

HUMAN RIGHTS : RIGHTS OF WOMEN AND CHILDREN

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Abstract

Every person is entitled to some basic rights simply by the fact of being human. These rights are fundamental and can not be taken away at someone's whim. Human rights are granted to all the citizens of the world irrespective of their nationality, sex, origin, religion, language or any other status. Human rights were born out of the atrocities and enormous loss of life during world war II after which the United Nations Universal Declaration of Human Rights was signed and adopted in 1948. Human rights are thus, interdependent, interrelated and indivisible. These rights are universal and inalienable.

In this paper we have researched about and how Human Rights are not only the basic rights but also an obligation on the state which it has to fulfil to facilitate the enjoyment and protection of these rights to its citizens.

This paper focuses on the vulnerable groups of the society i.e.; the women and children, who from the time immoral have been prey to the denial of human rights. Vulnerable groups are those which by nature or because of the deep-rooted customs are weak and ill-protected whose rights have been violated very frequently by the dominant section of the society.

The concern for the protection of rights of women was first shown by the United Nations. The convention on the Elimination of All the Forms of Discrimination Against Women (CEDAW) is an internationally adopted treaty law by the United Nations. This acted as an international bill of rights of women. It focused on gender equality and the rights of women. This paper also focuses on the rights of women in Indian society and how they are evolved in the view of the internationally adopted treaty law.

This paper also pays attention to another vulnerable section of the society i.e.; "Children". The United Nations Convention on the Rights of the Child is an internationally adopted treaty law which sets out the civil, political, economic, social, health and cultural rights of children.

Our paper will, therefore, focus not only on the concept of human rights but also on the vulnerable sections of society and how human rights act as a benchmark to ensure social justice.

Key Words : UDHR, United Nation's Convention, women, children, social justice

INTRODUCTION

The history of human rights is that of the struggle against the exploitation of one person by another. It is based on the recognition of basic rights founded on the concept of the inherent dignity and worth of every individual. The term "human rights" is comparatively of recent origin but the idea of human rights is as old as the history of human civilization. Human rights are deeply rooted in the historical past. The history of mankind has been firmly

associated with the struggle of the individual against injustice, exploitation, and disdain.

Human rights are freedoms established by a customary or international agreement that impose standards of conduct on all nations. Human rights are distinct from civil liberties, which are freedoms established by the law of a particular state and applied by that state in its jurisdiction. Human rights are moral principles or norms that describe certain standards of human behaviour and are regularly protected as natural and legal rights in municipal and international law.

Human rights are fundamental rights because without them the life and dignity of man will be meaningless. Human rights are inalienable, i.e., one cannot lose them, because they are linked to the very fact of human existence, they are inherent to all human beings. These rights are indivisible, interdependent and interrelated as they are intrinsically connected and cannot be viewed in isolation from each other. Human rights are universal which means that they applied equally to all people everywhere in the world and with no time limit.

EVOLUTION OF HUMAN RIGHTS

The world's first charter of human rights was recorded on a 'baked clay cylinder' in Akkadian language in 1539 BC, by the first Asian Persia king "Hammurabi" who is also known as "Hammurabi's Codes" and this charter described 'all people have the right to choose their religion and racial equality without the discrimination of slaves, establishes fair wages, protection to property, avoid harsh punishment and provide required charges for fair trial.'

The Magna Carta (also called Magna Charta)¹ or the Great Charter of the liberties of England granted by King John of England to the English baron on June 15, 1215 which was created by the third Emperor Henry VI and the ransom of Richard I. The people of England were then given the right of the choice to be free from governmental interference, the rights of all free citizens to own and inherit property and to be protected from excessive taxes.

The Bill of rights was formed in 1689 in the parliament of England which was duly signed and accepted by the legislature and the crown and gave documentary authority for the rule of law.

IS HUMAN RIGHT A LEGAL RIGHT?

The question arises as to whether human rights are legal rights? It may be noted that legal right is a right which is recognised and protected by the legal system. It has two important essential elements i.e.; firstly, the holder of the right and secondly, the person bounded by the duty. Rights and duty are correlative and a person can not have a right without a corresponding duty. Human rights belong to human being and the state has the corresponding duty to protect the rights of human being. The declaration of the human right defenders adopted by the General Assembly on December 9, 1998 laid down under Article 2 Para 1 which describes the state's duty to protect, promote and implement all human rights by adopting necessary measures. Para 2 of the above article which describes state shall adopt necessary legislative, administrative and other steps to ensure that the right to protect human rights is effectively guaranteed. The above implies that human right is legal right. While human beings have rights, the state has a corresponding duty however to protect the rights.

HUMAN RIGHTS IN INDIA

Respect for human rights as always been one of the main concerns of every democratic society. Although human rights, in theory, can be nurtured and enhanced within various political system, history has convincingly proved that they can be truly guaranteed only in conditions of the **greatest possible transparency in decision making** on part of those who are in position of power.

In India, the concept of human rights stretches back to the age of the Vedas, the Puranas and the various Epics. As far as the Pre-independence period is concerned, a resolution was adopted by the National Congress at its 45th session held at Karachi in March, 1931. The Congress was of the opinion that in order to end the exploitation of the masses, political freedom must include real economic freedom of the starving which may be agreed to on its behalf should provide, or enable the Swaraj Government to provide for fundamental rights of the people.

The Indian Constitution bears the impact of the UDHR and this has been recognised by the Supreme Court of India. The UDHR does not define the term "Human Rights". It refers them as "the equal and inalienable rights of all the members of the human family". The framers of the Indian Constitution were influenced by the concept of human rights and guaranteed most of the human rights contain in the declaration. The UDHR contained civil and political as well as economic, social and cultural rights. While civil and political rights have been incorporated in Part III of Indian Constitution, economic, social and cultural rights have been incorporated in Part IV of the Constitution. While Part III guarantees certain rights to the individuals, Part IV gives direction to the state to provide some other rights to its people in specified matter. Directives, though not enforceable before the courts, are not to be regarded inferior to the Fundamental Rights. Both together constitute the conscience of the Constitution.

India has ratified many International Conventions relating to Human Rights. It has an obligation to implement the rights stipulated therein to the individuals. The role of the government is therefore gigantic. In order to implement the rights provided in the International conventions municipal legislation of the country is required to be in conformity with the provision of the International Conventions. Treaties may be transferred into the domestic law so that individuals may invoke them in securing or defending their rights in cases where this does not automatically flow from ratification. In many cases, it has been held by the Indian Courts that legislation would be expressly required to give effect to a treaty. To give effects to its commitments, the Parliament has enacted various legislation, viz. Protection of Civil Rights Act, 1955, National Commission for Women Act, 1990; Juvenile Justice (Care and Protection of Children) Act, 2000; Bonded Labour System Abolish Act, 1976; etc. It is the Constitutional obligations of the courts not to ignore and apply the provisions of International Convention and instrument of human rights in general, and International covenants on human rights in particular to interpret the Constitutional provisions relating to human rights.

¹ The original charter was in Latin which consists of 70 clauses.

HUMAN RIGHTS AND THE WORLD

The declaration of the independence of the thirteen united states of America in 1776 which is also known as the Virginia Declaration, 1776; the constitution of the united states of 1787 which specifies about the inherent rights of human beings. The French Declaration of the rights of men and the citizen of 1789 which stipulated that free and equal rights are the born rights of men.

The swiss businessmen (Henry Dunant) who saw the Battle of Solferino was saddened to see the condition of the 40,000 thousand wounded dying men left by their army. He then wrote "A Mighty Solferino" which described the plight of the victims of war. In 1864, the first Geneva Convention was therefore drafted by the joint efforts of the Swiss business man and the Swiss Government. This convention was framed for the soldiers of the armed forces in the field. In 1906, the second Geneva Convention was formed for the shipwrecked and wounded members of the armed forces at sea. Similarly, in 1929, the third Geneva Convention was made for the 'treatment of prisoners of war'. On 12 August, 1949 the fourth convention was made for 'protection of civilian person in time of war' which was ratified by 157 countries.

The Universal Declaration of Human Rights (UDHR) was adopted by the General Assembly of United National on 10th December 1948 in Paris after the experience of the world war II. It represents the first global expression of rights which are entitled to all human beings inherently. This day is also known and celebrated as **INTERNATIONAL HUMAN RIGHTS DAY**. The main objective of the declaration is to present the ideals of human rights and fundamental freedom and to inspire every individual with "DIGNITY AND JUSTICE FOR ALL OF US". It is not legally binding in nature.

VULNERABLE GROUPS

Vulnerable Groups may be defined as certain groups of population who often encounter discriminatory treatment, or need some kind of special attention for protection of the State to avoid exploitation or from harmful environment.

The aim of human rights instruments is the protection of those vulnerable to violations of their fundamental human rights. Often human rights instruments set out additional guarantees for persons belonging to these groups; the Committee on Economic, Social and Cultural Rights, of the United Nations, for example, has repeatedly stressed that the ICESCR is a vehicle for the protection of vulnerable groups within society, requiring states to extend special protective measures to them and ensure some degree of priority consideration, even in the face of severe resource constraints.

This part focuses on groups that are especially vulnerable to abuse of human rights; groups that are structurally discriminated against like women and groups that have difficulties defending themselves and are therefore in need of special protection. Some groups are : 1) women and girls; 2) children; 3) refugees; 4) national minorities; 5) indigenous peoples; 6) disabled persons; 7) elderly persons; Clearly this is not an exhaustive list of persons in need of particular protection.

Women and children are the major vulnerable groups all over the world. These two groups have been oppressed and have faced discrimination since a long time.

The United Nation Declaration of right of the child notes that children need "Special safeguard and care, including appropriate legal protection before as well as after birth". The declaration focuses on the key principle that a child is to enjoy "special protection" as well as "opportunities and facilities, by law or by other means," for healthy and normal physical, mental, moral, spiritual, and social development "in condition of freedom and dignity".

Women in the societies all over the world have been socially, economically, physically, psychologically, and sexually exploited from time immemorial, sometimes in the name of religion sometimes on the pretext of writings in the scriptures and sometime by social sanctions. The concept of equality between male and female was almost unknown to the world earlier however, it is a harsh reality that women have illtreated specially in the country like India since ages.

CONTRIBUTION OF THE UNITED NATIONS FOR THE PROTECTION OF WOMEN'S RIGHTS

- i) The **Preamble of Charter of United Nations**, declares that "as a basic goal to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women".

Article 8 of the above Charter, said that, "Shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of the equality in its principal and subsidiary organs.

Commission on the Status of Women is a functional commission of the Economic and Social Council (ECOSOC) established by the Council in 1946. It functions are:-

- a) to prepare recommendation and report to the ECOSOC on promotion of Women's rights in political, economic, civil, social and educational field,
 - b) to make recommendations to the Council on urgent problems requiring immediate attention in the field of women's rights with object of implementing the principle that men and women shall have equal rights and to develop proposals to give effect to such recommendations.
- ii) The **Convention on the Political Rights of Women, 1953** was adopted by the General Assembly on 20th December, 1952 which came into force on 7th July, 1954. It desires to implement the principle of equality of rights for men and women in the field of public service in his country under Article 3 of the Convention. Article 1 of the Convention "women shall entitled to vote in all elections on equal terms with men, without any discrimination. Article 2, ensures that, "women is also eligible for election to all publicly elected bodies, establish by the national law, on equal terms with men, without any discrimination".
- iii) The **Declaration on Elimination of Discrimination against Women, 1967** was adopted on 7th November, 1967. This Declaration was a precursor to the **Convention on the Elimination of All Forms of Discrimination Against Women, 1979** on 18th December, 1979. The Convention came into force in 1981. As on 3rd February, 2016 the Convention had 189 State Parties. Article 1 of the Convention, defines the term ' discrimination against women' as any distinction , exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. The Part III of the Convention lays down a number of field² where States are required to take steps to eliminate discrimination against women which are:- Education
- a) Employment
 - b) Health Care
 - c) Economic and Social life
 - d) Women in Rural Areas
 - e) Equality before Law
 - f) Marriage and Family Relations
 - g) Agreed to pursue by all appropriate means to eliminate discrimination against women³ and, to this end they undertook:
 - to incorporate the principle of equality of men and women in their national constitutions or other appropriate legislation;
 - to adopt appropriate legislative and other measures, including sanctions, when appropriate, prohibiting all discrimination against women;
 - to establish legal protection of the rights of women on equal basis with men and to ensure through competent tribunals and other public institutions the effective protection of women against any act of discrimination;
 - to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
 - to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprises;
 - to take all appropriate measures, including legislation to modify or abolish existing laws, regulations, customs, and practice which constitute discrimination against women and
 - to repeal all national penal provisions which constitute discrimination against women.
- iv) **Beijing Conference, 1995**: - The Fourth World Conference on Women, held in 1995 between 4th to 15th September, 1995 which commonly known as **Beijing Conference** stated that '**Women's Rights are Human Rights**'. It is for the integration of women's human rights in the work of the different human rights bodies of the United Nations. It also considered the issues of violence

² Under the Articles 10 to 16 of Convention on the Elimination of All Forms of Discrimination against Women, 1979

³ Under Article 2 of Convention on the Elimination of All Forms of Discrimination against Women, 1979

against women whether in public or private life as human rights issues. This Conference also called for eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religion extremism.

It classified 12 critical areas regarding women which are: increasing burden, poverty, educational opportunities, inequality in health status, violence against women, effects of armed or other kinds of conflicts on women, inequality in women's access to and participation in economic structures and policies, inequality between men and women in the sharing of power and decision making at all levels, insufficient mechanisms at all levels to promote the advancement of women, lack of awareness of women's human rights, insufficient mobilization of mass media to promote women's possible contribution to society, lack of adequate recognition and support for women's contribution in managing natural resources and safeguarding the environment and girl child.

- v) The **Optional Protocol to the Convention on the Elimination All Forms of Discrimination against Women, 1999** adopted on 7th October, 1999 by the General Assembly which done the investigation on the any discrimination against women and monitoring on the state parties whether performing its duties properly or not.

RIGHTS OF WOMEN IN INDIA

After the enforcement of the constitution, various efforts were made with an objective to uplift the status of the female gender by a scheme of various legislations and judicial interpretations.

Right to Abortion

This right was elaborated by the legislature when it enacted the Medical Termination of Pregnancy Act, 1971. Now the pregnancy can be terminated legally as health measure when there is danger to the life or risk to physical or mental health of the women on humanitarian grounds, such as when pregnancy arises out of a sex crime or when there is substantial risk that the child if born would suffer from deformities and diseases.

Live-in Relationships

In January 2008, the Supreme Court⁴ validated long term live in relationships as marriages. The bench declared that children born out of such a relationship would no longer be called illegitimate.

Women Karta

A Karta is the caretaker of the whole family and looks after the welfare of all the members of the family. By virtue of the Hindu Succession Amendment Act, 2005, equal property rights on daughters have been provided for. Earlier women were not included as coparceners and hence could not become a Karta.

The Protection of Women from Domestic Violence Act, 2005

The term domestic violence has been made wide enough to involve in itself all probable types of abuse. An important initiative towards the right of women can be enlarging the scope of sexual abuse like marital rape which is now legally recognised form of abuse under the definition of sexual abuse in this Act.

The definition also covers the claims for compensation arising out of domestic violence and includes maintenance similar to that provided for under section 125 of the Code of Criminal Procedure, 1973. Also, the Act was made to identify emotional abuse as a form of domestic violence.

Equal Remuneration Act, 1976

This Act was passed to provide for payment of equal remuneration to men and women workers and for the prevention of discrimination on the grounds of sex against women in the matter of employment and for matters connected therewith or incidental thereto.

Maternity Benefit Act, 1961

This Act was passed to regulate the employment of women in certain establishment for certain periods before and after child birth, and to provide for maternity benefit and certain other benefits.

A pregnant woman has been given protection in order to protect her health as well as to avoid any interference which may be detrimental to sound development of the unborn child.

INTERNATIONAL HUMAN RIGHTS FOR CHILDREN

The UDHR had stipulated under Para 2 of the Article 25 that childhood is entitled to special care and assistance. A slightly expanded version of the UDHR concerning child were incorporated in the Declaration of the Rights of the Child adopted by the General Assembly on 20th November, 1959.

The International Covenant on Civil and Political Rights under Article 23 and 24 which codifies that "the right of the child to special protection due to his maturity, the right to a name and the right to a nationality". The International Covenant on Economic, Social and Cultural Rights under Article 10 which made for the care of

⁴ Tulsa & Ors. V. Durgatiya & Ors. , SCC Civil Appeal no. 648 of 20021 of 15 January, 2008

child and stated that “the child should grow up in a family environment, in an atmosphere of happiness, love and understanding”.

The **Convention on the Rights of the Child (CRC)** was adopted by the General Assembly on the 20th November, 1989 which came into force on 2nd September, 1990. As on 3rd February, 2016, the Convention had 196 State Parties as its members. The CRC is the first globally legally binding treaty for the protection of children’s civil, political, economic, social and cultural rights. In fact, CRC, provided a bill of rights for children. Its implementation is monitored by the Committee on the Rights of the Child. It is based on the four core principles:

- a) the principle of non-discrimination;
- b) the best interests of the children;
- c) the right of life, survival and development; and
- d) considering the views of the child in the decisions that affect them (according to their age and maturity).

Under Article 1 of this Convention, declares that “a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”.

RIGHTS OF THE CHILD

A number of rights have been given in this Convention which are-

- a) Right to life (Article 6, Para 1);
- b) Right to acquire nationality (Article 7);
- c) Right to freedom of expression (Article 13, Para 1);
- d) Right to freedom of thought, conscience and religion (Article 14, Para 1);
- e) Right to freedom of association and to freedom of peaceful assembly (Article 15, Para 1);
- f) Right to education (Article 28, Para 1);
- g) Right to benefit from social security (Article 26, Para 1)
- h) Right to a standard of living adequate for the child’s physical, mental, spiritual and social development (Article 27, Para 1);
- i) Right to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health (Article 24, Para 1);
- j) Right to the protection of the law against arbitrary or unlawful interference with his or her privacy, family, home or correspondence (Article 16, Para 1).

The first **Optional Protocol on the Involvement of Children in Armed Conflict** which was adopted by the Additional Protocol I, Geneva Conventions in 1977. Under Article 77, Para 1 stated that “the parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years don’t take a direct part in hostilities and they shall refrain from recruiting them into their armed forces”.

It has been estimated by the UN that over 3,00,000 boys and girls are serving in Government or rebel forces in over 30 armed conflicts in the World as soldiers, runner guards, sex slaves, cooks or spies. Girls are especially vulnerable, because they are often sexually exploited. In order to prevent children from being targets in armed conflicts on Optional Protocol to the Convention on the Rights of the Child was adopted on 25th May, 2000 which came into force on 12th February, 2002. As on the 3rd February, 2016, the Optional Protocol had 162 State Parties. India ratified the Protocol on 30th November, 2005. It established that “No person under the age of 18 shall be subjected to compulsory recruitment into regular armed forces, and imposes an obligation on the states to raise the minimum age for voluntary recruitment to at least 16 years”. The protocol sets forth an obligation upon States to report to the CRC on its implementation.

The second **Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography** came into force on 18th January, 2002. It provides detailed requirements for the criminalization of violations of the rights of children in the context of the sale of children, child prostitution and child pornography. As on 3rd February, 2016, the Optional Protocol had 171 State Parties. India ratified the protocol on 16th August, 2005.

The third **Optional Protocol to the Rights of the Child on a Communication Procedure** which provide complaint mechanism to the children and was adopted by General Assembly on 19th December, 1911. It came into force on 14th April, 2014. As on 3rd February, 2016 the protocol had 24 State Parties.

RIGHTS OF CHILDREN IN INDIA

Child Rights go beyond just human rights, which exist to ensure fair and proper treatment of people across the world, and promote their wellbeing.

Children, defined as any person under the age of 18, need more than just human rights due to a set of unique needs stemming from their vulnerabilities.

Various efforts have been made with the objective to ensure care and protection to children through legislations, policies and other governmental schemes. Some of the major legislations are as follows:

The Juvenile Justice (Care and Protection of Children) Act, 2015

The Act known as 'The Reformatory Act' deals with two categories of children, namely children in need of care and protection and children in conflict with the law.

It treats all the children below 18 years equally, except that those in the age group of 16-18 can be tried as adults if they commit a heinous crime. A child of 16-18 years age, who commits a lesser offence (a serious offence), may be tried as an adult if he is apprehended after the age of 21 years. A heinous offence attracts a minimum seven years of imprisonment. A serious offence attracts three to seven years of imprisonment and a petty offence results in maximum imprisonment for term of three years.

It mandates setting up of Juvenile Justice Boards (JJBs) in each district. Juvenile Justice Board (JJB) is the competent authority to deal with children in conflict with law which comprises of three members, a metropolitan magistrate and two social workers, of whom at least one shall be a woman, forming a bench. The Act also provides for the establishment of Child Welfare Committee which is a competent authority to deal with children in need of care and protection. Child Welfare Committee constitutes a Chairperson and four other members, one of whom should be a woman. The Act provides for the establishment of various kinds of Institutions such as

- Children's Home for the reception of child in need of care and protection.
- Special Homes for the reception of child in conflict with law
- Observation Homes which are meant for the temporary reception of children during the pendency of any inquiry.
- After-care Organizations which are meant for the purpose of taking care of children after they have been discharged from Children's Home or Special Homes.

The Protection of Children from Sexual Offences Act, 2012

The Protection of Children from Sexual Offences Act, 2012 (POCSO Act), defines a 'child' to mean 'any person below the age of eighteen years' and raised the age of consent from 16 years under the Indian Penal Code (IPC) to 18 years. The Act provides for a wide range of sexual offences including penetrative sexual assault, non-penetrative sexual assault (kissing, fondling) and non-contact based sexual acts such as sexual harassment. Unlike the IPC, which treats sexual intercourse by a man with his wife above the age of 15 years as an exception to rape, the POCSO Act does not permit any exception. In fact, penetrative sexual assault and non-penetrative sexual assault by a person who is related to a child through marriage constitutes an aggravated offence. The Act also suggests that:

Any person (including a child) can be prosecuted for engaging in a sexual act with a child irrespective of whether the latter consented. A husband/wife can be prosecuted for engaging in a sexual act with his/her spouse below the age of eighteen years. The Act does not recognise consensual sexual acts among children or between a child and an adult.

The Right of Children to Free and Compulsory Education Act, 2009

The Right to Education Act (RTE Act) was enacted to implement fundamental right under Article 21-A, newly created vide Constitution (86th Amendment) Act, 2002, which mandated the states to provide free and compulsory education to all the children of the age six to fourteen years.

Under RTE Act every child has right to full time compulsory elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards.

'Compulsory education' casts an obligation on the appropriate government and local authorities to provide and ensure admission, attendance and completion of elementary education by all children in the 6-14 age groups.

The Prohibition of Child Marriage Act, 2006

As per UNICEF, child marriage is widespread across India, with nearly half of brides married as girls. While there has been a decline in the incidence of child marriage nationally (from 54% in 1992-93 to 27% in 2016) and in nearly all states, the pace of change remains slow, especially for girls in the age group 15-18 years. Child marriage is more prevalent in rural areas (48%) than in urban areas (29%).

The Prohibition of Child Marriage Act, 2006 prohibits solemnisation of child marriages; and the child marriage is when either of the contracting parties to the marriage is child; child under the Act is, in the case of female, who has not attained the age of 18 years and in the case of male, who has not attained the age of 21 years.

The Commission for Protection of Child Rights Act, 2005

This law is to provide for the constitution of a National Commission and State Commissions for Protection of Child Rights and Children's Courts for providing speedy trial of offences against children or of violation of child rights.

NATIONAL HUMAN RIGHTS COMMISSION (NHRC)

In India, the Protection of Human Rights Act was enacted to provide better protection of human rights. The purpose of the enactment is laid down in the Preamble of the Act i.e.; to provide for the constitution of a National Human Rights Commission, State Human Rights Commission (SHRC) in States and Human Rights Courts for better protection of human rights and for matters connected therewith or incidental thereto.

The Act set up NHRC and the SHRCs in the state and the Human Rights Courts in then districts. Section 3 of the Act lays down that the Central Government shall constitute a body to be known as NHRC which shall have 8 members and will be headed by a chairperson.

The commission has a wide mandate. Its functions, as laid down in section 12 of the Protection of Human Rights Act, include:

- Inquire, *suo moto* or on a petition presented to it by a victim or any person on his behalf or on a direction or order of any court, into complaint of (i) violation of human rights or abetment thereof; or (ii) negligence in the prevention of such violation, by a public servant.
- Intervene in any proceeding involving any allegation of violation of human rights pending before a court, with the approval of such court.
- Visit, notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of inmates thereof and make recommendations thereon to the Government.
- Review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation.
- Review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures.
- Study treaties and other international instruments on human rights and make recommendations for their effective implementation.
- Undertake and promote research in the field of human rights.
- Spread human rights literacy among various sections of society and promote awareness about the safeguards available for the protection of these rights through publications, the media, seminars and other available means.
- Encourage the efforts of non-governmental organizations and institutions working in the field of human rights.
- Such other functions, as it may consider necessary for the protection of human rights.

The reach of the Commission is considerably enhanced by the appointment of Special Rapporteurs and the constitution of Core and Expert Groups. It has evolved transparent systems and procedures for discharging its functions. The Commission has laid down procedures to transact its own business by formulating regulations.

NATIONAL COMMISSION FOR WOMEN (NCW)

In pursuance of the National Commission for Women Act, 1990, the National Commission for Women (NCW) was constituted on 31st January, 1992 as a statutory body to safeguard and promote the rights and interests of women. The Commission has been mandated to investigate and examine the legal safeguards provided to women under the Constitution and other laws and recommend to the Government, the measures for their effective implementation. The Commission is also mandated to review the existing provisions of the Constitution and other laws affecting women and recommend amendments to meet any lacunae/or inadequacies in such laws; to look into complaints and take *suo-motu* notice on matters relating to deprivation of women's rights, etc. and take-up issues with appropriate authorities; take-up research studies on issues of relevance to women, Gender Sensitisation of Police Officers, participate and advise in the planning process for socio-economic development of women, evaluate socio-economic progress, inspect jails, remand homes, etc. where women are kept under custody and seek remedial action wherever necessary. The Commission, as such, is tasked with the responsibility of addressing the concerns of women and help in designing, implementing and monitoring activities, implementation of laws, policies and programmes for empowerment of women.

The Commission addresses a large number of complaints received from women with a view to ensure that the rights of women are not compromised and justice is not denied to them. The complaints received through the online portal as well as offline are processed expeditiously and the matter is taken up with the appropriate authority concerned and pursued till its logical conclusion.

In case of family/ matrimonial disputes, both parties are called for personal hearing and efforts made to mediate or counsel the parties for resolving the marital discords. In cases of serious crime, the Commission constitutes Inquiry Committees, which conduct inquiries and makes recommendations based on the findings. Wherever considered, complaints are also forwarded to various State Commission for Women, National Human Rights Commission, National Commission for Scheduled Castes and Schedule Tribes and their State counterparts for necessary action as considered.

The National Commission for Women has continued to take *suo-motu* cognizance of cases. The number of cases where *suo-motu* cognizance has been taken by the Commission, the number of cases where Action Taken Reports (ATRs) have been received and the number of cases⁵ that were closed from 1st January, 2018 to 31st March, 2019 are given below:

No. of cases taken up	No. of ATRs received (Old & New)	No. of cases closed (Old & New)	Inquiry Committee/ Fact Finding Team constituted
215	243	71	10

The National Commission for Women has partnered with the Cyber Peace Foundation and Facebook to promote digital literacy for women including the precautions that can be taken; raising awareness about cybercrimes; and advising users about the resources available to women; to prevent the problems and also how to handle such crimes. The National Commission for Women has partnered with *Airbnb* to create livelihood opportunities for women in the northeast region. The Commission in collaboration with *Airbnb* conducted workshop on Home Stay Tourism to create livelihood opportunities for women in North Eastern States of Manipur, Meghalaya and Arunachal Pradesh.

MINISTRY OF WOMEN AND CHILD DEVELOPMENT, GOVERNMENT OF INDIA

The Ministry of Women and Child Development is the apex body of Government of India for formulation and administration of regulations and laws related to women and child development. It came into existence as a separate Ministry with effect from 30th January, 2006; earlier, it was the Department of Women and Child Development set up in the year 1985 under the Ministry of Human Resource Development. The nodal responsibility of the Ministry is to advance the rights and concerns of women and children who together constitute 67.7% of the country's population.⁶ The function of the Ministry is to promote the empowerment and protection of women and children and ensure their equitable and wholesome development.

The vision of the ministry is to ensure empowered women living with dignity and contributing as equal partners in development in an environment free from violence and discrimination; and, well-nurtured children with full opportunities for growth and development in a safe and protective environment. Ministry promotes social and economic

empowerment of women through cross-cutting policies and programmes, mainstreaming gender concerns, creating awareness about their rights and facilitating institutional and legislative support for enabling them to

⁵ Annual Report 2018-19, Ministry of Women and Child Development, Government of India

⁶ Census of India, 2011

realize their human rights and develop to their full potential. It focuses on ensuring development, care and protection of children through cross-cutting policies and programmes, spreading awareness about their rights and facilitating access to learning, nutrition, institutional and legislative support for enabling them to grow and develop to their full potential.

The Ministry has three Autonomous Organisations viz. National Institute of Public Cooperation and Child Development (NIPCCD), Central Social Welfare Board (CSWB), and Rashtriya Mahila Kosh (RMK) working under its aegis, besides three Statutory Bodies namely, National Commission for Women (NCW) and National Commission for Protection of Child Rights (NCPCR) and Central Adoption Resource Authority (CARA).

GENDER AND CHILD BUDGETING

Women constitute 49% of India's population⁷, they lag behind men on many social indicators like health, education, economic opportunities, etc. and are placed at a more vulnerable position. To address these vulnerabilities, the government of India is committed to promote gender equality in all areas of development. It was recognised that the way government budgets allocate resources has the potential to transform gender inequalities. Looking at the huge potential of the government budgets to make positive changes in gender dimensions of society, Gender Budgeting was adopted by the Government of India as the budgetary strategy at the National Level in 2005-06 with the introduction of the gender budget statement as part of Government of India's National Budget.

Children on the other hand constitute almost 40%⁸ of the entire population of the country; which earns India the moniker of the Youngest Nation in the world. The number could become our strength if fostered appropriately. Steady increase in the number of reported crimes committed against children points out the facts that children are one of the most vulnerable group of India's population. With this view in mind a separate budget statement is being published under Expenditure Budget since 2008-09, reflecting the provisions and expenditures on children across sectors. It reinforces the National commitment towards welfare of children and gives an opportunity to introspect and analyse potential area of investment and policy reformation.

Gender Budgeting is not an accounting exercise but an ongoing process to ensure that benefits of development reach women as much as men. Gender Budgeting entails maintaining a gender perspective at various stages like programme/policy formulation, assessment of needs of target groups, review of existing policies and guidelines, allocation of resources, implementation of programmes, impact assessment, reprioritisation of resources, etc. A gender responsive budget is the culmination of this process.

Barring some specific initiatives, children often remain conspicuous by their absences in the larger development narratives of the country. Hence, it is essential to maintain a reasonable focus on the sizeable child population of the country to provide opportunities and facilities to children envisaged in the Constitution of India to invest in the young population of the country at the right time and in the right manner, to enable the country harvest demographic dividends and to provide for their due and fair share within the development agenda of the country.

A statement was introduced in the union budget for 2008-09 to capture the expenditure being incurred on children. This statement has been carried over in subsequent union budget. However, since it was the voluntary declaration it did not capture all child specific schemes and initiatives in the union budget. The matter was pursued with all the Ministries and Departments, NITI Aayog supported the deliberation to draw attention of the stakeholders towards the necessity of consciously budgeting for children.

CENTRAL SOCIAL WELFARE BOARD

The Central Social Welfare Board (CSWB) was set up by a Resolution of Government of India on 12th August, 1953 with the objective of promoting social welfare activities and implementing welfare programmes for women & children through voluntary organisations. In order to give it a legal status, the Board was registered as a Charitable Company in 1969. During the year 1954, the State Social Welfare Boards were set up in all States and Union Territories to work together with Central Social Welfare Board for implementing programmes of the Board across the country. The Board is functioning as an interface between government and the voluntary sector for more than six decades having a country-wide infrastructure for monitoring the programmes/ schemes of the government being implemented by the voluntary organisations.

Launch of Emergency Response Support System (ERSS) in 14 States, Investigation Tracking System for Sexual Offences (ITSSO), Safe City Implementation Monitoring (SCI) on 19th February, 2019: Shri Rajnath Singh, Hon'ble Minister of Home Affairs and Smt. Maneka Sanjay Gandhi, Hon'ble Minister of Women and Child Development, Govt. of India jointly launched Emergency Response Support System (ERSS) – 112 Mobile App,

⁷ Census of India 2011

⁸ Census of India 2011

Investigation Tracking System for Sexual Offence (ITSSO) and Safe City Implementation Monitoring (SCIM) Portal on 19th February, 2019. Rs. 7.86 Lakhs has been spent for the launch.

In compliance of direction of Hon'ble Supreme Court of India, Ministry of Women and Child Development (MWCD), Govt. of India decided to construct a new Swadhar Greh for 1000 widows at Vrindavan, Mathura, Uttar Pradesh. Central Social Welfare Board (CSWB) was given responsibility to look after the construction of Swadhar Greh building. The construction of the building has been completed in January 2018. The inmates of Krishna Kutir are provided safe and secure shelter, food, clothes, recreational facilities and transportation for visiting temples in Vrindavan. The inmates are also provided with medical facilities like health check-up, medicines, physiotherapy and pathological tests. They are given training in skill development in order to make them self dependent.

The Scheme of Family Counselling Centre (FCC) was introduced by C.S.W.B in 1983. The centres provide counselling, referral and rehabilitative services to the women & children who are victims of atrocities, family maladjustment and social ostracism and also provide crisis interventions and trauma counselling in case of natural and man-made disasters. The centres are also instrumental in creating awareness and mobilizing public opinion on social issues affecting status of women. The centres work in close collaboration with the local administration, police, courts, free legal aid cells, medical and psychiatric institutions, vocational training centres, One Stop Centres, Swadhar Greh, etc.

There are 33 State Social Welfare Boards functioning in each State and Union Territory functioning as a bridge between State and Centre for the strengthening and promotion of voluntarism. Monitoring of programmes is the responsibility of the State Boards. The State Board is headed by Chairperson who is appointed by the respective State Govts. in consultation with CSWB. The State Board members include four professional drawn from field of Social, Home Science, Medicine, Law and Economics.

NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS

The National Commission for Protection of Child Rights (NCPCR) was constituted by the Government of India, Ministry of Women & Child Development as a statutory body in March, 2007 under the Commissions for Protection of Child Rights (CPCR) Act, 2005, to protect, promote and defend child rights in the country. The Commission comprises of, a chairperson who is a person of eminence and has done outstanding work for promoting the welfare of children; and six Members (out of which at least two shall be women) from the following fields to be appointed by the Central Government from amongst persons of eminence, ability, integrity, standing and experience in - education; child health, care, welfare or child development; juvenile justice or care of neglected or marginalised children or children with disabilities; elimination of child labour or children in distress; child psychology or sociology; and laws relating to children.

The NCPCR play key role in protect, promote and defend child rights in the country. The Commission's Mandate is to ensure that all Laws, Policies, Programs, and Administrative Mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India and also the UN Convention on the Rights of the Child. The Commission visualizes a rights-based perspective flowing into National Policies and Programs, along with nuanced responses at the State, District and Block levels, taking care of specificities and strengths of each region. In order to touch every child, it seeks a deeper penetration to communities and households and expects that the ground experiences inform the support the field receives from all the authorities at the higher level.

CENTRAL ADOPTION RESOURCE AUTHORITY (CARA)

The Juvenile Justice Act, 2015 has created a specialised agency called CARA, Central Adoption Resource Authority alongwith detailed adoption procedure under the Act and the rules thereunder. It functions as a nodal body at the National Level for promoting and regulating adoption of Indian Children. As per the Juvenile Justice Act, 2015, CARA has been mandated to undertake the following functions :

- Promote in-country adoptions and to facilitate inter state adoptions in coordination with State Agencies;
- Regulate inter-country adoptions;
- Frame regulations on adoption and related matters from time to time, as may be necessary;
- Carry out the functions of the central authority under the Hague Convention on Protection of Children & Cooperation in respect of inter-country adoption;
- Any other function as may be prescribed.

CASE STUDIES

1. D.R. Congo v. Burundi, Rwanda, and Uganda⁹

In the case of *D.R. Congo*, armed forces of Burundi, Rwanda, and Uganda raped and killed women in the Democratic Republic of Congo, among other violations¹⁰. The Democratic Republic of Congo also alleged that the Rwandan and Ugandan forces specifically attempted to decimate local populations by spreading AIDS through the rape of Congolese women and girls¹¹. The African Commission found violations of the First Protocol Additional to the Geneva Conventions and the Convention on the Elimination of All Forms of Discrimination against Women, and the African Charter on Human and Peoples' Rights¹².

2. An Infant Kept on Ventilator Died due to Being Bitten by Rats in Government Hospital in Guntur District, Andhra Pradesh¹³

The Commission initiated suo motu proceedings on the basis of a media report captioned "Ventilator par rakhe bacche ko chuhon ne kuttar kar mar dala", published in Hindi newspaper 'Punjab Kesari' dated 27/8/2015. The incident allegedly took place in Government hospital in District Guntur, Andhra Pradesh where a 10 days old child, kept on ventilator was badly bitten by the rats on two occasions which led to his death due to excessive bleeding. According to the report, the child was operated upon and was kept on ventilator in the post-operative unit as a life protection measure.

The Superintendent, Government Hospital, Guntur submitted a report which confirmed the incident of rat bites and death of the child of one Ch. Laxmi. It was stated that the first incident of rat bite occurred on 24.08.2015 with a scratch/bite on left hand of the baby, immediately after which preventive measures were taken. Unfortunately, again on 26.08.2015, the infant was bitten by the rat on the left temporal side and upper chest. The baby expired at about 2.45 p.m. on the very day of second rat bite i.e. 26.08.2015.

The Committee of senior Professors, which conducted a departmental enquiry in the matter, concluded that the baby expired due to multiple congenital anomalies and breathing difficulties and that the rat bites could not amount to the death of the baby. Also, as per the post-mortem report, the infant died due to "shock as a result of Septicemia" associated with multiple gnawing injuries. However, at the same time, it is to be noted that the Committee also recommended that sanitation of the hospital should be improved and that every ward should be adequately provided with staff nurses. Moreover, the report of the Superintendent, Government General Hospital further revealed that the contract of sanitation and security services provided by Chaitany Jyothi Welfare Society, Vijayawada was terminated for gross negligence on its part and the Sanitary Inspector of the hospital was also suspended. The report further enumerated the steps taken for improvement of sanitation and to tackle the rat menace in the hospital.

A cumulative assessment of all the above admitted facts led the Commission to an inescapable conclusion that there had been gross negligence in the matter of maintenance of sanitation as well as in taking adequate care of the child who was kept on ventilator in the post operative unit. This negligence led to the repeated rat bites to the baby who expired on the same day of the second rat bite. The Commission did not express any opinion on the actual cause of death but it observed that, nevertheless, gross negligence on the part of the hospital authorities/ its agents/ contractors was writ large in the case which led to violation of human rights of the deceased child and the parents. Hence, the Commission held that the State was liable to pay compensation to the next-of-kin of the deceased child for violation of the human rights. The Commission, accordingly, issued a notice to the Chief Secretary, Government of Andhra Pradesh under section 18 of the PHRA, 1993 to show cause as to why it should not recommend payment of `1,00,000/- (Rupees One Lakh only) as compensation to the next-of-kin of the deceased child.

As the Chief Secretary, Government of Andhra Pradesh failed to submit any reply to the show cause notice, despite reminders, the Commission on 05.12.2016 recommended to Government of Andhra Pradesh to pay an amount of ` 1,00,000/- (Rupees One Lakh only) as monetary compensation to the next-of-kin of the deceased child.

⁹ Communication No. 313/05, 33rd Ordinary Session, May 2003

¹⁰ *Id.* at paras. 4-5

¹¹ *Id.* at para. 5.

¹² *Id.* at para. 86

¹³ Case No. 1051/1/6/2015, NHRC

CONCLUSION

A Gender equal society would be one where the word 'Gender' does not exist, where everyone can be themselves. Human Rights are rights for all. They are meant equally for every human being, be it women or children. In order to ensure social justice in the world equal provision of human rights in all spheres is the first concern. The question arises, how can human rights promote social justice? Human rights promote equality. Social justice and human rights have a shared goal i.e.; human dignity and equality for all. The major issues concerning social justice like eradication of poverty can only be achieved if human rights are equally promoted among all sections of the society.

Poverty disproportionately affects people from certain backgrounds. This is because discrimination of all kinds is closely linked to poverty. It limits opportunities and causes division in society that go far beyond difference in household income. Human rights provide equal opportunities for all which in turn results in equal distribution of wealth in the society. Since human rights are legally enforceable, they make government accountable in ensuring social justice. However, enabling ease of access to justice is itself a crucial fight.

Nelson Mandela rightly said – “To deny people their human rights is to challenge their very humanity.”

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