



Subject :
**Human Rights
Law & Practice**

Paper : 6.1

≡ MIES
R.M. Law College

Affiliated: Vidyasagar University

Approved by: Bar Council of India

SONARPUR

Near SBI
Kolkata-700 150

☎ 2428 3510



SUBJECT TOPICS

- 1. CHARACTERISTICS AND NATURE OF HUMAN RIGHTS**
- 2. LANDMARKS IN DEVELOPMENT OF HUMAN RIGHTS**
- 3. LAWS PROTECTING WOMEN'S RIGHT**
- 4. LAWS PROTECTING CHILDREN'S RIGHT**
- 5. THE RIGHTS OF SCHEDULED CASTES (SC) AND SCHEDULED TRIBES (ST)**
- 6. NATIONAL COMMISSION FOR SCHEDULED TRIBES – NCST**
- 7. NATIONAL COMMISSION FOR WOMEN (NCW)**
- 8. ROLE OF SOME RENOWNED INTERNATIONAL NGO'S IN THE PROTECTION OF HUMAN RIGHTS**
- 9. ROLE OF SOME PROMINENT NGO'S IN INDIA IN THE PROTECTION OF HUMAN RIGHTS**

CHARACTERISTICS AND NATURE OF HUMAN RIGHTS

Following are the characteristics of human rights:

1. Human Rights are Inalienable - Human rights are conferred on an individual due to the very nature of his existence. They are inherent in all individuals irrespective of their caste, creed, religion, sex and nationality. Human rights are conferred to an individual even after his death. The different rituals in different religions bear testimony to this fact.
2. Human Rights are essential and necessary - In the absence of human rights, the moral, physical, social and spiritual welfare of an individual is impossible. Human rights are also essential as they provide suitable conditions for material and moral upliftment of the people.
3. Human Rights are in connection with human dignity - To treat another individual with dignity irrespective of the fact that the person is a male or female, rich or poor etc. is concerned with human dignity. For eg. In 1993, India has enacted a law that forbids the practice of carrying human excreta. This law is called Employment of Manual Scavengers and Dry Latrines (Prohibition) Act.
4. Human Rights are Irrevocable: Human rights are irrevocable. They cannot be taken away by any power or authority because these rights originate with the social nature of man in the society of human beings and they belong to a person simply because he is a human being. As such human rights have similarities to moral rights.
5. Human Rights are Necessary for the fulfilment of purpose of life: Human life has a purpose. The term “human right” is applied to those conditions which are essential for the fulfilment of this purpose. No government has the power to curtail or take away the rights which are sacrosanct, inviolable and immutable.
6. Human Rights are Universal – Human rights are not a monopoly of any privileged class of people. Human rights are universal in nature, without consideration and without exception. The values such as divinity, dignity and equality which form the basis of these rights are inherent in human nature.
7. Human Rights are never absolute – Man is a social animal and he lives in a civic society, which always put certain restrictions on the enjoyment of his rights and freedoms. Human rights as such are those limited powers or claims, which are contributory to the common good

and which are recognized and guaranteed by the State, through its laws to the individuals. As such each right has certain limitations.

8. Human Rights are Dynamic - Human rights are not static, they are dynamic. Human rights go on expanding with socio-eco-cultural and political developments within the State. Judges have to interpret laws in such ways as are in tune with the changed social values. For eg. The right to be cared for in sickness has now been extended to include free medical treatment in public hospitals under the Public Health Scheme, free medical examinations in schools, and the provisions for especially equipped schools for the physically handicapped.

9. Rights as limits to state power - Human rights imply that every individual has legitimate claims upon his or her society for certain freedom and benefits. So human rights limit the state's power. These may be in the form of negative restrictions, on the powers of the State, from violating the inalienable freedoms of the individuals, or in the nature of demands on the State, i.e. positive obligations of the State. For eg. Six freedoms that are enumerated under the right to liberty forbid the State from interfering with the individual.

LANDMARKS IN DEVELOPMENT OF HUMAN RIGHTS

The important landmarks in the progress of human rights are as follows: -

1. **The Magna Carta**, also known as the Great Charter, of 1215 is the most significant constitutional document of all human history. The main theme of it was protection against the arbitrary acts by the king. The 63 clauses of the Charter guaranteed basic civic and legal rights to citizens, and protected the barons from unjust taxes. The English Church too gained freedom from royal interferences. King John of England granted the Magna Carta to the English barons on 15th June 1215. The king was compelled to grant the Charter, because the barons refused to pay heavy taxes unless the king signed the Charter.

2 **The English Bill of Rights, 1689**- The next source and avenue of the development of the philosophy of human rights is the English Bill of Rights, enacted on December 16, 1689, by the British Parliament. The British Parliament declared its supremacy over the Crown in clear terms. The English Bill of Rights declared that the king has no overriding authority. The Bill of Rights codified the customary laws, and clarified the rights and liberties of the citizens. It lays down the twin foundations, viz., the supremacy of the law, and the sovereignty of the nation, upon which, the English constitution rests.

3. American Declaration of Independence, 1776- The first colonies to revolt against England were the thirteen States of America. These states declared their independence from their mother country on 4th July 1776. The declaration charges the king with tyranny and affirms the independence of the American colonies. The declaration of independence has great significance in the history of mankind as it justified the right to revolt against a government that no longer guaranteed the man's natural and inalienable rights.

4. The U.S. Bill of Rights, 1791- The U.S. Constitution was enacted on 17th September 1787. The most conspicuous defect of the original constitution was the omission of a Bill of Rights concerning private rights and personal liberties. Madison, therefore proposed as many as twelve amendments in the form of Bill of Rights. Ten of these were ratified by the State legislatures. These ten constitutional amendments came to be known as the Bill of Rights. The overall theme of the Bill of Rights is that the citizen be protected against the abuse of power by the officials of the States.

5. The French Declaration of the Rights of Man and of the Citizen, 1789- The fall of Bastille and the abolition of feudalism, serfdom and class privileges by the National Assembly ushered France into a new era. On 4th August 1789, the National Assembly proclaimed the Rights of Man and of the Citizens. The Rights were formulated in 17 Articles. The Declaration of the Rights of Man and of the Citizen has far reaching importance not only in the history of France but also in the history of Europe and mankind. The declaration served as the death warrant for the old regime and introduced a new social and political order, founded on the noble and glittering principles. Further the declaration served as the basis for many Constitutions, framed in different countries, where the framers gave top priority to human rights.

6. Declaration of International Rights of Man, 1929- After World War I, questions about human rights and fundamental freedoms began to be raised. In 1929, the Institute of International Law adopted the Declaration of International rights of Man. The Declaration declared that fundamental rights of citizen, recognized and guaranteed by several domestic constitutions, especially those of the French and the U.S.A constitutions, were in reality meant not only for citizens of the states but for all men all over the world, without any consideration.

7. The UN Charter, 1945- The United Nations Charter was drafted, approved and unanimously adopted by all the delegates of the 51 states, who attended the United Nations

Conference at San Francisco. The UN Charter contains provisions for the promotion and protection of 8 human rights. The importance of the Charter lies in the fact that it is the first official document in which the use of „human rights“ is, for the first time traceable and which also recognized the respect for fundamental freedom.

8. The Universal Declaration of Human Rights, 1948- The Universal Declaration of Human Rights was adopted by the General Assembly of the United Nations on 10th December, 1948. The Declaration consists of thirty Articles and covers civil, political, economic, social and cultural rights for all men, women and children. The declaration however is not a legally binding document. It is an ideal for all mankind.

9. International Covenants on Human Rights- The Universal Declaration of Human Rights, 1948- was not a legally binding document. It lacked enforcements. This deficiency was sought to be removed by the U.N. General Assembly by adopting in December, 1966, the two Covenants, vis,

1. International Covenant on Civil and Political Rights and

2. International Covenant on Economic, Social and Cultural Rights.

The two International Covenants, together with the Universal Declaration and the Optional Protocols, comprise the International Bill of Human Rights. The International Bill of Human Rights represents a milestone in the history of human rights. It is a modern Magna Carta of human rights.

LAWS PROTECTING WOMEN’S RIGHT

Social reform legislation recognizing women rights has been introduced in India since the British rule. After independence too the legislatures have enacted several laws for protecting women’s rights and making provisions for the violation of their rights punishable.

The recognition of women’s right as human right became international law when the U.N. General Assembly adopted the CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women) on 19th December 1979.

With reference to India, the Indian Constitution prohibits discrimination on the basis of sex. Yet, it recognizes that women need special attention. The latter point is brought out by Articles 23 and 42. Article 23 prohibits traffic in human beings. By implication, this means

that women, children, etc. cannot be disposed of for immoral purposes. Article 42 lays down that the State shall make provision for securing just and humane conditions of work and maternity relief. The Directive Principles of State Policy recognise the right to Maternity benefits in Article 42 of the Constitution. The Indian Parliament passed the Maternity Benefits Act in 1961. The Maternity Benefits Act aims to regulate the employment of women employees in certain establishments for certain periods before and after child birth and provides for maternity and certain benefits. The Domestic violence Act, 2005 provide protection to the wife or female live - in partner from domestic violence at the hands of the husband or male live-in partner or his relatives. Domestic violence under the Act includes actual abuse or the threat of abuse whether physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

Among other things, Articles 14, 15, 16 and 39 guarantee equality among the sexes.

- Art.14 lays down equality before the law and equal protection of the law.
- Art.15 prohibits discrimination against any citizen on grounds of religion, race, sex, etc.
- Art.16 guarantees equality of opportunity in matters of public employment. It says that no citizen shall be discriminated against on ground of religion, race, caste, sex, etc.
- Art. 39 guarantees equal pay for equal work for both men and women.

LAWS PROTECTING CHILDREN'S RIGHT

The children of our country are the most underprivileged in our society. The poverty in our country is of such great magnitude that children from underprivileged section of the society are forced to work resulting in child labour. According to National Sample Survey, the number of child workers have increased manifold in the society. Further the condition in which a child is forced to work is no better than that of slavery. The government of India have enacted the following thirteen Acts to provide legal protection to all children.

1. The Child Marriage Restraints Act, 1929.
2. The Children Act, 1933.
3. The Employment of Children Act, 1938.

4. The Minimum Wages Act, 1948.
5. The Factories Act, 1951.
6. The Plantation Labour Act, 1951.
7. The Indian Factories Act and Mines Act, 1952.
8. The Merchant Shipping Act, 1958.
9. The Apprentices Act, 1961.
10. The Atomic Energy Act, 1962.
11. The Beedi and Cigar Workers (Condition of Employment) Act, 1966.
12. The Shops and Establishments Acts, 1969 (Statewise)
13. The Child Labour (Prohibition and Regulations) Act, 1986.

Of these, the 1986 law is the most important one, wherein the Act lists occupations and processes in which employment of children is prohibited. Few of the hazardous occupations where a child cannot be employed are as domestic servants, workers in dhabas, restaurants, hotels, motels, teashops, resorts, spas or other recreational centres. Further the working hours for a child to work is also specified. It states that a child can work to six hours, including an interval of at least one hour and children are not permitted to work between 7 p.m. to 8 p.m.

THE RIGHTS OF SCHEDULED CASTES (SC) AND SCHEDULED TRIBES (ST)

Several laws have been passed by the Parliament and State legislatures to protect the rights of the Scheduled Castes and the Scheduled Tribes.

- Article 17 of the Constitution abolishes untouchability and declares it as punishable by law. Since the age old custom continued even after independence, the Parliament made a more stringent law in 1989 which is called The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.
- As per Clause (4) of Article 15 permit's the State to make special provisions for the advancement of the Scheduled Castes, Scheduled Tribes and other Backward Classes in educational and technical institutions.

- Reservations in Public services in made by Article 16(4) for posts or appointments in favour of any backward class of citizens which is not adequately represented in the Services under the State. However, if there is only one post in a cadre, reservation cannot be made.
- Reservation of seats in Lok Sabha and State Assemblies is made vide Articles 330, 332 and 334 of the Constitution of India.
- Special laws are made to protect the tribal land which forbids the sale or transfer of land to non-tribals.
- Special provisions are laid down in the Fifth and Sixth Schedules of the Constitution. The Fifth schedule empowers the Governor to enact special legislation for protecting the Scheduled Tribes from exploitation by moneylenders, regulating allotment of land and prohibiting or restricting the transfer of land in the Scheduled Areas. The Sixth Schedule deals with the administration of Tribal areas in Assam, Meghalaya and Mizoram.

NATIONAL COMMISSION FOR SCHEDULED TRIBES –NCST

The functions, duties and power of the National Commission for Scheduled Tribes have been laid down in clauses(5), (8) and (9) of the Article 338A of the Constitution, as amended by Constitution [Eighty-ninth Amendment] Act, 2003. Clause (5) states that it shall be the duty of the Commission:-

1. to investigate and monitor all matters relating to the 61 safeguards provided for the Scheduled Tribes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards.
2. to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes.
3. to participate and advise on the planning process of socio-economic development of the Scheduled Tribes and to evaluate the progress of their development under the Union and any State.
4. to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards.
5. to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other

measures for the protection, welfare and socioeconomic development of the Scheduled Tribes

6. to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Tribes as the President may, subject to the provisions of any law made by Parliament, by rule, specify.

NATIONAL COMMISSION FOR WOMEN (NCW)

The commission shall perform all or any of the following functions, namely :-

- Investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws;
- present to the Central Government, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguard;
- make such reports recommendations for the effective implementation of those safeguards for improving the conditions of women by the Union or any state;
- review, from time to time, the exiting provisions of the Constitution and other laws affecting women and recommend amendments thereto so as to suggest remedial legislative measures to meet any lacunae, inadequacies or shortcomings in such legislations;
- take up cases of violation of the provisions of the Constitution and of other laws relating to women with the appropriate authorities;
- look into complaints and take suo moto notice of matters relating to:- deprivation of women's rights and non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development;
- undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement
- inspect or cause to inspected a jail, remand home, women's institution or other place of custody where women are kept as prisoners or otherwise and take up with the concerned authorities for remedial action, if found necessary;
- make periodical reports to the Government on any matter pertaining to women and in particular various difficulties under which women toil;

ROLE OF SOME RENOWNED INTERNATIONAL NGO' s IN THE PROTECTION OF HUMAN RIGHTS

There are hundreds of NGO's working at the international level for the protection of Human Rights. The most renowned among them are The International League for Human Rights, Amnesty International and Human Rights Watch. These NGO's are very active in the protection of Human rights. Let us discuss their role in relation to human rights.

The International League for Human Rights (ILHR)- This NGO is the oldest organization working in the field of human rights. It was established in 1942. in U.S.A. for defending the rights of people. It interacts with the government and investigates the cases of the violation of human rights. The league aims at establishing a just society in which people can claim and enjoy their fundamental rights. The ILHR was given consultative status in 1947. As a result of this it got the authority to testify the abuses of human rights before the United Nations Economic and Social Council.

The Amnesty International (AI)- This is another world famous NGO working for the protection of human rights. It was established in 1961. The AI mainly deals with the five areas viz women's Rights, Children Rights ending Torture and Execution, Rights of Refugees and Rights of prisoners of conscience. At present the AI is concentrating mainly on controlling the violence against women and checking the world arms trade. Its main branches are in London and New York.

Human Rights Watch (HRW)- This NGO was established in New York in 1987. It serves as an umbrella organization for U.S. Helsinki watch committee, America Watch, Asia Watch, Middle East Watch and Africa Watch. It publishes Human Rights publication Catalogue, quarterly newsletters and Human Rights world watch reports. It evaluates the Human Rights practices of governments in the light of standards recognized by international laws and agreements including the Universal Declaration of Human Rights and the Helsinki Accord. Further it also evaluates the performance of the U.S. government in promoting human rights at the international level. Of course the organization mainly concentrates on evaluating the treatment of the U.S. government with refugees and visitors to U.S.

ROLE OF SOME PROMINENT NGO' s IN INDIA IN THE PROTECTION OF HUMAN RIGHTS

People's Union for Civil Liberties (PUCL)- This is a Delhi – based NGO. At the outset it is necessary to know the situation in which the PUCL was founded in 1976 by Jayaprakash Narayan, the great Gandhian leader. In the beginning he formed a national group named, Citizens for Democracy (CFD) in 1974 along with similar groups in Delhi, Madras, Mumbai and Calcutta for opposing the autocratic functioning of the government of India. Later on, emergency was declared by the government. During the emergency, fundamental rights and civil liberties of people were suppressed. Again the National Security Act was passed in 1980. This is a repressive law which introduced preventive Detention of people under the pretext of national security. In a response to this act, the PUCL was revitalized in 1980. It insisted that the civil liberties of people must be protected at any cost. It also pledged to work against any type of discrimination that encroaches civil liberties of the weaker sections of society like children, women etc.

The PUCL organizes 'The JP Memorial Lecture' on 23rd March every year. This is the day on which the emergency in India was lifted in 1977. The PUCL also presents 'Journalism For Human Rights' Award. The award was instituted in 1980 to create awareness about civil liberties and human rights in the minds of journalists and common men.

Though the PUCL is a Delhi-based NGO, it works on the National level. It has branches in different cities in India. It publishes a monthly bulletin both in English and Hindi. It is known as the PUCL bulletin and enlightens people about the legal ways and means of claiming, exercising and also fighting for protecting their human rights.

People have Right to live. This also includes the Right to food and livelihood. On the basis of this, in 2001, the PUCL filed Public Interest Litigation (PIL) in the Supreme Court. The six states in India such as Orissa, Maharashtra, Gujarat, Rajasthan, Himachal Pradesh, and Chhattisgarh were hit by acute drought. People in these states were starving. Still the state governments were not providing food to people. These drought hit people were not in a position to purchase food grains. On the basis of the PIL filed by the PUCL, the Supreme Court directed the respective state government to provide food to the drought affected people free of cost. Thus, the Right to life of people was protected. The Court also directed the state governments to devise a scheme so that no person will suffer from hunger.

The PUCL is working for highlighting the instances of the violation of human rights. It also sees that the violations pertaining to human rights get redressed, The activities of the PUCL make it clear that weak democracy can be made strong only by protecting the civil liberties of people.

People's Union for Democratic Rights (PUDR)- There is another Delhi – based N GO. It is known as people's Union for Democratic Rights (PUDR). This organization positively states that the underprivileged people have Right to organize themselves and to agitate or revolt for bringing about total change in the socio economic and political system if it does not ensure solutions to their problems. This organization also filed a case in the Supreme Court for protecting the economic rights of Asiad workers. They were paid less than minimum wages. The court declared that it amounts to forced labour and it also violates the article 23 of the constitution of India. And thus the justice was done to the Asiad workers.

Both the PUCL and PUDR are fighting together for the protection of Human Rights of people. The former concentrates on the protection of civil liberties while the latter fights for giving socioeconomic justice to people.

The Narmada Bachao Andolan (NBA)- The Sardar Sarovar project is one of the mega development project in India. It is also a multi purpose project. It was undertaken in 1946 for providing drinking water to people, supplying water for irrigation and also for the generation of energy. The project involved the construction of hundreds of small and large dams. This project is so big that it caused the submergence of lakhs of hectares of agricultural and forest land and hundreds of villages also. It displaced over a million of people. Most of them are tribal people. And the most unfortunate part of the project was that these displaced people were not given adequate compensation for the loss of their land, employment and property. They were not provided alternative means of livelihood and employment opportunities. Their rehabilitation was totally neglected and the most fundamental human right of people such as Right to life that includes the Right to food and livelihood was violated. Their civil liberties were suppressed. And when people protested against the forced acquisition of land by the government, they were denied vivid liberties. Their rightful demands for compensation and rehabilitation were just neglected. The worst part is that several people were also killed.