

CHAPTER – III

PROTECTIVE PROVISIONS OF HUMAN RIGHTS: GLOBAL AND NATIONAL CONTEXT

3.0 Introduction

Human rights become operative with the birth of individuals, irrespective of their caste, creed, religion, sex or nationality. More or less the violation of human rights across the globe cannot be ignored. The continuation of such acts of human being against humanity is really unfortunate. Therefore, realising the need of international institutions and laws become need of hour to protect such sort of evil acts. The national governments of the world are also very much concern in this regard. These all existing laws and protective provisions to promote and protect the human rights can be discussed in global and national context. The details can be presented as follows.

3.1 Global Context

At present, we are in a phase of internationalisation of human rights, in other words most domestic legal systems have started to recognise the fundamental rights and freedoms. The new phase has begun where human rights have been proclaimed in both universal and regional international organisations. In this progressive and ongoing internationalisation process, the promotion and protection of all kind of human rights has gone from being an issue which fell within the exclusive competence of the states to becoming a legitimate concern of the international community as stated in the Vienna Declaration from the world conference on human rights.

The UN system has two main types of bodies to promote and protect human rights. These are - a) Charter Bodies and b) Treaty Bodies.¹ The role of those bodies is to prevent violations of human rights and ensure human rights by promoting international cooperation and co-ordinating the various human rights activities of United Nations. The charter based bodies are created under the international human rights treaties and made up of independent experts mandated to monitor state parties' compliance with their treaty obligations. These are - Human Rights Council (HRC), Universal Periodic Review (UPR), Special Procedures, Commission on the Status of Women (CSW), UN Women,

¹ Collister, Heather, Thomas Helem, Pooja Patel and Olive Starrenburg (2015), A Simple Guide to the UN Treaty Bodies. Geneva: International Service for Human Rights (ISHR) publications.

Security Council, General Assembly, Secretariat, Economic and Social Council (ECOSOC), International Court of Justice (ICJ) and Trusteeship Council. The treaty based bodies were created to monitor and encourage states to uphold and implement their international obligations. Presently, there are 10 (ten) treaty bodies, which are monitoring the implementations of the nine core international human rights treaties and one optional protocol. These are - Committee on the Elimination of Racial Discrimination (CERD), Human Rights Committee (HRC), Committee on Economic, Social and Cultural Rights (CESR), Committee on the Elimination of Discrimination against Women (CEDAW), Committee against Torture (CAT), Sub-Committee on Prevention of Torture (SPT), Committee on the Rights of Child (CRC), Committee on the Protection of Migrants Workers (CMW), Committee on the Rights of Persons with Disabilities (CRPD) and Committee on the Enforced Disappearance (CED). This way provisions for protections of human rights is reflected in a number of core international human rights treaties and in customary international law.

3.1.1 Human Rights under the U.N. Charter

The United Nations signed the Charter on 26th June 1945, which represents remarkable advancement in the direction of human rights and in respect of human faith. During the 2nd World War, the heinous atrocities took place in the name of race, religion and nationality. These massive atrocities against human life and dignity led to a strong movement towards international protection of fundamental human rights. At San Francisco Conference, the delegates from some states were in favour of adopting strong provision in the concern of human rights. An attempt was also to incorporate the U.N. Charter on International Bill on Human Rights. Due to that, the concern for human rights are woven in the U.N. Charter like a golden thread. At present, the human rights have occupied a significant chapter in various story of U.N. The Charter contains a number of provisions for the promotion and protection of human rights, and fundamental freedoms as well as in the Preamble and in Articles 1, 13 (b), 55, 56, 62 (2), 68 and 76 (c). Some of these are being given below:

a) The very first paragraph of Preamble of the Charter stated that we the people of the United Nations are committed to reaffirm faith in fundamental human rights, in the dignity and worth of human being, in the equal rights of men and women, and of nations of world at large or small.

b) Paragraph 3, Article I of the Charter lays down that the achievement of international co-operation in promoting and encouraging respect for human rights, and for fundamental freedoms for all individual without any discrimination in regard to race, sex, language or religion shall be one of the purposes of the U.N.

c) As per the terms of Article 13, the General Assembly is given power to initiate studies and make recommendations for the purpose of assisting the realization of human rights and fundamental freedoms without any discrimination in regard to race, sex, language or religion.

d) Article 55 of the Charter empowers the U.N. to promote universal respect for and observance of human rights and fundamental freedoms for all without any distinction in regard to sex, race, language or religion.

e) Article 56 of the Charter provides that the members of the U.N. shall pledge themselves to take joint and separate action in co-operation with Organisation for the achievement of the purposes set forth in Article 55.

f) Article 62 of the Charter of the U.N. given powers the Economic and Social Council to make recommendations for the purpose of promoting respect for and observance of the human rights and fundamental freedoms of all.

g) As per Article 68, this is the responsibility of the Economic and Social Council to set up commissions in economic and social fields for promotion of human rights. The commission on human rights and on the status of women are the subsidiary bodies of the Economic and Social Council.

h) Paragraph (C) of Article 76 lays down that one of the basic objectives of the Trusteeship System is to encourage respect for human rights stand for fundamental freedoms irrespective of race, sex, language or religion.

The U.N. Charter did not contain a specific Charter on the human rights. Therefore, an attempt was being made to fill them out by drawing up the 'Universal Declaration of Human Rights and Fundamental freedoms' in the year 1948 in order to implement the Universal Declaration, the European Convention for the Protection of Human Rights and fundamental Freedoms, the African 29 Charter on Human and People's Rights, the American Convention on Human Rights and finally the International Covenants on human rights were adopted.

3.1.2 Universal Declaration of Human Rights (UDHR)

The basis for the formulation of United Nations covenants, conventions, declarations and recommendation on specific aspects were provided by UDHR. The human rights that are proclaimed in the universal declaration are divided into two broad kinds. The first kind of human rights refer to civil and political rights, that are includes - right of life, liberty and security of person, freedom from slavery and torture, equality before the law, protection against arbitrary arrest, detention or exile, the right to fair trial, the right to own property, participation in politics, the right to marriage, the fundamental freedoms of thought conscience and religion, opinion and expression, freedom of peacefully assembly and association and the right to take part in the political system or government of their country. The second are economic, social and cultural rights that are related to each other. More specifically, these are – right to work, equal pay for equal work, the right to form and join trade unions, the right to an adequate standard of living, the right to education and the right to participate freely in cultural life.

The UDHR set out one preamble and 30 numbers of articles.² These articles are,
Article 1: All human beings are born equal in dignity and rights.

Article 2: Every individual is entitled to all the rights and freedoms set forth in the Declaration without any distinction.

Article 3: Every individual has the right to life, liberty and security of person.

Article 4: Every individual has the freedom from slavery and servitude.

Article 5: Every individual has the freedom from torture or cruel, inhuman or degrading treatment or punishment.

Article 6: Every individual has the right to recognition everywhere as a person before the law.

Article 7 to 11: Every individual has the right to an effective judicial remedy, freedom from arbitrary arrest, detention or exile, the right to a fair trial and public hearing by an independent and impartial tribunals, the right to be presumed innocent until proved guilty.

Article 12: Every individual has the freedom from arbitrary interference with privacy, family, home or correspondences, freedom from attacks upon honour and reputation, the right to protection of the law against such attacks.

² Universal Declaration of Human Rights (UDHR)

Article 13 to 15: Every individual has the freedom of movement, the right of asylum and the right to a nationality.

Article 16 to 17: Every individual has the right to marry and to have a family and the right to own property.

Article 18 to 19: Every individual has the freedom of opinion and expression.

Article 20: Every individual has the right to peaceful and association.

Article 21: Every individual has the right to take part in government and to equal access to public service.

Article 22: Every individual has the right to social security.

Article 23: Every individual has the right to work, free choice of employment, right to equal pay for equal work, the right to form and join trade unions.

Article 24: Every individual has the rights to rest and leisure, including reasonable limitations of working hours and periodic holidays with pay.

Article 25: Every individual has the right to a standard of living adequate for health and well-being.

Article 26: Every individual has the right to education including parent to choose for their children.

Article 27: Every individual has the right to participate in the cultural life of the community.

Article 28: Every individual is entitled to a social and international order.

Article 29: Every individual has the duties to the community in which alone the free and full development of his/her personality.

The concluding article 30 recognised that nothing in this declaration may be interpreted as implying for any state, group or person any right to engaged in any activity or to perform any act aimed at the violations of any of the rights and freedoms set forth as part of this declaration.

3.1.3 United Nations Human Rights Council (UNHRC)

UNHRC was formed on 15th March 2006. The responsibility is to strengthen the promotion and protection of human rights and fundamental freedoms, and for addressing and investigating violations of human rights and serves as the main forum of UN for inter-governmental co-operation and dialogue on human rights issues. The main focus is to

help member states in order to meet their human rights obligations through dialogue, capacity building and technical assistance.

UNHRC is mandated to make recommendations to the General Assembly of the United Nations for the development of international law in the field of human rights and to promote full implementation of human rights obligations undertaken by States. With the creation of UNHRC, human rights were placed high on the UN agenda and today UNHRC has formal status within the UN.

3.1.4 International Covenants

The General Assembly adopted the two historic Covenants on 6th December 1966. These are - a) The International Covenant on Civil and Political Rights and b) The International Covenant on Economic, Social and Cultural Rights.³ It also adopted an Optional Protocol to the International Covenant on Civil and Political Rights. Apart from this, The General Assembly also adopted the second Optional Protocol to the International Covenant on Civil and Political Rights on 15th December 1989 with the aim and objective to abolish the death penalty.⁴

a) The Covenant on Civil and Political Rights: - The Covenant on Civil and Political Rights which consists of 53 Articles is divided into 6th different parts. Article 1 refers to the right of peoples to self-determination states that all people have the right to determine freely their political status and freely pursue their economic, social and cultural development; and may for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, base on the principles of mutual benefit and international law. The Articles again states that in no case may a person be deprived of his or her own means of subsistence and that the States Parties shall promote the realization of the right of self-determination and shall respect the right. The Covenant on Economic, Social and Cultural rights also stipulated the above provisions into under Article I, Part II stipulated the rights and obligations of States parties to the Covenant. It included the obligations of the States to take necessary steps to incorporate the provisions of the Covenant in the domestic laws and to adopt such legislative or other measures as may be necessary to give effect to the

³ United nations General Assembly Resolution 2200 A (XXI), 16th December 1966.

⁴ United Nations General Assembly Resolution 36/59, 25th November 1981.

rights recognized in the Covenant. The States parties ensure equal right of men and women to the enjoyment of all civil and political rights.

Substantive rights: - Part III deals with the particular rights of the individuals and the obligations of the States Parties.

Article 1: The right to life.

Article 7: Right to freedom from inhuman or degrading treatment.

Article 8: Right to freedom from slavery, servitude and forced labour.

Article 9: Right to liberty and security.

Article 10: Right of a detainee to be treated with humanity.

Article 11: Right to freedom from imprisonment for inability to fulfil a contractual obligation.

Article 12: Rights to freedom of movement and choose one's residence.

Article 13: Right to freedom of aliens from arbitrary expulsion.

Article 14: Right to a fair trial.

Article 15: Non-retroactive applicator of criminal law.

Article 16: Right to recognition as person before law.

Article 17: Right to Privacy, family, home or correspondence.

Article 18: Right to freedom of thought, conscience and religion.

Article 19: Right to freedom of speech and expression.

Article 20: Prohibition of propaganda of war.

Article 21: Right to peaceful assembly.

Article 22: Right to freedom of association.

Article 23: Right to marry and have a family.

Article 24: Right to freedom of child.

Article 25: Right to part in the conduct of public affair, to vote and to be elected.

Article 26: Rights of equality before the law.

Article 27: Rights of minorities.

The rights mentioned above set forth in the Covenant are not absolute and subject to certain limitations. With the formulation of the limitations varied from one article to another, it could be said that by and large the Covenant provided that rights should not be subjected to any restrictions except those, which were provided by law and were

necessary to protect national security, public order, public health or morals or the right and freedoms of others.

b) Covenant on Economic, Social and Cultural Rights: - The International Covenant on Economic, Social and Cultural Rights consists of 31 Articles divided into five parts. Part I deals with rights of Civil and Political Rights. Other rights of the individuals are enumerated in Part III of the Covenant which include the following,

Article 6: Right to work.

Article 7: Right to just and favourable conditions of work.

Article 8: Right to form and join trade unions.

Article 9: Right to social security.

Article 10: Right in respect to motherhood and childhood, marriage and the family.

Article 11: Right to adequate food, clothing, housing and standard of living, and freedom from hunger.

Article 13: Right in regard to education including a plan for implementing compulsory primary education.

Article 14: Right in respect to education including a plan for implementing compulsory primary education.

There are two Optional Protocol on covenant on the Civil and Political Rights of 1966. These two are separate instrument, but having relation with each other. The state parties to the Covenant can become parties to the protocol. The Covenant and Protocol came into force on 23rd March 1976, which gives rights to the individuals to make petitions before the human rights committee. The Protocol give every rights to concern State Parties to denounce when it wants, by giving prior notification to the Secretary General of the United Nations. The Article 1, 2 and 3 of said protocol refers to the sources, subject matter and permission to communications. The Human Rights Committee gives jurisdiction to receive communications from individuals.

The Second Optional Protocol of 25th November 1981 deals with the International Covenant on Civil and Political Rights. It worked on the issue of Abolishment of death penalty. The General Assembly considered the form of elaborating a draft of a second optional protocol to the International convent. A Second Optional protocol to the International Covenant on civil and political Rights was concluded in 1987. Death Penalty

was regarded as the element of suffering and humiliation, and it's a violation of human rights too. It is an inhuman treatment to the human life. On 11th July 1991, the Protocol came into force. The second optional protocol to the International Covenant on Civil and Political Rights was adopted by the General Assembly on 15th December 1989 to abolish death penalty at the International level.

3.1.5 International Judicial System (ICJ)

The International Court of Justice has the authority to the cases of states only. According to Article 34 (1) of the statute of the International Court only the party can go before the court, individuals have no access to the court and can't file a petition before the court unless the state sponsors it.

The statute of the International Criminal Court came into force on 1st July 2002 and inaugurated on 11th March 2003. Their purpose was to eliminate the violation against human rights. The statute of the court is also known as 'Rome Statute.' Article 5 of statute says that the court can give jurisdiction on 5 serious crimes. These are: a) the crime of genocide, b) Crimes against humanity, c) War crimes and d) The crime of aggression. Article 7 of the statute says that 'crimes against humanity' means extermination, murder, enslavement, forceful transfer of population, imprisonment, rape, torture, sexual slavery, enforced prostitution, forced pregnancy and the crime of apartheid.

3.1.6 Key International Convention on Human Rights

The human rights violation has become the common phenomenon in today's world. So, the UN to protect and promote the human rights put some conventions which are very relevant to the human rights violations. These are:

3.1.6.1 Apartheid: - The United Nations condemned Apartheid as a crime against humanity in 1966. All International convention on the suppression and punishment of the crime of Apartheid was put to an end on 30th November of 1973. On 18th July, 1976 the convention came into force.

3.1.6.2 Apartheid in Sports: - The General Assembly adopted the International Declaration against Apartheid in sports on 14th December of 1977. The General Assembly adopted the International Convention against Apartheid in Sports on 10th December 1985.

3.1.6.3 Torture and other Inhuman, Cruel, Punishment and Degrading treatment: - On 9th December 1975, the General Assembly adopted a Declaration on the protection of human being from being subjected or inhuman treatment or punishment.

The General Assembly on 10th December 1984 adopted a convention, which is known as Convention against Torture and other cruel or inhuman or punishment or degrading treatment.

3.1.6.4 Slavery and Slave Trade: - The International slavery convention was adopted on 2nd September 1926 under the League of Nations, which transfers the powers and functions that were undertaken by the League of Nations.

3.1.6.5 Forced labour: - The General Conference of the International Labour Organization (ILO) was adopted a convention on 25th June 1957 to abolish forced labours. It came into force on 17th January 1959.

3.1.6.6 Traffic in Persons and Prostitution: - A convention to curb the suppression of the Traffic on Persons and Exploitation of women was adopted on 2nd December 1949 under the protection of the United Nations.

3.1.6.7 Elimination of Racial Discrimination against women: - The commission on the Status of Women was established in 1946 to deal with issues of women. On 7th November 1967, the General Assembly adopted a declaration on the elimination of discrimination against women. Again, a convention on the elimination of all forms of discrimination against women was adopted on 18th December 1979 by the General Assembly. In addition with mentioned conventions, three other conferences were held during the UN sponsored International Women's Decade starting from 1976 to 1985. These are at Mexico City in 1975, Copenhagen in 1980, and Nairobi in 1985. In 1995 from 4th to 15th September, the 4th world conference on women held at Beijing was called Beijing Conference stating that rights of women's are human rights.

3.1.6.8 Rights of the Child: -The UDHR provided under paragraph 2 of Article 25 that childhood is entitled to special care and assistance. The General Assembly on 20th November 1959. Adopted the above principle along with other principles of the UDHR concerning the child were incorporated in declaration of the rights of Child. The Convention on the Rights of the Child on the other hand was adopted by the General Assembly on 30th Anniversary of the declaration on 20th November 1989, which came in to force on 2nd September 1990.

3.1.6.10 The Right of the Persons Belonging to National or Ethnic, Religious and Linguistic Minorities: - The Covenant on Civil and Political Rights under Article 27 provided that persons belonging to ethnic, religious and linguistic minorities shall not

be denied the rights to enjoy their own culture, to profess and practice their own religion or to use their own language. Inspired by the decision of the General Assembly on 18th December 1992, adopted the declaration on the Rights of Persons belonging to National or Ethnic, Religious or Linguistic minorities.

3.2 National Context

India after achievement of independence on 15th August 1947 adopted the Democratic system of government presently known as the largest Democracy of the world and we gave to ourselves a written constitution, which is considered as longest constitution of the world. The constitution of the nation guaranteed to all its citizen liberty, equality and justice, social and political irrespective of castes, colour, creed, sex, religion, region whatever it may be. There is provisions for every rights and duties for every citizen of the nation.

3.2.1 Constitution of India and Human Rights

The framers of the Indian Constitution were influenced by the concept of human rights and guaranteed most of human rights contained in the Universal 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 on the other so call economic, social and cultural rights have been incorporated in Part IV of the constitution. The details provisions for protection and promotion of human rights of Civil and Political Rights in the Universal Declaration of Human Rights (UDHR), Economic, Social and Cultural Rights in UDHR and that are recognised and reflects in Constitution of India can be understand from the following **Table 3.1**

Table 3.1
Provisions with article on Civil and Political Rights in the Universal Declaration of Human Rights (UDHR) and Constitution of India

Sl. No.	Provisions of Rights	Articles of UDHR	Constitution of India
1	Equality before law	Article 7	Article 14
2	Prohibition of any form of discrimination	Article 7	Article 15 (1)
3	Equality of all kind of opportunity	Article 21 (2)	Article 16 (1)
4	Freedom of speech and expression	Article 19	Article 19 (1) (a)
5	Freedom of peaceful assembly	Article 20 (1)	Article 19 (1) (b)
6	Right to form association or union	Article 23 (4)	Article 19 (1) (c)
7	Freedom of movement within the border	Article 13 (1)	Article 19 (1) (d)
8	Protection in respect of conviction for offences	Article 11 (2)	Article 20 (1)
9	Protection of life and personal liberty	Article 3	Article 21
10	Protection of slavery and forced labour	Article 4	Article 23
11	Freedom of conscience and religion	Article 18	Article 25 (1)
12	Remedy for enforcement of rights	Article 8	Article 32
13	Rights against arbitrary arrest and detention	Article 9	Article 22
14	Right to social security	Article 22	Article 29 (1)

Source: - UDHR and the Constitution of India.

Most of the economic, social and cultural rights proclaimed in the UDHR have been incorporated in part IV of the Indian constitution by framers. The following **table 3.2** will show the details of its reflection and recognition as law of land.

Table 3.2
Provisions with article on Economic, Social and Cultural Rights in the Universal Declaration of Human Rights (UDHR) and Constitution of India

Sl. No.	Provisions of Rights	Articles of UDHR	Constitution of India
1	Right to work, just and favourable condition of work	Article 23 (1)	Article 41
2	Right to equal pay for equal work	Article 23 (2)	Article 39 (d)
3	Right to education	Article 26 (1)	Articles 21 (A), 41, 45 & 51A (K)
4	Right to just and favourable remuneration	Article 23 (3)	Article 43
5	Right to rest and leisure	Article 24	Article 43
6	Right of every individual to a standard of living adequate for him and his family	Article 25 (1)	Article 39 (a) & Article 47
7	Right to a proper social order	Article 28	Article 38

Source: - UDHR and the Constitution of India.

International Covenant on Civil and Political Rights that are recognised and reflect in Indian constitution can be understood from the following **table 3.3**.

Table 3.3
Provisions with articles of the International Covenant on Civil & Political Rights and Constitution of India

Sl. No.	Provisions of Rights	Covenant on Civil and Political Rights	Constitution of India
1	Forced Labour	Article 8 (3)	Article 23
2	Equality before law	Article 14 (1)	Article 14
3	Prohibition of any kind of discrimination	Article 26	Article 15
4	Equality of opportunity to public service	Article 25 (C)	Article 16 (1)
5	Freedom of speech and expression	Article 19 (1) & (2)	Article 19 (1) (a)
6	Right to peaceful assembly	Article 21	Article 19 (1) (b)
7	Right to freedom of association	Article 22 (1)	Article 19 (1) (c)
8	Right to move freely within the territory of a state	Article 12 (1)	Article 19 (1) (d) & (e)
9	Protection in respect of conviction of offences	Article 15 (1)	Article 20 (1)
10	Protection from prosecution and punishment	Article 14 (7)	Article 20 (2)
11	Not to be compelled to testify against himself	Article 14 (3) (G)	Article 20 (3)
12	Right to life and liberty	Article 6 (1) & 9 (1)	Article 21
13	Right to child education	Article 26 (1)	Article 21 (A)
14	Protection against arrest and detention	Article 9 (2), (3) & (4)	Article 22
15	Freedom of conscience and religion	Article 18 (1)	Article 25

Source: - Covenant on Civil & Political Rights and the Constitution of India.

3.2.1.1 Fundamental Rights and Human Rights: - Many of the provisions of the human rights and freedoms as mentioned in the UDHR of 1948 and International Covenant on Civil and Political Rights of 1966 are guaranteed in Part III of the Indian Constitution as fundamental rights. In fact, Part III of the constitution is characterized as the Magna Carta of India. The protective provisions that are enshrined in the 6 (six) fundamental rights of Indian constitution. These are – a) Right to equality, b) Right to freedom, c) Right against exploitation, d) Right to freedom of religion, e) Cultural and educational rights and f) Right to constitutional remedies.

a) Right to equality: - The relevant provisions of the right to equality are laid down in 14, 15, 16, 17 and 18 of the constitution. These are – Article 14: Equality before law. Article 15: Prohibition against discrimination. Article 16: Equality of opportunity in matters of public employment. Article 17: Abolition of untouchability. Article 18: Abolition of titles.

b) Right to freedom: - Right to freedom is reflected in the article 19, 20, 21 and 22 of the fundamental rights in constitution.

Article 19 (1) includes 6 (six) freedoms. These are – freedom of speech and expression, freedom of assembly, freedom of association, freedom of movement, freedom of residence and settlement, freedom of profession, occupation, trade and business. Freedom of the press is included under Article 19 (1) (a).

Article 20 provides protection against arbitrary and excessive punishment to any person who commits an offence. It cannot be suspended during the period of emergency.

Article 21 guarantee right to life and personal liberty. It says that no person shall be deprived of his life or personal liberty except according to the procedure establishment by law.

Article 22 provides protection against arbitrary arrest and detention. It includes – informing the detainee of the cause of his arrest, allowing him to consult and be defended by a legal practitioner of his choice and producing him before a nearest magistrate within the period of 24 hours.

c) Right against exploitation: - Article 23 and 24 deals with the rights against exploitation.

Article 23 seeks to ban traffic in human being, beggar or any other form of forced labour.

Article 24 prohibits employment of children below the age of 14 years in any factory or mine or any hazardous condition.

d) Right to freedom of religion: - The relevant provisions of right to freedom of religion are laid down in article 25, 26, 27 and 28 of the constitution.

Article 25 entitles everyone the freedom of conscience and the right to process, practice and propagate a religion of one's choice.

Article 26 grants right to religious dominations to establish institutions for practice or propagating their religion, manage its own affairs in matters of religion and passes and dispose of their immovable property.

Article 27 provides for exempting religious institutions from paying taxes to state for religious purposes.

Article 28 deals with religious instruction to be imparted in educational institutions. No religious instruction can be provided in institutions own and administered by the state. Religious instruction may be imparted but pupil may not be compelled to attend them in institutions recognised by the state and receiving aid out of state funds. Religious instructions can be imparted and people can be compelled to attend them in educational institutions administered by state established by a religious endowment or religious trust.

e) Cultural and educational rights: - Article 29 and 30 deals with the cultural and educational rights.

Article 29 provides for criteria for determination of minority.

Article 30 provides that all minorities shall have the right to establish and administer educational institution of their choice.

f) Right to constitutional remedies: - Rights to constitutional remedies has only one article i.e. 32. According to B. R. Ambedkar, article 32 is the fundamental of all fundamental rights. This include - the right to move the supreme court by appropriate proceeding for the enforcement of the rights is guaranteed and the supreme Court has the right to issue directions or orders or writs in the nature of Habeas Corpus, Mandamus, Certiorari, Prohibition and quo Warranto, whichever may be appropriate for the enforcement of any of the rights conferred by this part.

3.2.1.2 Fundamental Duties and Human Rights: - The 42nd amendment of Indian constitution in 1976 incorporated the new Part IV A specifying a code of 10 (ten) fundamental duties for the citizens of the country. The fundamental duties of every Indians are to abide by the constitutions, respect the national flag and national anthem, cherish and follow the noble ideals which inspired our national struggle for freedom, protect the sovereignty, unity and integrity of nation to defend the country and render national service, promote the spirit of common brotherhood amongst all people, preserve the rich heritage of our composite culture, protect and improve the natural environment,

develop scientific temper and spirit of inquiry, defend public property, strive towards excellence in all spheres of individual and collective activity. The 86th Amendment of Indian Constitution of 2002 brought a new clause in Article 51 (A). The newly inducted duty is instruction to parents or guardians to provide opportunities for education to their children or as the case may be ward between the ages of 6 and 14 years.

Duties follows from the rights. Rights and duties go hand to hand, right without duty is devoid of any meaning. Every rights implies certain duties.

3.2.1.3 Directive Principles of State Policy and Human Rights: - The Directive Principles of State Policy is one of the novel feature of the Constitution of India. These principles are enshrined in part IV of the constitution. These are some instructions to the union and state governments. They are considered as the fundamental principles in the governance of the country and both central and state governments are expected to apply these principles in formulating their policies and making laws. Certain fundamental rights have incorporated in Part III of the constitution, but these alone are not considered sufficient to ensure the fullest development of an individual being a citizen. Therefore, in order to enable the individual to live happy and honourable life, the Directive Principles of State Policy have been made a part and parcel of the Constitution. Both the Union and State Governments are morally obliged to embody these principles in their policies and laws. Moreover, the Directive Principles are keeping with the spirit and ideals of the constitution. The implementation of the directives will enable our government to fulfil the ideals and objectives laid down in the Preamble to the Constitution. The fulfilment of the ideals like Justice, Liberty, Equality and Fraternity set forth in the preamble certainly would make India a truly welfare state. The directives also set before the legislature and the executive, local and other authorities in India standards of advancement to judge their success or failure. They lay down the goals for the achievement of which the country would direct its social and economic order.

The various directives have been set forth in Article 39 to 51 of the constitution. These are various kind of instructions to the governments. Hence, it would be more convenient to categories them under different sections of principles. These are Socio-economic principles, Gandhian and Liberal Principles.

a) Socio-economic principles: - There are many socialistic principles which tend to give our country the shape of socialism. Thus, the state should direct its policy towards securing to its citizens.

- i) The right to adequate means of livelihood for all citizens.
- ii) Distribution of the material resources of the country so as to serve common good.
- iii) Operation of the economic system in such a way that does not result in the concentration of wealth and means of production in the hands of a few.
- iv) To secure equal pay for equal work, both for men and women.
- v) Protection of the health and strength of the workers, both adult and children.
- vi) Protection of childhood and youth against exploitation and against moral and material abandonment.
- vii) Provisions for securing the right to work and education, public assistance for those who are unemployed, old, sick and disabled.
- viii) Provisions for just and humane conditions of work and for maternity relief.
- ix) Provisions for living wage for all workers and conditions of work ensuring a decent standard of living, enjoyment of leisure, social and cultural opportunities.
- x) Promotion of educational and economic interest of the weaker sections of the people and protection of these people against social injustice and other kinds of exploitation.

The 44th Amendment (Constitutional) Act of 1978 added certain new directives which lay down that the state shall in particular strive to minimise inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities not only among individuals but also among group of people residing in different area or engaged in different locations.

b) Gandhian Principles: The state shall,

- i) To organize village panchayats and give them adequate power to function as units of local self-government.
- ii) To promote cottage industries, organize agriculture and animal husbandry, preserve and improve the breeds and prohibit slaughter of cows and calves and other milk and draught cattle.

iii) To prohibit consumption of intoxicating drugs and drinks, which are injurious to health.

Make efforts to provide for free and compulsory education for all children up to 14 years of age.

c) Liberal Principles: - The state shall,

- i) Separation of the judiciary from the executive in public services.
- ii) Provide from uniform civil code for its citizens throughout the country.
- iii) Protect every monument or phase or object of any artistic or historic interest.
- iv) Endeavour to achieve international peace and security, maintain just and honourable relations between nations, foster respect for international obligations and encourage settlement of international dispute by arbitration.

The principles of Directive Principles of State Policy are very important for the overall development of an individual. It can be observed that the GoI with states of Indian union have been made every possible efforts to implement the policies through various schemes, but yet to be done a lot.

3.2.2 Judiciary and Human Rights

Judiciary is one of the three organs of government, and has become the driving force of human rights for the country in India. Among the three organs of government, judiciary has become the impetus of human rights. The functions and application of judiciary plays a vital role of the human rights provisions of constitution. The Supreme Court of India and the State High Courts have liberally interpreted the power of the constitution to emphasize the fundamental rights. The two major contribution of the judiciary to the human rights are: a) the substantive expansion of the concept of human rights under Article 21 of the Constitution, and b) the procedural innovation of Public Interest Litigation.

Expansion of Article 21 lays down as protection of life and personal liberty - "No individual shall be deprived of his/her life or personal liberty except according to the procedure established by law." The expansion of Article 21 of the Constitution has taken place in two respects:

a) The expression that the procedure established by law received a new interpretation not intended by the founding fathers of the Constitution.

b) The judiciary interprets right to life and personal liberty to encompass all basic conditions for life with dignity and liberty.

Such an approach allows it to come down heavily on the system of administration of criminal justice and law enforcement. It also brings into the fold of Article 21 all those directive principles of state policy that are essential for a 'life with dignity.' Thus, the judiciary has interpreted 'Life' to include the right to possession of each organ of one's body and a prohibition of torture or inhuman or degrading treatment by Police forces.

Ever since the public interest litigation came to be promoted by the Supreme Court, there has been an ongoing debate in the country between its supporters and opponents. In 1982 the Supreme Court promised to examine a range of relevant issues concerning the public interest litigation procedure. An examination of these issues may be useful to streamline the public interest litigation law and practice with a view to discouraging abuses.

Taking into account the peculiar nature of public interest litigation, the Supreme Court of India in a public interest litigation, *D. K. Basu v. State of West Bengal*, issued guidelines to be followed in all cases for arrest and detention by the State interrogatory agencies till legal Provisions are made on that behalf as preventive measures.

The Guidelines are:

i) The Police personal carrying out the arrest and handling the interrogation of arrestee should bear accurate, visible & clear identification, and name tags with their designations. The particulars of such personnel who handles interrogation of the arrestee should be recorded in register.

ii) The Police officer expediting the arrest should prepare a memo at the time of arrest and shall be attested by at least one witness. This may be either a member of the family of the arrested or a respectable person of the locality from where the arrest is made. It shall be countersigned by the arrestee and shall contain the time and date of arrest.

iii) The person, who has arrested or detained and is being held in custody in a Police Station or interrogation centre or other lockups, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed as soon as possible that he has been arrested and is being detained in a particular place.

iv) The time, place of arrest and venue of custody of an arrestee should be notified by the Police, when the next friend or relative of the arrestee lives outside the

District or town through the Legal Aid Organization in the district and the Police Station of the area concerned telegraphic ally within 8 to 12 hours of the arrest.

v) The person arrested should be made aware of his or her right to have someone informed of his or her arrest or detention as soon as he or she is put under arrest or is detained.

vi) The entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person, who has been informed of the arrest and the names and particulars of the Police officials in whose custody the arrestee is.

vii) The arrestee should, where he so requests, be also examined at the time of his arrest and the major and minor injuries if any present on his body and must be recorded at that time. In this connection, the Inspection of memo must be signed by both arrestee and Police officer effecting the arrest and a copy shall be provided to the arrestee.

viii) The arrestee should be subjected to medical examination every 48 hours during his detention in custody by a doctor from a panel of approved doctors appointed by the Director, Health Services of the State concerned. He should prepare such a panel for all tehsils and Districts as well.

ix) Copies of all the documents including the memo of arrest referred to above should be sent to the Magistrate for record.

x) The arrestee may be permitted to meet his lawyer during interrogation through the latter may not be present throughout interrogation.

xi) The Police control room should be provided at all District and State headquarters so that information regarding the arrest and the place of custody of the arrestee can be communicated by the Officer carrying out the arrest within 12 hours of effecting the arrest and at the Police control room it should be displayed on a conspicuous notice board. The Supreme Court also insists that the requirements that flow from Articles 21 and 22 (1) of the Indian Constitution are to be strictly followed. These would apply with equal force to other Government agencies including the Directorate of Revenue Intelligence, Directorate of Enforcement, Coast Guard, Central Reserve Police Force (CRPF), Border Security Force (BSF), Central Industrial Security Force (CISF), the State Armed Force and intelligence Agencies, such as the Intelligence Bureau, RAW, Central Bureau of Investigation (CBI) and CID. These guidelines are only a few out of a large

number of judgements of the apex court in which the court upheld the human rights of the oppressed individuals.

3.2.3 National Human Rights Commission (NHRC)

The Protection of Human Rights Act was passed in 1993 by the Parliament of India for the better protection of the human rights. The NHRC was established under the Act and functioning from the head quarter which is at New Delhi with the permission of Central Government. Many offices has been established in different states of India. NHRC has been engaged in different activities of human rights. It has been working in protecting of human rights by investigating human rights violations and in different concern issues.

The Chief Justice of Supreme Court is the Chairman of NHRC and one member should be the judge of the Supreme Court and one more member should be the Chief Justice of the High Court and two more members can be appointed those, who have practical experience and knowledge relating to human rights. The Chairpersons of the National Commission for Minorities, the National Commission for the Schedule Caste, the National Commission for Schedule Tribes and the National Commission for Women are the members of the Commission and they take the sole responsibilities of the functions specified in the Clauses (b) to (c) of Section 12. Chief Executive Officer of the Secretary General performs the power and functions.

The functions of the NHRC in promotion and protection of human rights are laid down in Section 12 of the Act.⁵ These are,

- a) To enquire on a petition presented to the Commission by a victim or any person on behalf of, in to complaint of human rights violation or abetment thereof or Negligence in the prevention of such violation by a public servant.
- b) To intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court.
- c) To visit, under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are denied or lodged for the purpose of treatment, reformation or protection, to study the living conditions or the inmates and make recommendations thereon.

⁵Agarwal, H.O. (2006), Human Rights. Allahabad: Central Law Publications, Pp. 302-303.

d) To review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommended measures for their effective implementation.

e) To review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommended for appropriate remedial measures.

f) To study treaties and other international instruments on human rights and make recommendations for their effective implementation.

g) To undertake and promote research in the field of human rights.

h) To spread human rights literacy among different Sections of the society and promote awareness of the safeguards available for the protection of the rights through publication, the media, seminars and other available means.

i) To encourage the efforts of Non-Governmental Organizations and institutions working in the field of human rights and,

j) To carry out other activities or functions as it may consider necessary for the protection of human rights.

The Commissions exercise the following powers while enquiring into complaints under this Act.⁶ These are,

a) To summon and enforced the attendance of the witnesses and examine them on oath.

b) To discovery and production of any document; power to receive evidence on affidavits.

c) To requisition any public record or its copy from any Court or Office.

d) To issue Commission for the examination of witnesses or documents and

e) To do any act in any prescribed matter.

f) The Commission can require furnishing any formation regarding the subject matter. Unless a person claims legal privilege, he is legally bound to furnish such information within the meaning of Sections 176 and 177 of Indian Penal Code.

g) The Commission or any other authorized gazetted Officer can enter into any building or any place regarding any documents relating to enquiry and seize such document or take extracts subject to provisions of Section 100 Criminal Procedure Code.

⁶Ibid

h) The Commission is deemed a Civil Court, when any offence under Sections 175, 178, 179, 180 or 288 of Indian Penal Code is committed in the presence of Commission. After recording the facts of the offence, the Commission forwards the case to the Competent Magistrate to try the same. Every, proceeding before the Commission is a judicial proceeding under Sections 193, 228 of Indian Penal Code and the Commission is a deemed Civil Court under Section 195 of Criminal Procedure Code.

The purpose of any investigation or any enquiry can be done by the any officer or investigation agency of Central and State Government. The authorised officer has the power to summon any person, examine the person, enforce attendance, request the production of any document and can also request any public record. Except for prosecution of giving false evidence, any statement given by any person before the commission must not be cured against him in any civil or criminal proceeding. After the investigation, the investigating officer or any investigating agency submit the reports to the Commission within specific period of time. The Commission make the correction of the report and do enquiry including examination of the investigating Officer or Agency and make satisfactory results.

3.2.4 Some other measures of protection of human rights under law of India.

Apart from above mentioned provisions for promotion and protection of human rights under the law of India, there are also some other measures which were taken during the different period. These are:

- a) The Protection of Civil Rights Act o1955.
- b) Suppression of Immoral Traffic in Women and Girls Act of 1956.
- c) Maternity Benefit Act of 1961.
- d) Dowry Prohibition Act of 1961.
- e) Equal Remuneration Act of 1976.
- f) Bonded Labour (Abolition) Act of 1976.
- g) Employment of Children Act of 1938 (Amended in 1985).
- h) The Child Labour (Prohibition and Regulation) Act, 1986.
- i) Juvenile Justice Act of 1986.
- j) Indecent Representation of Women (Prohibition) Act, 1986.
- k) Sati (Prevention) Act of 1987.

- l) The Schedule Caste and the Schedule Tribes (Prevention of Atrocities) Act of 1989.
- m) The National Commission for Women Act of 1990.
- n) The National Commission for Minorities Act of 1992.
- o) The National Commission for Safai Karmacharis Act of 1993.
- p) The National Commission for Backward Classes Act of 1993.
- q) The Mental Health Act of 1993.

3.2.5 Constitutional provisions relevant to Schedule Tribes

Schedule Tribes (ST) of India considered as one of the weakest section of people economically, socially and politically. They are the sections of people, who can be easily exploited and derived by so call advance section of people. Therefore, constitution of enlisted certain section of people as tribes whose culture, traditions, dialects and dress were rich and unique in every way. Thus, system of nations have recognised special laws or safeguard provisions in their system of law making and administrative mechanisms.

There are some 209 articles and 2 special schedules of the Indian constitutions are directly relevant to STs. The following **table 3.4, 3.5, 3.6** will summarise some social, economic and political provisions in details.

Table 3.4
Constitutional Social provisions relevant to STs

Sl. No.	Provisions/Articles	Summary of provisions
1	Article 14	Equality before law
2	Article 15	Prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth
3	Article 15 (4)	The State is to make special provisions for the advancement of any socially and educationally backward classes of citizens or for the SCs and STs
4	Article 16	Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state
5	Article 16 (4)	The State to make provisions for reservation in appointment, post in favour of any backward class citizens, which in the opinion of state is not adequately represented in the service under the state
6	Article 16 (4A)	The State to make provisions in matters of promotion to any class or classes of posts in the service in favour of SCs and STs.
7	Article 25-28	Freedom of religion
8	Article 29-30	Freedom to culture and education
9	Article 338 A	A National Commission to Schedule Tribes to investigate, monitor and evaluate all matters relating to the Constitutional safeguards provide for STs
10	Article 339 (1)	Appointment of a Commission to report on the administration of the Schedule Areas and welfare of the STs in the states
11	Article 340	Appointment of a Commission to investigate the conditions of socially and educationally backward classes and difficulties under which they labour and to make recommendations to remove such difficulties and to improve their conditions.
12	Article 342	To specify the tribes and tribal communities to be Schedule Tribes

Source: - Constitution of India.

Table 3.5
Constitutional Economic provisions relevant to STs

Sl. No.	Provisions/Articles	Summary of provisions
1	Article 46	The state, to promote with special with special care the educational and economic interests of the weaker sections of the people, and in particular of SCs and STs and protect them from social injustice and all forms of exploitation
2	Article 275 (1)	Grants-in-aid to be made available from the consolidated Fund of India each year for promoting the welfare of the STs and administration of Schedule Areas
3	Article 335	The claims of the members of SCs and STs in the appointments to services and posts in connection with the affairs of the union or of a state to be taken into consideration consistent with the maintenance of efficacy of administration

Source: - Constitution of India.

Table 3.6
Constitutional Political provisions relevant to STs

Sl. No.	Provisions/Articles	Summary of provisions
1	Article 330	Reservations of seats for the SCs and STs in the House of the People
2	Article 332	Reservations of seats for the SCs and STs in the Legislative Assemblies of the States.
3	Article 243D	Reservations of seats for the SCs and STs in Panchayat
4	Article 243 T	Reservations of seats for the SCs and STs in Municipality
5	Article 243 M (4) (b)	Extension of the Part IX, the Panchayats to the Scheduled areas through a law enacted by Parliament. This has been done by the Panchayats (Extension to the Scheduled Areas) Act 1996.
6	Article 243 ZC (3)	Extension of the Part IX, the Panchayats to the Scheduled areas through a law enacted by Parliament. No such law has been enacted to date.
7	Article 224	The administration of Schedule areas and STs to be governed by the Fifth Scheduled, and that of Tribal areas in Assam, Meghalaya, Tripura and Mizoram to be governed by the Sixth Schedule.
8	Article 371 B	Special provisions to the State of Assam
9	Fifth Schedule	Provisions as to the Administration and Control of Schedule Areas and STs
10	Sixth Schedule	Provisions as to the Administration of Tribal Areas in the State of Assam, Meghalaya, Tripura and Mizoram.

Source: - Constitution of India.

3.2.6 Legislative safeguards for Scheduled Tribes

India being a union of state, legislation can be discussed both in union and state level. As per the mandate of constitution, there are number of legislative safeguard in the form of special laws, rules and notifications for STs. The following **table 3.7** will show the details in this regard.

Table 3.7
Legislative safeguard for STs

Sl. No.	Act/Laws/Notification	Purpose of legislation
1	Protection of Civil Rights Act, 1976	This central statute prohibits the practice of untouchability and cites instances of such practice liable for prosecution as criminal offences.
2	The SCs and STs (Prevention of Atrocities) Act, 1989	This Central statute is aimed at checking and deterring atrocities against STs and SCs
3	Panchayats (Extension to the Schedule Areas) Act 1996 (Generally known as PESA)	In pursuance of the enactment of PESA, State Governments across the country have amended the state level Panchayati Raj legislations to make special provisions for panchayats in Scheduled Areas. A Complete list of these provisions is beyond the scope of this report.
4	The STs and other Traditional Forest Dwellers Recognition of Rights Act, 2006	A recently enacted Central law concerning the rights of STs and other forest dwellers over forests and forests resources.
5	Land Acquisition, Rehabilitation and Resettlement Act of 2013	The right to fair compensation and transparency in land acquisition. It is most important piece of legislation that has been enacted in the context of forced acquisition of land by the state.

Source: - Constitution of India.

As per as STs of Assam is concern, Article 371 B has provides special provisions.

3.2.7 Key Institutional Structures Relating to STs

India is union of states. Hence, there is two sets of law makers and government as well. Therefore, while making laws and implementing policies, there is in need for varieties of institutional structure i.e. agencies or departments to carry forward the activity for welfare of the backward section of people. The following given institutions are some of the provisions that we have in the system of India both in Central and State.

Central Government: - These are,

- i) Ministry of Tribal Affairs
- ii) National Commission for Scheduled Tribes (NCST)

- iii) Tribal Sub Plan/Integrated Tribal Development Projects
- iv) Commission for Scheduled Areas and Scheduled Tribes
- v) Committee on Welfare of SC and STs
- vi) National Scheduled Tribes Finance and Development Corporation (NSTFDC)
- vii) Tribal Cooperative Marketing Development Federation (TRIFED)

State Government: - These are,

- i) Department of Tribal Welfare.
- ii) Tribal Advisory Councils.
- iii) Cooperatives Marketing Federations and Finance and Development Corporations.

3.3 Conclusion

The protective provisions for Human Rights is being provided to end the evil activities in society. UN being an international body since its inception has been taking remarkable role to protect and promote the human rights across the globe. But, more or less the violations of human rights are still exists, which can be considered as a curse to human being and shameful acts against humanity. Despite various provisions, policies and programs that have been carry out by the various organs of the UN, but the concept of 'national sovereignty' continues to be formidable obstacle in ensuring human rights. In some of the cases, intervention by world body on humanitarian ground of an incident is happening try project that nothing is happening against humanity and ignore by saying internal matter.

In the context of India, there is written provisions for the protection and promotion of rights for every citizen of the country and more specially certain special provisions are being provided for the weaker section of the people like SC, ST and OBC which have discussed above. Despite all these provisions, still violations of human rights against weaker section of people are being seen in many states of India. Assam, where ST population comprises 12.5% of total population are not free from such sort of evil acts. Hence, world body with its various specialised agencies, union government, state government, NGOs, student organizations and other civil society come forward hand to hand to work for the protection and promotion of human rights.

Marking the 50th Anniversary of UNDHR in 1997, the then Secretary General of UN, Late Kofi Annan told – ‘without human rights, no peace and prosperity would last.’⁷ He also remind the very mission of UN – ‘to fight every day to broaden the horizons of human rights until a day when no man was tortured, no women was abused and no child was denied his/her dignity.’⁸ On that very auspicious day, he conveyed precious message to the young people of world by saying⁹ - ‘It is the universality of human rights that gives them their strength. It endows them with the power to cross any border, climb any wall, defy any force. The struggle for universal human rights has always and everywhere been the struggle against all forms of tyranny and injustice - against slavery, against colonialism, against apartheid. It is nothing less and nothing different today. Young friends all over the world, you are the ones who must realize these rights, now and for all time. Their fate and future is in your hands. Human rights are your rights. Seize them, defend them. Promote them. Understand them and insist on them. Nourish and enrich them. They are the best in us. Give them life.’

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⁷<http://www.un.org>

⁸Ibid

⁹Annan, Kofi, message of 50th Anniversary of the UDHR in 1997. The same was cited by V.R. Krishna Iyer “The Dialectics and Dynamic of Human Rights in India, Yesterday, Today and Tomorrow” Tagore Law Lectures in 1999. Calcutta: Eastern Law House.