998, the International Criminal Court was proposed to be established in Hague (Netherlands) under the Rome Statute of International Criminal Court. This court is separate from the International Court of Justice (ICJ), which deals with Inter State disputes and in which only the states can become party. The ICJ does not address the issue of human rights violations directly. Therefore, the International Criminal Court gains significance in this regard. This court shall have the power to exercise its jurisdiction over the persons for the most serious crimes of International concern. The court is complementary to National Criminal Jurisdiction. Under the statute, the court shall be composed of following organs: a) The Presidency; b) Appeals Division; Trial Division and Pre Trial Division; c) The office of the Prosecutor; and d) The Registry. This court shall have the jurisdiction with respect to the crimes of genocides, crimes against humanity, war crimes and the crimes of aggression. Hence, this court directly deals with the violation of Human Rights. Although, all the above arrangements and efforts made by the UN and its associate bodies seem to be comprehensive, but the International arrangement like this has its own weaknesses. Scholars have made following observations regarding this: The protection and promotion of Human Rights is not possible without a civil society, and a civil society can be built up only by edifice of equality and democracy. It would, therefore, be too much to expect that the United Nations, which is not based on the principles of equality and democracy, would be able to perform its role effectively as the protector of international peace and human rights. This created a wide gap between promise and performance of UNDHR and other instruments of UNO. Despite affirmation and reaffirmations, there remain challenges and threats to the tenets of universality of human rights as enshrined in the two Covenants (ICCPR and ICESCR) or to the primacy of international human rights jurisprudence which, in effect, leads to "institutionalization of human rights violations."<sup>44</sup> Apart from certain inherent weaknesses, the status and authority of the United Nations, appears to have been weakened further in the post-Cold War global scenario marked by unipolarism and American hegemony in international politics.<sup>45</sup> The International Court of Justice is open to the member States only. It implies that individuals have no access to the court. Thus it has always refused to entertain the petitions and requests which have often been addressed to it by individuals. The jurisdiction of the International Court of Justice depends upon the consent of the States involved, and this has been done by few states to disputes involving human rights. Even if the International Court, in a few cases, is able to render judgment against the state, which violates human rights, there is no international police to enforce the decision of the court. No doubt, the Security Council has been empowered to enforce the decisions of the court against a party to a case which has failed to perform the obligations under a judgment of the court, if the matter is brought before it by the aggrieved party. But, it is regarded as a political body and its recommendations are some times motivated by political considerations. If

the barrier of veto is not crossed, the council becomes incompetent to take any decision against the state which has failed to comply the decision of the court. Although the International law of Human Rights has fostered a growing political and legal support for the protection of human rights, many states still regard that enforcement of human rights as an interventionist act. Consequently, implementation of International Human Rights law depends largely on voluntary compliance by the states. Security Council of course, can take collective action against a state if it decides that violations of human rights by a state are likely to endanger international peace and security. There is generally a hesitation on the part of the states and other parties to submit the dispute to the Court because, firstly, judges of the Court have not always been impartial. There is a belief prevalent that the Court is not the appropriate place for the settlement of disputes of which the solution is primarily of juridical character. Secondly, procedure of the Court is complicated, time consuming and expensive, and thirdly, States are not prepared to submit a dispute to the Court whose judgments are enforced by the Security Council, a political organ of the United Nations.<sup>46</sup>

Whatever be the achievements and weaknesses of the United Nations, there seems to be no alternative to this inter-governmental organization, and hence, it should be the continuing endeavour of the conscientious international community, committed to human rights, to come together and play a positive role in strengthening the UN. According to S.P. Srivastava, There exists a reciprocal relationship between the Universal Declaration of Human Rights (1948) and the guiding principles of criminal justice administration. This relationship underlines the fact that effective employment of human rights is a decisive factor in the removal of conditions promoting criminal behaviour as also for the treatment of offenders.<sup>47</sup>

### **NATIONAL PERSPECTIVE**

As S.P. Srivastava has observed, the international perspective provides guidelines to the Criminal Justice Administration in Municipal Law. So, it will be appropriate to study the Indian Criminal Justice System in the light of these parameters. It will be also worthwhile to make a comparative study of both international and national perspective regarding Criminal Justice Administration. India is a signatory to universal declaration of human rights and it has also ratified the two covenants namely, International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights. Under *Article 51* of the Constitution, Fostering respect for international law is an obligation of the State. Hence, as per this principle of state policy the human rights incorporated in the international instruments are bound to be respected in the Indian jurisdiction. In the Comparative analysis of international and national perspective one can cite an obvious difference between the perception of human rights. The international perspective is dominated by the western perception of human right where the question of human right emerged out of individual v/s State equation while the Indian perception has its route in the ancient value setup where the duties are given importance over the rights. The Indian Criminal Justice System has its roots in this perception, but its modern system is largely a legacy of British Colonial administration and it has also been influenced by the modern international perception which is the western perception also. Before making an assessment of Criminal Justice Administration in contemporary India it will be significant to have a brief look over its evolution since the ancient times. A careful examination of the ancient Indian Constitutional and legal system would show that it had established a duty based society; its postulate was not only the duty of individual towards the society but also the duty of rulers towards the individual and the society.

The Indian tradition has no direct reference to the concept of rights and it is based on the ideology of “Vasudev Kutumbkam” that is the “whole universe is my family”. Therefore, the Indian tradition is not individualistic but it has social perspective, rights to it are not the result of human life but it is the condition of social life of human being. Social life from individuals point of view needs rights but from societal aspect needs duty. In this perspective the famous principle of “Geeta” is that “Duty only is your Right”. This principle of “Anasakta Karma” has no concept of rights as if every human being demands his rights and does not perform his duties then the situation becomes unmanageable, therefore, Dharma or Duty of each individual is to serve other human beings and create a society which can be termed as welfare or egalitarian society based on the principle of “Happiness for all” (Sarve Bhavantu Sukhinam). Therefore, the sanatan view is that the rights of individual are subservient to the common good and even the state is directed to pursue this principle. The concept of absolutist, monarchies had always been rejected and the supremacy of Dharma (law) and Spirit is accepted. This aspect is evident from the verse in Udyogaparva of Viraturaniti which reads: “Sacrifices the interest of individual for the sake of the family, sacrifices the interest of the family, for the sake of the village. Sacrifices the interest of the village, for the sake of the country and lastly for the sake of securing Moksha (eternal bliss) of the Atma reject the world.”<sup>48</sup> Though the sanatan tradition rejects the idea of individual rights but it has emphasised over the Right to equality. In the Vedas, the equality of all was declared in following words: “No one is superior or inferior. All should strive for the interest of all and should progress collectively.”<sup>49</sup> The other Indian religions like Buddhism and Jainism also laid down the principles of non-violence and ‘aperigraha’ to guide the individuals behaviour with his fellow human beings for creating a better society. These religions also directly or indirectly stressed upon the duties rather than the rights. Sikhism, also aimed at creating a better society on the principle of “Sarbat da Bhala” or welfare of all. Though some modern scholars attacks Hinduism for creating such a stratified society, based on varna system, which promotes discrimination and violation of rights of women and other marginalized sections but these three religions denounce any such stratification and discrimination. Indian tradition also got enriched by the introduction of Islamic tradition. During the British period, the English concept of justice was evolved which

incorporated some of the principles of both Hindu Law and Muslim Law under the Judicature Act of 1874.

**HUMAN RIGHTS IN THE CONSTITUTION OF INDIA** The preamble of the Constitution, fundamental rights and directive principles of the state policy jointly constitute the broad spectrum of human rights. No one alone can claim to be complete by itself. The Preamble, as amended by 42<sup>nd</sup> Constitutional Amendment 1976, of the Constitution has set forth the basic objectives to be achieved by the Constitution. It may be read as under: “We, the people of India, having solemnly resolved to constitute India into a Sovereign, Socialist, Secular, Democratic, Republic and 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 to promote among them all, Fraternity assuring the dignity of the individual and the (unity and integrity of the nation); In our Constituent Assembly, this twenty-sixth day of November, 1949, do hereby adopt, enact and give to ourselves, this Constitution. The preamble itself is very clear. It is the basic root of all rights and justice. The human rights can be said to be an off-spring of the preamble. Human Rights in the Constitution can be classified under various categories. These rights, as mentioned above are included in both the Part III and Part IV. The general classification can be made under following categories:

- ❖ The justiciable rights called fundamental rights are included in Part III and non-justiciable rights known as Directive Principles of State Policy are in Part IV. Both when combined, lay down the framework of the welfare state, in India. The judiciary plays a pivotal regulatory role as far as fundamental rights are concerned. But the legislature and the government have a significant role to play regarding the Directive Principles. Here, sometimes the judiciary and the government, come face to face in a conflict situation as both claim to protect or regulate the different spheres. But the welfare state needs both of these rights in order to create an environment where every citizen can enjoy his rights without any discrimination as both these Parts of the Constitution provide political, civil, cultural, social and economic rights.
- ❖ While some of the provisions relating to fundamental rights are limited to citizens only, such as *Articles* 15, 16, 19, 29, the remaining provisions of this part are applicable to citizens and alien alike i.e. to all persons residing within the territory of India for the time being, and subject to its jurisdiction, e.g. protection of life and personal liberty (*Article* 21); educational rights of minorities (*Article* 30).<sup>58</sup>
- ❖ Another classification of the fundamental rights of the Indian Constitution is that while some of the rights impose limitations on state action [e.g. *Articles*. 14; 15(I); 16; 18(I); 19; 20-22; 31], there are other provisions which are limitations on the freedom of action of private individuals as well [e.g. *Article*. 15(2); 17; 18(2); 23(I); 24.] According to the philosophy of fundamental rights, they are available only against state action. But since Part III of the Indian Constitution was the resultant of various sentiments, this general principle was not borne in mind by the makers of the Constitution, and resulted in the introduction of some anomalies into Part III.<sup>59</sup>
- ❖ From another standpoint, it may be pointed out that, while most of the fundamental rights guaranteed by the Indian Constitution belong to a person Qua individual (e.g., *Article* 19), there are some others which belong only to a section of the people and to an individual only as a member of that section or community (e.g., *Articles*. 26; 29(I); 30). Such rights are intended for the protection of minorities and other groups.<sup>60</sup>
- ❖ From the formal standpoint, it may be stated that, while some of the fundamental rights in the Constitution are couched in the negative form of a prohibition on the state, e.g., *Article* 14 - “The state shall not deny... equality before the law or equal protection of the laws...;”<sup>61</sup> *Article* 18 - “No title... shall be conferred by the state...;”<sup>62</sup> there are others which are couched in a positive form of rights of citizens which it would be the duty of the State to protect, e.g., *Article* 16(1) - “there shall be equality of opportunity for all citizens...;”<sup>63</sup> *Article* 19(1) - “All citizens shall have the right...;”<sup>64</sup> For easy reference, the Indian Constitution groups the fundamental rights in following ways: Right to equality (*Article* 14-18). Right to freedom (*Article* 19-22). Right against exploitation (*Article* 23-24). Right to freedom of religion (*Article* 25-26). Cultural and educational rights (*Article* 29-30). There is also an indirect reference to the Natural Rights in the Constitution to meet the growing needs of civilization and the change in the social environment. The Supreme Court of India has recognized the Fundamental Rights as Natural Rights in *Moti Lal V. State of UP*.<sup>65</sup> Similarly Chief Justice Patanjali Shastri has referred to Fundamental Rights as “those great and basic rights which are recognized and granted as Natural rights inherent in the status of a citizen of a free country.”<sup>66</sup> Although, Part III of the Indian Constitution contains an exhaustive list of fundamental rights, still, a departure has been made by the Supreme Court, while propounding the theory of emanation, by following the example of the American Supreme Court. It means that even though a right is not specifically mentioned in Part III, it may still be regarded as a fundamental right if it can be regarded as an integral part of a named fundamental right that is, “it emanates from a named fundamental right or its existence is necessary in order to make the exercise of a named fundamental right meaningful and effective.”<sup>67</sup> Applying this theory of emanation, the Supreme Court has evolved the following rights as Fundamental Rights: The right to privacy [as an emanation from *Articles* 19(I)(d) and 21]. The right to human dignity [as an emanation from *Articles* 14, 19, 21]. The right to travel abroad [as an emanation from *Articles* 21]. The right against torture, cruel or inhumane or degrading treatment [as an emanation from *Article* 21]; such as solitary confinement, unnecessary letters, 98 handcuffing. The right to speedy trial [from *Article* 21]. The right to free legal aid in criminal trial [from *Article* 21]. The right against delayed execution. The right against custodial violence. The right to shelter, doctor’s assistance, the right to health. The right to pollution free environment. The right to education of a child till the age of 14 years. The freedom of press. Still, other classification may be made from the standpoint of the extent of limitation

imposed by the different fundamental rights upon Legislative and Executive power. On the one hand, we have some fundamental rights, such as under *Article 21* which are addressed against the Executive but impose no limitation upon the legislature at all. Thus, *Article 21* simply says that –

**“No person shall be deprived of his life or personal liberty except according to the procedure established by law”**

On the other hand, there are Fundamental Rights which are intended as absolute limitations upon the legislature power so that it is not open to the Legislature to regulate the exercise of such rights e.g. the rights guaranteed by *Article 15, 17, 18, 20, 24*.

### UN AND INDIA

As mentioned earlier India is a signatory to the universal Declaration of Human Rights of 1948. In 1979, India ratified two covenants: International Covenant on Economic, Social and Cultural Rights; and the International Covenant on Civil and Political Rights. The Constitution of India guarantees human rights under Fundamental Rights. The Directive Principles of State Policy supply necessary guidelines for their effective implementation. The following Tables show the different Articles of these Covenants which are identical to the rights included in the Constitution:

### **Comparison between Fundamental Rights and the Covenant on Civil and Political Rights**

**Table- 3.1**

S.No	Rights	Covenant on Civil and Political Rights	Indian Constitution
1	Forced labour	<i>Article 8(3)</i>	<i>Article 23</i>
2	Equality before law	<i>Article 14(1)</i>	<i>Article 14</i>
3	Prohibition of discrimination	<i>Article 26</i>	<i>Article 15</i>
4	Equality of opportunity to public service	<i>Article 25( c)</i>	<i>Article 16(1)</i>
5	Freedom of speech and expression	<i>Article 19(1) &amp; (2)</i>	<i>Article 19(1)(a)</i>
6	Right of peaceful assembly	<i>Article 21</i>	<i>Article 19(1)(b)</i>
7	Right of freedom of association	<i>Article 22(1)</i>	<i>Article 19(1)( c)</i>
8	Right to move freely within the territory of the State	<i>Article 22(1)</i>	<i>Article 19(1)(d)&amp; (e)</i>
9	Protection in respect of conviction for offence	<i>Article 15(1)</i>	<i>Article 20(1)</i>
10	Protection from prosecution and punishment	<i>Article 14(7)</i>	<i>Article 20(2)</i>
11	Not to be compelled to testify against himself	<i>Article 14(3) (g)</i>	<i>Article 20(3)</i>
12	Right to life and liberty	<i>Article 6(1) &amp; 9(1)</i>	<i>Article 21</i>
13	Protection against arrest and detention in certain cases	<i>Article 9(2) (3) &amp;</i>	<i>Article 22</i>
14	Freedom of conscience and religion	<i>Article 18(1)</i>	<i>Article 25</i>

### **The comparison between Rights included in form of Directive Principles of State Policy and the Covenant on Economic Social and Cultural Rights**

**Table-3.2**

S.No	Rights	Eco- Soso and Cultural Rights	Indian Constitution
1	Equal pay for equal work	<i>Article 7(a) (i)</i>	<i>Article 39(d)</i>
2	Safe and humane condition of work	<i>Article 7(b)</i>	<i>Article 42</i>
3	Maternity Relief	<i>Article 10(2)</i>	<i>Article 42</i>
4	Right to work	<i>Article 6(1)</i>	<i>Article 41</i>
5	Opportunity to Children	<i>Article 10(3)</i>	<i>Article 39(f)</i>
6	Compulsory education to Children	<i>Article 13(2)(a)</i>	<i>Article 45</i>
7	Living Wages	<i>Article 7(a)(ii)</i>	<i>Article 43</i>
8	Condition of Work	<i>Article 7(d)</i>	<i>Article 43</i>
9	Adequate standard of living	<i>Article 11</i>	<i>Article 47</i>
10	Right to child education	<i>Article 13(1)</i>	<i>Article 21-A</i>

Some rights specified in these covenants are not directly included in the Constitution of India but they have found their way through various judgements of the courts. Even then there are some rights of these covenants which are, neither guaranteed as fundamental rights in part III of the Constitution, nor they have been regarded by the judiciary as fundamental. For instance, the right against torture or cruel, inhumane or degrading treatment or punishment, the right not to be subjected to medical and scientific experimentation, prohibition of death sentence on children and pregnant women, special treatment of juvenile offenders etc. under *Articles 7, 6, 10 and 14* of Covenant on Civil and Political Rights. Apart from these Covenants, India remained an active member of UN and has become party to various other Declarations, Conventions and Agreements. It has also participated in various peace keeping missions of UN.

As far as implementation of any International Covenants or agreements in our National Law is concerned, there are different views. In *A.D.M Jhabalpur V. Shukla*,<sup>70</sup> Justice H.R. Khanna in his dissenting opinion held that if there is a conflict between a municipal law and an International law, the court shall give effect to the municipal law. But there are other views also, like in *Maneka Gandhi V. Union of India*<sup>71</sup> Justice Bhagwati held that what is necessary to be seen is, as to what test must be applied and whether the right claimed by petitioner, which is also mentioned in International Covenant or agreement, is an integral part of a named fundamental right or has the same basic nature and character as the named fundamental rights. In

other words, only that right of the covenant can be enforced which is mentioned or which is by nature or character similar to the one mentioned in the fundamental rights, in the Constitution. That means those rights which are not included in part III in the Constitution or have no resemblance with the Constitutional rights, cannot be enforced. But it can be a good excuse for the Government, not to implement these rights. The result is that a number of violations of human rights still occur despite the ratification of human rights convention by the Government. It is desirable to set up a body of experts to take a fresh look on all the statutes with a view to bring them fully into the conformity with those human rights conventions, which have been ratified by the Government. Some of the specified rights mentioned in these Covenants got recognition through various court judgments and enriched Indian criminal justice system, the prominent among them are, right to speedy trial, right to provide legal assistance, right of prisoners to be treated with humanity, right of not to be imprisoned for inability to fulfill a contractual obligation, right to compensation etc.<sup>7</sup>

### **CRIMINAL JUSTICE ADMINISTRATION**

The extent to which the human rights are respected and protected within the context of its criminal proceedings, is an important measure of society's civilization.<sup>73</sup> Social justice, the signature of the Indian Constitution, has its overtones in the criminal justice system too. Consequently, administration of criminal justice is to be geared towards the same goal of social justice. Society changes and the perception which is social justice, also undergoes corresponding changes.<sup>74</sup> In India, the administration of Criminal Justice System follows the Anglo Saxon adversarial pattern. The three segments of the Criminal Justice System viz, the police, the judiciary and the correctional institutions must function in a harmonious and cohesive manner in order to produce desired results. However, the three wings of the Criminal Justice System, very often instead of interacting, tend to counteract one another. The police, very often, instead of promoting and protecting human rights, violate them callously. Allegations of the police violence and brutality are being constantly received from different parts of the country.<sup>75</sup> It is widely believed and perhaps justifiable too, that the present criminal justice system is heavily loaded in favour of the accused because in the adversarial system, he is presumed to be innocent till proved guilty. But as Bharat B. Das has said, "There is nothing wrong in giving a 'victim-oriented' approach to the criminal justice system by seeking Constitutional foundation to it. Thus, for example, it can be agreed that it is the right of the individual to remain free from being victim of crime."<sup>76</sup> Before going into the detail of Criminal Justice System in independent India, there is need to have a brief overview of the origin of this system in the history. It has its roots in ancient Hindu Law. In ancient Hindu Law, the law givers were fully aware of the necessity of directly compensating the victims of crime. Thus, Manu in Chapter VIII, Verse 287 says: "**If a limb is injured, a wound (is caused) or blood (flows, the assailant) shall be made to pay (to the sufferer) the expenses of the cure.**"<sup>77</sup> In Chapter VIII, Verse 288, Manu Says: "**He who damages the goods of another, be it intentionally or unintentionally, shall give satisfaction to the (owner) and pay to the king a fine equal to the damage.**"<sup>78</sup> Manu thus, provides direct reparation to the victim of crime apart from payment of fine to the king (the State). In Chapter XXI, Verse 10, Brihaspati Says:<sup>79</sup> "**He who injures a limb, or divides it, or cuts it off, shall be compelled to pay the expenses of curing it; and (who forcibly took an article in a quarrel restore) his plunder**". In Chapter XXII, Verse 7, he says: "**A merchant who conceals the blemishes of an article which he is selling, or mixes bad and good articles together, or sells (old articles) after repairing them shall be compelled to give a double quantity (to the purchaser) and to pay fine equal (in amount) to the value of the article**".<sup>80</sup> The law of Vishnu and Yajñvalakya also advocates compensation to the victim of crime for their injury. Yajñvalakya, Narada and Brihaspati fix a compensation twice to the purchase (who paid the price) and a fine of an equal amount, in case of fraudulent sale of one article to another, or knowingly, selling defective articles as free from defect. Again, traders or business men who lost their property while travelling through the kingdom were also compensated. So also during Islamic rule restitution and atonement was a recognized form of punishment. As far as the evolution of criminal justice system in India during Mughal and British period is concerned, it has been discussed in the introductory chapter. Reparation or compensation, as a form of punishment is found to be recognized from the ancient times in India. In ancient Hindu Law, during Sutra period, awarding of compensation was treated as a royal right. The Law of Manu requires the offender to pay compensation equivalent to the expenses of cure, in the case of injuries to the sufferer, and to the satisfaction of the owner, where the goods were damaged. In all cases of cutting of a limb, wounding or fetching blood, the assailant shall pay the expenses of a perfect cure, or in his failure, both full damages and a fine of some amount.<sup>81</sup> The criminal justice system in India has various components like the Constitution, different enactments, judgments of judiciary and activities of various structural setups like police, prisons etc. The whole setup includes, The rights of accused, The rights of victim and, The rights of other citizens under criminal justice administration.

### **CONSTITUTIONAL PROVISIONS REGARDING CRIMINAL JUSTICE**

The Part III of Indian Constitution, includes certain fundamental rights which have direct or indirect provisions regarding Criminal Justice Administration especially the *Articles* 14, 20, 21, 22 and Art. 32. Under Art 12 all these fundamental rights are available against the state which includes not only executive and legislative organs of the union or the state but also the local bodies as well as other authorities. This is the basis of Indian criminal justice administration where the state and its organs are made responsible to provide and protect these rights of the citizens. Art. 13 restricts the State to make any law which takes away or abridges the rights conferred by the part III i.e. Fundamental rights.

**Article-14:** Article 14 of the Constitution provides: -*“The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”* Prima facie, the expression, “equality before law” and “equal opportunity of the laws” may seem to be identical but in fact they mean different things. While equality before law is a somewhat negative concept implying the absence of any special privilege in favour of any individual and the equal subjection of all classes to the ordinary law. Equal protection of the laws is a more positive concept implying equality of treatment in equal circumstances. It means that no man is above the law of the land and every person whatever his rank or status, is subject to the ordinary law. But the exceptions are allowed by the Indian Constitution in this regard. e.g. The President and the Governor of the State shall not be answerable to any court in regard to their performance of their official duty, and no criminal proceeding shall be instituted or continued against them in any court during their term of office and that no civil proceedings in which relief is claimed against them, shall be instituted in any court during their term of office. Some immunities are also given to the foreign sovereigns and ambassadors. “Equal protection of the laws”, on the other hand, would mean “that among equals, the law should be equal and equality administered and the like should be treated alike”. In other words, it means the right to equal treatment in similar circumstances both in the privileges conferred and in the liabilities imposed by the law.<sup>82</sup> The guarantee of equal protection applies against substantive as well as procedural laws.<sup>83</sup> It means that all litigants, who are similarly situated, are able to avail themselves of the same procedural rights for relief and for defence, without any discrimination. Though in some special situations, a procedure different from the one laid down by the ordinary law can be prescribed for a particular class of persons, if the discrimination is based upon a reasonable classification having regard to the object which the legislation has in view and the policy underlying it. One of the examples is the Special Courts bill, 1978. The Supreme Court in reference to it has held that the setting up of a Special Court for the expeditious trial of offences, committed during Emergency period by the high officials, is in the interest of the functioning of the democracy under the Constitution of India.<sup>84</sup> The guarantee of “equal protection” also includes absence of any arbitrary discrimination by the laws themselves or in the matter of their administration. Even where a statute is not discriminatory, but a public official responsible for its operation, applied it against an individual, not for the purpose of the Act but intentionally for the purpose of injuring him, the latter may have that executive act annulled by the Court on the ground of contravention on the guarantee of equal protection. In short Article 14 hits at the “arbitrariness” of the State action in any form.<sup>85</sup> Article -20: This Article provides protection in respect of conviction for offences. It prohibits ex post facto operation of criminal law and confers immunity against double jeopardy and protection against self-incrimination. The provision against ex post facto legislation is contained in clause 1 of Article

#### **OUR CONSTITUTION WHICH RUN AS FOLLOW:**

*“No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence”* It is a basic principle of criminal law in every civilized society that no person can be convicted of an offence for an act which was not an offence under the law in force at the date when it was committed. No act can be made an offence by enacting legislation with retrospective effect. So also no one can be subjected to a greater penalty for an offence than what was provided under the law in force when the offence was committed. This protection against ex post facto operation of criminal law is enacted as a Constitutional right under clause 1 of Article 20 of the Constitution.<sup>86</sup> Though ordinarily legislation can enact prospective as well as retrospective laws, according to the present clause a Legislature shall not be competent to make a criminal law with retrospective effect. The prohibition against double jeopardy is contained in Clause 2 of Article 20 which runs thus,

*“No person shall be prosecuted and punished for the same offence more than once.”* Though the expression ‘double jeopardy’ is used in the American law and not in our Constitution but clause (2) of Article 20 lays down a similar principle. Even before the Constitution was framed, this principle was enacted in the Code of Criminal Procedure. But the Constitution makers considered it fit to include it as a Constitutional protection so that it could not be lightly interfered with by any legislature by just amending the Code of Criminal Procedure.<sup>87</sup>

**Article 20(2)** refers to judicial punishment and gives immunity to a person from being prosecuted and punished for the same offence more than once. In other words, if a person has been prosecuted and punished in a previous proceedings for an offence, he cannot be prosecuted and punished for the same offence again in the subsequent proceedings. The Article, however, does not give immunity from proceedings, other than proceedings before a court of law or a judicial tribunal. Hence, a Government servant who has been punished for an offence in a court of law may yet be subjected to the departmental proceedings for the same offence or conversely.<sup>88</sup> The immunity from self-incrimination is conferred by clause (3) of Article 20 which says, *“No person accused of an offence shall be compelled to be a witness against himself.”* The scope of this immunity has prima facie been widened by our Supreme Court by interpreting the word ‘witness’ to comprise both oral and documentary evidence, so that no person can be compelled to furnish any kind of evidence which is reasonably likely to support a prosecution against him. Such evidence must, however, be in the nature of a communication. The prohibition is not attracted where any object or document is searched and seized from the possession of the accused. For the same reason, the clause does not bar the medical examination of the accused or the obtaining of thumb impression or

specimen signature from him. This protection does not apply to the Administrative investigations and enquiries. It applies only to the police investigations only. It has been explained by the Supreme Court that in order to claim the immunity from being compelled to make a self incriminating statement, it must appear that a *formal accusation* has been made against the person at the time when he is asked to make the incriminating statement. He cannot claim the immunity at some general enquiry or investigation on the ground that his statement may, at some later stage, lead to an accusation.<sup>89</sup> This protection is also not applicable to the searches and seizures under a search warrant.

This clause of Article 20 is not free from controversy. Serious doubts have been expressed in various quarters that this principle has tended to defeat justice. In support of this principle, it is claimed that the protection of the accused against self incrimination promote active investigation from external source to find out the truth and proof of alleged or suspected crime instead of extortion of confessions on unverified suspicion. On the other hand, the opinion has been strongly held by some that this rule has an undesirable effect on social interest and that in the detection of crime, the state is confronted with overwhelming difficulties as a result of the privilege. It is also said that this has become a hiding place for criminals, who have cultivated its usefulness whereas, the rights of the accused persons are amply protected without this privilege and that no innocent person is really in need of it. This controversy is really a part of larger controversy, that which of the two interests should prevail.<sup>90</sup> This controversy apart, this provision is an important part of criminal jurisprudence in our country. It enacts a measure of protection against a testimony compelled through police torture, violence and intimidatory methods, which are unfortunately still present.

The apex court in *Sarwan Singh v. State of Punjab*<sup>91</sup> has laid down certain guidelines regarding the recording of the confessional statement of an accused. The court emphasized that before recording a confession, the magistrate should ensure that the mind of the accused is completely free of any possible influence of the police. The court observed that the effective way of securing such freedom from fear to the accused person is to send him to jail custody and to give him adequate time to consider, whether he should make a confession at all. Court considered that the reasonable time to be given to an accused person should be at least 24 hours so that he can decide whether or not he should make a confession.

**Article -21:** This Article provides that, “No person shall be deprived of his life or personal liberty except according to the procedure established by law.” It means that no member of the Executive shall be entitled to interfere with the liberty of a citizen unless he can support his action by some provision of law. In short, no man can be subjected to any physical coercion that does not admit of legal justification. When, therefore, the state or any of its agent deprives an individual of his personal liberty, such action can be justified only if there is a law to support such action and the procedures prescribed by such law have been “strictly and scrupulously” observed.<sup>92</sup>

The phrase “the procedure established by law” is often compared with the principle of “Due process” of American Constitution. When the Constitution of India was being formed, B. N. Rau, a Constitutional adviser, visited United States to study the working of the principle of ‘Due process’. Justice Frankfurter of Supreme Court of US advised him not to include this clause in the Indian Constitution, as this gives immense powers to judiciary and some scholars believe in judicial restraint as against judicial activism. The constituent assembly decided not to include it and instead used phrase “except according to the procedure established by law”.<sup>93</sup> The principle of ‘Due process’ is based on the concept of natural justice and hence provides the basis of “reasonableness and fairness” to the judiciary to review the legislature and through this it can question the law itself whether it is reasonable or not. But our Constitution adopted the notion of procedure which is established by the law, hence law here is beyond the review power of judiciary.

The 1978 decision in *Maneka Gandhi v. Union of India*<sup>94</sup> case become a landmark or watershed in the history of Constitutional law of the country. The judgment in this case linked Art 21 with Art 19 and applied the notion of “reasonable restrictions” under Art 19 on Art 21. Thus it imported the principle of natural justice in the principle of procedure established by law. The Supreme court for the first time took the view that Art 21 affords protection not only against the executive action but also against the legislation and no law can deprive a person of his life and personal liberty unless it prescribes a procedure which is reasonable, fair and just and it would be for the court to determine whether the procedure is reasonable, fair and just and if it is not, the court will strike down the law as invalid. Thus Article 21 assumed a new dimension and the Supreme Court introduced “procedural due process” in the Constitutional law of India through creative interpretation inspired by judicial activism. This new interpretation of Art 21 brought about a significant reform in the administration of criminal justice as far as under trial prisoners are concerned. One pathetic aspect of criminal justice administration in India has been an unduly large number of under trial prisoners languishing in jails. The statistics show that at any given point of time, the percentage of under trial prisoners have always exceeded that of convicts. The under trial prisoners represent about 61.5 per cent of total jail population.<sup>95</sup> Under Art 21, the judiciary laid down many provisions to protect the rights of the under trial and in this regard the famous *Hussainara Khatoon v. Home Secretary, State of Bihar and other* cases proved to be a landmark. These judgments explained various aspects of the rights of under trials which include, Right to speedy trial, Rights of prisoners to be treated with humanity, Right for legal assistance, Right to compensation etc. The Supreme Court stated, in *D.K Basu vs State of Bengal*<sup>96</sup> that “The precious right guaranteed by Art 21 of the Constitution of India cannot be denied to the convicts, under trials, detenués and other prisoners in custody, except according to the procedure established by law and by placing only such reasonable restrictions as are permitted by law”. Right to speedy trial: In *Hussainara Khatoon v. Home Secretary, State of Bihar*, it was held by the Supreme Court that although the speedy trial is not specially enumerated as a fundamental right, yet it is implicit in the broad sweep and content of Article 21 which deals with the right

to life and liberty. Bhagwati J, held in this case –“No procedure which does not ensure a reasonable quick trial can be regarded as ‘reasonable, fair or just’. There can, therefore, be no doubt that speedy trial and byspeedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21.” It was also held by the Supreme Court that detention in jail for a period longer than what they would have been sentenced if convicted, is illegal, as being in violation of their fundamental rights under Art 21 of the Constitution.<sup>98</sup> In this case, the court also directed the release of such under trials. However, delayed trial is not an unfair trial in all the cases. In those cases where delay is caused by the tactics or conduct of the accused himself, Art. 21 of the Constitution cannot be invoked. The conviction and sentence in a case may be restored where the delay was caused by the conduct of the accused and no prejudice has resulted to him on its account. It was desirable to lay down the ruling so that the principle laid down in *Hussainara Khatoon’s* case might not be misused.

**Right to provide legal assistance:** In the beginning the right to legal aid for an accused person was not considered as the right, as it was just a directive principle of state policy under Art 39-A. The Supreme Court in *Janardhan Reddy v. State of Hyderabad*<sup>99</sup> stated that fundamental rights in the Constitution do not carry with them the right to provide services of legal practitioner at the state cost. Though it is an obligation of the state but it is not an obligation enforceable in the court of law. But later on the Supreme Court in *M.H. Hoskout v. State of Maharashtra*<sup>100</sup> held that the right to free legal service is an essential ingredient of a reasonable, fair and just procedure for a person accused of an offence and is implicit in Art 21 of the Constitution. In the case, Krishna Iyer, J., who delivered the majority judgment observed: “If a prisoner sentenced to imprisonment is virtually unable to exercise his Constitutional and statutory right of appeal ... for want of legal assistance, there is implicit, in the court under Art 142 read with Art 21 and 39-A of the Constitution, power to assign counsel for such imprisoned individual ‘for doing complete justice’. In *Hussainara Khatoon*<sup>101</sup> also the court held that ‘if the three legal services are not provided to the accused, the trial itself may run the risk of being vitiated as countervailing of Art 21.’ Justice Bhagwati has also held that “the law does not permit any government to deprive its citizens of Constitutional rights on the plea of poverty.”<sup>102</sup>

**Right of undertrials and prisoners to be treated with humanity:** From time to time the judiciary has also stressed upon the needs of humane treatment to the undertrials and the prisoners. In famous *Hussainara* case, the Supreme Court held that the women and the children who were in the jails and who were also the victims of offence should be released and the under trials should be taken to welfare homes or rescue homes.<sup>103</sup> In this case, the court rejected the counter affidavit of State of Bihar that these women and children were victim of an offence and were required for the purpose of giving evidence and that they are being held under “protective custody”. The Court pointed out that the expression “protective custody” is an euphemism calculated to disguise what is really and in truth nothing but imprisonment and it is nothing short of blatant violation of personal liberty guaranteed under Art 21.<sup>104</sup> The Supreme Court in, *Charles Shobraj v. Superintendent Central Jail, Tihar, New Delhi*,<sup>105</sup> recognized that the right to life is more than mere animal existence or vegetable substance. Even in prison, a person is required to be treated with dignity and one enjoys all the rights specified in Art 19 and 31. The court restricted the punishment of solitary confinement and recognized the need to put the prisoners in bar fetters for an unusually long periods only in those cases where ‘absolute necessity demanded it. In *Nandani Satpathi v. P.L. Dani*,<sup>106</sup> the Supreme Court stated that the right of accused to consult his lawyer at the stage of custodial interrogation is covered under Art 21. The court also held that as part of the right to live with human dignity has a necessary component of right to life, and the detenu would be entitled to have interviews with the members of his family and friends.<sup>107</sup> In *Joginder Kumar v. State of U.P.*<sup>108</sup> and others the court issued an order that –An arrested person has the right to inform about his arrest to one of his friends, relation or other person who is known to him. The police officer shall inform the arrested person, when he is brought to police station, of his right. An entry shall be required to be made in the diary as to who was informed of the arrest. The *Sunil Batra v. Delhi Administration*<sup>109</sup> is also important in this regard. In this case, the court held that the practice of keeping under trials with convicts is inhumane as it is against the test of reasonableness in Art 19 and fairness in Art 21. In order to secure the humane treatment to the prisoners, the judges in *Sunil Batra v. Delhi Administration*<sup>110</sup> set out guidelines to be prescribed and followed which were as follows: -

- ❖ The state shall take early steps to prepare in Hindi, a prisoner’s handbook and circulate copies to bring legal awareness amongst the inmates. Periodical jail bulletins stating how improvements and habilitative programmes are brought into the prison may create a fellowship which will ease tension. A prisoner’s wall paper, which will freely ventilate grievances will also reduce stress. All these are implementary of section 61 of Prisons act.
- ❖ The state shall also take steps to ensure the standard minimum rules for treatment of prisoners as recommended by the United Nations, especially those relating to work and wages, treatment with dignity community, contacts and correctional strategies. In this latter aspect, the observations we have made of holistic development of personality shall be kept in view.
- ❖ The Prisons Act needs rehabilitation and the prison manual total overhaul, even the Model Manual being out of focus with healing goals. A correctional cum orientation course is necessary for the prison staff to inculcate the Constitutional values, therapeutic approaches and a tension free management.
- ❖ The prisoner’s right shall be protected by the court by its writ jurisdiction plus contempt power. To make this jurisdiction viable, free legal service to the prisoner programme shall be promoted by professional organizations recognized by the court such as e.g. Free Legal Aid (Supreme Court) Society. The district bar shall keep a cell for the prisoner’s relief.
- ❖ Right of not to be imprisoned for Inability to Fulfill a Contractual Obligations: This right has been provided under Art 11 of the Covenant on Civil and Political Rights but it has no mention in Indian Constitution. But the Supreme Court has held that to keep a person in prison because of his poverty and consequent inability to meet his contractual liability is a violation

of Art 21 of the Constitution.

❖ Right to Compensation: In *Rudul Shah v. State of Bihar*,<sup>111</sup> the Supreme Court held that, “Art 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Art 21 secured is to make its violators to pay monetary compensation. Administrative rigidity leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some relief for the unlawful acts of instrumentalities which act in the name of public interests and which present for their protection the powers of the state as a shield.”

❖ Death penalty and Art 21: Though there is a debate regarding the death penalty in India and there are conflicting views that the penalty of death sentence has no rational nexus and it is arbitrary and irrational and is therefore, violative of Art 14 and Art 21 of the Constitution.<sup>112</sup> But the judiciary, in general holds that the penalty of death sentence is Constitutionally permitted in India if it is done according to the procedure established by the law.<sup>113</sup>

❖ Article 22: This Article provides the rights to the detainees as well as rights against the arbitrary arrest and detention. The CLs. (1) and (2) of Article 22 are -No person who is arrested shall be detained in custody without being informed, as soon as may be, of the ground for such arrest. No such person shall be denied the right to consult and to be defended by a legal practitioner of his choice. Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

However Para 3(a) of this Article has not provided these safeguards to – (a) an enemy alien, (b) a person arrested or detained under a law providing for preventive detention. Though this Article provides the right against arbitrary detention but ironically it contains the provisions for preventive detention. The scholars like D.D. Basu has mentioned it as a ‘necessary evil’.<sup>114</sup> The Constitution authorizes the legislature to make law providing for ‘preventive detention’ for the reason connected with the security of a state, the maintenance of public order, or the maintenance of supplies and services essential to the community, or for the reason connected with defence, foreign affairs or the security of India.<sup>115</sup> The subject of defence, foreign affairs and security of India falls under the union government while other subjects are included in state list, hence even the states can enact their own preventive detention acts. The *preventive detention* means detention of person without trial. It is distinguished from *punitive detention*. The object of punitive detention is to punish a person for what he has done and after he is tried in the courts for the illegal act, committed by him. The object of preventive detention, on the other hand, is to *prevent* him from doing something and the detention in this case takes place on the apprehension that he is going to do something wrong. Under these provisions, the legislature is competent to enact that a person should be detained or imprisoned without trial for any of the above reasons and against such laws, the individual shall have no right of personal liberty. The Constitution however, imposes certain safeguards against the abuse of this power.<sup>116</sup> It is these safeguard which constitutes fundamental rights against arbitrary detention and it is because of these safeguards that the preventive detention has found a place in the part on fundamental rights in our Constitution. The relevant provisions read as follows- When a person has been arrested under a law of preventive detention:

❖ The government is entitled to detain such person in custody only for three months. If it seeks to detain the arrested person for more than 3 months, it must obtain a report from an Advisory board – who will examine the papers submitted by the government and by the accused – as to whether the detention is justified.

❖ The person so detained shall, as soon as may be, be informed of the grounds of his detention excepting facts which the detaining authority considers to be against the public interest to disclose.

❖ The person detained must have the earliest opportunity of making a representation against the order of detention.

❖ A law which violates any of the conditions imposed by Article 22 as stated above, is liable to be declared invalid and an order of detention which violates any of those conditions will, similarly, be invalidated by the court and the detenu shall forthwith be set free.<sup>117</sup>

The history of preventive detention in India has its roots in the British period. In the early days of British India, Preventive detention was introduced under Bengal Regulation III of 1818.<sup>118</sup> During the period of World War under the Defence of India Act 1939, it was again introduced keeping in mind the defence of the state. But even after the end of the war, the preventive detention clause was continued in India as an instrument to suppress the apprehended for the breach of public order, public safety etc. by the Provincial Maintenance of Public Order Acts. The circumstances during the time of independence and partition had necessitated the provisions for such legislations to be included in the Constitution by the framers of the Constitution to save the infant Republic from the inroads of any subversive elements. But the framers of the Constitution improved upon the existing law by subjecting the power of preventive detention to certain Constitutional safeguards, upon the violation of which, the individual could have a right to approach the Supreme Court or the High Court to safeguard his fundamental rights. The provisions of the Constitution regarding preventive detention are **not** self-executory but it requires a law to be made by legislature, conforming to the conditions laid down in Art 22, and the preventive detention can subsist only as long as the Legislature permits. After independence, a number of such acts have been enacted

and many of them have been nullified by the court, from time to time. The main such acts are, The Preventive Detention Act 1950 which expired at the end of 1969, The Maintenance of Internal Security Act (MISA) 1971, which was repealed in 1978, The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA) 1974, The National Security Act (NSA) 1980, The Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act 1980, The Terrorist and Disruptive Activities (Prevention) Act 1985 (TADA) and The Prevention of Terrorists Activities (POTA). The COFEPOSA is still in use. There is controversy regarding the utility of such Acts, as sometimes these have been used to suppress the political opposition or the democratic forces e.g. during emergency in one year of 1975-76 about 1,75,000 persons were detained under the Preventive Detention.<sup>119</sup> Similarly, it has been alleged that these acts were liberally used to suppress the workers who were demanding their democratic rights. No doubt there are many examples of political misuse of such Acts, but then Art 22 provides for them as a necessary evil.

**Article 32:** This *Article* provides Constitutional remedies for the enforcement of fundamental rights. A mere declaration of fundamental rights in Constitution is of no use unless there are the means to make them effective. The CLs (1) and (2) of Art 32 held that- The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed. The Supreme Court shall have power to issue directions or orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari whichever may be appropriate for the enforcement of any of the rights conferred by this part. Apart from this, the Indian Constitution lays down following provisions, for the enforcement of fundamental rights – Under Art 13, the fundamental rights are guaranteed by the Constitution not only against the action of executive but also against the legislature. Any act of these two which takes away or abridges any of these rights, shall be void and the Courts are empowered to declare it as void. The Judiciary has also been armed with power to issue above mentioned writs by the Supreme Court and High Court under *Article 32* and *Article 226*. Under *Article 359*, it is held that these rights shall not be suspended except during a proclamation of emergency and that also in the manner laid down by the Constitution. In this *Article* the Supreme Court is constituted as the protector and guarantor of fundamental rights. Under *Article 32*, the Supreme Court has the power to issue the aforesaid writs only for the purpose of the enforcement of fundamental rights. But under *Article 136*, the Parliament by law may confer the Supreme Court powers to issue these directions, orders or writs for the purposes, other than the enforcement of fundamental rights. (Sharma 820) Under *Article 226*, a High Court has wider powers regarding the writs. It can issue these writs not only for the purpose of enforcement of fundamental rights but also for the redress of any other injury or illegality, point to the contravention of ordinary law, under certain conditions. Where the infringement of a fundamental right has been established, The Supreme court cannot refuse relief under Art 32 on the ground –

- ❖ That the aggrieved person may have his remedy from some other court or under the ordinary law,<sup>120</sup> or
- ❖ That disputed facts have to be investigated or evidence has to be taken before relief may be given to the petitioner,<sup>121</sup> or
- ❖ That the petitioner has not asked for the proper writ applicable to his case. In such a case, the Supreme Court must grant him the proper writ and if necessary modify it to suit the exigencies of the case.<sup>122</sup>
- ❖ Generally only the person affected may move to the court but the Supreme Court has held that in social or public interest actions, any person may move the court. This is called expansion of the ‘right to be heard’. It favours public interest litigation.<sup>123</sup> This *Article* is immune from being overridden by the legislation and any law which overrides Supreme Court’s power to grant this remedy shall be void.<sup>124</sup> The Constitution also provides for empowering courts other than Supreme Court and High Courts to issue the writs, by making a law of parliament, but no such law has been passed.<sup>125</sup> Speaking about its significance of Art 32, Dr. Ambedkar said, “If I was asked to name any particular *Article* of the Constitution as the most important – an *Article* without which this Constitution would be nullity – I would not refer to any other *Article* except this one. It is the soul of the Constitution and very heart of it.<sup>126</sup> Here it is necessary to explain the writs provided under Art 32 in detail as it is the corner stone of Constitutional remedies – *Writ of Habeas Corpus* - A writ of habeas corpus is in the nature of an order calling upon the person who has detained another to produce the latter before the court in order to let the court know on what ground he has been confined and to set him free if there is no legal justification for the imprisonment. The word ‘*habeas corpus*’ literally means ‘to have a body’. By this writ, therefore, court can secure the body of a person who has been imprisoned to be brought before itself to obtain knowledge of the person why he has been imprisoned and to set him free if there is no lawful justification for the imprisonment. The writ may be addressed to any person whatever an official or private person who has another person in his custody and disobedience to the writ is met with the punishment for contempt of court. The writ of ‘*habeas corpus*’ is thus a very powerful safeguard to the subject against arbitrary acts not only of private individual but also of the executive. The main purposes of the writ of *habeas corpus* are to protect a person if he is arrested or detained by the Executive without the authority of law or in contravention of the procedure established by the law or the law which authorizes the imprisonment. To issue the statute which authorizes the imprisonment or detention where the order of imprisonment or detention is *ultra vires*. Under the following cases this writ cannot be issued – Where the person against whom the writ is issued or the person who is detained is not within the jurisdiction of the court. To secure the release of person who has been imprisoned by the court of law on criminal charge. To interfere with a proceeding for the contempt by a court of record or parliament.<sup>127</sup> *Writ of Mandamus* - Mandamus literally means a command. It demands some activity on the part of the body or a person to whom it is addressed. In short, it commands the person to whom it is addressed to perform some public or quasi-public legal duty which has refused to perform and the performance of which cannot be enforced by any other adequate legal remedy. It is, therefore, clear that mandamus will not issue unless the applicant has a

legal right to the performance of legal duty of a public nature and the party against whom the writ is sought is bound to perform that duty. It is a discretionary remedy and the High Court may refuse to grant mandamus where there is an alternative remedy for redress of the injury complained of. In the matter of enforcement of fundamental rights, however, the question of the Supreme Court or the High Court to enforce the fundamental rights. In India, mandamus will lie not only against officers and other persons who are bound to do a public duty but also against the Government itself for Art 226 and Art 361 provide that appropriate proceedings may be sought against the Government concerned. The writ is also available against inferior courts or other judicial bodies when they have refused to exercise their jurisdiction and thus to perform their duty.<sup>128</sup>

### **PUBLIC INTEREST LITIGATION**

The Supreme Court of India in a number of important decisions has significantly expanded the scope and frontier of human rights. In this, the public interest litigation has played a major role. Earlier, a person who sought to enforce his fundamental rights through a court, must first establish that he had been personally aggrieved by the state act, he had complained against. This is known as the rule of 'locus standi' or standing of the petitioner in the court who complains of a violation of his human rights. The restrictive role of locus standi often operated to close the doors of justice to large masses of people in the country. In such cases an organization (or an individual) which has been allowed to fight for the public cause or challenge the Constitutionality of law through the petitioner may not be able to show that is (or he) has been directly affected by it. In this new era of public interest litigation, the court not only dispensed with the law of locus standi but also the law of procedure, holding that the court can be moved even by a letter addressed to a judge of the Supreme Court or High Court, in place of ordinary process of petition supported by affidavit.<sup>132</sup> Thus came into being a new jurisdiction of the court named as 'epistolary jurisdiction'.<sup>133</sup> Significant strides in human rights jurisdiction, particularly in favour of the weaker sections have taken place as a result of the public interest litigation and display of judicial activism by the courts. Nandita Haksar, a prominent social activist has expressed that these PILs have helped the disadvantaged sections in seeking the redressal against injustice. To her, "A human being (like bonded labourer) without hope cannot dream of going to Supreme Court. It is only a socially committed individual or a politically aware organization that can speak on his behalf."<sup>134</sup>

### **PROTECTION OF HUMAN RIGHT ACT, 1993 AND NATIONAL HUMAN RIGHTS COMMISSION**

In 1993, the protection of Human Rights Act was enacted which provided for the Constitution of National Human Rights Commission, State Human Rights Commissions and Human Rights Courts for better protection of Human Rights in the country. Under this act, the provision was made that central government shall constitute a body known as National Human Rights Commission which shall consist of a Chairperson who has been a Chief Justice of Supreme Court, one member who has been a judge of Supreme Court, one member who has been a Chief Justice of High Court, two members from amongst the persons having knowledge or practical experience regarding human rights. The Chairpersons of National Commission for Minorities, National Commission for Scheduled Caste and Scheduled Tribes and National Commission for Women shall also be deemed to be the members of this Commission. Apart from this, the Commission has a Secretary General who acts as Chief Executive officer of the Commission. The headquarters of the commission is situated at Delhi. The Chairperson and the members are appointed by the President on the recommendation of a committee headed by the Prime Minister and which includes Speaker of Lok Sabha, Home Minister, leaders of opposition in Lok Sabha and Rajya Sabha and Deputy Chairman of Rajya Sabha. The Chairperson and the members can only be removed from the office by order of President on the ground of proved misbehaviour or incapacity after an enquiry by the Supreme Court. The Chairperson is appointed for five years. Under the chapter 3 of this Act, the commission performs following functions:- inquiry, suo motu or on a petition presented to it by a victim or any person on his behalf, into complaint of – violation of human rights or abetment thereof. negligence in the prevention of such violation by a public servant. intervene in any proceedings involving any allegation of violation of human rights pending before a court with the approval of such court. visit, under intimation to the State government, any jail or any other institution under the control of state government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon. review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation. review the factors including acts of terrorism that inhibit the enjoyment of human rights and recommended appropriate remedial measures. study treaties and other international instruments on human rights and make recommendations for their effective implementation. undertake and promote researches in the field of human rights. spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media seminars and other available means. encourage the efforts of non-governmental organizations and institutions working in the field of human rights such other functions as it may consider necessary for the promotion of human rights.<sup>135</sup>

The Commission, while conducting an inquiry into the complaints under this act, has all the powers of civil court trying a suit under the Code of Civil Procedure, 1908. It can summon and enforce the attendance of the witnesses, it can order the discovery and production of any document, it can receive evidence on affidavits, it can ask for any public record etc. Every proceeding before the commission is deemed to be a judicial proceedings within the meaning of section 193 and 228 of the Indian Penal Code and commission is deemed to be a civil court for all the purposes of section 195 and chapter XXVI of the code of criminal procedure 1993. For the purpose of conducting any investigation or an inquiry, the commission can utilize

the services of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be. The commission can take following steps upon the completion of an enquiry held under this act:- where the inquiry discloses, the commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant, it may recommended to the concerned government or authority, to initiative proceedings for prosecution or such other action as the commission may deem fit against the concerned person or persons. approach the Supreme Court or the High Court concerned for such directions, orders or writs as that court may deem necessary. recommend the concerned Government or authority for the grant of such immediate interim relief to the victim or the members of his family as the commission may consider necessary. subject to the provision of clause (5), provide a copy of the inquiry report to the petitioner or his representative. the commission shall send a copy of its inquiry report together with its recommendation to the concerned government or authority and the concerned government or authority shall within a period of one month or such further time as the commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the commission. the commission shall publish its inquiry report together with the comments of the concerned government or authority, if any, and the action taken or proposed to be taken by the concerned government or authority on the recommendations of the commission Regarding any complaint of the violation of human rights by the members of armed forces, Naval, Air Force, Army and Para Military forces under Central Government, the commission, under Chapter-4, can seek a report from the Central Government and it can make recommendations to the government on the basis of that report and further direct the Central Government to inform the commission as to the action taken within 3 months. Except this, the commission cannot hold its own inquiry or investigation in such cases. The commission is supposed to submit an annual report to the central government and state government concerned and it can also submit special reports on any matter from time to time. These reports are to be laid before each house of the parliament or the state legislature, as the case may be alongwith the memorandum of action taken or proposed to be taken on the recommendations of the commission and the reasons for the non acceptance of the recommendations, if any. Under this Act, the State Human Rights Commissions are also formed in many States. Each Commission is headed by a Chairperson who has been a Chief Justice of High court. Apart from this, one member who has been the judge of High Court, one member who has been a District judge in the State and the two members from amongst the persons of having knowledge or practical experience regarding human rights are also appointed. All these are appointed by the Governor of these States. Under the same Act, chapter-6, special Human Rights Courts are also proposed to be formed for the purpose of providing speedy trial of offences arising out of violation of human rights. The State Government, with the concurrence of Chief Justice of the High Court can specify for each district a Court of Session to be 'a Human Rights Court' by a notification. For every human rights court, the state government can also specify a Public Prosecutor or appoint an advocate, who has been in practice for not less than 7 years, as a Special Public Prosecutor for the purpose of conducting cases.<sup>136</sup> Hence, in the Criminal Justice System of India a detailed arrangement has been made regarding the human rights of the citizens. This system, having a Constitutional keel has its roots deep into the history. The present system is a beautiful combination of both indigenous system, which have been evolved and seasoned throughout the history and the western model, introduced by the Britishers and later on got influenced by the conventions and declarations promulgated at International level. The present system not only addresses the rights of the citizens, but it also laid down provisions for its functioning.

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