INTERNATIONAL HUMAN RIGHTS REGIME AND INDIA

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DECLARATION

I declare that the dissertation entitled "International Human Rights Regime and India" submitted by me for the award of the degree of Master of Philosophy of Jawaharlal Nehru University is my own work. The dissertation has not been submitted for any other degree of this university or any other university.

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CERTIFICATE

We recommend that this dissertation be placed before the examiners for evaluation.

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To

My Mother

Contents

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ABBREVIATION

ACHR	Asian Charter of Human Rights
AFSPA	Armed Forces Special Powers Act
APDP	Association of Parents of Disappeared Persons
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Elimination Convention on the of all Forms of Discrimination against Women
CERD	The Convention on the Elimination of All Forms of Racial Discrimination
CID	Criminal Investigation Department
COFEPOSA	Conservation of Foreign Exchange and Prevention of Smuggling Activities Act
CPPCG	The Convention on the Prevention and Punishment of the Crime of Genocide
CPRW	The Convention on the Political Rights of Women
CRC	Convention on the Rights of the Child
CRSR	Convention Relating to the Status of Refugees
DAD	Democracy Assistance Dialogue
ECOSOC	Economic and Social Council
EU	European Union
HCHR	High Commissioner for Human Rights
IBHR	International Bill of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of all forms of Racial Discrimination

ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
MWC	International Convention on the Protection of Migrant Workers
NGOs	Non Governmental Organizations
NHRC	National Human Rights Commission
NSA	National Security Act
OHCHR	Office of the High Commissioner for Human Rights
POTA	Prevention of Terrorist Act
RTI	Rights to Information
TADA	Terrorist and Disruptive Activities (Prevention) Act
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nation
UDHR	Universal Declaration of Human Rights
UNESCO	United Nations Educational Scientific and Cultural Organizations
UNICEF	United Nations Children's Fund
UPA	United Progress Alliance
USSR	Union of Soviet Socialist Republic

Chapter One

INTRODUCTION

When we speak of Human Rights in general terms, we speak of certain basic rights guaranteed to all individuals, regardless of local jurisdiction and other factors such as ethnicity and nationality. It must be understood that a formal definition of Human Rights has not been universally made or accepted by different social scientists. For this reason, the term has come to acquire different meaning in different local jurisdictions, resulting in differential application. According to Forsythe, "Human Rights are widely considered to be those fundamental moral rights of the person that are necessary for a life with human dignity. Human Rights are thus means to a greater social end, and it is the legal system that tells us at any given point in time whose rights are consider most fundamental in society. Even if Human Rights are thought to be inalienable, a moral attributes of person that the state cannot contravene, Rights still have to be identified-that is, constructed- by human beings and codified in the legal system. While human rights have a long history in theory and practice, it was the American and French revolutions of the eighteenth century that sought to create national nationally politics based on broadly shared Human Rights. Despite the rhetoric of universality, however, Human Rights remain essentially a national matter, to be accepted or not, until 1945 when they were recognised in global international law" (Forsythe 2000: 3).

Donnelly gave his own idea about Human Rights to assure that "list of Human Rights are based only loosely on abstract philosophical reasoning and a priori moral principles. They emerged instead from the concrete experiences, especially the sufferings, of real human being and their political struggles to defend or realise their dignity. International recognised human rights reflect a politically driven process of social learning" (Donnelly 2003: 57). It is an undisputable fact that Human Rights are founded on core values of freedom, equality, equity and justice. It insists on equality of treatment for all and no discrimination against anyone. Human Rights are basic guarantees of freedoms that every human being must enjoy in order to be able to live a life of dignity and pursue opportunities to realise one's full potential. At the basis of

Human Rights is the core belief of respecting the rights of the others. It is our responsibility that the rights of the other members in a society or any other political or social group are not transgressed when one's own rights are exercised. For example, it is the right of every individual in a society to be free from discrimination. What we need to understand is that human rights cannot be enjoyed in isolation. On the contrary, the subjective denial of basic rights to an individual in a society is bound to affect the other members of the society as well.

Human Right also includes civil, political and economic rights. Civil rights are designed to protect and promote a vibrant, pluralistic, and autonomous civil society made by the free individuals. Hence civil rights include freedom of thoughts, belief, communication, speech, as well as judicial rights.

Political rights are designed to protect and promote participation in governance of public affairs. So they therefore include the right to vote and to be elected by free elections, the right to equality of participation in public affairs, and the right to equal access to public service positions. Economic, social, and cultural rights are designed to protect and promote the basic livelihood and knowledge conditions indispensable to the exercise of civil and political rights. They are there to ensure that there is a solid foundation on which the equal participation implied by the equal enjoyment of civil and political rights does not remain merely words on paper. This category therefore includes rights, like right to work, right to create and join labour associations, right to social welfare, and right to education.

Human Rights are broadly classified into three generations of rights. First generation of civil and political rights include right to life, liberty, and freedom from torture. Mainly we can say that these rights are "liberty-orientated" and include the rights to life, liberty and security of the individual; freedom from torture and slavery; political participation, freedom of opinion, expression, thought, conscience and religion, freedom of association and assembly.

Second generation of economic and social right require active provision, such as by imposing an obligation on government. Some analyst calls them ideals, often constrained in practice by inadequate resources. These are also "security-orientated" rights, for example the rights to work, education, a reasonable standard of living, food, shelter and health care.

Third, generation of Human Rights consists of environmental, cultural and developmental rights. These include the rights to live in an environment that is clean and protected from destruction, and rights to cultural, political and economic development. And concern such rights as peace, development, and humanitarian assistance. While many of the claims are attached to individuals, some belong to collectivises, such as the right to national self determination (UNHR: 2006).

According to Dauglass Hussak, many people mistakenly inflate the concept of rights by assorting benefits they believe to be rights. This confusion according to Hussak has become evident in the assertion of what are known as second generation human such as the right to economic development and prosperity and third generation human rights which cover the rights to world peace and a clean environment. Hussak argue that prosperity and peace are rights but not substantive rights and that even the substantive human rights are given several different meanings.

Historical Evolution of International Human Rights

History always plays a key role in evolution of any concept or thought so it is very important to know the history of human rights. It is true that without history it is impossible to know and predict the present and future. Culture, religion, values, ethics and morals had an important role in the evolution of human rights. Like in the story of Mahabharata even war between two states or kings begins and closes with a proper whistle. So we can say that religion and cultural history also have their significance in understanding the evolution of human rights. The belief that everyone, by virtue of her or his humanity, is entitled to certain human rights is fairly new. Its roots however, lie in earlier tradition and documents of many cultures. It took the catalyst

of World War II to propel human rights onto the global stage and into the global conscience.

Throughout much of history, people acquired rights and responsibilities through their membership in a group - a family, indigenous nation, religion, class, community, or state. Most societies have had traditions similar to the "golden rule" of "Do unto others as you would have others do unto". The Hindu Vedas, the Babylonian Code of Hammurabi, the Bible, the Quran (Koran), and the Analects of Confucius are five of the oldest written sources which address the question of people's duties, rights, and responsibilities. In addition, the Inca and Astec codes of conduct and justice and an Iroquois Constitution were Native American sources that existed well before the 18th century. In fact, all societies, whether in oral or written tradition, have had systems of propriety and justice as well as ways of tending to the health and welfare of their people (Shiman: 1993:6, 7 and Nancy Flowers: 2008).

Precursors of 20th Century Human Rights Documents

According to Nancy Flowers, documents asserting individual rights, such the Magna Carta (1215), the English Bill of Rights (1689), the French Declaration on the Rights of Man and Citizen (1789), and the US Constitution and Bill of Rights (1791) are the written precursors to many of today's human rights documents. Yet many of these documents, when originally translated into policy, excluded women, people of colour, and members of certain social, religious, economic, and political groups. Nevertheless, oppressed people throughout the world have drawn on the principles of these documents to assert the right to self-determination (2008:21). The evolution of human rights has been gradual throughout in the history. Mainly we can say that there were five tipping points in the world which led to consolidation of human rights as we know today.

British Magna Carta (1215)

It is considered to be the first documented source of human right in the history. When it was originally signed by King John in 1215, Magna Carta was intended to strengthen the powers of the barons and other feudal grandees. During the

conflict between Parliament and the monarchy, Magna Carta was used to resist absolute rule and that time citizens of the country were allowed to enjoy certain civil and political rights. Similarly, French Revolution (1789) stood for 'Liberty, Equality and Fraternity'. The declaration proclaimed that "Men are born free and equal in rights. Social distinctions may be founded only upon the general good. The aim of all political association is the preservation of the natural and imprescriptibly rights of man. These rights are liberty, property, security, and struggle to oppression. No body or individual may exercise any authority which does not proceed directly from the nation". Liberty consists in the freedom to do everything which injures no one else; hence the exercise of the natural rights of each man has no limits except those which assure to the other members of the society the enjoyment of the same rights. (French Declaration, 1789).

The American Bill of Rights (1791)

American bill of rights guarantees the freedom of speech, press, and religion, the people's right to keep and bear arms, the freedom of assembly, and the freedom to petition. The Bill of Rights also restricted Congress's power by prohibiting it from making any authoritarian law which might deprive any person of his life, liberty, property without due process established by the law. In criminal cases, it required condemnation by grand jury for any capital or infamous crime. It also guaranteed a speedy public trial with an impartial and local jury, and prohibits double jeopardy. In addition, the Bill of Rights stated the details in the Constitution, of certain rights, which shall not be construed to deny or disparage, "and reserves all powers not granted to the Federal government to the citizenry or States" (American Bill of Rights: 1791).

Geneva Convention (1864)

Geneva Convention is a set of treaties, that laid the foundation of international humanitarian law. The first Geneva Convention dates to 1864 which focused on treatment of battle wounded. Prescribes the rules for conducting war standards for humanitarian concerns. The subsequent conventions specifies how prisoners are to be treated. It also specifies how civilians in occupied territories are to be treated.

Universal Declaration of Human Rights (1948)

The preamble to the Universal Declaration of Human Rights, 1948 acts as a mirror through which the essence of Human Rights could be visualised. It embodies the expectation of humanity as also foundation of freedom, justice, peace and protection (by rule of law) against tyranny and oppression. The preamble lays emphasis on equal rights of men, women and children and the need to live with dignity. Promotion of universal respect and observance of human rights and fundamental freedoms are the basic tenets of the preamble. In fact, in the preamble to the Charter of the United Nations, the people of the United Nations declare their determination to save succeeding generations from the scourge of war, to reaffirm social progress and ensure better standards of life in larger freedom. Based upon the conviction that governments have an obligation to protect the human rights proclaimed by the UDHR, the United Nations has created a number of mechanisms and procedures to influence the conduct of governments that violate these rights.

The history of human rights has roots in all the great events of the world and it has sustained the struggle for freedom and equality everywhere. The international community has grown and changed enormously during the course of the 20th century. The aftermath of Second World War prompted the victors to try to assemble a forum, firstly to deal with some of the war's consequences and secondly to provide a way to prevent such appalling events in future. As a result, the United Nations was born. Former Secretary General U. Thant saw UDHR as an important step in the promotion and protection of human rights, which has won a place of honour as a basic international code of conduct by which performance in promoting and protecting human rights is to be measured. Two more international instruments were also concluded subsequently viz. a) International Covenant on Economic, Social and Cultural Rights. b) International Covenant on Civil and Political Rights. These documents were adopted in 1966 and came into force 10 years later. An optional protocol to the latter covenant also provided machinery for the handling of complaints from individuals under specified circumstances. These documents together constitute the International Bill of Human Rights.

The UN strives not only to protect human rights, but to promote them as well. The UN offers technical assistance to countries in publishing human rights information and makes human rights counsellors and educators available at the request of governments. Of course, many of the UN's specialised agencies are actively engaged in human rights issues as a component of their work, including United Nations Educational Social and Cultural Organisations (UNESCO), International Labour Organisation (ILO), and the UN High Commissioner for Refugees. Election monitoring in post-conflict situations is an example of how the international community helps promote civil and political rights, while emergency relief operations promote rights such as the right to food and shelter (UN 2006).

The Vienna Declaration and Programme of Action (1993)

At the World Congress on Human Rights in Vienna in 1993, more than 7000 delegates from 171 UN member States and representatives of 840 NGOs gathered to set out a revitalised programme of action to make human rights a reality for all.

The Universality of Human Rights

As we know that there is no universal culture, religion, tradition, values so universality of Human Rights can not be achieved at global level. This is very much visible in multicultural, cosmopolitan society or state, and hence each community, race, religious group are treated differently, minority groups got special privilege in different countries in order to preserve there separate and unique identity, culture and tradition. We also know that rights and culture have strong connectivity so due lack of universality in culture, universality of Human Rights is at risk. In fact, some scholars such as Shashi Tharoor have argued that "the concept of human rights is a human-centred, view of the world, predicated upon an individualistic view of man as an autonomous being whose greatest need is to be free from interference by the state free to enjoy what one Western writer summed up as the right to private property, the right to freedom of contract, and the right to be left alone. But this view would seem to

clash with the communitarian one propounded by other ideologies and cultures where society is conceived of as far more than the sum of its individual" (Tharoor 2000).

Although human rights play a major role in international politics in the global world, a formal concept of human rights has not been universally accepted. The term has come to acquire different meaning in different local jurisdictions, resulting in deferential application. We can say that it is a contentious issue. The issue raises as much question as it answers. There is a consensus in the West pertaining to universality of human rights but critics are highly critical of this view. The claim is that the universality of the human rights cannot be accepted simply by ignoring the very different cultural, economic, and political realities of the other parts of the world. When the very bases of the scaling the societies are different how can we talk about the universality of human rights. International covenants do not take cognisance of the traditions, the religions, and the socio-cultural patterns of the third world countries.

Some argue that the concept of universality is culturally constructed. Human Rights are viewed as representing the particular belief systems of some cultures and societies rather than those of all cultures and societies. This is the so-called 'cultural relativist' argument, the very rationale of which is to deny claims of universality. Accordingly, in their modern form, human rights are considered a Western construct of limited application to non-Western nations. This is the so-called "West versus the Rest" debate.

Some Asian political leaders have adopted this cultural relativist argument. For example, Dr Mahathir Mohammad, the Prime Minister of Malaysia and the former Singaporean Prime Minister Lee Kuan Yew. However, others have counter-argued that Asian values and the universality of Human Rights are complementary, for example, President Kim Dae Jung of South Korea, Anwar Ibrahim, the former Deputy Prime Minister of Malaysia, and President Habibie of Indonesia. In addition, the recently drafted forcefully reiterates the universality of Human Rights" (ACHR 1998).

One of the reasons why this diversion of opinion exists within Asia is that supporters of the cultural relativist argument believe the notion of universality to be promising more than it can deliver.

According to Tharoor, it is essential to recognise that universality does not presuppose uniformity. To assert the universality of Human Rights is not to suggest that our views of Human Rights transcend all possible philosophical, culture or religious differences or represents a magical aggregation of the world's ethical and philosophical systems. Rather, it is enough that they do not fundamentally contradict the ideals and aspirations of any society, and that they reflect our common universal humanity, from which no human being must be, excluded (2000).

According to Tharoor, there is essentially a philosophical objection to the universality of human rights. Truly speaking nothing in this world is universal. The Human Rights are limited by cultural perception; it is a human centric view of the world. Some philosopher assert that human rights are an individualistic view of the man whose biggest need is to be free from interference by the state, freedom to enjoy the life. This ideology however clashes with the societies and culture that are conceived as far more than group of individuals. Mainly aim of Human Rights is equality of men's dignity and all dimensions related to human beings. But critics of the universalist definition of Human Rights claim that nothing can be universal. (2000)

Shashi Tharoor gives one example of the famous Shah Banu case, in which the Supreme Court upheld the right of a divorced Muslim woman to alimony, prompting howls of outrage from Muslim traditionalists who claimed that this violated their religious belief; that divorced women are only entitled to the return of the bride price paid upon marriage. The Indian parliament then passed a law to override the court's judgment under which Muslim women married under Muslim laws would be obliged to accept the return of the bridge price as the only payment of alimony , but that the official Muslim charity, the Waqf board would assist them". (Tharoor: 2000).

Many Muslim women and feminists were outraged by this. But the interesting point is that is if a Muslims women does not want to be subject to the provisions of the act, she can marry under the civil code; if she marries under Muslim personal law, she will be subject to its provisions. That may be the kind of balance that can be struck between the rights of Muslims as a group to protect their traditional practices and the rights of a particular Muslims women, who may not choose to be subject to that particular law, to exempt herself from it.

Again many countries raising question of universality of human rights when celebrated fifteenth anniversary of the Universal Declaration in 2002 suggested that its provisions reflected the ethnocentric bias of the time. "That time many countries argued that the concept of Human Rights is a really cover for western interventionism in the affairs of the developing worlds, and that Human Rights are mainly one tool of western political western neo-colonialism. Also critic in the 1970s wrote that Human Rights not a Trojan horse, secretly introduced into other thinking and feeling for which Human Rights is the proper solution in cases of conflicts" (Tharoor 2000).

It is also argued that developing countries often can not afford human rights, since the tasks of nation building, economic development, and the consolidation of the state structure to these ends are in progress and many of such authoritarian and semi-authoritarian governments argue that it is more efficient in promoting development and economic growth than champion the cause of human rights. This is the premise behind the so called Asian values case, which attributes the economic growth of Southeast Asia to the Confucian virtues of obedience, order, and respect for authority. The argument is even a little more subtle than that, because the suspension or limiting of human rights is also portrayed as the sacrifice of the few for the benefit of the many (Tharoor 2000).

Universal human rights is a challenging concept to define and even more difficult to apply. Proliferated by the ongoing Iraqi prison abuse scandal, it remains one of the most arguable debates in international relations discourse. Some scholars have even gone so far as to argue that by negating the diversity amongst global

cultures and by promoting a massive set of social values, the mere notion of universal human rights reinforces neo-colonialist arguments by obliquely signifying Western hegemony over the developing world. Donnelly on the one hand, substantively advances the central norm of the UDHR that declares, "human beings are born free and equal in dignity and rights" (Donnelly 2003: 11, 225). He discloses how human rights is a realistic project and dimensions of this concept can be embedded into virtually all facets of human social and political existence. Donnelly approaches the issue by considering its impact on 'modest' cultural differences. When confronted with these modest differences Donnelly remains optimistic that cross-cultural dialogue can productively engender a consensus in rendering categorical human rights.

Although the overall argument is comprehensive and generally well-supported, it is nevertheless flawed by the lack of cogency evident in the author's discussion of humanitarian intervention. Donnelly claims that there is no innate association between the Western world and the establishment of human rights. Indeed, "the West had the (good or bad) fortune to suffer the indignities of modern markets and states before other regions" (Donnelly 2003: 78).

It can be concluded, therefore, that for socio-economic reasons the modern West was compelled to indoctrinate human rights prior to the non- Western world. However, as some scholars argue, during the initial stages of the state building processes in Western Europe and the United States, the politically sanctioned violation of human rights was common practice. In fact the notion of universal human rights-which has been significantly amplified by decrees like the Geneva Convention and the UDHR-did not garner ample international attention until after the Second World War. This suggests that for universal human rights to undermine traditional international legal norms-norms that are undergird in the theory of state sovereignty – what is required is the strongly ingrained social, political, cultural, and economic institutions. States of the modern West have had hundreds of years to create their qualitative fabric, and it is from this history and experience that the UDHR was conceived in 1948 (Donnelly: 2003). However, Donnelly expects the UDHR to be

applied to all states irrespective of when and how nationhood was established. He seems to negate the fact that many countries of the developing world are resultant of two primary phenomena: (i) the decolonisation movement of primarily the 1950s and 60s, and, (ii) the dissolution of the Soviet Union in the early 1990s.

"In any event, Human Rights have come to play on increasingly in important role in the domestic law and, in particular, the constitutional law of many countries. today, such as in Britain and other countries in Europe, in Canada, and in the US etc. Moreover, the outlines of a new international order for Human Rights are emerging. The European convention and the evolution of the European Union (EU) point toward a stronger institutional, though still regional, base for international Human Rights. And this may be replicated, to a degree, on a larger scale through the UN and the international courts. These are the structures through which Human Rights are recognised and maintained, to the extent that they exist in the world today" (Ready & Sellers: 2005: 71).

According to Michael Montagne, many countries emphasise different aspects of human, rights principles and policy. Some nations have emphasised traditional civil and political rights, whereas other particularly communist and socialist regimes have emphasised the concept of economic and social rights. Some governments have embraced both sets of principles. In the United States, the concept of certain individual and collective rights like, civil and political rights seen as "natural" has its origin in colonial times, reflecting the influence of John Locke and other political theorists. This concept was clearly set forth in the Declaration of Independence and was codified in the Constitution and the Bill of Rights. The United States has long regarded international human rights standards as universal. It rejects the arguments of nations such as China, which claim that such standards can be disapproved as mere "Western" concepts and argue that human rights should be viewed through the transparency of each nation's history and culture. Unlike many governments, the United States acknowledges that some human rights problems persist within its territory despite its generally having a good record and accepts that universal human rights standards involve study and criticisms of such matter.

The Universal Declaration was born at a time that made its success difficult. The Declaration's approval by the General Assembly coincided with the beginning of the Cold War- an ideological and geopolitical conflict between capitalist and communist countries that continued almost until 1990. Ideological differences and hostilities might have stalled the human rights movement worldwide but not the human rights advances in Europe. In the early 1950s Western European countries formed the Council of Europe and created the European Convention for the Protection of Human Rights and Fundamental Freedoms.

This international convention, "European Convention on Human Rights" entered into force September 3, 1953, and was binding upon countries that ratified it. The European Convention established basic rights similar to those in the Universal Declaration, but included provisions for enforcement and adjudication. The European Convention gave birth to the European Court of Human Rights, whose job is to receive, evaluate, and investigate complaints, mediate disputes, issue judgments, and interpret the Convention. The human rights set forth in the Convention are legally enforceable rights to which member states are bound. In creating the European Convention and Court, the countries of Western Europe gradually proved that effective protection of human rights could be provided at the international level (ECHR:1953)

The Universal Declaration of Human Rights (UDHR) is one of the first international documents to be based on the idea that rights are guaranteed to each human being. Most previous international declarations and treaties were based on the idea of positivism, whereby rights were only recognised once they have been set forth in the national legislation. Like the UN itself, the UDHR was written with the aim of establishing world peace by promoting human rights. Originally, the UDHR brought together 58 distinct geographic, cultural and political backgrounds in the formation of one universal document. Although the UDHR is not legally binding, it has created international human rights standards that are codified in various international treaties and national litigations.

If we do not recognise the universality of Human Rights then the concept of Human Rights will get diluted. As a result government will start abusing such rights and put the Human Rights of people at risk. Objections to the applicability of international Human Rights standard have all too frequently been raised by authoritarian rulers and power elites to rationalise their continual violations of Human Rights and solely to sustain them in power.

Thus the 'universality of Human Rights' is a concept. This concept holds that Human Rights belong to all human beings and are fundamental to every type of society. In this way, everyone has the same basic Human Rights. Individuals may exercise different rights, or exercise the same rights differently, depending on which group they belong to within society. Different groups include women, children, or those of a certain race, ethnicity or religion. Even if the form or content of Human Rights changes over time, the concept of their universality remains true.

The universality of Human Rights does not mean that the rights of every human being are the same for everyone, all of the time and in every circumstance. In fact, this would be impossible to achieve. Individual Human Rights do not exist in isolation. Sometimes they complement one another and at other times, there is tension between them. The potential for rights to conflict is often present. For example, the rights to freedom of expression or a fair trial may clash with the right to privacy; the right to cultural or religious practice may clash with the right not to be discriminated against on certain grounds; and the rights to a healthy environment, to an education, to health care or to welfare benefits may be in competition with each other over the same limited resources.

Human Rights' Universality in International Politics

If we try to understand human rights in international politics there is no universality as all rights and values are defined and limited by cultural context. If there is no universal culture, there can be no universal human rights. In fact, some scholars have objected that the concept of human rights is founded on an

anthropocentric, that is, a human-centred, view of the world, predicated upon an individualistic view of man as an autonomous being whose greatest need is to be free from interference by the state with a freedom to enjoy what one Western writer summed up as the right to private property, the right to freedom of contract, and the right to be left alone But this view would seem to clash with the communitarian one propounded by other ideologies and cultures where society is conceived of as far more than the sum of its individual (Tharoor 2000).

Not only Donnelly and Tharoor but Duquette also has given their idea about universality of human rights. In this aspect again the question arises "How then are human rights "objective" moral norms? What are the necessary conditions for their realisation? Can we appeal to a system of international law that is universally accepted or at least offers a fabric of institutions that give expression to an international consensus on human rights? Must it be the case that prior to such institutionalisation, human rights have no realty at all? Are the fundamental moral rights claim for all people in the American declaration of independence or the French declaration of the rights of man merely "manifesto" rights that is, recommendations that claims recognised as civil right in a particular society be made into civil right universally for all societies"(Duquette 2005: 69). According to Duquette the idea of human rights of asserting the universality of human rights raises two problems. First is the problem of relativism in which challenges the very idea of universal rights. He argues that any coherent relativism does not present a serious threat to the universality of human rights.

The second problem is of a viable universalism, which involves the issues of how to establish whether there are universal moral norms supporting human rights and how to identify their content. A solution perhaps is the universalism of human rights that recognises the place of cultural relativism, avoid foundational appeal in the argument for universalism and thus allow for the implementation of human rights in culturally divers context while recognising the importance of cultural differences and preserving the universality of human rights.

According to Reidy and Sellers in the "pragmatic-historicist account, the objectivity of universal human rights is based on practical reasons for accepting these rights within a context and is not intended to evoke Immanuel Kant's formalistic and a historical attempt to capture the absolute and ultimate transhistorical principles of morality. Practical reason is more properly conceived as being practical reasoning that is engaged critically in providing justifications for norms, with emphasis on the process of argumentation, experimental thinking and discovery, presupposing various intellectual traditions, whether or not these are explicitly or thematically recovered" (Reidy and Sellers 2005: 71).

They mention that the "the universalism and relativism of human rights should not be viewed as being entirely antithetical conceptions but rather as being on a spectrum, with the radical extremes at each end. Radical universalism, with its dogmatic appeals to a priory principle might understate the importance of cultural diversity and contribute to moral imperialism, whereas to a radical, relativism might understand the similarities of human experience and the commensurability of human cutlers and promote scepticism about the objectivity of moral norms. Neither of these extremes is morally attractive or practically viable, and they usually appear in public discourse in the insincere justification or rationalisation imperialist or protectionist policies" (Reidy and Sellers 2005: 74).

In reality, many of the current objections to the universality of human rights reflect a false opposition between the primacy of the individual and the paramountcy of society. Many of the civil and political rights protect groups, while many of the social and economic rights protect individuals. Thus, crucially, the two sets of rights, and the two covenants that codify them, are like Siamese twins inseparable and interdependent, sustaining and nourishing each other.

The word "human right" has become a catch word in international politics in contemporary times due to the recognition of international human right at global level after Second World War. Definitely this recognition is outstanding development for present world scenario. This development and recognition of human rights regime

continued at regional level also as many regional organisations beside UN also gave weightage to the issue of human rights.

The United Nations charter in its preamble declared: "We the people of the United Nations determined..... to reaffirm faith in fundamental human rights, in the dignity and worth of persons, in the equal rights of men and women and of the nations large and small....." The Charter also declared that the purpose of the United Nations is "to achieve international co operation is solving international problem of an economic, social cultural as human character and promoting and encouraging respect for human and for fundamental freedoms for all without distinctions as to race, sex, language and religion. (UN Charter 2006). Mainly we can say that United Nations has been endeavouring to relate human rights to global issues and has been strenuously working to find solutions for human rights concerns affecting millions of deprived, dispossessed, discriminated against and the marginalised people.

The human rights field can be understood from the fact that there are nearly 70 international convents declarations and other documents pertaining to these issues. These are known as the "instruments of human rights "and are covered under the categories of general instruments, special instruments and legal instruments (treaties etc) which embodies the political commitment by member states and also provide the guide for action in the field of human rights and elicit a commitment to bring domestic policies in line with the international code. There are elaborate prescribed procedures in the field of human rights. These procedures serve advisory assistance corrective relief and remedial and preventive functions.

However in many nations around the world, series human rights violations continue under the pretext of preserving national security. A host of arbitrary laws some time pretended to protect people from terrorist have draconian characteristics and thereby violate and restrict the basic rights of the people, especially, if they are seen to be unsympathetic to those in power or the established political, economic and social structures of the country.

It is absurd and surprising that many of the existing national security laws in India are based on the model of similar laws in colonial states, laws which have been used as tools for depriving the people of basic freedoms.

Also many South- East Asian states show a blatant disregarded for human rights in their own countries. These countries had been under some form of colonial dominations. During the long years of colonial rule, the ruling powers promulgated various legislations in order to suppress political dissent under colonialism. After independence these South-East Asian countries faced a similar kind of suppression of democratic space and human rights.

At the same time, ethnic conflict due to arbitrary demarcation of boundaries during partition, political subversion and violent protest against the state in many part of the world such as in South –Asian countries has undermined realisation of human rights. A typical modern South -East Asian state has dealt with political oppositions in a way similar to the colonial regime preceding it. Countries like Malaysia, Indonesia the Philippines, Burma, Thailand, Vietnam, Cambodia are constantly indulging in gross human rights violations and have their own share of human rights abuses, killings long detention, fortune, summary, trials impositions of still sentences etc (HRSEA: 2006).

Individuals in developing countries commonly turn to the Universal Declaration and other international human rights instruments in claiming civil and political as well as economic and social rights which has 170 member countries as signatories. The UDHR says, that "Everyone has the right to take part in the government of his or her country". It also says that "Everyone has a right to a standard of living adequate for the health and well-being" of both self and family.

There were a number of developing countries notably India, China, Chile, Cuba, Lebanon, and Panama which played an active and highly influential part in the drafting of the Universal Declaration of Human Rights. In the case of the Human

Rights covenants, in the 1960s, the developing world actually made a decisive contribution, particularly Ghana and Nigeria. The principles of Human Rights have been widely adopted, imitated, and ratified by developing countries; the fact that therefore they were devised by less than a third of the states now in existence, (the rest being under colonial rule at the time of UDHR) is really irrelevant. (Tharoor: 2000)

This differentiation between Human Rights is constantly changing. However, it should never develop into a formal or semi-formal hierarchy of rights, as this would jeopardise the concept of universality. Consider, for example, the perceived distinction between civil and political rights and economic, social and cultural rights. The Universal Declaration on Human Rights broadly covers both sets of rights in equal measure, though they are separated by two covenants – the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Part of the reason for this perceived distinction flows from the distinct form and nature of these two sets of rights.

It is argued that civil and political rights are 'negative' rights or freedom, as they generally require States not to interfere in the affairs of their citisens (e.g. privacy, freedom of expression, thought and religion, freedom of movement and assembly, and freedom from torture, arbitrary arrest and discrimination). Economic, social and cultural rights, on the other hand, are considered 'positive' rights - in that they require States to actively implement measures to secure these rights (e.g. right to a clean environment, and right to education, health, welfare assistance, and the right to substantive equality).

Many Western countries argued that economic, social and cultural rights were not "justifiable" – for instance, if an individual lacks adequate food, clothing or shelter, it may be difficult, in a court of law, to determine who is responsible for the circumstances. It was also recognised that the UDHR encompassed both "positive" and "negative" rights. Positive rights (e.g. the right to education) require that someone do something to ensure a specific right, while negative rights (e.g. the right not to be

subjected to torture) demand that states not to do something under the weight of military dictatorships, theocracies, and periods of colonial, authoritarian or totalitarian rule.

Civil and political rights are more heavily emphasised in liberal-democratic countries while economic and social rights were aggressively advocated by what were then (in the late 1940's) Communist countries. Unfortunately, the two were pitted against one and other, with the Soviet bloc countries arguing that economic and social rights had priority over civil and political. This was a thinly disguised effort to cover up Soviet disregard for and violation of basic civil and political rights. As the Soviet system opened up in the 1980s, nations acknowledged that all rights are interdependent, and that implementing one "set of rights" was no excuse for failing to implement the other.

In 1977, the US signed the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

The Universal declaration of Human Rights was the source of inspiration for freedom movements in colonies against imperial powers. Even today issue of Human Rights and dignity unites the people of world against neo colonialism or neo imperialism which is led by northern hemisphere of globe against third world and developing countries.

The inconsistency between the international and (some) domestic levels is a matter of concern for international law and international relations. The force of international Human Rights norm-setting is significantly diluted if countries believe that they are able to say one thing in Geneva or New York but do something else at home

The proposed study seeks to analyse the international human rights regime and its implication for the Indian state, in particular UDHR. It would go into the different provisions laid down by international human rights bodies, how these rights have

evolved over the years. It would also go into the constitutional provisions of human rights in India, how India applies international human rights, norms and values at the domestic level.

The research works in divided into five chapters.

Chapter one essentially deals with human rights in the international arena. An overview is attempted to try and explain the meaning, nature and universality of human rights. In this chapter, a kind of preliminary investigation in made of the different generations of human rights – economic, political, social or cultural nature rights. Chapter one also speaks of how states are compelled to adopt international and universality accepted ideas and rights.

Chapter two deals exclusively with the international human rights regime, and the different conventions, protocols and declarations, and institutions that seek to act as custodians of human rights in the world.

Chapter three is a study of the rise and rapid growth of non Governmental Organisations on human rights – an important actor in advocating human rights at domestic level with reference to India. It will also trace how NGO's are affecting implementation of human rights in India.

Chapter four deals with the constitutional provisions on human rights in India and also seeks to attempt a comparative analysis of such institutional provisions and the internationals norms, protocols and conventions. It also makes an attempt to study the violations of human rights by the Indians state such as fake encounters, preventive detentions, enforced disappearances, etc.

Chapter five would be in the nature of a conclusion, where different threads of thought, analysis and debate would be summarised. It would also attempts to seek a solution to the harmonious working of international norms with the domestic provisions.

Chapter Two

INTERNATIONAL HUMAN RIGHTS REGIME AND UNIVERSAL DECLARATION OF HUMAN RIGHTS

The notion of rights, most importantly human rights embodies the promise inherent in the logic of one conception of universal social culture, encapsulated by the idea of human rights as universal moral guarantees for individuals. Human rights are awarded to all, without qualification, without the need to reciprocate or bear responsibility and without the need to demonstrate one's suitability to receive them as was historically the case with the positive rights of national citizenship (Taylor 1994: 35). Appearances, however, may be deceptive. Human rights are not morally self-sufficient: a conception of 'the good life' (of the way people ought to live) is always required to underwrite them. The United Nations Charter and the Universal Declaration of Human Rights may be seen as a kind of proto-global constitution, reflecting an attempt to turn human rights into constructive rights. For activists, moral theories may now begin and end with universal human rights.

Contemporary international human rights law and the establishment of the United Nations (UN) have important historical antecedents. Efforts in the 19th century to prohibit the slave trade and to limit the horrors of war are prime examples. In 1919, concern over the protection of certain minority groups was raised by the League of Nations at the end of the First World War. However, this organization for international peace and cooperation, created by the victorious European allies, never achieved its goals. The League floundered because the United States refused to join and because the League failed to prevent Japan's attack of China and Manchuria (1931) and Italy's attack on Ethiopia (1935). It was succeeded by the UN after the Second World War (Taylor 1994: 46).

United Nations and Human Rights:

There are different ways of looking at the evolution of human rights in the United Nations. It is certainly, an unsatisfactory system, and one might point out the imperfections. It also is a story of the impact of politics and politicization, and one

could spend time discussing these aspects. It is a story in which violations of the rights of large groups of humankind have been left unattended and one could highlight these failures as well.

As the San Francisco conference convened in 1945 to draft the Charter of the United Nations, there was a strong belief in many countries that the new world order should be built on the foundations of human rights. Blueprints for an international bill of human rights were developed by leading academics, civil society organizations, and by some governments. Almost all the leading powers assembled at San Francisco, however, had many human rights skeletons in their cupboard. In the southern parts of the United States, segregation and racial discrimination were rife. Great Britain and France had colonies in which all manner of human rights violations were taking place. The evidence that has subsequently come to light about atrocities committed against local populations in countries such as Kenya is heart-rending. France also had a similar history. The then Union of Soviet Socialist Republics (USSR) had Gulags and other nations under its subjugation. On top of all of this, the cold war had descended on the San Francisco conference and the leading powers were more concerned with struggle for supremacy. It was not an environment conducive to inspiring human rights choices and the major powers would have preferred not to have to deal with the subject. But civil society would not let them get away with this (Neil 2006: 34).

Thanks largely to civil society pressure upon the delegates, the Charter of the United Nations as finally adopted, included several human rights provisions that were significant for the future world order: First, the United Nations was based on the principles of equality of, and self-determination for all people. The principles of self-determination turned out to be the bedrock for pursuing the independence of colonial countries and territories, one of the great achievements of the United Nations. Second, the United Nations is based on the principle of non-discrimination among nations and peoples. There is no discrimination on grounds of race, sex, language, or religion. This commitment to equality has characterized the United Nations ever since its existence and is also be one of the foundation principles of the new world order. The newly independent countries entering the United Nations in the mid 1960s pushed for procedures to deal with gross violations of human rights in the colonies. However, in

an ironic twist of history, it is those very developing countries which are arguing that the United Nations should not seek to condemn countries on their human rights record but the Charter's choice for promotion of human rights had been championed by the developed countries. The developing countries championed the cause of protection. Now they, in turn, opt for promotion. The way forward must be a balance between promotion and protection. The key must surely lie in prevention through efforts to build up in each country of the world an effective national protection system covering civil and political rights as well as economic, social and cultural rights. This is a challenge of human rights and also a challenge of nation building and a challenge of development. The San Francisco choices are thus still with us and the key lies in Articles 55 and 56 of the Charter.

A founding principle of the United Nations is *"to reaffirm faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women..."* Actions undertaken by the United Nations have included the dispatch of UN investigators, special rapporteur to monitor and report on abuses, the establishment of human rights field missions in trouble-spots where the UN conducts peacekeeping operations, and the imposition of economic and political sanctions (Neil 2006: 41).

Universal Declaration of Human Right:

In 1948, the United Nations General Assembly proclaimed the Universal Declaration of Human Rights (UDHR) for all people and all nations. In the UDHR, the United Nations stated in clear and simple terms the rights that belong equally to every person. These rights belong to entire human society.

The UDHR's Preamble speaks of "the human family," the need to develop "friendly relations between nations" and the determination of the "peoples of the United Nations" to promote "social progress." Article 22 regards "everyone as a member of society," Article 27 speaks of the right to freely participate in "the cultural life of the community" and Article 28 addresses the need for "a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized." (UN 1948)

Article 29 says, "everyone has duties to the community in which alone the free and full development of his personality is possible." The Article goes on to say that in the exercise of his or her rights and freedoms, "everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society" (UN 1948).

At the same time, the Universal Declaration makes it clear that none of the rights and freedoms in the UDHR may be exercised contrary to the purposes and principles of the United Nations. While the Universal Declaration recognizes the inalienable rights and fundamental freedoms of the individual human being, it also recognizes that human beings live in community with one another, and that this community is vital to the complete human person.

The most important statement on the norms of the international human rights regime is the Universal Declaration of Human Rights of 10 December 1948; the International covenant on civil and political rights and international convention on economic and cultural rights which came into force in 1976. The rights proclaimed in the Universal Declaration of the human rights can be divided into personal, legal, civil, political, economic, social and cultural rights Neil 2006: 55).

Right to life, nationality, recognition before the law, protections against cruelty, degrading, or in human treatment or punishment, and protection against racial, ethnic, sexual or religious discrimination, are personal rights of a human being (Article 2-7, 15).

Access to remedies for violation of basic rights, the presumption of innocence, the guarantee of fair and impartial public trial, prohibition again ex facto laws and protection against betray arrest, detention, or exile and arbitrary interference with one's family, home or reputation are legal right (Article 8-12).

Rights to freedom of thought, conscience, religion, opinion and expression, movement and residence, and peaceful assembly and associations are civil rights of human being (Article 13, 18-20).

Rights to food and a standard of living adequate for the health and well-being of oneself and one's family are subsistence rights of human being (Article-25).

Right to work, rest and leisure, and social security are economic right. (Articles - 22-24).

Right to education and right to participate in the in the cultural life of the community are the social & cultural rights (Article 26-27).

Rights to take part in government and periodic and authentic elections with universal and equal suffrage (Article 21) are political rights. (Donnelley1986:607)

The Universal Declaration of Human Rights along with number of convention, treaties protocols form part of international human rights regime.

The norms of the 1948 universal Declaration of human rights, in order to be active human rights (as constitutional rights or as international basic rights) and to be morally justifiable as human rights, must satisfy these three points. Human rights, like all basic civil rights, require justification, effective recognition, and maintenance. Beyond that, all rights also require some specification of content, some setting of scope (with provision for making scope adjustment), and some competitive weighting in case of conflict. Some institutional devices for the on- site resolution of conflicts, and so on. Otherwise, such rights will conflict with one another and collapse into an incoherent set."(Martin: 2005:49). "The Universal Declaration and the covenants provide the norms of what we can call "the global human rights regimes" a system of rules and implementations procedure centred on the United Nations. Its principles

organs are the UN commissions on human rights, the human rights committee, and the high Commissioner for human rights. (Donnelly 2003:129).

Critics have argued that the Declaration is an elaboration upon the human rights provisions of the Charter and therefore deserves to be ranked alongside the United Nations Charter as one of the basic constitutional documents of the contemporary world order. Views differ as to whether the Universal Declaration, in part or as a whole, is a legally binding document but most commentators agree that some parts of it represent binding international law.

The Universal Declaration, the two International Covenants, the Convention against racial discrimination, the Convention against Torture, the Convention on the Rights of the child, the Convention on the Elimination of Discrimination against Women, and the Convention on the Rights of Migrant Workers and their Families are the principal human rights treaties to date. The first six conventions are widely ratified, with the convention on the Rights of the Child being the one subscribed to by all but two states. The convention on the Rights of Migrant Workers and their Families is the least ratified of all because Western countries in particular have consistently objected to many of its provisions.

International Human Right Regime:

According to Stephen D. Krasner, "International regimes are defined as principles, norms, values and decision making procedure around which actor's expectations converge in a given issue area of international relations. Principles are belief of fact, causation, and rectitude. Norms are standards of behavior defined in terms of rights and obligations, rules of specific prescriptions or prescriptions for action. Decision making procedures are prevailing practices for making and implementing" (Krasner1983:185-186). Another definition of regime is given by John G Ruggie according to whom regime are social institution, around which actor expectations converge in a given area of international relations. Accordingly, as is true of any social institution, international regimes limit the discretion of their constituent units to decide and act on issues that fall within the regime's domain" (Ruggie 1982: 380).

Steiner & Alston elaborates upon human rights regime; they discuss "the relationship between right and duties, issue of cultural relativism, challenges to universalism and conflicts among different rights. They also discuss international human rights organizations, and the human rights norms included by the United Nations system such as international covenant on civil and political rights, economic, social and cultural rights as well as regional arrangements, civil society, NGOs and human rights committee. They also elaborate the distinctive aspect of the human rights movement of the last half century and its importance in the development and human rights regime" (Steiner & Alston: 2000).

Donnelly also emphasized on the idea of human rights regime, "List of human rights is based only loosely on abstract philosophical reasoning and priority moral principles. They emerge instead from the concrete experiences, especially the sufferings, of real human beings and their political struggles to defend or realize their political struggles to defend or realize their dignity. Internationally recognized human rights reflect a political driven process of social learning. (Donnelly: 2003:58).

This study will consider only the universal or UN-centred regime, which in this study shall refer to as the international human rights regime. The most important statements of the norms of the international human rights regime are the Universal Declaration of Human Rights, adopted on 10 December 1948 by the UN General Assembly, and the International Human Rights Covenants, which were opened for signature and ratification in 1966 and came into force in 1976. The rights proclaimed in the Universal Declaration- the best-known, most general, and most widely accepted statement of the regime's norms-are usually divided into civil and political rights and, economic, social, and cultural rights.

The catalogue of the international human right regime is further elaborated in International Human Rights Covenants and a variety of single-issue treaties and declarations on topics such as genocide, political rights of women, racial discrimination, and torture. Although these latter documents occasionally deviate from the Universal Declaration-for example, the Covenants prominently added a right

to self-determination and deleted the right to property-for the most part they elaborate or extend rights proclaimed in the Universal Declaration. Therefore, the regime's norms are quite coherent (Taylor 1984: 65).

The central procedural principle of the contemporary international human rights regime is national jurisdiction over human rights questions. The Universal Declaration, though widely accepted as authoritative, is explicitly a standard of achievement, and each state retains full sovereign authority to determine the adequacy of its achievements. The Covenants do impose strict legal obligations but on only those states-currently about one-half-that voluntarily accept them by becoming parties to the treaties. Furthermore, national performance is subject to only minimal international supervision. The regime, however, does verge on authoritative international standard setting or norm creation. States show not merely willingness but even a desire to use the United Nations, especially the Commission on Human Rights, to create and elaborate human rights norms, and the resulting declarations and conventions usually are widely accepted.

The modern articulation of human rights has captured the essence of justice, which though expressed differently in different cultures, is deeply held by all humankind. Validation of human rights lies in the repeated global endorsements from individuals and collectives, governments and civil society. The ability of the human rights regime to nuance itself in response to the complexities of technological innovation shows its lasting value. Governments are today seen as legitimate by their own people and the international community only when they abide by human rights benchmarks. As well, the endeavours of governance and development are premised on always seeking to promote, protect and fulfil human rights. Rights advocates would argue that in a globalising interconnected world where borders mean little, the realisation of human rights is the very raison d'être for the continued existence of the State.

Monitoring Human Rights:

The Office of High Commissioner for Human Rights:

The Office of High Commissioner was recommended by the World Conference on Human Rights that met in Vienna in 1993 and was established by the United Nations General Assembly later that year. United Nations Secretariat, the Centre for Human Rights and the Office of High Commissioner and the Centre for Human Rights were consolidated in 1998. That meant that the High Commissioner was called upon to fulfil different roles: moral leadership, political sensitivity, and bureaucratic-managerial duties. These roles are contradictory and this has been felt in practice (UN 2007).

The major contributions of the position of High Commissioner to the quest for human rights of implementation and protection have been to provide a voice for victims, to exercise initiative in launching investigations into gross violations of human rights, and to exercise a spearhead function for the human rights movement, interacting with bodies such as the Security Council and the International Criminal Court. Some gains have been made on these fronts. But the Office of High Commissioner is still in the early stages. It receives meagre allocations from the regular budget of the United Nations and spends two-thirds more from voluntary contributions. This reflects adversely on its staffing structure and on its ability to plan and act independently. In 2006, the High Commissioner has proposed a plan of action to double the resources of the Office from the regular budget in five years and hopes that the United Nations membership will follow-up on this (Neil 2006: 76).

Unfortunately, the High Commissioner has been squeezed on the budgetary front in the past on account of initiatives taken for the protection of human rights and at the present time, the debate is still going on as to whether, and how, the United Nations should deal with gross violations of human rights.

The Heads of State and Government gathered at United Nations Headquarters from 14-16 September 2005 and acknowledged that each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing

and crimes against humanity. This responsibility, they acknowledged, entailed the prevention of such crimes, including their incitement, through appropriate and necessary means. They accepted that responsibility and pledged to act in accordance with it. They called upon the international community, as appropriate, to encourage and help States to exercise this responsibility and to support the United Nations to establish an early warning capability (Mertus 2005: 31)

The Heads of State and Government declared that the international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapter VI and Chapter VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, they declared their preparedness to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the United Nations Charter, including Chapter VII, on a case by case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly failing to protect their population from genocide, war crimes, ethnic cleansing and crimes against humanity (Mertus 2005: 32).

The Commission on Human Rights devotes much time to monitoring the implementation of the standards it has set. It may turn to any number of permanent or special procedures when examining a specific area of human rights violations. Its two permanent procedures are the 1503 Procedure and the 1235 Procedure; its special procedures include fact-finding missions, thematic mechanisms or mandates and advisory services (Freeman 2002: 66).

The 1503 Procedure is a confidential procedure named after Economic and Social (ECOSOC) Resolution 1503 by which it was established. It is activated when the Commission receives a communication about a consistent pattern of gross human rights violations. Violations considered under this procedure include genocide, apartheid, racial or ethnic discrimination, torture, forced mass migrations and mass imprisonment without a trial. The report of consistent gross human rights violations to the Commission may not be an anonymous one, yet it does not require the consent of

the state concerned for an investigation to take place. This regulation gives the Commission great leeway in deciding how to best approach a situation. Following its investigation, the Commission then decides what action to take. When a 1503 Procedure fails to stop a human rights violation it has investigated, the Commission on Human Rights may invoke the 1235 Procedure under which it can hold an annual public debate about the gross violations of human rights in question. If this also fails to adequately affect the situation, the Commission may move to have ECOSOC pass a resolution condemning the violators. This public condemnation tarnishes the reputation of the leaders in the state in question and discredits their legitimacy as political elites (Freeman 2002: 66).

Among the special procedures available to the Commission on Human Rights, fact-finding missions are a useful tool. In a fact-finding mission, an expert or group of experts studies the human rights situation and looks for violations in a given state with the purpose of gathering information for a 1503 or a 1235 procedure. However, a fact-finding mission may only occur with the consent of the state whose human rights recorded is being questioned. As of April 2003, 47 countries had extended standing invitations to the Thematic Special Procedures of the United Nations Commission on Human Rights to investigate human rights issues, meaning that the Commission may initiate a fact-finding mission for any one of those countries at any time. For all other nations, the Commission must first seek and gain approval before dispatching its experts to the country (UN 2007).

Another special procedure available to the Commission on Human Rights is a thematic mechanism or mandate. Working groups and/or special rapporteur investigate human rights violations. Recently, there has been an increase in the number of Special rapporteur investigating human rights issues. Lastly, the Commission on Human Rights offers advisory services to nations that request it. The Commission provides educational and informational assistance to states in order to help them observe a high level of human rights protection. Additionally, the Commission on Human Rights may request assistance from the Office of the High Commissioner for Human Rights in the form of seminars, training courses, and clinics as well as advice from experts.

Sub-Commission on the Promotion and Protection of Human Rights:

The Sub-Commission was established by the Commission on Human Rights at its first meeting in 1947, and was titled the Sub-Commission on Prevention of Discrimination and Protection of Minorities before a 1999 vote to change its name. It serves as the main subsidiary body to the Commission on Human Rights (UN 2007).

The Sub-Commission is comprised of 26 member experts acting independently, without affiliation to their state of origin, though the are elected by the Commission proportionally according to geographical population distribution. Presently, member experts are divided as follows: seven from Africa, six from Western Europe and other States, five from Asia, five from Latin America and three from Eastern Europe. Each member has one alternate; half the members and their alternates are elected every two years and each serves for a term of four years. The Sub-Commission meets for three weeks each year in Geneva. Government officials, staff of UN specialized agencies and NGO observers may also attend their meetings (UN 2007).

The Sub-Commission's mission is to undertake studies under the guidance of the UDHR and to make recommendations to the Commission on Human Rights concerning the prevention of discrimination of any kind relating to human rights and fundamental freedoms and the protection of racial, national, religious and linguistic minorities. The Sub-Commission also undertakes work assigned to it by the Commission or ECOSOC, and distributes these assignments between its six working groups: the Working Group on Communications (which considers complaints regarding a consistent pattern of gross and verifiable violations of human rights, together with any existing replies from governments), the Working Group on Contemporary Forms of Slavery, the Working Group on Indigenous Populations, the Working Group on Minorities, the Working Group on Administration of Justice and the Working Group on Transnational Corporations (UN 2007).

Other Human Rights Treaties:

With the goal of establishing mechanisms for enforcing the UDHR, the UN Commission on Human Rights proceeded to draft several other treaties such as the International Covenant on Civil and Political Rights (ICCPR) and its optional Protocol and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

International Covenant on Civil and Political Rights (ICCPR):

The International Covenant on Civil and Political Rights, like the ICESCR, was adopted by the UN in 1966, but did not enter into force until 1976. Also like the ICESCR, the ICCPR saw a great deal of delay in its ratification due to the Cold War conflicts. These two treaties were signed separately because of the thought that political and civil rights could and must be guaranteed from the moment a nation signs on to the Covenant, but that, while it was desirable for the same to be true of economic, social and cultural rights, it was not feasible. Implementation of social and economic rights was expected to take much time and thus could not be forced upon a nation merely because it has ratified the Covenant (UN 1966). In Article 2 of the ICCPR, the Covenant obliges a state to respect and to ensure to all individual the rights recognized in the present Covenant. Meanwhile, a state undertakes to take steps to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant, according to Article 2. The ICCPR is monitored by the Human Rights Committee (UN 1966).

These two treaties account for most of the provisions listed under the Universal Declaration of Human Rights. Further, they make the provisions binding for those nations who are parties to the covenants. The two covenants along with their optional protocols and the Universal Declaration of Human Rights are known as the International Bill of Human Rights. India has acceded to ICCPR.

International Covenant on Economic, Social and Cultural Rights (ICESCR)

This International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted by the United Nations in 1966 and entered into force one decade later, in 1976, along with the International Covenant on Civil and Political

Rights. The amount of time that it took the ICESCR to enter into force may be partly attributed to the Cold War, in which Communist regimes, who advocated for economic, social and cultural rights, stood squarely against Western capitalist democracies, who embraced the civil and political rights codified in the International Covenant on Civil and Political Rights, India has acceded this covenant (UN 2007).

Committee on Economic, Social and Cultural Rights:

The Covenant itself did not provide for the creation of a monitoring body, so in the early days of ICESCR, states that had ratified the treaty reported to a working group of ECOSOC. In 1986, the Committee on Economic, Social and Cultural Rights (CESCR) took over the role as an independent expert committee to monitor the implementation of the Covenant. Currently, the Committee does not have a mechanism for processing individual complaints, although in 1996, CESCR sent to the Commission on Human Rights a draft of a proposed optional protocol that would provide for this kind of complaints procedure. It meets three times a year in Geneva (UN 2007).

Convention on the Rights of the Child (CRC):

The UN Convention on the Rights of the Child (CRC) is the most widely ratified human rights treaty. Adopted in 1989, it enshrines the notion that children have independent human rights. The CRC also established an international legal framework to protect children. The CRC is a seminal piece of international legislation, which has generated a global sense of responsibility towards the protection of children's rights. Yet, a report by the International Save the Children Alliance (ISCA) suggests that there is little evidence of CRC provisions bringing positive change to children's lives. A key finding over the past ten years is that no country has yet fulfilled all the rights of the child set out in the CRC. Evidence suggests that all countries, - rich and poor- have a long way to go. Further findings, however suggest that the CRC has increased levels of governmental accountability, brought about some legislative and institutional reform in signatory countries and established a precedent for international co-operation. Children's rights are now more visible: with the integration of the convention into the work of the UN and other agencies, children are better protected in war zones; young offenders are better

treated; and in service provision, there is a new focus on children who are excluded or discriminated against. Most national governments have failed to develop an explicit strategy for implementing the provisions of the CRC. Failure to disseminate adequate information about the CRC has resulted in a lack of public awareness (Muscroft 2000:10). India has acceded this convention.

As with many other recent multilateral initiatives, especially those held within a UN context or the UN system, the United States managed to alienate itself from the majority of its allies and found itself allied with unlikely bedfellows, including Iraq, Sudan, and Syria on some positions. In particular, the United States is one of only two UN countries; the other is Somalia, to not have ratified the Convention on the Rights of the Child (CRC), the most comprehensive children's rights treaty in existence. As such, the United States did not want language included in the session's final document that referred to a country's performance on protecting the rights and needs of children based upon the CRC standards. The United States also did not want a provision in the outcome document that prohibited the death penalty or life imprisonment for individuals under 18, as the United States is one of the few countries that continue to execute children for their crimes. Another fight that emerged during the conference was over references to reproductive health services. The United States did not want to include abortion in the list of reproductive health services offered to adolescents, even though the same language had been adopted at five previous UN conferences (Muscroft 2000: 12).

Committee on the Rights of the Child:

The Committee on the Rights of the Child monitors the Convention on the Rights of the Child. While the Committee engages in many of the same practices as do other committees, there is no individual complaints mechanism associated with the Convention, nor is there one associated with either of its two optional protocols, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. However, the Committee still examines state reports submitted and makes general

recommendations to the General Assembly on state parties and their compliance with the Convention (Muscroft 2000: 13)

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD):

The International Convention on the Elimination of All Forms of Racial Discrimination was adopted in 1965 and entered into force in 1969. It seeks to eliminate all forms of racial discriminations, and is monitored by the Committee on the Elimination of Racial Discrimination (UN 1965). India has ratified this treaty.

Committee on the Elimination of Racial Discrimination:

The Committee on the Elimination of Racial Discrimination (CERD) exists to monitor state parties to the CERD. It has 18 independent experts who are elected to CERD by state parties to the Convention. They meet in Geneva each year for two three-week sessions.

CERD's four main duties are the same as Human Rights Committee's: to review reports submitted by states on their domestic actions taken to comply with the treaty; to consider information submitted from one member state accusing another member state of violating the treaty in some manner; to consider individuals' complaints against states that have signed the treaty; and to issue written General Comments (UN 1965).

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW):

This Convention on the Elimination of All Forms of Discrimination against Women was adopted the 1979 and entered into force in 1981. It focuses on the areas of education, employment, health, marriage, and the family as each area relates specifically to women. CEDAW calls for the elimination of discrimination against women within society as well as the adoption of legislation to further women's rights. It is monitored by the Committee on the Elimination of all forms of Discrimination against Women (UN 1979). India has ratified the convention.

Committee on the Elimination of all forms of Discrimination against Women:

The Committee on the Elimination of all forms of Discrimination against Women (the CEDAW Committee) monitors the CEDAW treaty. It consists of 23 independent experts who are elected by those states that are parties to the Convention. It is one of the four monitoring committees that may undertake confidential inquiries into individual complaints.

As the Committee on the Elimination of Racial Discrimination and the Human Rights Committee, the CEDAW Committee has four main duties: to review reports submitted by states on their domestic actions taken to comply with the treaty; to consider information submitted from one member state accusing another member state of violating the treaty in some manner; to consider individual complaints against states that have signed the treaty; and to issue Committee written "General Comments" on each state's compliance with the treaty, taking into account reports written also by NGOs, to present to the Secretary General (UN 2007).

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT):

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted in 1984 and entered into force in1987. Among other provisions, it bans torture and rape as weapons during wartime. It is monitored by the Committee against Torture.

Committee against Torture:

The Committee against Torture exists to monitor the Convention against Torture. Its membership includes ten independent experts, elected by parties to the Convention. The Committee meets twice a year in Geneva for two to three weeks at a time, and submits an annual report to the UN General Assembly.

The Committee against Torture shares four of its five main duties with the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, and the CEDAW Committee. Its mission includes: reviewing reports submitted by states on their domestic actions taken to comply with the treaty;

considering information submitted from one member state accusing another member state of violating the treaty in some manner; considering individuals' complaints against states that have signed the treaty; issuing written "General Comments" on each state's compliance with the treaty, taking into account reports written also by NGOs, to present to the Secretary General. In addition to these four shared goals, CAT also investigates into allegations of general systematic forms of torture.

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families:

The latest of the UN's human rights treaties, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, was adopted in 1990 and entered into force July 1, 2003. It is monitored by the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families.

U.N. Human Rights Council:

The establishment of the U.N. Human Rights Council was part of a comprehensive U.N. reform effort by former U.N. Secretary-General Kofi Annan and member states. In March 2005, the Secretary-General outlined a plan for U.N. reform in his report, *In Larger Freedom: Towards Development, Security, and Human Rights for All.* He presented Human rights, along with economic and social development and peace and security, as one of three "pillars" on which to base the work of the U.N. In September 2005, heads of state and other high-level officials met for the World Summit at U.N. Headquarters in New York to address issues of development, security, human rights, and reform. The summit outcome document listed several mandates for strengthening the U.N., including reform of the U.N. Security Council, management structure, and human rights bodies (UN 2007).

The Council is responsible for "promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and unfair and equal manner." The council will "address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon." It also promotes and coordinates the mainstreaming of human rights within

the U.N. system. In order to achieve the above goals, the council will undertake a universal periodic review of each UN agency. (UN 2007).

The Council is designated as a subsidiary body of the General Assembly, whereas the Commission was a subsidiary body of the ECOSOC. This change significantly enhances the standing of human rights within the U.N. framework. In its new capacity, the council reports directly to the General Assembly's through ECOSOC. Former Secretary-General Annan stated that eventually he would like to see the council become a principal organ of the U.N. in the same vein as the Security Council. The Council is composed of 47 members apportioned by geographic region as follows: 13 from African states; 13 from Asian states; six from Regional distribution of seats on the Commission on Human Rights was as follows: 15 members from African states; 12 from Asian states; five from Eastern European states; 11 from Latin America and Caribbean states; and 10 from Western Europe and other states (Mertus 2005: 76).

A key difference between the Council and the Commission is the direct election of Council members by the General Assembly. Under the Commission, candidates were first nominated by their regional groups and then the nominees were submitted for election by members of ECOSOC. Regional groups often sent the same number of nominees to the election as there were seats available. This forced some member states to cast votes for countries with questionable human rights records in order to fill all regional group seats. The president and vice-presidents form the Council Bureau, which is responsible for all procedural and organizational matters related to the Council. The current president is Ambassador Doru Romulus Costea of Romania. Under the Commission, the role of president was held by a chairperson. The Council is headquartered in Geneva, Switzerland (Mertus 2005: 77).

The Table-1 given at the end of the chapter according to Landman and Office of the United Nations High Commission for Human Rights shows the countries which have signed the respective treaties as well as the ratio at global level for each human right covenants and treaties. It is clear in one glance that CRC is one of the most important treaty in among all human right treaties. This treaty has been signed by

world's 98.4% states by 1989. The other treaty (CEDAW) has been signed by the 85% of the countries and India also signed this treaty. International Covenant on civil and Political Rights (ICCPR): India signed this treaty but acceded to it take on 10 July 1979.

TABLE-1

The International Human Rights Regime: Instruments, Dates, Membership and India

Name	Date When Open for Signature	State Parties 2000N (%)
International Covenant on Civil and Political Rights (ICCPR)	1966 (India's accession on 10 July 1979)	146 (75.6)
International Covenant on Economic, Social, and Cultural Rights (ICESCR)	1966 (India's accession on 10 July 1979)	142 (73.6)
Optional Protocol to the International Covenant Civil and Political Rights (OPT1)	1976 (India has not signed)	95 (49.2)
Second Optional Protocol to the International Covenant Civil and political Rights (OPT2)	1989 (India has not signed)	44 (22.8)
International Convention on the Elimination of all Form Of Racial Discrimination (CERD)	1966 (04 Jan 1969 Ratification by India)	156 (80.8)
Convention on the Elimination of all Forms of Racial Discrimination against Women (CEDAW)	1979 (08August 1998 Ratification by India)	164 (85.0)
Convention against Torture and other Cruel Inhuman, Or Degrading Treatment or punishment (CAT)	1984 (India has signed the convention on 14 Oct 1997)	122 (63.2)
Convention on the Rights of the Child (CRC)	1989 (India's Accession on 11 Jan 1993)	190 (98.4)

Landman (2005:61) and (UNHCHR: 2004)

Chapter Three

HUMAN RIGHTS NGOs AND INDIA

Introduction of NGOs:

The rise of Non Governmental Organisations (NGOs) as international actors as well as shapers of national policy is one of the most important trends in international relations. NGOs encompass the entire range of civil society: from lobbying for better health, protection of the environment, and advancement of education for all; to delivering humanitarian relief and securing and protecting basic civil and political rights.

As the World Bank has noted, total development aid disbursed by international NGOs increased ten-fold between 1970 and 1985. The World Bank estimates that the number of national NGOs in developing countries is between 6,000 and 30,000.

As such I have discussed in earlier two chapters that, Human Rights plays a vital role in international politics at global level. This chapter deals with understanding of the phenomenon of NGOs participating in the field of human rights both at international level, as well as in India. Non governmental organisations are organisations which functions without the assistance and interference of governments. These organisations are set up by people outside the government; and also work as a watchdog at both national and international level. The works and functions of NGOs may vary widely.

NGOs are main actors at international level and national level in field of human Rights, civil rights, environment protection, health services etc. We can say that NGOs also play a decisive role in the maintenance and proper functioning of international human rights regimes by creating a link between individual citizen and the government at broader level. The significance of human rights NGOs has increased extremely with growing awareness about human rights at global level.

NGOs monitor the proceedings of human rights bodies such as the Commission on Human Rights and are the "watchdogs" of the human rights that fall

within their mandate. Some important and large human rights NGOs are Amnesty International and Human Rights Watchs).

Human rights NGOs carry out a variety of functions, such as advocacy, education, publication of matter relating to human rights, exposing instances of human rights violations, and putting pressure on governments to implement human rights. They are also important for the role they play in creating and expanding the Human Rights discourse by taking into consideration various kind of Human Rights violations all over the world and have made their presence felt by being able to apply sufficient pressure on states. Although and NGOs have made various achievements in the Human Rights movements, critics have pointed out several shortcomings in their manner of functioning. Possibly the two most severe types of criticisms levelled against them are un-democratic manner of functioning and a lack of transparency and accountability.

According to Parul Kumar (2008) the role of NGOs becomes important to prevent states from becoming dictatorial and also to form a link between individual citizens and the state. Indeed, one of the most important roles played by NGOs is to constitute an effective 'pressure group' and constantly attempt to make the state accountable for its actions aimed at making the state more accountable (2008). It is for this reason that it has been argued that NGOs should be seen only in relation to the state.

Upendra Baxi, in a discussion on the tasks and missions of human rights NGOs, names the following functions:

Baxi talks about future inventing which refers to the process of constantly reinventing human consciousness and organization to shatter dominant discourses, which may not favour certain groups, such as racism, colonialism and discrimination against women. NGOs plays role in agenda setting. Several NGOs create an agenda of political and social action, which arises out of their conception of a better future for human beings. As norm-creator, NGOs are often faced with the task of opposing developments that pose a threat to the normatively of human rights.

Baxi has also given example of Implementation Human rights NGOs that carry out an array of functions relating to the implementation of human rights, such as investigation to expose human rights violators, and the process of lobbying (Baxi: 2002:49).

Human rights NGOs play an important role in upholding human rights as envisaged under the United Nations Declaration of Human Rights and other human rights instruments. They also perform the task of creating awareness about these human rights. Due to these characteristic, they compel the governments of countries across the world to enforce human rights in their respective countries and be vigilant in order to prevent the infringement of these rights. They are often useful owing to the fact that they can resort to the use of informal channels to disseminate information about human rights even in countries where the government regime is repressive (Tujil: 1999:503).

United Nations and NGOs:

The United Nations has given recognition to the concept of NGO under Article 71 of the UN Charter, which states: "the Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned" (Kumar 2008). The NGO sector has played an important role in the ECOSOC, particularly as far as natural disasters and refugees are concerned. (Finkelstein: 2006)

The role of NGOs within the United Nations system will continue to evolve. In a 2002 report to the United Nations, the Secretary General emphasized the importance of the role played by NGOs in the United Nations system, noting that the "formal deliberations and decisions of many such meetings of intergovernmental organizations are now often enriched by the debates carried out in non-governmental forums and events held in parallel with the official conferences." The report discussed developments in the relationship between NGOs and the United Nations, such as new procedures that allow NGOs to give testimony to Security Council members on certain issues, and efforts by NGOs to present collective views. Finally, the Secretary

General noted the need for reforms, such as the need for clarification of the NGO accreditation process, and created a panel to review these issues. (UN 1999).

The Universal Declaration of Human Rights was adopted by the UN General Assembly on 10 December, 1948. The concept of Human Rights emerged from the Declaration, with Article 1 of the Declaration emphasizing the equality of all human beings, with respect to dignity and rights. It further emphasized each person's entitlement to all the rights and freedoms laid down in the Declaration without there being any distinction of race, colour, sex, language, religion, etc. It prohibits slavery, and declares cruel, inhuman or degrading treatment or punishment to be violations of human rights. Arbitrary arrest and detention constitute a violation of essential human rights, as per the Declaration. These are some of the key features of the United Nations Declaration of Human Rights and also comprise some of the main concerns of human rights NGOs.

NGOs and Human Rights:

In the world thousands of NGOs are working on human rights but some NGOs have emerged as important players in the field of human rights. According to Welch, "NGOs, is one of the most striking features of contemporary international politics. While states remain the major protectors and abusers of human rights, NGOs such as Amnesty International have emerged as central players in the promotion of human rights around the world" (2008).

Welch, (2008) argues that as advocacy organizations, human rights NGOs work with or against governments in developing agendas for action. Through treaty negotiations with governments, they seek to establish international standards for state behaviour. To mobilize public opinion, they investigate, report human rights abuses and offer direct assistance to victims of those abuses. They lobby political officials, corporations, international financial institutions, intergovernmental organizations, and the media. As their numbers increases, so their range of activities continues to expand. Today, NGOs are increasingly involved in providing services, such as holding training programs for upholding the rule of law and providing humanitarian assistance in disaster areas (2008: 21). Welch again says that, there is little doubt that NGOs

have influenced the human rights practices of governments and popular perceptions of human rights.

As we can see, NGOs play a major role in influencing the UN policy, and many of them have official consultative status at the UN especially in the International Covenant on Civil and Political Rights and its first Optional Protocol allowing individuals to submit complaints to the Human Rights Committee adopted by the General Assembly on 16 December 1966 and entered into force on 23 March 1976. The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, was adopted on 15 December 1989 and entered into force on 11 July 1991.

Amnesty International:

Amnesty International India works with people in India to demand respect for human rights and protect people facing abuse. They mobilise people, campaign, conduct research and raise money for their work and promote a culture where human rights as enshrined under UDHR are embraced, valued and protected.

Amnesty International stands as one of the biggest and most active Human rights NGO in the world. In the year 1999, Amnesty International had more than a million members in over 160 countries. It had national sections in 56 countries. 320 Officials and 95 volunteers work in the Amnesty International Secretariat, London. Every two years, an International Council constituted by representatives of the Amnesty International movement elects an International Executive Committee, comprising of nine members. Amnesty International also has consultative status at the United Nations, and was awarded for its achievements by the United Nations, on the 30th anniversary of the Universal Declaration of Human Rights. (Bargohin (1999:191)

Amnesty International states its mission as following: vision is a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. In pursuit of this vision, AI's mission is to undertake research and action focused on preventing and ending grave abuses of the rights to physical and mental integrity,

freedom of conscience and expression, and freedom from discrimination, within the context of its work to promote all human rights(Amnesty International:2006).

Some of the specific violations of human rights that Amnesty International aims to redress are freeing of prisoners detained on the basis of their beliefs, ethnic origin, sex, colour, language etc.

Human Rights Watch:

Human Rights Watch is a USA-based NGO, with its headquarters in New York. It is organized on the basis of divisions, which are categorized not on membership, but on region and the theme of work carried out by that particular division. Some of these specific themes of work carried out are women's rights, children's rights. In the past, the HRW has also looked into academic freedom, human rights and prison conditions. Its functioning include fact-finding investigations into human rights abuses in all regions of the world, publish those findings in books and reports and generating extensive coverage in local and international media. Human Rights Watch then meets with government officials to urge changes in policy and practice - at the United Nations, the European Union, in Washington and in the capitals around the world. In extreme circumstances, Human Rights Watch presses for the withdrawal of military and economic support to governments that violate the rights of their people (Human Rights Watch (2006).

Human Rights NGOs and India:

It is very important for developing country like India to provide proper awareness about Human Rights in order to save civilian from marginalisation. Even Human Rights awareness is also important to prevent government from taking advantage of there ignorance. The Human Rights movement achieved quality success in India since the proliferation of Human Rights NGOs in our country.

Human rights violations in India have manifested in different forms in India even after the Emergency, often with the State being a party to these violations or showing indifference to the plight of the victims. The Human Rights movement has expanded itself ever since its origin during the period of Emergency. It now focuses

on a wider range of issues, with economic and social rights, problems relating to inter-community tension, the struggle for natural resources and women's rights.

According to Amnesty International Report: India 2008, bomb attacks and armed conflict in various parts of the country left hundreds of people dead. Indo-Pakistan talks as well as initiatives to resolve conflicts in Kashmir and Nagaland made little progress. Rapid strides in some economic sectors fuelled high expectations in urban areas, although moves to acquire land and other resources for business and development projects led to protests in several states. This coincided with an upsurge in activity by armed Maoist groups in some states, raising security and human rights concerns. Marginalized local communities, including adivasis (indigenous communities), dalits and small farmers, protested against threats to their livelihood, denial of their right to participation in decision-making over development projects, and resettlement and rehabilitation processes. Many types of human rights abuses were reported, including unlawful killings, forced evictions, excessive use of police force, violence against women and harassment of human rights defenders. Institutional mechanisms failed to protect civil and political rights or ensure justice for victims. The failings extended to economic, social and cultural rights, particularly of already marginalized communities.

Some of the prominent human rights NGOs in India are the National Centre for the Protection of Human Rights which coordinates several human rights activities; and NGOs such as the Indian Association of Lawyers, the Lawyers Collective, the Human Rights Trust and the South Asian Human Rights Documentation Centre (deals with documentation, research as well as implementation of human rights); and the Punjab Human Rights Organization which works with Amnesty International and the UN Human Rights Commission (2004).

Human rights NGOs in India have constantly had to mould themselves according to the specific nature of human rights violations that they are dealing with. Aswini Ray points out that this is a challenge that the human rights movement has not been able to deal with sufficient ease. "They are periodically called upon to respond to them with indigenous theoretical and conceptual innovations in view of the paucity of comparable resources in the asymmetrical western liberal democratic experience.

This challenge still remains inadequately responded because of the limited empirical base of political theory within the western experience" (Aswini Ray 2004: 39).

Human Rights NGOs have been instrumental in expanding the rights discourse to include certain rights, which were previously not part of the human rights discourse, due to the limited sense in which the state projected rights. As a natural consequence of this development, the State has been compelled to take steps for the implementation of human rights.

These NGOs have created awareness about the state being a human rights violator, by highlighting out atrocities in Gujarat and Kashmir, for example, through the passage of draconian laws. In order to formulate an effective defence against these accusations, the State has had to bring about reform in its policies and actions. Human Rights NGOs in India have particularly played a significant role by taking steps to guarantee human rights to the marginalized groups, such as women and members of oppressed classes. It is due to the efforts undertaken by these NGOs that the rights of these groups have been taken cognizance of, by the State, and have also been widely recognized in society.

If we try to evaluate their functioning, lack of a comprehensive approach is criticism levelled against human rights NGOs in India due to the rather rigid manner in which they focus only on a single issue. For example, the NGOs dealing with women's rights may not engage with the problems of the peasantry. This would lead to issues such as those of women's exploitation in the farmers' movement being neglected.

Neera Chandoke points out the perils of such an approach: "if each discourse occupies its own space and fights its battles independently from other discourses of resistance, the fragmented arena resulting from these particularistic practices is peculiarly vulnerable to being occupied by the state and by the dominant classes". It is submitted that the NGOs must pursue a more flexible approach, for concentrating on single issues without thinking about Inter-related rights of other groups may prove to be prejudiced (Chandhoke (20005:9).

It is the view of several experts that human rights NGOs isolate themselves from other actors in civil society and the masses. Ramchandra Guha argues that due to their restricted social base, NGOs do not enjoy popular support, to the extent that their exclusivity lends them the character of powerful class-based movements, often the kind that they are opposed to. Moreover, the media and the middle classes begin to view them as groups pursuing their vested interests and working as per the whims of their donors.

The biggest criticism that human rights NGOs in India are facing is related to the issue of funding. It is alleged that many human rights NGOs formulate their programmes, such that the interests of their donors are given priority to. As a result, many of the areas of human rights that NGOs focus on, such as women's rights, are in fact, a product of the manipulation that their donor agencies exercise.

In fact, many human rights NGOs are run, not by the councils that they claim to have, but by individuals, who are the donors of the funds granted to the NGOs. The situation is such that there are no means of keeping a strict watch over the flow of foreign funds and ascertaining who their real beneficiaries are (Tandon 2006).

NGOs which are guilty of unaccountability to the citizens, for which they are claiming to be working in the interest of, have no right to point finger on the government which is accountable for its action. Therefore we can say that issue of funding and its misuse can shake the very foundation of NGOs on which they are based. Many countries made laws to ensure the proper, transparent functioning of NGOs under proper norms for the welfare of civil society. Many NGOs have reservation on such laws because these laws bring government in the sphere of their functioning.

According to Dadrawala taking measures, such as establishing strict accounting standards, carrying out regular audits through the setting up of an Audit Committee, separation of the Chairman and the Chief Executive, restricting the service contracts of executive directors to three years, the pay of officers to be regulated by a remuneration committee, etc. would bring about some measure of transparency to the functioning of NGOs. Audit or government's eye on financial

matter of NGOs are very important in order to maintain honest and transparent functioning (Dadrawala2006:46).

Importance of NGO at National and International Level:

According to Upendra Baxi NGOs find security in creating "global spaces", as opposed to "local spaces", that is, there is a greater possibility of NGOs from different countries coming together to protest against a global cause, rather than a local cause. "It is submitted that this is a natural outcome of the fact that human rights NGOs in India are likely to pursue goals that may be unique to their home country, owing to the peculiar nature of the problems that they are protesting against. Several NGOs identify their goals in terms of protest against specific policies of the governments of their respective countries, which result in human rights violations of citizens of that country. It follows that it may often be difficult to generate global awareness or solidarity about causes that are specific to the countries of origin of many local NGOs, and hence the solidarity expressed at a global level pertains to global issues of human rights. Further, most of these NGOs may not even possess the resources to bring their local cause into the global space, given the limited space that they operate in at the global level. (Baxi 2002:49).

Another point of concern is the difference in the quantum of resources at the disposal of NGOs. It is noteworthy that NGOs, such as Amnesty International, OXFAM and Greenpeace have more members than citizens in small countries, such as Fiji, Nauru and San Marino. There is also a great degree of variation in the funds available to various NGOs.

The localized presence of many human rights NGOs can be seen in contrast to the massive scale at which some NGOSs operate. Moreover, the small-scale operation of an NGO may be due to a lack of greater resources, but it is also often a matter of choice, with domestic NGOs finding that effectiveness would be best guaranteed by local projects.

Hence, it cannot be doubted that in the scope of their organization, and manner of operation, international NGOs are far larger than local level NGOs. Often, NGOs in India may be small organizations, which take up a particular cause and deliberately

aim at targeting a very small section of people. For Example, an NGO in India may take up the issue of trying to guarantee rights of tribal residing in a particular region.

Putnam, in his discussion on the fragility of civil society, records the observation that there is a considerable deal of anxiety revolving around the collapse of civil society in the United States owing to a decline of associationalism. Hence, the view held in the west is that the scarce resource of "social capital" has been lost.

It is of note that many NGOs that operate in the world today are of western origin. On the other hand, the idea of civil society in India seems to be flourishing, with the rapid expansion of the human rights discourse and the simultaneous increase in number of human rights NGOs. Contrary to the trend in the west, where NGOs could well be diminishing in number, the culture of associationalism is flourishing in India, which is evident from the proliferation of human rights NGOs. The human rights movement today would be incomplete without the contribution of civil society, particularly NGOs, which have been crucial in the human rights movement, not merely for redressing the wrongs done to victims of human rights violators but also for successfully creating a comprehensive discourse on human rights.

Without NGOs contributing to the field of human rights at the international level and the domestic level in various countries, the state would exist without having any specific agencies to be accountable to, for the violation of specific human rights. Further, these organizations have helped in bringing instances of human rights violations to the notice of the state, so that they can take action in that regard.

The protection of human rights has become an issue of prestige in the current day scenario, with no State being able to afford complacency on its part. NGOs have also been instrumental in equipping marginalized groups - women, children, indigenous peoples, to name a few with the ability to demand their rights. However, the functioning of these agencies has, by no means, been without its share of criticism.

It would also make the human rights movement more effective, since it would reduce the fragmentation that currently exists therein. Another constructive suggestion

that can be made at this juncture would be to encourage NGOs and states to enter into a relationship that could lead to better cooperation.

Although the goal of NGOs to apply pressure upon the government should not be lost sight of at any cost, it may be more beneficial for the state and non-state actors to enter into a non-confrontational relationship, one that could lead to an improved implementation of human rights. Lastly, it must be said that the human rights movement is in a state of constant change, with new doctrines and ideas being added everyday to the human rights discourse.

Role Played by NGOs

NGO also were instrumental in achieving the inclusion of human rights standards in the United Nations Charter in 1945, they were few in number and influence at that time. Only forty-one NGOs held consultative status with ECOSOC in 1948 and fewer yet focused exclusively on human rights issues. Since the 1960s, however, the number of NGOs and their influence both nationally and internationally has grown exponentially. Approximately 500 NGOs held consultative status with ECOSOC in 1968; this number had increased to over 1000 by 1992. (Korey: 1998).

Human rights NGOs have also grown in influence, both nationally and internationally. As Korey explains, NGOs "played a decisive role in transforming the phrase 'human rights' from a Charter provision or a Declaration article into a critical element of foreign policy discussions in and out of governmental or intergovernmental circles.(korey:1998).

NGOs have been instrumental in setting international human rights standards. "Standard-setting" is "the establishment of international norms by which the conduct of states can be measured or judged."

For example, NGOs were instrumental in achieving the passage of the Universal Declaration of Human Rights. In addition, NGOs have pressured their national governments to sign and ratify the treaties that embody human rights norms and have worked to increase use of the complaint mechanisms of these treaties. NGOs also had a significant impact at the 1993 World Conference on Human Rights in

Vienna. The conference was attended by over 800 NGOs, two-thirds of which were grass-roots organizations. As the Office for the High Commissioner for Human Rights explains, the search for "common ground" on the agenda issues at the Vienna Conference "was characterized by intense dialogue among governments and dozens of United Nations bodies, specialized agencies and other intergovernmental organizations and thousands of human rights and development NGOs from around the world." From OHCHR World Conference on Human Rights. Women's NGOs were a particularly prominent force at this conference and in pushing for the inclusion of groundbreaking language in the conference document. NGOs have continued to play critical roles in advancing the agenda at subsequent United Nations conferences. (Paul: 2000, Korey: 1998).

NGOs work to document violations of human rights standards. Investigation and documentation by NGOs has been vitally important in bringing human rights abuses to the attention of the United Nations, the international community and the public at large. According to Dorothy Thomas, Human Rights practice is a method of reporting facts to promote change. Hence, the influence of nongovernmental organizations is intimately tied to the rigor of their research methodology. One typical method of reporting human rights violations in specific countries is to investigate individual cases of human rights violations through interviews with victims and witnesses, supported by information about the abuse from other credible sources. (Thomas and Beasley1993: 19).

NGOs work to create and support enforcement mechanisms. As international human rights standards gained prominence, NGOs began "spurring the creation of special UN mechanisms" to enforce these standards while also "providing those UN instruments with the assembled documentation to make their investigations productive." Some of the UN mechanisms that have been created in part because of NGO lobbying include the thematic and country mandates under the Office of the High Commissioner for Human Rights. These include Working Groups on issues such as disappearance and detention; Special Rapporteur on topics such as torture, arbitrary and extrajudicial killing, violence against women, and racism; Special Rapporteur on particular countries, such as Cuba, Sudan, Burma (Myanmar), Burundi and Rwanda; and Special Rapporteur or Representatives on groups of countries, such as the UN

Special Rapporteur for Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (later the Special Representative of the Commission on Human Rights on the Situation of Human Rights in Bosnia and Herzegovina and the Federal Republic of Yugoslavia). NGOs were also the impetus behind the creation of the UN High Commissioner for Human Rights. (Korey 1998)

These NGOs build on a legacy of championing human rights through norm-setting and monitoring. They have helped to shape international agreements, instruments, institutions and human rights mechanisms over decades. NGOs were keys to shaping the language on human rights and fundamental freedoms in the United Nations Charter and of the U.N. Universal Declaration on Human Rights itself. These NGOs courageously defend human rights activists, often while risking reprisal themselves.

Together with the increasing worldwide demand for greater personal and political freedom often reflected in the work of these NGOs is the growing recognition that democracy is the form of government that can best meet the demands of citizens for dignity, liberty, and equality.

Finally, as far as democracy is concerned Human Rights have strong connectivity with it. The level of democracy in any country can be easily judged by the Human Rights given to the civil society of that country. So we can easily say that both democracy and Human Rights reinforce each other. The right of assembly, free speech and all other elements that constitute representative democracy signifies our democratic activities. Good governance, a government by the people that is accountable, transparent, and willing to accept constraints on power and cede it peacefully; and a flourishing civil society is essential for proper functioning and promotion of democracy. NGOs play a vital role in all such important areas of public interest.

U.S. based NGOs such as the National Endowment for Democracy, the Centre for International Private Enterprise, the American Centre for International Labour Solidarity, the National Democratic Institute for International Affairs, the International Republican Institute, and Freedom House actively promote democracy

across the globe. The British Westminster Foundation is a leader in democracy promotion.

This is however often considered as a form of US imperialism. US President Bush has said: "Freedom, by its nature, must be chosen, and defended by citizens, and sustained by the rule of law and the protection of minorities. America will not impose our own style of government on the unwilling. Our goal instead is to help others find their own voice, attain their own freedom, and make their own way."(Roth: 2000:92) By in supporting and defending the work of NGOs, that is exactly what we are doing – helping men and women across the globe shape their own destinies in freedom, and by so doing, helping to build a safer, better world for us all.

Russian President Putin acknowledged that NGOs can and do contribute to the well-being of society, but he added that their financing must be transparent and efforts to control them by "foreign puppeteers" would not be tolerated. The new Russian law has the potential to cripple the vital work of many NGOs, including foreign NGOs there to support the local NGOs, and could retard Russia's democratic development. The new law is now in effect. Recently, the Russian Ministry of Justice issued extensive implementing regulations along with dozens of forms for NGOs to complete (Lowenkran 2006).

All countries regulate NGO activity in some fashion, but there is a difference between giving NGOs the opportunity to register for non-tax status, and demanding that NGOs register to simply function. Most countries only require notification of registration, not permission from authorities, in order to operate as a formal, legal entity (Lowenkren: 2006).

Kenneth Roth feels that "International organizations have volunteered and been volunteered for a variety of tasks that require forms of legitimacy that international organizations never had" (Roth: 2000:92).

Challenges to NGOs Functioning:

It has been alleged that human rights NGOs do not have the legitimacy that they require, in order to carry out the tasks carried on by them.

The major criticism that NGOs are facing is of having an elitist bias. This is because of the membership of most NGOs which is restricted to affluent and educated western middle class. Due to this NGOs are lacking in connectivity with the masses as a result opinion restricted to people of northern hemisphere.

Most of the NGOs are having western biasness, due to this they sometime fails in understanding and appreciating the nature of problem of human rights violations that developing countries face.

NGOs are using ritualistic pattern of reports having same type of approach for different type of problems. This lack in innovation portrays NGOs in bad light. Stanley Cohen expresses his distaste for human rights NGOs using a standard pattern in composing their reports. According to him the format used by human rights NGOs, which involves, in the following order, the NGOs expressing concern and condemnation for the objectionable practice in question, stating the problem, setting the context of the problem, describing the sources and methods of information obtained by the organization, allegations in greater detail, a statement of the relevant international instruments and lastly, calling upon the government to undertake some action – has become ritualistic.

At the same time there is selection biasness also in functioning of NGOs. Most of the reports of NGOs are of Human Rights violation in democratic and open countries due to easy availability of information regarding violation, e.g. there are likely to be more reports on human rights violations in Israel as opposed to those in Cambodia.

We can say today, all across the globe, NGOs are helping to establish and strengthen democracy in three key ways:

First, NGOs are working to establish awareness of and respect for the right of individuals to exercise freedoms of expression, assembly and association, which is crucial to participatory democracy.

Second, NGOs are working to ensure that there is a level playing field upon which candidates for elective office can compete and that the entire elections process is free and fair.

Third, NGOs are working to build and strengthen the rule of just laws and responsive and accountable institutions of government so that the rights of individuals are protected regardless of which persons or parties may be in office at any given time.

According to Albrecht Schnabel and Shale Horowitz (2002) NGOs must address a number of key challenges:

In general, NGOs working at local and international levels need to make governments aware of human rights abuses in their (and other) countries, advocate the ratification of human rights conventions, and promote human rights legislation and education. NGOs need to work to reduce the gap between those who have and those who do not have access to political, economic and legal resources within society. NGOs need to continue and strengthen their focus on public and mass education for tolerance, respect and protection of rights. They need to emphasize peace and human rights education inside and outside schools and universities. In turn, an educated citizenry will place greater pressure on its own governments to respect human rights at home and to intervene abroad to prevent human rights tragedies (Schnabel and Horowitz 2002).

NGOs need to encourage opinion makers, educators, and faith-based organizations and movements to support peaceful resolutions to conflict, rather than incite adversity. They must also monitor government policies and the field activities of regional organizations and the UN. They must monitor activities of other NGO actors, thus offering some much-needed legitimacy and accountability of NGOs. Local and international NGOs need to assure transparency and accountability of their work and procedures to reduce accusations of paternalism and corruption. Mutual codes of conduct are crucial in this effort. They need to emphasize professionalism, non-partisanship and independence. Local NGOs must strive to become less

dependent on foreign funding by establishing membership fees and engaging in local fundraising (Schnabel and Horowitz 2002).

NGOs need to be more comprehensive in their human rights work: They need to embrace the Universal Declaration of Human Rights in its entirety – they must focus not only (or mostly) on political and civil rights, but also on social and economic rights. Particularly local NGOs need to be more multicultural through norms, practice and personnel, to stem the loss of credibility among some parts of the population and elite, and to gain deeper understanding of the wide range of issues affecting all social or ethnic sectors of transition societies.

NGOs must collaborate with regional organizations and the UN in advocating and promoting good human rights practices, and in monitoring human rights improvements. They need to curb turf fights and, instead, coordinate efforts with other NGOs. Moreover, international NGOs need to train and build capacities of domestic NGOs. More than at present, civil society actors must engage issues heavily affected by relativism. In this context, they need to play a critical role in social dialogue and persuasion, and search for constructive joint positions with traditional subgroups on issues of basic human rights. In collaboration with states and IGOs, they should give more attention to an evolving universalist consensus that does not incorporate all human rights, but distinguishes a rational core that reaches civil, economic and social rights (Schnabel and Horowitz 2002).

Chapter Four

UNIVERSAL DECLARATION OF HUMAN RIGHTS AND PRACTICES IN THE INDIAN CONTEXT

The adoption of the United Nations Charter and the subsequent enactment of a number of fundamental international instruments such as the UDHR of 1948 and the two covenants of human rights of 1966 had such a profound impact on the international community that no state, whether it a democratic or an authoritarian can possibly challenge, at least openly. The human rights need to be respected and cherished everywhere in this world and India is also no exception.

Constitutional Provisions on Human Rights:

In India, human rights simply did not come to force with the adoption of the Constitution and required a concrete plan and system to enforce as well as bring this Constitution in real practice. The fight for human rights was an integral part of our freedom struggle. It was not simply a fight for national or political independence, but also one which envisaged a just and pluralistic society based on respect and tolerance for the different sections of our diverse society.

The provisions of the fundamental rights laid down in the Indian constitution have a similarity with the rights given in the United Nations Declaration of Human Rights (UNDHR) both in form and context. These include Articles 14, 15, 16, 19, 20, 21, 23, 25, 29, and 31. The first of these Articles i.e., Article 14 is concerned with 'equality before law. Article 15 relates to the prohibition of discrimination on grounds of opportunity in matters of public employment. Article 16 is about equality of opportunity in matters of public employment. Article 19 deals with freedom of speech and expression; freedom of assembly: freedom of association; freedom of movement; freedom of residence and settlement; freedom of profession, occupation, trade or business.

Clause (1) of Article 20 is about prohibition against ex-post facto legislation; clause (2) deals with immunity from double prosecution and punishment while clause

(3) relates to the accuser's immunity from being compelled to give evidences against him self.

Article 21 of the Indian Constitution provides that 'no person shall be deprived of his life or liberty except according to the procedure established by law.' Article 22 relates to preventive detention, while Article 23 guarantees the right against exploitation Articles 25-28 deal with freedom of conscience and free profession, practice and propagation of religion. Cultural and Educational rights are provided in Article 29 and 30.

Article 32 deals with right to constitutional remedies for enforcement of fundamental rights. Through Article 32, the Supreme Court acts as the guardian of the Fundamental Rights enshrined in our Constitution. "The original jurisdiction of the Supreme Court (under Article 32) extends to cases of violation of the Fundamental Rights of individuals and the Court can issue several writs for the enforcement of these rights. It is an unique feature of our Constitution that in principle, any individual can straightaway approach the highest court in case of violation of his Fundamental Rights" (Kashyap, 2005: 238).

Besides the Directive Principles of States Policy enshrines the economics rights which are not enforceable. As Leela Simon states, "The Directive Principles of State Policy under Part IV of the constitution incorporate the right to work and fair wages; to equal pay for equal work; to improved living conditions; to education; to participate in cultural life; and to the highest attainable standard of physical and mental health. All these rights are not enforceable by a court, though judicial activism has made them more real for the people. (Nirmal, Chiranjivi J. and Leela Simon, 2000:44).

Similarities Between the Constitutional Provisions and the International Norms:

There are a lot of similarities between the provisions laid down in the Indian Constitution and those in the UHDR and the Covenant on Civil and Political Rights (1966) etc. For example, the provision of equality before law and equal protection of laws are provided in both the Indian constitution and the Covenant on Civil and Political Rights. Article 14(1) of the constitution says that "the State shall not deny

any person equality before law or equal protection of the laws within the territory of India". There is a lot in common with regard to provisions on forced or bonded labor in these documents. Article 23(1) of our constitution and article 8(3) are in agreement over the issue of bonded labor. (See table 2)

TABLE – 2

Similarities Between Universal Declarations of Human Rights and Indian Constitutions:-

Rights	Universal Declaration of Human Rights	Indian Constitutions
Equality before law	Article 07	Articles 14
Equality of opportunity in matters of public employment	Article 21(2)	Article 16(1)
Protection of certain rights regarding freedoms of speech, etc,	Article 19	Article 19(1) A
Protection in respect of conviction for offences	Article 11(2)	Article20 (1)
Protection of life and personal liberty	Article 9	Article 21
Prohibition of trafficking in human beings and forced labor	Article 14	Article23
Freedom of conscience and free Profession practice and propagation of religion	Article 18	Article25 (1)
Protection of Interests of minorities	Article 22	Article29 (1)
Right of minorities to establish and administer Educational Institutions	Article 20(3)	Article 30(1)
Right to property	Article17 (2)	Not a fundamental rights after amendment 44, but now in Article 300A
Remedies for enforcement of rights conferred by this part	Article 8	Article 32

TABLE - 3

Similarities Between Covenant on Civil and Political Rights and Indian Constitution

Rights	Convention on Civil And Political Rights	Indian Constitution
Prohibition of trafficking in human beings and forced labor	Article 8(3)	Article 23
Equality before law	Article 14(1)	Article 14
Prohibition of discrimination on ground of religion, race, caste, sex or place of birth	Article 26	Article 15
Equality of opportunity in matters of public employment	Article 25(c)	Article 16(1)
Protection of certain rights regarding freedom of speech	Article 19(1, 2)	Article 19
To assemble peaceably and without arms	Article 21	Article 19 (1b)
To form association or unions	Article 22(1)	Article 19(1c)
To move freely throughout the territory of India	Article 12 (1)	Article 19(1d,e,g)
Protection in respect of conviction for offences	Article 15(1) Article14 (7)	Article 20(1)(2)
No person accused of any offence shall be compelled to be a witness against himself	Article 14(3g)	Article 20(3)
Protection of life and personal liberty	Article 6 (1), Article 9 (1)	Article 21
Protection against arrest and detention in certain cases	Article 9 (2,3,4)	Article 22
Freedom of conscience and free profession, practice and propagation of religion	Article 18(1)	Article 25

TABLE - 4

Similarities Between Covenant on Economics, Social and Cultural Rights and Indian Constitution

Rights	Convention on Economics, Social and Cultural Rights	Indian Constitution
Equal pay for equal work	Article 7a (1)	Article39d
Provision for just and humane conditions of work and maternity relief	Article 7b	Article 42
Right to work, to education and public assistance in certain cases	Article 6(1)	Article 41
Opportunity for children	Article 10 (3)	Article 41f
Compulsory education for children	Article 13 (2a)	Article 45
Living wage, etc, for workers	Article 7(a)(11) Article 7 (d)	Article 43
Nutrition and standard of living	Article 11	Article 47

Emergency Provisions of the Indian Constitution and Its Impact on Fundamental Human Rights: Some Critical Issues:-

Even in normal times restrictions are always in place with respect to the practice of the fundamental rights inherited in part III of the Constitution of India for example; article 19 guarantees the rights to freedom of speech and expression; to assemble peacefully and without arms; to form associations and unions and so on. However, the states is allowed to impose 'reasonable restrictions' in the " interest of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality, or in relations to contempt of covet, defamations or incitement to or offence" Article 19(2).

So far as the question of "reasonableness" of the restrictions is concerned, it should be determined from both the substantive and procedural standpoints. In order to be reasonable, the restrictions imposed must have a reasonable relations to the collective object which the legislations seek to achieve, it should not go beyond that

objective. In other word, the restrictions imposed must not be greater than the offence sought to be prevented .This is called as substantive reasonableness.

On the other hand, procedural reasonableness relates to the manner in which the restrictions have been imposed. "that is to say, in order to be reasonable, not only the restriction must not be excessive, but the procedure or manner of imposition of the restriction must also be fair and just" (Basu 2002:103).

During on emergency, the Indian Constitution work under an altogether different set of regulations. A 'Proclamations of emergency' may be made by the President under article 352 at any time if he is satisfied that the security of India or any part there of has been threatened by war, external aggression or internal arm rebellion. Such a proclamation may be made even before the actual occurrence of any disturbance e.g., when external aggression is apprehended.

Though the actual occurrence of war or any armed rebellion is not necessary to justify a proclamation of emergency, but no such proclamations can be made by the President unless the unions minister of cabinet rank, headed by the Prime minister, recommends to the president, in writing, that such a proclamations should be issued (Article352(3).

It is to be noted that after 1978 , it is not possible to issue a proclamation of emergency on the ground of "internal disturbance" short of an armed rebellion, for the word "internal disturbance" have been substituted by the word "armed rebellions" by the constitutions (44th Amendment 1978 (Basu 2002:351).

Articles 358-359 lays down the effects of a proclamation of emergency under article 352 upon the fundamental rights. Article 358 provides that the state would be free from the limitation upon its legislative and executive power imposed by article 19.The rights guaranteed by article 19 would be non - existent against the state during the operation of a proclamation of emergency. Article 349 provides that the right to move the judiciary for the enforcements of the rights under Article 19 or any of them, may be suspended by an order of the President of India (Basu 2002:350).

> "While Article 358 comes in to operation automatically to suspend Article 19 as soon as proclamation of emergency on the ground of the war or the external aggression is issued, to apply article 359 a further order is to be made by the president, specifying those fundamental rights against which the suspension of enforcements shall be operative" (Basu 2002:350).

In other words, as soon as a proclamation of emergency is made under Article 352, state shall be freed from the limitations imposed by article 19; it means that the parliament shall be competent to make any law and the executive shall be at liberty to take any action, even though it may violate or restrict the right to freedom of speech and expression, assembly, association, movement, residence, profession or occupation as guaranteed by the different provision under articles 19.

So far as the above mentioned rights are concerned, the ordinary citizen shall have no protection against the legislative or executive authorities during the operation of the proclamation of emergency.

> "The enlargement of the power of the state under article 358 will continue only so long as the proclamation itself remains in operation Article 19 will revive as soon as the proclamation expires. But the citizen shall have no remedy for acts done against him during the period of the proclamation, in violation of the above rights [article 358]" (Basu 2002:135)

The very first proclamation of emergency under Article 352 was made by the president on October 26, 1962 in the view of Chinese aggression in Arunachal Pradesh. This proclamation of emergency was revoked by an order made by the President on January 10, 1968.

On December 3, 1971, the second proclamation was made under Article 352 when Pakistan launched airstrikes against India. It precipitated into a war resulting in the liberation of Bangladesh.

Though there was a ceasefire on the capitulation of Pakistan in Bangladesh in December, 1971, followed by the Shimla Agreement between Indian and Pakistan, the proclamation of 1971 was continued, owing to the persistence of the hostile attitude of Pakistan. It was in operation when the third Proclamation of June 25, 1975 was made.

While the two preceding proclamations under Article 352 were made on the ground of "internal aggression", the third proclamation of emergency under Article 352 was made on June 25, 1975 on the ground of aggression "internal disturbance ....." Both the award and third proclamations were revoked in March 1977.

Anti-Terrorism Law in India

In the report to the 58th session of the United Nations Commission on Human Rights, then United Nation High Commissioner for Human Rights noted that "an effective international strategy to counter - terrorism should use human rights as its unifying framework. The suggestions that human rights violation is permissible in certain circumstance is wrong. The essence of human rights is that human life and dignity not be compromised and that certain acts, whether carried out by state or non-state actors, are never justified no matter what ends. International human rights and humanitarian law define the boundaries of permissible political and military conducts. A reckless approach towards human life undermines counter terrorism measures" (PUCL Bulletin, March 2005).

Despite elaborate individual rights enshrined in the judiciary and a free and fair judicial system , systematic violation of human rights occur at regular intervals, more so in insurgency infected areas. The security forces operate with little regard for the law, secure in the knowledge that there acts would be condoned by the state. A few of the provisions of certain draconian laws and the acts perpetuated in the name of upholding law and order would serve to validate the argument made above.

On the right of 11 July, 2004, Mr Jhangjam Manorama Devi was allegedly raped and murdered by Assam Rifle personal. The Armed Forces Special Power Act (AFSPA), 1958 empowers even the non-commissioned officers to arrest "suspects" without warrant, to destroy any structure that way be hiding "suspected insurgents"

and to conduct search and seizure at will. But what was of even greater alarm in that, this act empowers the security personnel to kill even when there may be no apparent threat. On the other hand, no legal measures can be initiated without the prior permissions of the union government. The guilty Assam rifles personal took shelter under this specific provision and with active cooperation of the senior army officers, refused to cooperate with the civil injuries.

The AFSPA was first introduced in 1958, it was supposed to remain in force for 1year only. Subsequently, the ACT has been kept on extending indefinitely. In the Northeast region of India, the AFSPA has been the chief symbol of suppression. Incidentally, some of the provisions of the AFSPA have a close resemblance with the pre-independence security measures, such as the armed forces (special powers) Ordinance promulgated by the British government in August, 1942 with the aim of suppressing the freedom movement.

That the (AFSPA) violates the criminal justice system is without doubt. For instance the Act provides special powers which amount to awarding heaver penalty to the "suspects " than convicted persons would get from the judiciary. Which is a clear violations of the criminal justice system. Moreover non application of the "due focus of law" makes the armed forces to be their own judge and jury. This provides an ideal environment for the armed forces to indulge in act of human rights violations with little fear of punishment. Most importantly, section 6 of the AFPSA requires provision sanction of the union Government to prosecuted erring persons which leaves the judicial system inconsequential and also gives the impression that the executive does not trust the judiciary. The only way out of this mess created by the Indian state and its security agencies is for the Supreme Court to take charge and declare it as unconstitutional.

Another example of how the political executive, with active collaboration of the bureaucracy, can undermine human rights is the now- repealed Prevention of Terrorist Activities Act (POTA), POTA was supposed to be anti terrorism legislation which was enacted in 2002. It was to replace the Prevention of Terrorism Ordinance (POTO) 2001. It was meant to provide a legal framework to strengthen administrative authority to fight terrorism.

Controversy surrounded the act since its inception and even before. For example, it was passed on March 26, 2002 after ten-hours debate in the in the Indian parliament. The ruling national democratic Alliance (NDA) had to call for a joint - session of the parliament. Incidentally, it was the third time in Indian history that a joint - session had to be called. Section 3(3) of the act provided that whosoever "abets "a terrorist act shall be punishable. This provisions ran contrary to an observations of the supreme court's constitution Bench is Kartar Singh that the world " abet" as used in TADA is vague....". Again , under Section 4 of POTA , any person who is found to be in " possession of unlicensed arms is presumed to be guilty of terrorist act , where as ordinary the person could be prosecuted only under the Arms Act for such an offence. Similarly under section 7 of POTA, a police officer investigating an offence under POTA can seize or attach any property if "he has the reason to believe that such property constitutes the proceeds of terrorism". Such draconian provisions provide a breeding ground for human rights violations.

On September 7, 2004 the union cabinet in keeping with the UPA government Common Minimum Programme, approved ordinance to repeal the controversial POTA, The Bhartiya Janta party slammed the government's decision to repeal POTA as politically motivated and compromising the country's security.

Fake Encounters:

Fake encounters or "extra-judicial killings" are a blot on civil society. Security forces resort to such measures on the assumption that the judiciary works at a slow pace, and at times, not at all. Advocates of such measures argue that at present, most of the security personnel work 'extraordinary circumstances', and that the normal law of the land cannot be applied in such conditions.

We can say that the Constitution, under Article 21 guarantees right to life for all citizens. As a civilized member of the international community, Indian cannot remain oblivious of such glaring abuses of human rights. Any condoning of such activities or the part of the security forces could will lead to an erosion of the civil liberties of the common people.

Fake encounters are mostly witnessed in insurgency affected regions of the country, such as the state of Jammu & Kashmir, and the North east region. In recent years such "encounters" are also seen to have been taken place in the Maoist affected districts of Orissa, Chhattisgarh and others. Since anti-state activities are spread all over the country, it is highly probable that there could be a steep increase in the number of 'fake encounters'.

While most security experts concede that the security forces act under extreme pressure, and at times emotions may run high, but it is very important to keep a sight vigil on their activities.

It is also argued that the security forces resort to extra-judicial killings because of political pressure and vested interests. These vested interests include "the allowances the security forces receive, secret service funds police officers get which they do not have to account for, cash rewards and accelerated promotions based on the crudest measures of success such as body counts, sales of petrol and vehicle spare parts by the Para-military forces, collusion with timber smugglers, the lavish lifestyle of officials, etc" (Ghate, 2002:318).

What is tragic in such circumstances is that not only the accused does not get the right, as provided under the law, to be defended by a lawyer of his choice, but in most instances, it is also found that the victims turns out to be innocents.

In certain uses, it is seen that such violation of human rights are defended under the name of 'self-defense'. Of course, the law is India recognizes the right of a citizen to self defense, and in the course of such self-defense, even causing death in the encounter in a particular case can be justified depending upon the facts established after a purposed investigation.

That the menace of 'fake encounters' have reached alarming proportions is evident from the attention that the National Human Rights Commission has paid to this phenomenon. It has also been noticed that such fake killings have also been happening not only in insurgency infested regions, but also in the metros, and other big towns. The Mumbai police have earned notorious reputation for eliminating

suspected gang-members, including innocents, in the name of enforcing law and order. In certain instances, evidence has been obtained that the police eliminates rival gang members for pecuniary gains.

In response to a complaint [Ni. 234 (1 to 6) / 93 – 94] brought before the civil liberties group – the Andhra Pradesh Civil Liberties Committee, National Human Rights Commission (NHRC) land down the procedure to be followed in all cases of encounters. This procedure spelt out in a letter dated March 29, 1997 from the then chairperson of the NHRC to the Chief Ministers of all the states and the administrators of the Union Territories. It recommended the adherence of the following steps:

(a) When the police officer in charge of a police station receives information about the deaths in an encounter between the police party and others, he shall enter that information in the appropriate register.

(b) The information as received shall be regarded as sufficient to suspect the commission of a cognizable officers and immediate steps should be taken to investigate the facts and circumstances leading to death to ascertain what if any, offence was committed and by whom.

(c) As the police officers belong the same police station are the members of the encounter party, it is appropriate that the cases are made over for investigation to some other independent investigation agency, such as the state CID.

(d) Question of granting of compensation to the dependents of the deceased may be considered in cases ending in conviction if police officers are prosecuted on the basis of the results of the investigation.

Thus, it is evident from the observations of the NHRC that the investigation need to be carried out impartially by a separate investigation agency, and secondly, besides punishing the guilty, compensation should also be doled out to the servicing family members.

It is observed that in most cases, the administration seeks to protect the guilty personnel, especially in emergency affected regions. The armed forces fully refuse to

co-operate with the investigating agencies and the lower judiciary. Protected by draconian laws such as the AFSPA, NSA and others, accused personnel either refuse to appear before the civil inquiries and at times, ever threaten the witnesses with direct circumstances. The security forces 'enjoy considerable immunity'. Recollecting his experiences in Kashmir and elsewhere, Prabhu Ghate (2002:318-19) says that "the AFSPA 1958 allows the security forces the right to arrest without warrant, and to shoot to kill in order to do so, even persons about to commit a prospective offence. Section 7 indemnifies personnel from prosecution for any acts done under the act. A similar provision exists under the equivalent state government act, the JK Public Safety Act, the main preventive act in use, disallows legal proceedings against officials for "acts done in good faith" (Prabhu Ghate 2002:318-19).

Singhvi (2003) writes that law enforcement agencies routinely resort to torture, euphemistically called 'third degree'. The fact that law specifically prohibits torture does not alter the situation on the ground. It is open secret even police officers with outstanding professional records see nothing wrong in the use of third degree methods. This practice enjoys sanction at influential levels of the administration and society at large. As long as the end result is socially acceptable, few questions are asked. The general belief if that it is impossible to control crime and criminals without resorting to 'third degree' methods. Thus, if the use of torture were only an aberration, the problem could have been solved easily through stricter disciplinary procedures against the police officers involved. As is evident, the malaise runs much deeper.

Preventive Detention and Human Rights Violations:

Entry 9 in List I (Union List) and entry 3 in List III (Concurrent List) of the Seventh Schedule of our constitution deals with preventive detention.

Preventive detention means detention of a person without trial. It is so called in order to distinguish it from punitive detention. The objective of punitive detention is to punish a person 'for what he has done' after it is proven in the courts. The objective of preventive detention, on the other hand, is to prevent her from doing something and the detention in this case takes place on the apprehension that he is going to do something wrong which comes within any of the grounds specified by the constitution, viz., acts prejudicial to the security of the state; public order,

maintenance of supplies and services essential to the community; defense; foreign affairs or security of the state; public order, maintenance of supplies and services essential to the community; foreign affairs or security of India. In fact, preventive detention is resorted to in such circumstances that the evidence in possession of the authority is not sufficient to make a charge or to secure the conviction of the detention by legal proofs but may still be sufficient to justify his detention on the suspicion that he would commit a wrongful act unless he is detained (Basu D.D. 2002: 111).

The provision of preventive detention had existed in India even before the adoption of the constitution in 1950. Bengal Regulation 111 of 1818 - the Bengal State prisoners Regulation – provided that there can be no limitation upon the powers of the government to detain our Indian native on grounds of more suspicion. Another such draconian provision was Rule 26 of the Rules framed under the Defense of India Act, 1939, which authorized the British government in India to detain a person whenever it was satisfied with respect to that particular person that such detention was necessary to prevent him from action in any manner prejudicial to the defense and safety of the country and the like (Emp. V. Sibnath, A. 1945 P.C. 156). After independence in 1947, preventive detention was continued in India as an instrument to suppress apprehended breach of public order, public safety and the like (Basu D.D. 2002: 112)

Article 22 guarantees protection against arrest and detention in certain cases and declares that no person who is arrested shall be detained in police custody without being informed of the grounds of such arrest and he shall not be denied the right to consult and defend himself by a legal practitioner of his choice.

One of the first detention laws to be passed was the Preventive Detention Act in 1950. Initially, it was meant to be a temporary Act, but it came to be extended several times until 1969 when it lapsed. In 1971, the Maintenance of Internal Security Act (MISA) was enacted which had a number of provisions similar to the Act of 1950. In 1974, Parliament passed the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA). It was intended as an economic adjunct of the MISA. MISA was repealed in 1978. The National Security Act (NSA) was passed in 1978. It was meant to strengthen the Central and State

governments to maintain public order and to uphold the unity and integrity of the country.

With the rise of terrorist-related activities in Punjab and elsewhere, the Union Government passed the Terrorist and Disruptive Activities (Prevention) Act (TADA) in 1985.

One of the preventive detention laws which were misused the most was the TADA. The evidence was corroborated not only by independent and voluntary agencies such as Amnesty International, but also by former Union Minister for Home Affairs, M.M. Jacob who said on record that between 1981-1991, altogether 26,915 persons had been detained under the Act. But what was more surprising was that the state of Gujarat recorded the highest number of incarcerated under TADA, which stood at 9569. Gujarat never experienced terrorism like in Assam, Jammu and Kashmir or Punjab. Another disturbing trend was that a majority of the people held under TADA in Kashmir were minority Muslims.

Police Torture

In spite of the constitutional provisions aimed at safeguarding the personal life and liberty of a citizen, growing incidents of torture and deaths in police custody have been a disturbing factor. Prohibitions against torture and custodial misconduct remain, by and large, only on paper. It is widely accepted; even by the state authorities that torture is rampart, and it is the major reason for custodial deaths in India. Because it takes place in a confined environment, details and information about such violations of human right is and hard to access. In most instances, torture is resorted to in order to 'exact confessions'.

The poor and the weak, with little or no access to lawyers, are the worst sufferers. Things have reached such proportions that relatives of the accused do not hesitate to pay bribes in order to ensure that their wards are not subjected to torture in police custody. Thus, it serves the police as a double-edged weapon, and it is evident that the police will not relinquish it so easily; Things are also helped by the fact that India has not ratified the Convention against Torture.

In most cases involving human rights violations, the junior level officers are generally suspended and subjected to departmental inquiry. It is observed that fellow officers display a tendency to protect each other. In many instances, the punishment was usually in the form of a transfer, which not only emboldens the serial offenders but also encourages greater corruption in the police department.

Cases involving police excesses are difficult to substantiate because of the lack of support from other government departments. It is observed that falsifying records by deliberately omitting medical data in rising health certificates and in autopsy reports is common under compulsion or threat (Nirmal, Chiranjivi V, 2000). In the prison set up, doctors do not operate autonomously. Doctors seldom maintain independent records, neither do they have any authority to keep original documents; the police keeps such documents in their charge.

The Issue of Enforced Disappearances

Enforced disappearances were a trademark feature of totalitarian regimes, such as Nazi Germany in the 1930s and 1940s, the Soviet Union, Maoist China. But what is astonishing is that such enforced disappearances are not new to our country. In fact, in places like Kashmir and other insurgency infected regions, such acts continue unabated.

In Kashmir, in certain instances innocent civilians are buried as foreign militants, killed in "encounters" by the security forces. According to the Association of Parents of Disappeared Persons (APDP), more than 8,000 civilians - man and woman – have gone missing in the state Jammu and Kashmir since the insurgency began in 1989. The government response is predictable: it branded those who went 'missing' as anti-nationals who had crossed over to Pakistan in order to receive ideological and military training.

Such enforced disappearances "established one thing – that in recent decades, in the course of our fight against terrorism, the security agencies, sometimes with the complicity of our governments, have carried out enforced disappearances of terror suspects," (Mukul Sharma: 2008). Instead of responding to terror with justice, the security forces have tended to fight terror with counter-terror. What is surprising, and

equally unfortunate, is that these security agencies have carried out such crimes with impunity. This is in contravention to accepted international norms and human values.

Mukul Sharma further writes "to disappear is to vanish, to cease to be, to be best. But the "disappeared" have not simply vanished. Someone, somewhere, knows what had happened to them. Someone is responsible. Each enforced disappearance violates a swathe of human rights : the right to security and dignity of a person; the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment; the right to human conditions of detention; the right to a legal personality; as well as rights related to fair that and family life. Ultimately it violates the right to life, as victims of enforced disappearances are killed" (2008).

Contrary to popular perceptions, human rights violations in the form of disappearances and extra-judicial killings are not limited only to specific regions. Reports by human rights groups have shown that such violations are happening with increasing regularity in states such as Gujarat, Maharashtra, Andhra Pradesh, Uttar Pradesh, Bihar, Rajasthan and Orissa.

India has signed the international Convention for the Protection of All Persons from Enforced Disappearances in February 2007. "No person shall be subjected to enforced disappearance". India, however, is averse to the idea of independent observers from the United Nations and Amnesty International (AI) to either visit the country or conduct independent inquiries. It is unfortunate that India has still not ratified the Convention against Torture, and requests by the UN special rapporteur on torture and extra-judicial executions to visit the country have been pending for long.

This places an obligation on the States to adopt and enforce safeguards against disappearance, and requires them to provide judicial remedy and redress to the victims and their families (Mukul Sharma, 2008).

To restore the faith in the Indian political system, one needs to ensure that all allegations of enforced disappearances and extra-judicial killings are independently and impartially investigated; anyone suspected of such crimes should be prosecuted in

a fair manner. It is equally important that the victims are adequately compensated and rehabilitated in order to provide a healing touch and instill faith in Indian democracy.

Minority rights:

In order to strengthen the cause of the minorities, the United Nations promulgated the Declaration of the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities on December 18, 1992. It proclaimed that:

States shall protect the existence of the National or Ethnic, Religious and Linguistic identity of minorities within their respective territories and encourage conditions for the promotion of their identity. Incidentally, December 18 is observed as Minorities Rights Day all over the world.

The Indian Constitution does not define the term 'minority' but it means a non-dominant group. It is a relative term and is referred to represent the smaller of two numbers, sections or group called 'majority' in that sense (Bakshi, P.M., 2006: 69). Five communities are recognized as minorities by the Indian government. These include the Muslims, Christians, Sikhs, Buddhists and Parsis. These five notified communities constitute 18.42 percent of the total population or accounted for 189.5 million of India's population according to the 2001 census.

The Indian constitution provides adequate safeguards for religious, linguistic and cultural minorities. Articles 25-28 provide freedom of conscience and free profession, practice and propagation of religion. It means that there shall be no 'state religion' in India. The State shall neither establish a religion of its own nor confer any special patronage upon any particular religion (Basu, 2002: 115).

Article 25 provides for right to freedom of religion. However, this right is subject to public order, morality and health. Article 26 lays down the freedom to manage religious affairs. Article 27 states that no person shall be compelled to pay taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any religion or religious denomination. Article 28 provides for "freedom as to attendance at religious instruction or religious worship in certain educational institutions".

Educational, Linguistic and cultural rights are guaranteed under Articles 29-30. It says that any section of India having a distinct language, script or culture of its own shall have the fundamental right to conserve the same. It is important to note that this provision accords protection not only to religious minorities but also to linguistic and cultural minorities.

The Constitution provides that there shall be no discrimination in state funded educational institutions. Article 29(2) provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving State aid, on grounds only of religion, race, caste language or any of them. It is a very wide provision intended for the protection not only of the religious minorities but also of 'local' or linguistic minorities. It could be argued that certain Constitutional provisions are multi-faceted i.e. they cater to more than one section of minorities. There are also provisions under the Constitution that all minorities, whether based on religion or language, shall have the fundamental right to establish and administer educational institutions of their choice.

The Indian constitution, under article 350A, instructs every state to provide for adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups. It also speaks for the appointment of a special officer for linguistic minorities to investigate and report to the President all matters relating to the safeguards provided for linguistic minorities under the Constitution[1]. Apart from these provisions, parliament has enacted the National Commission for Minorities in 1992. Its primary objective is to monitor the working of the safeguards provided in the Constitution and the various state and Union laws.

The Sachar Committee Report and Muslims:

The Sachar Commission was constituted by the Congress-led UPA (United Progress Alliance) Government to inquire into the conditions of the largest minority community in India-the Muslims. It was the first systematic study of the Muslim

[1] This particular provision is provided in Article 350B.

community in independent India. [2] The highlights of the Sachar Committee report[3], submitted toward the end of 2006, recommended the setting up of an Equal Opportunity Commission to address concerns of deprived minority groups; creation of a national data bank on various socio-religious categories; designate Arzal Muslims as SCs or Most Backward Castes and evolve affirmative action measures; promote religious tolerance by initiating a process to evaluate textbooks for appropriate social values; evolve criteria to facilitate admissions to the most backward socio-religious categories in universities; provide financial and other support to initiatives built around occupations where Muslims are concentrated and that have growth potential; work out mechanisms to link madarsas to higher secondary schools and recognize madarsa degrees for eligibility in defense, civil and banking examinations; devise teacher training components that highlight diversity and sensitize teachers to the aspirations of Muslims; setting up of a national Wakf Development Corporation with a revolving corpus fund of Rs.500 crores (Ramakrishnan, Venkitesh, 2006: 6).

The Sachar committee recommendations, if carried out in letter and spirit, can serve as example of amelioration of minority grievances. Most of the recommendations listed above have a lot in common with the spirit, if not the content, of international covenants and declarations of human rights. The Sachar committee could serve as an example for other nations and international organizations to strive to emulate.

In sum, we can say that there is a great degree of synergy between international norms on human rights and the Constitution of India's provision on fundamental rights. In practice, however, the realization of these rights is not without problems and hence violation of human right is not uncommon in India. As such we can say after Sachar Committee Report, minority communities neither flourish nor having a dignityful life.

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[2] All the other commissions, including the Dr. Gopal Singh Committee, looked into issues relating to the Muslim community along with those relating to other segments of society, such as the S.Cs, S.Ts and other weaker sections.

[3] The processes of the committee were essentially based on three types of issues relating to identity, security and equity, with special emphasis on issues of equity. Within this broad perspective, a wide range of specifics were covered by the committee such as perceptions about Muslims; the size and distribution of the community's population; indices of the community's income, employment, health, education, poverty, consumption and standards of living; and the community's access to social and physical infrastructure. The committee also made a meticulous study of the perpetuation of the caste system in the Muslim community (Ramakrishnan, 2006:5).

Chapter Five

CONCLUSIONS

"Human Rights are basic guarantees of freedoms that every human being must enjoy in order to be able to live a life of dignity and pursue opportunities to realise one's full potential"(UDHR : 2008). Human Right have been broadly classified into three generations of rights. The first generation of human rights are civil and political rights, including right to life, liberty, freedom of speech and voting rights. The second generation of rights is related to economic and social rights while the third generation of rights include environmental, cultural and development rights.

The most important statement on the norms of the international human rights regime is the Universal Declaration of Human Rights adopted on 10 December 1948 and the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights which came into force in 1976. The rights proclaimed in the Universal Declaration of the Human Rights are all encompassing - legal, civil, political, economic, social and cultural rights.(Neil 2006: 55).

But all countries of the world do not operationalise the principles and goals enshrined in the UDHR in totality. Hence, in practice, achieving human rights for every human being is very difficult and depends on different values and cultural contexts. The term has come to acquire different meaning in different local jurisdictions resulting in differential application. It cannot be denied that Asian societies put more emphasis on a group-political or social, rather than the individual rights. But at the same time, it cannot be argued that human values and rights are not important in Asian societies and political system. As Amartya Sen has pointed out the concerns for the rights of the individual are not entirely a gift of western societies.

Many scholars have discussed the impact of regime on state behaviour and outcomes. "However, there is no general agreement on this point and three basic orientations can be distinguished. The conventional structural views the regime concept as useless if not, misleading. Modified structural suggests that regime may matter, but only under fairly restrictive conditions, and Grotian see regimes as much more pervasive, as inherent attributes of any complex persistence pattern of human behaviour" (Krasner 1982:190)

In the case of India, as discussed in the dissertation, a great degree of synergy exists between the constitutional provisions on fundamental rights, directive principles of state policy and the UDHR and many other human rights treaties. India is also a party to a number of UN treaties and declarations on human rights, including ICCPR, ICESCR (accession), and CRC, CERD and CEDAW (Ratified) and on CAT (signature).

The constitutional provisions on Fundamental Rights (under Part III) and the Directive Principles of State Policy (part IV; though not enforceable) provide a formidable set of rights to its citizens. Many of them reflect the principles enshrined in the Universal Declaration of Human Rights, such as right to life, liberty, equality before law, freedom of speech, equality of opportunities, religious rights and remedies for enforcement of rights, etc.

However, in practice, violations of human rights are not uncommon. Constitutionally the fundamental rights of people are suspended in the case of proclamation of emergency. Also a number of draconian laws (mostly extraordinary laws for 'tackling' counter insurgency and terrorist activities) including the AFSPA, NSA, POTA, TADA, COFEPOSA are invoked and/or in operation which violate the rights of people. Hence, in practice several cases of violations of human rights are reported, especially fake encounter, preventive detention, police torture, enforced disappearances, etc. Also, instances of discrimination on ground of caste and religion are not too infrequent, not to mention the denial of social and economic rights because of high incidences of poverty, illiteracy and malnutrition. Acording to P N Bhagvati

(1980) it is only through achievement of social and economic rights that civil and political rights can become a practical reality for the entire people of country. Otherwise, civil and political rights will remain a mere illusion.

The Supreme Court has always taken a serious view of the prevalence of torture and other forms of degrading methods in police practices and other spheres of our social and political life. An important device which could help check such menaces is the 'public interest litigation'. By this way, it could entertain press reports, letters and petitions from persons lacking a formal locus standi, as writs in public interest.

To restore the faith in the Indian political system, one needs to ensure that all allegations of enforced disappearances and extra-judicial killings are independently and impartially investigated; anyone suspected of such crimes should be prosecuted in a fair manner. It is equally important that the victims are adequately compensated and rehabilitated in order to provide a healing touch and instil faith in Indian democracy.

In this context, a constructive and positive role of NGOS is very important. It is important for NGOs to portray such problems and campaign for realizing the human rights of everyone and everywhere. Human rights NGOs such as Amnesty International play an important role in shaping human rights norms and standards. They also play an important role in upholding human rights as envisaged under the United Nations Declaration of Human Rights and other human rights instruments by pressurising governments to sign and ratify the treaties that embody human rights norms and have worked to increase the use of the complaint mechanisms under these treaties. They also perform the task of creating awareness about human rights. Investigation and documentation by NGOs has been vitally important in bringing human rights abuses to the attention of the United Nations, the international community and the public at large. They are often useful owing to the fact that they can resort to the use of informal channels to disseminate information about human rights even in countries where the government regime is repressive.

The Amnesty International group in India was started in 1968 by Mridula Sarabhai, a human rights activist whom Amnesty International had adopted as a prisoner of conscience after her arrest in 1965. She said the letters she received in prison from Amnesty International members gave her the strength to bear her incarceration and the desire to launch Amnesty International in India. Today, there are 14 groups in India, organized into the Indian Section based in Delhi. The members - men and women, young and old, from every walk of life and from many of India's diverse ethnic, religious and social groups - are united by a common goal, to protect human life, dignity and safety in all parts of the world. Amnesty International members in India work on all major campaigns. For instance, during the 1995 women's campaign, the Amnesty International India held a seminar to highlight the rights of women and joined international activities such as letter-writing to governments and opposition groups. Besides Amnesty International, many other human rights NGOs work towards the realisation of human rights in India. The role of such human rights NGOs has often been criticised for being non-transparent, unaccountable, political, elitist and Western but such limitations notwithstanding, their role is crucial in the filed of human rights.

The role of media as a watchdog is equally important in the protection and promotion of human rights. It is however, witnessed that the media fails either to highlight the instances of human rights violations, or wilfully collaborates with the state agencies to cover-up the incidents. At times, the media also plays a negative role by sensationalizing an incident (sometimes referred to as trial by media), which can have grave repercussions for both the society and the individual. Hence media must be sensitised to play an important role in securing rights of the people.

Another effective tool to fight police excesses, torture and custodial deaths is the Right to Information (RTI) Act, if it is applied diligently. It is seen in most cases, the security forces and the police tend to hide the evidence under different pretends. The official secrets Act of 1923 is an instrument in their hands. It could be countered by the RTI Act. If the information about a particular instance of extra-judicial killing

becomes known, it could be pursued by civil society and the judiciary can provide justice to the aggrieved parties.

It would not wrong to say that the violation of human rights can be controlled only when there is a firm determination for the human dignity and values. It is crucially important that the Indian society at large, including the political elite, both civil and police administration, the media, civil society and intellectuals who yield influence in moulding the opinion in the society, reject and renounce their ambivalent and opportunistic attitude towards the violation of human rights.

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