

**JUDICIAL APPROACH IN  
PROTECTION OF HUMAN RIGHTS  
OF VULNERABLE GROUPS IN INDIA**

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## INTRODUCTION

The objective of the United Nations, and international law of human rights, is to provide a stable and peaceful life to every individual, without any kind of discrimination. The aim is to work towards the realization of rights guaranteed legally establish a borderless and just world. To achieve these objectives, nation-states have adopted a number of legal texts and evolved specific policies to help discriminated groups realize and enjoy legally guaranteed basic minimum rights at the international and national level.

However, the political, social, economic and cultural inequalities present in each society many a times, hamper the rights of the weaker sections of a society, thereby obstructing them from fully realizing their rights. In spite of clearly articulating the parameters of equality and non-discrimination on any count, discrimination based on gender, race, language, and other counts still prevail in various societies around the World. Taking into consideration various prevailing circumstances, the international community extended concessions to the disadvantaged groups across the world, not only to remove the apparent deficiencies in the realization of their legally guaranteed human rights, but also to make them self- sufficient in exercise of their rights on an equal footing.<sup>1</sup>

In the Indian context, the Constitution of India guaranteed to all the people of India the civil, political, economic, social, and cultural rights for their realization by all sections of the polity without any kind of discrimination. However, due to poverty, customary and cultural practices prevalent in the country, equal opportunity has been denied to various groups of people. This has prevented them from enjoying their rights equally on par with other developed sections of the society. There are various disadvantaged groups of people such as women, children, Scheduled Castes, Scheduled Tribes, Linguistic Minorities, Religious Minorities, Sexual Minorities etc. In order to augment their rights, the Constitution of India has provided a number of concessions to protect them from exploitation by other groups. However, from a variety of discriminatory practices that are prevalent against the above groups, it has become apparent that the existing environment for the free exercise of rights is in some way deficient. In order to bridge the gaps in the social system, the Legislature has adopted a number of progressive legislations extending concessions to augment the rights of these people. The Judiciary too in a number of cases has liberally interpreted the provisions of the Constitution and various legislations to uphold the rights of the vulnerable groups. The expansion of Public Interest Litigation or Social Action Litigation by the Supreme Court of India is a welcome feature, compared to its counterparts across the world, to augment the rights of discriminated groups.<sup>2</sup>

The aim of human rights instruments is the protection of those vulnerable to violations of their fundamental human rights. There are particular groups who, for various reasons, are weak and vulnerable or have traditionally been victims of violations and consequently require special protection for the equal and effective enjoyment of their human rights.

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<sup>1</sup> [unipune.ac.in/pdf\\_files/Book\\_II\\_final\\_17-9-12.pdf](http://unipune.ac.in/pdf_files/Book_II_final_17-9-12.pdf) 13/11/13, 09:45am

<sup>2</sup> Human rights and Vulnerable Groups available at [http://www.sagepub.com/upmdata/11973\\_Chapter\\_5.pdf](http://www.sagepub.com/upmdata/11973_Chapter_5.pdf), 13/11/13, 10:13am

## **MEANING AND CONCEPT OF VULNERABLE AND DISADVANTAGED GROUPS**

**This will introduce the meaning and idea of vulnerable and disadvantaged groups. It will focus on the Social, Economical and Cultural problems generally faced by these groups. Human rights universally recognize the realization of rights by all sections of people without any discrimination. However, many a times, due to a number of adverse social, economic, cultural aspects, which play a vital role in the realization of the rights, the vulnerable and disadvantaged groups are often not in a position to exercise their rights freely.**

### **(i) Meaning of Vulnerable groups**

The meaning of vulnerable is highly evasive. In the language of human rights 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 a harmful environment. People who are discriminated based on sex, race, by birth in a particular community, religious or disability or any other criteria that is specific to each society may generally described as disadvantaged people.

According to European Foundation for the improvement of living Working Conditions, vulnerable people mean:

“Groups that experience a higher risk of poverty and social exclusion than the general population, ethnic minorities, migrants, disabled people, the homeless, those struggling with substance abuse, isolated elderly people and children all often face difficulties that can lead to further social exclusion, such as low levels of education and unemployment or underemployment.”

### **(ii) meaning of disadvantaged groups**

According to the general perspective of International Law of Human Rights, disadvantaged groups are the people who are denied free access to the guaranteed rights. Based on the socio, economic, cultural perspectives, the classification of these groups vary from country to country. In general, women, children, socially, economically, culturally deprived sections, disabled, minorities etc. form part of disadvantaged groups. Poverty is the main contributing factor towards degradation of the status of these people that are classified as disadvantaged groups.<sup>3</sup>

### **(iii) Concept of vulnerable and disadvantaged groups**

The concept of vulnerable and disadvantaged groups is as old as human history. From ancient to modern times in every society, number of instances could be found where in a section of people in each society are given a different kind of treatment. In general, the discrimination often based on humiliation, harassment, intimidation, through social,

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<sup>3</sup> “What is a disadvantaged group? “- Steven E. Mayer, 2003-; [www.effectivecommunities.com](http://www.effectivecommunities.com) , 13/11/13, 10:15 am

political, economical, customary, and cultural factors. The idea behind such practices is to keep away such people from the forefront of the social activities and deprive them of their life and liberty. Further, keeping them aloof, depriving their economic, intellectual capacities to sub serves the needs of the rich and dominant people of a society.<sup>4</sup>

The economic factor contributes for the cause of vulnerability of people. However, it cannot include other aspects of discrimination based on gender, disability, social, cultural, customary, caste and other types of discriminatory practices that are prevalent in each society. Apparently, an economic criterion alone projects a narrow outlook in the determination of vulnerable and disadvantaged groups. In order to measure the vulnerability and backwardness in a holistic perspective, it has to be evaluated from social availability of resources along with consumption, health, conventional traditions, practices that are followed in each society. This type of criteria adopted in each society could alone provide a viable classification of vulnerable and disadvantaged groups.<sup>5</sup>

In view of the existence of large number of vulnerable and disadvantaged people, International Law of Human Rights extends special considerations for the promotion and protection of their rights and works towards eradication of discriminations. Accordingly, the United Nations has adopted a number of Declarations, Conventions, and Covenants to uplift the rights of these people. It also established special commissions and organizations to deal with the rights of such people whose rights are at jeopardy.

Due to lack of an acceptable definition, many a times, the UN bodies work on *ad-hoc* basis to augment the rights of disadvantaged people. The United Nations and its other bodies including the Human Rights Council regularly adopt a number of guidelines for implementation by the states in their efforts to curb the threats against the disadvantaged people.

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<sup>4</sup> P.K. Pandey (Ed) Human Rights , APH Publishing Corporation, 2012

<sup>5</sup> Chandrima Chatterjee and Gunjan Sheoran: Vulnerable Groups in India, Centre for Enquiry into Health and Allied Themes, 2007, Mumbai

## **(A) WOMEN AND GIRLS**

Women and girls are normally in a disadvantaged position all over the World. However, compared to developed countries, they are in a more disadvantageous position in developing countries due to abject poverty, other social, cultural, and derogatory customary practices adopted in each country.

The customary practices such as sati, purdah and devadasi system robbed the freedom of women to a great extent and deprived of their political, social and economic rights especially in inheritance of property. The Hindu law completely prohibited the property rights of inheritance until recent times. During the British Period, a number of reformers, Raja Ramohan Ray, Iswarchandra Vidayasagar, Knadukuriveerasalingam, Jyothirao Phule, Balaganadara Tilak and many other reformers fought for the abolition of unequal treatment meted out to women in many fronts.<sup>6</sup>

Women constitute almost half of the world population. However, their enjoyment of rights equally with that of men is far from satisfactory. In every society from ancient to modern times, women are considered as the property of men to serve their interests in both society and domestic front. In order to halt such practices, the UN and the international community have evolved a number of methods to augment the rights of women on par with men without any kind of discrimination.<sup>7</sup>

In spite of progressive legislations and judicial pronouncements, the misuse of technology, rapid urbanization, poverty, natural calamities such as famines, floods etc many a times worsens the situation of women in exercising their rights to the fullest extent as guarantee by law. Indian women suffer a number of inequalities especially in the domestic front on the name of customary and religious faiths. This is more evident especially in issues relating to marriage, customary ceremonial functions, and choice of reproductive rights, payment of wages, especially in the agricultural and other sectors, inheritance of property, domestic violence, custodial rapes, and sexual harassment at work place and in society.<sup>8</sup>

### **(i) National Standards**

After independence, the Constitution of India adopted on January 26, 1950 abolished all kinds of discriminatory practices against women. The constitution on the lines of the Universal Declaration of Human Rights 1948 recognizing the rights of women has a number of provisions to protect in augmenting their rights. Some of the Salient Features are:

1. The constitution through Article 14 recognized equality and equal protection before law for both men and women.
2. No discrimination against women is permissible. (Article 15 (1)).

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<sup>6</sup> Ram Kishore Chppudhury and Tapash Ghan Choudhury: Judicial Reflections of Justice Bhagwati, Eastern Law House, 2008

<sup>7</sup> Sterbach L. Juridical Studies in Ancient Indian Law (Part 1) 1956 pp 197.270

<sup>8</sup> Douglas Brownidge: The Violence Against Women: Vulnerable Populations, Routledge, 2009

3. Equality of opportunity in matters of public appointments for all citizens is guaranteed and in particular gender-based discrimination in respect of employment or office under the state has been prohibited. (Art. 16)
4. Through Article 15 clause (3) it permits the state to make any special law or provisions or concession to be extended for the promotion and welfare of Women.
5. Article 21 guarantees the Life and Liberty to all the citizens without any sort of discrimination.
6. The Directive Principles of States Policy (which in the language of human rights described as Economic, Social and Cultural Rights) directs the State to make provisions through Article 39 (a) the state to ensure both men and women have the right to an adequate means of livelihood.
7. Article 39 (Clause D) Provide for equal pay for equal work without any discrimination.
8. Article 42 allows the state to make provisions for securing just and human conditions of work and maternity relief.
9. According to Article 51( A ) (e) it is the fundamental duty of every citizen to renounce practices derogatory to the dignity of women

To achieve the objectives of the constitution and to uplift the rights of women, the Government of India enacted a number of special legislations and amended some of the existing civil, criminal, and family laws. They are:

- a) **The Dowry Prohibition Act, 1961** that prohibits demand of dowry by the in laws in any form linked with the marriage of women, and if proved it constitutes as a crime under the eye of law.
- b) **Child Marriage Restraint Act 1929** as amended in 1956 prohibits any marriage of a girl below the age of 18 years. In case if marriage is performed below the age 18, constitutes as a crime where in the elders and the husband together are punishable. This Act increased the age limit of a female from 15 to 18 years and that of a male from 18 to 21 years.
- c) **The Hindu Marriage Act, 1955** as amended in 1976 provides equal right of inheritance of property for women as a coparcener in the joint property of a family. This Act further provides the rights to a girl to repudiate any child marriage performed before attaining majority.
- d) **Immoral Traffic (Prevention) Act 1986** (which repealed the Suppression of Immoral Traffic Act of 1956), prohibits of selling, soliciting women or girls for any immoral purpose including keeping them as brothels. The aim of the Act is to prohibit sexual exploitation of person, which includes men and children. It decriminalizes prostitution.
- e) **Indecent Representation of Women (Prohibition) Act 1986:** This act punishes the exploitation of women or depiction of women in any indecent manner that affects the dignity of women. It makes such acts as a criminal offence.
- f) **Commission of Sati (prevention) Act 1987:** This act prohibits any kind of act forcing a woman to immolate along with the dead body of the husband. This is again a criminal offence where in the punishment may be awarded up to life imprisonment.
- g) **National Commission of Women Act 1990:** This Act was enacted to establish a National Commission of women to monitor and to help women related issues, especially to review the Constitutional and Legal safeguards for women ; to

recommend remedial legislative measures ; to facilitate redressal of grievances and to advise the Government on all policy matters affecting women.

- h) **Prenatal Diagnostic Technique (Regulation and Prevention of Misuse) Act 1994:** This Act prohibits scanning of a fetus and performing illegal abortions to kill a female fetus.
- i) **Protection of Women from Domestic Violation Act 2005:** This Act was amended to discharge the international commitments of the Government of India to the CEDAW Convention. According to this Act, any type of intimidation of women or harassment by family or otherwise, which constitutes a violation to the dignity of women, is punishable and is a criminal offence.
- j) **The Marriage Amendment Act 2001** amended the Hindu Marriage Act, Special Marriage Act, Parsi Marriage and Divorce Act, the Code of Criminal Procedure providing for speedy disposal of applications for maintenance. This Act further removed the ceiling of maintenance and gave an ample discretion to judiciary to decide the amount of maintenance in each case depending on the status of other spouse.

Apart from the above legislations, the government of India established the National Commission of Women to cater to the needs of women in a number of areas. The Indian Judiciary in a number of judgments has greatly contributed for the augmentation of women's rights in a wide array of areas such as:

1. Discretion shown in the area of employment;
2. Unequal treatment to HIV Victims and AIDS patients;
3. Inheritance in the property laws;
4. Treatment of victims of rape, sexual harassment of women at work place, dowry related offences;
5. Separate police cells to women prisoners; establishment of women police stations, Safety of women in the police lock-ups;
6. Ban on use of the latest technology, which include Ericsson method, sonography an amniocentesis tests; Advertisements, Serials, in the print and electronic Media with respect to the pre-natal diagnostic techniques;
7. Banning of discriminatory cosmetic advertisements, banning even indecent representation of women in films, upholding dignity of prostitutes in cases of rape; Reproductive rights, etc., certainly augmented the rights of women compared to yester years. Many of the judgments of the courts led the legislature to enact a number of progressive laws or to amend the existing ones.

## (ii) National Policy of Women

The Government of India in the year 2001 adopted a National Policy of Women for advancement, development and empowerment of women. The Ministry of Women and child development takes care of various aspects of women's development and empowerment. The aims and objectives of the policy are looked after by the Ministry to achieve self sufficiency of Indian women. The aims and objectives of the policy are:

- a) Creating an environment through positive economic and social policies for full development of women to enable them to realize their full potential.
- b) The *de-jure* and *de-facto* enjoyment of all human rights and fundamental freedom by women on equal basis with men in all spheres – political, economic, social, cultural and civil.

- c) Equal access to participation and decision making of women in social, political, and economic life of the nation.
- d) Equal access to women to healthcare, quality education at all levels, career and vocational guidance, employment, equal remuneration, occupational health and safety, social security and public office etc.
- e) Strengthening legal systems aimed at elimination of all forms of discrimination against women.
- f) Changing societal attitudes and community practices by active participation and involvement of both men and women.
- g) Mainstreaming a gender perspective in the development process.
- h) Elimination of discrimination and all forms of violence against women and the girl child; and
- i) Building and strengthening partnerships with civil society, particularly women's organizations.

Apart from National Policies and other initiatives, the Government of India and the State Governments has evolved a number of policy formulations, schemes through annual budgets for the promotion of women's rights.<sup>9</sup>

### **(iii) Sum up**

The brief over view of the plight of women brings the scenario to the fore, which men need to consider women as partners in progress. In a traditional society like India, where many women goddess are worshipped with lot of devotion and respect, when it comes to equal treatment of their biological partners, both men and society keep them in low profile. Many a times they are considered as servants of the home, and are looked at as sexual objects. Their economic capacity is deprived to make them dependent on the male dominated society. The traditional, economic, social and cultural disbeliefs and age old customary practices of intimidating cruel practices that are prevalent in many parts of the world has to be halted with welcome sign of considering them as partners in progress. Love, affection, care with utmost respect for the augmentation of their rights alone would result in uplifting their rights and strengthen the national efforts in realizing their rights as human beings.

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<sup>9</sup> Mary Larkin: **Vulnerable Groups in Health and Social Care, Sage, 2009**

## **(B) CHILDREN**

Children again are the most disadvantaged people in the World. Children of developing countries, compared to developed countries face a number of problems, such as poverty, malnutrition, and other socio, economic, cultural abuses.

### **(i) Human Rights and Children**

Among the various vulnerable groups, children are another major category, whose rights are affected by negligence and other conditions in every society. In many societies in the world, especially in the developing world from tender age, their rights are abused for a variety of reasons. A child has a number of basic rights, such as, protection and prevention of illegal abortion, right to nourishment, adequate nutritious food, basic health care, love and affection of family, society, not to abuse the tender age, recreation, right to basic education, right to development, right to identity, community and social life, etc.

Poverty is a negation to the rights of millions of children in many societies around the world. Most often, they are pushed to work from the tender age at the cost of their physical, intellectual, and psychological development. According to the United Nations Children's Emergency Fund (UNICEF) around ten million children every year below the age of five die due to lack of proper medical care. About 100 million children mostly girls are not in schools. In the developing world, about 150 million children are underweight due to lack of nutritious food. Therefore, it is the duty of family, society and the nation-states to render their assistance to augment the rights of children in every sphere.<sup>10</sup>

### **(ii) National Scenario of Children and Legal Position**

India being the second largest populated country in the world has a huge contingency of children. The population of children in India is approximately thirty five million of the total population. Poverty often cited as the most common ground for the violation of the rights of children in India. Apart from this, lack of quality education and discrimination especially towards the socially backward people of the country constitutes as a major threat to the life of children. Further, lack of proper administrative implementation of the various schemes, legislative and constitutional dictums constitute as a major threat for the augmentation of the life and liberty of children as subjects of the society<sup>11</sup>.

### **(iii) Legal provisions governing the rights of Children**

The constitution of India bans every kind of discrimination of individuals, including children. The major provisions of rights that are relating to the rights of children are:

- (i) Article 14 recognizes the equal rights.
- (ii) It empowers the State to make special provisions for the development of women and children (Article 15 (3)).
- (iii) Article 15(4) authorizes the state to make special provisions for the advancement any social or backward people of India including the Scheduled Castes and Tribes
- (iv) Article 17 prohibits untouchability in any manner.
- (v) Article 19 confers freedom of speech, expression, to reside any part of the country, and move freely.

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<sup>10</sup> EU quality Assurances in vocational and educational training: available at <http://www.eqavet.eu/qa/gns/glossary/v/vulnerable-group.aspx> 14/11/13 06:06 am

<sup>11</sup> <http://childrensrightsportal.org/fundamental-rights/freedom> 14/11/13 06:11 am

- (vi) Article 21 guarantees free life and liberty, and make it obligatory that free and compulsory education be provided to every child in the age group of six to fourteen years.
- (vii) Article 23 prohibits traffic in human beings and abolishes bonded labour.
- (viii) Article 24 bans the employment or recruitment of children below 14 years in any factory or mine or heavy and harmful industries to the health and growth of children.
- (ix) Apart from these rights, it confers the remedial measures through judiciary for the violation of any of the rights conferred on its citizens through judicial intervention through Articles 32 and 226 of the constitution. Furthermore, to augment rights of children, it directs the state to make necessary policy formulations and legal enactments, through the Directive principles of State Policy.
- (x) The relevant provisions of Directive Principles of State Policy, which deal with children, are:
  - (xi) Article 39 clause (e) directs the state to evolve policy formulations not to abuse the tender age of children, and economic incapacity should not adversely result in their employment in any avocation, especially below the age of fourteen years in no circumstances.
  - (xii) Article 39 Clause (f) imposes an obligation on the state to provide opportunities and facilities for children to develop in a healthy environment. It further directs the state that life, liberty, and childhood be protected from any kind of exploitation, which includes moral or material negligence.
  - (xiii) Article 45 provides for care of early childhood, and compulsory education for all children until the child attains the age of six years.
  - (xiv) Article 46 further directs the state to take special efforts to promote the rights and interests of children belonging to social, educationally backward classes. In no way their economic and social status, adversely affect their rights.
  - (xv) Article 47 imposes an obligation to raise the nutritional standards of living and provide easy public access to health facilities.
  - (xvi) Article 51 (c) imposes a duty on the state to promote and respect international commitments and obligations. As signatory to number of conventions, covenants and other documents on international human rights law, it is the duty of the state to discharge its obligations in the promotion of children's rights through national legal framework.
  - (xvii) According to Article 51 (A) sub clause (k) imposes the fundamental duty on the parents or wards to provide education to their children between the age group of six to fourteen years compulsorily.

In order to achieve the constitutional mandate and the international obligations, the government has from 1950 till now, through various five years plans, adopted a number of policy formulations for the promotion of rights of children keeping the best interest of children.

However, the government gave more attention to the rights of children in the third five-year plan during the period of 1961-1966. The third plan period for the first time recognized the international obligations. Accordingly, it recognized children's special needs. It established a Social Security Department to give special attention to the rights of

children with respect to their health and education. In 1965, it established a food and nutrition board to enhance the status of children with respect to education and nutrition. It also set up an education committee to offer free education to every child below ten years to fulfill the constitutional mandate. It also established a department of social welfare, which later became an independent ministry of social welfare, which is re-designated as Ministry of Empowerment. The fourth five-year plan focused on a development package of basic minimum services to children. This scheme was introduced mainly, to take care of the destitute and neglected children of the country. Accordingly, in 1974 a National Policy of children was framed with an aim to cater to the needs of children. The policy clearly addresses the following as the important duties of the Union and the states. They are as follows:

- (i) Comprehensive health programmes
- (ii) Provisions for increasing the nutritional services;
- (iii) Free and compulsory education of children up to the age of fourteen years;
- (iv) Provisions for non-formal education;
- (v) Promotion of Physical education and other recreational facilities;
- (vi) Cultural and scientific activities in schools and other social sectors;
- (vii) Special assistance to children belongs to socially weaker sections;
- (viii) Upliftment of children in distress;
- (ix) Protection against neglect ,cruelty and exploitation of children;
- (x) Protection against Child Labour;
- (xi) Provisions for children ailing with disabilities ; and
- (xii) Encourage the services of society, and other voluntary organizations.

The fifth five-year plan constituted Children's Board in 1974 under the chairmanship of the Prime Minister of India, and launched a number of out reaching programmes to promote the best interest of children. The sixth five-year plan too adopted number schemes for the promotion of the interest of children. Among the various schemes, the notable one is the National Child Health policy, which aimed at providing health facilities to children with much care and precision. The seventh Five-year plan established a Ministry of Child and Women Welfare, and enacted a number of legislations.

Among the prominent legislations, the Juvenile Justice Act was amended in 1986, repealing the Children Act 1960 to protect child offenders from severe punishments and to reform their behavioral attitudes. It also declared a National Policy on Child Labour. In the eight five-year plan, it adopted scheme for assistance to infants to promote in country adoptions for destitute children and created a special agency named as Central Adoption Resource Agency (CARA). The ninth and tenth five-year plans too adopted various schemes for the promotion and augmentation of the welfare of children and their rights.

The eleventh and twelfth plan reviewing the situation and plight of the children in the country, framed a number of policy formulations. During these periods, it also established a National Commission for Children, increasing the budgetary allocation for compulsory education, an extensive amendment to the Juvenile Justice Act, Adoption of Right to Education Act, concessions to girl children on various fronts, free mid day meal scheme to children of poor families etc.

In spite of the laudable efforts of both the Union and States, even today millions of the Indian children die due to lack of nutritious food, lack of health care, and many other social, customary, economic, and cultural factors that hamper their growth. According to many reports of international agencies and non-governmental organizations, India is the major country compared to many of the under developed countries including the African region, where in the plight of children is worse in enjoying their rights as subjects of the State. The main reason is the inefficiency of the administrative wings of the state to properly implement and monitor the situation, apart from poverty, which is another significant factor that deprives the rights of children.

In order to augment the rights of children, in a number of cases, the Indian Judiciary has expanded the rights of children by interpreting provisions of the Constitution, various statutes and International Human Rights instruments to which India is a party highlighting the increasing role of state in the protection and promotion of rights of children in the following areas.

- (i) Prevention of mental and physical torture
- (ii) Prevention of Child Sexual Abuse and Trafficking
- (iii) Prevention of Illegal Adoptions by foster parents
- (iv) Prevention of Child Labour in hazardous industries
- (v) Rehabilitation of girls found in prostitution and trafficking
- (vi) Right to Compulsory Education of Children
- (vii) Providing rehabilitation to children of prostitutes
- (viii) Providing facilities to children in Juvenile Homes and keeping of Child offenders in Juvenile Homes
- (ix) Stream lining of mid-day meal scheme with nutritious food to destitute and other poor children

**(iv) National Commission for the protection Child Rights**

The National Commission for Protection of Child Rights (NCPCR) was set up in March 2007 under the Commission for Protection of Child Rights Act, 2005. According to the provisions of the Act, a child is defined as a person below the age of 18 years on the lines of the United Nations Child Rights Convention definition. The Commission's Mandate is to ensure that all Laws, Policies, Programmes, and Administrative Mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India and the UN Convention on the Rights of the Child.<sup>12</sup> The Commission, while enquiring into any matter, has all powers of the Civil Court trying a suit under the Code of Civil Procedures, 1908 and in particular, with respect to the following matters:

- (i) Summoning and enforcing the attendance of any person from any part of India and examining them on oath
- (ii) Requiring the discovery and production of any documents
- (iii) Receiving evidence on Affidavits
- (iv) Requisitioning of any Public Record or copy thereof from any Court of Office
- (v) Issuing commissions for the examination of witnesses or documents
- (vi) Forwarding cases to Magistrates who have jurisdiction to try the same
- (vii) On completion of inquiry, the Commission has the powers to take the following actions:

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<sup>12</sup> Johannes Hoogeveen; Emil Tesliuc and Renos Vakis: A Guide to the Analysis of Risk, Vulnerability and Vulnerable Groups; available at <http://siteresources.worldbank.org/INTSRM/Publications/20316319/RVA.pdf> 17/11/13 06:23 am

- (viii) To recommend to concerned Government for initiation of proceedings for prosecution or other suitable action on finding any violation of child rights and provisions of law during the course of an inquiry
- (ix) To approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary
- (x) To recommend to concerned Government or authority for grant of such interim relief to the victim or the members of his family as considered necessary

Apart from the above, as per the mandate of the commission, it monitors the implementation of various laws, conducts research, and submits periodical reports to the government for their implementation considering the best interest of children. Before the commission was constituted, the National and State Human Rights Commissions constituted under the Human Rights Act 1993 used to take care of the children's aspects. Due to the constant and continues efforts of the National Human Rights Commission , a number of issues of children could be augmented in various parts of the country, especially in the areas of bonded labour, child labour in hazardous industrial, destitute and street children, right to food, nutritional food, right to health etc. The efforts of the National Human Rights Commission resulted in amending the civil services rules of India that no civil servant or Government employee should appoint a child in their homes for work. If any such incident is found, such officer is liable to be severe punishment, which may result even in removal of service based on repeated such incidents.<sup>13</sup>

**(v) Sum up**

From independence until now, the government of India and the States adopted a number of schemes for the promotion and welfare of children. It has established a number of mile stones nationally to discharge its constitutional and international obligations in promoting the best interests of children . However, due to increasing population, poverty etc. millions of children are not in a position to have a square meal once in a day. Further, the adverse sex ratio of female population is a cause for concern. Apart from the state and a few nongovernmental organizations, the people of the country also need to discharge their bit of services for the augmentation of the children's rights is necessary.

Children, the joy of humankind, the gifts of god, need to be treated with utmost care, love, affection to enjoy their rights as human beings. Whatever schemes are drafted or implemented by the state, without the aid, efforts of the society children rights cannot be augmented to achieve self-sufficiency. Let the people of the country take a pledge to strive hard to extend their helping hand to one of the vulnerable and most effected populous of the country, namely children, the future generations of the polity in order to wipe out every tear that comes out of the eyes children.

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<sup>13</sup> VT Patil and TSN Sastry ( Ed) **Studies in Human Rights**, PR Publications New Delhi,2000

**(C) REFUGEES:**

Refugees means, persons who migrate from their country to another country to seek temporary shelter; due to adverse events such as famine, persecution, religious intolerance, racial discrimination or any other reason. Such people are unable to exercise freely all the human rights guaranteed in their own country or in a foreign territory wherein they reside temporarily.<sup>14</sup>

According to the United Nations Convention on the Refugees 1951, as defined (in Article 1A) a refugee means:

*“Any person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.”*

While the international community has generally responded swiftly and generously to refugee crises in the past 60 years, some worrying trends are emerging. The majority of today’s refugees are from Africa and Asia. Eighty per cent of today’s refugees are women and children and the causes of flight now include natural or ecological disasters and extreme poverty. In 2008, there were an estimated 14.9 million refugees in the world people who had crossed an international border to seek safety.<sup>15</sup>

The 1951 Convention also includes ‘exclusion clauses’, which stem from the understanding that the commission of some types of crimes justifies the exclusion of the perpetrators from the benefits of refugee status. Under Article 1(F), refugee status under the 1951 Convention does not apply to persons with regard to whom there are ‘serious reasons’ for considering they have committed the following crimes: a) Crimes against peace, war crimes and crimes against humanity; b) Serious non-political acts; and c) Acts contrary to the purposes and principles of the United Nations. Thus, if one of the exclusion clauses applies, the claimant cannot be a Convention refugee, whatever the other merits of his or her claim<sup>16</sup>.

Article 7 ICCPR has been interpreted to prohibit return to situations where the person might suffer torture or other cruel, inhuman and degrading treatment or punishment. Moreover, nearly all of ICCPR’s provisions apply to both citizens and non-citizens.

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<sup>14</sup><http://www.humanrights.is/the-human-rightsproject/humanrightscasesandmaterials/humanrightsconceptsideasandfora/Undirflokkur/refugees>  
19/11/13 06:50 am

<sup>15</sup> **University for Peace: Human Rights Law; 2004**

<sup>16</sup> Turner Bryan S.: Vulnerability and Human Rights: 2006, The Pennsylvania University Press

Article 3 CAT provides for protection from refoulement in situations where there is a substantial risk of torture. The non-refoulement provision under CAT is absolute. Unlike the non-refoulement provision of the 1951 Convention, it is not linked to cases where a person fears harm on account of race, religion, nationality, membership of a particular social group, or political opinion and it does not provide for exceptions based on national security. This means that the prohibition of return applies to all persons regardless of their past criminal conduct.

CRC applies to all children without discrimination, including child refugees and asylum seekers. CRC specifically stipulates that every child seeking refugee status has a right to protection and humanitarian assistance in the enjoyment of the rights set forth in the Convention, as well as other Conventions to which the state is party.

The Convention for the Protection of All Persons from Enforced Disappearance sets out non-refoulement where there are substantial grounds for believing that a person would be in danger of being subjected to enforced disappearance (Article 16; the Convention has not entered into force in March 2009).

Regional human rights Conventions also establish important safeguards for refugees. For example, Article 3 ECHR has been interpreted by the European Court to prohibit the return of persons where there is a risk of torture while Article 22(7) ACHR recognises 'the right to seek and be granted asylum' and Article 22(8) prohibits refoulement, a prohibition which is formulated in absolute terms.

In humanitarian law, Article 44 of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War deals specifically with refugees and displaced persons. Moreover, the 1977 Additional Protocol provides that refugees and stateless persons are to be protected under the provisions of Parts I and III of the Fourth Geneva Convention.

## **(D) INTERNALLY DISPLACED PERSONS:**

There is no exact definition defining Internally Displaced Persons. However, according to UN Principles of Internal Displacement, an IDP means:

‘internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.’<sup>17</sup>

The forced displacement of people within the borders of their own states, by armed conflicts, internal instability and systematic violations of human rights has become a pervasive problem throughout the world. Large numbers of people effectively become ‘refugees’ within their own countries by fault of the government or authorities in power. The United Nations estimates (2008) that close to 1 per cent of the world’s 6.7 billion people are internally displaced persons (IDPs). A host of dangers threaten IDPs during their flight, while they are displaced and even upon their return home or resettlement elsewhere. Yet, unlike refugees, internally displaced people are not protected by the 1951 Refugee Convention. The displacement of millions of people within the borders of their home countries causes serious humanitarian challenges while the mass flux of populations also threatens the stability of countries and entire regions.<sup>18</sup>

In order to address the needs of IDPs, the United Nations and its humanitarian partners established in January 2002 the Office for Coordination of Humanitarian Affairs (OCHA), which consists of international staff seconded by, inter alia, the UNDP, UNHCR, WFP, UNICEF and the NGO community. A main role of OCHA is to assist the UN Emergency Relief Coordinator in responding effectively to the needs of IDPs worldwide and to provide support to field response in IDP crises.

UNHCR has also called for greater attention to the problems of the internally displaced. In response to requests from the UN Secretary-General, UNHCR’s humanitarian expertise can be extended to IDPs on a case-by-case basis, such as when UNHCR assisted internally displaced persons in the former Yugoslavia. Certain experiences, e.g., that of ‘ethnic cleansing’ in the former Yugoslavia, have led to a call for standards explicitly forbidding the forcible movement of IDPs on racial, religious, ethnic or political grounds. Furthermore, enhanced protection for relief workers and others engaged in assisting and protecting those internally displaced is called for.

Another organisation which is increasingly important to the protection of IDPs, is the International Committee of the Red Cross (ICRC). As the ICRC’s mission is to protect and assist victims of armed conflict, its primary target group is often IDPs. The ICRC

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<sup>17</sup><http://www.google.co.in/imgres?q=internally+displaced+persons+in+india&hl=en&biw=1280&bih=923&tbn=isch&tbnid=YarwOSOUfoXNgM:&imgrefurl=http://transcurrents.com> 14/11/13 06:10 am

<sup>18</sup> Deng, Francis. "The guiding principles on internal displacement". *E/CN.4/1998/53/Add.1, February 11. New York, NY: United Nations.*

estimates the great majority of those people the organization assists are IDPs. In recent years, the ICRC has been developing programmes specifically aimed at protecting and assisting IDPs. The ICRC's protection and assistance activities are designed to restore acceptable living conditions and enable people to maintain an environment that is as close as possible to what they are used to until they can become self-reliant again. By ensuring that people can meet their basic needs, these programmes help avoid displacement and, where necessary, improve the community's capacity to host IDPs or IDP camps, whose presence generally puts an additional strain on the resident population.

The Internal Displacement Monitoring Centre (IDMC), established in 1998 by the Norwegian Refugee Council, is the leading international body monitoring conflict-induced internal displacement world-wide. The Centre conducts training and advocacy and runs an online database providing comprehensive information and analysis on internal displacement in some 50 countries<sup>19</sup>.

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<sup>19</sup> see [www.internal-displacement.org](http://www.internal-displacement.org) 11/11/13 09:15 am

## **(E) NATIONAL MINORITIES:**

All those people who do not form part of majority population of a country could be classified as national minorities. The classification may be based on religion, ethnicity, language or any other factors.<sup>20</sup>

### **(i) The Minorities and Human Rights**

Human rights being the inalienable rights of humanity, need protection at all times either by the state or by international comity. However, many a times, among the various vulnerable groups, minority's rights are not given due respect and relegated to secondary position. The International and national scenario is subtly examined.<sup>21</sup>

### **(ii) Minorities and India**

According to the Government of India Gazette notification issued on 23rd October 1993 by Ministry of Welfare, five religious communities viz; the Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis) were notified as minority communities. As per the 2001 Census, these five religious minority communities constitute 18.42% of the country's population. To protect the rights of minorities, the Constitution of India made exclusive provisions for the protection and free exercise of their human rights. Articles 25 to 28 of the Constitution guarantee the right to freedom of religion, including freedom of conscience and free profession, practice and propagation of religion. Articles 29 and 30 of the Constitution, protects the cultural and educational rights of minorities. In order to guarantee the rights of Minorities, the Union and the States adopted a number of policies and extended a large number of concessions on various fronts. In a number of cases, the Indian Judiciary has also upheld the provisions of the constitution and supplemented the policy perspectives of the Union and the States.

### **(iii) Constitutional rights and safeguards provided to the minorities in India**

#### **1. Constitutional safeguards for religious and linguistic minorities of India**

Though the Constitution of India does not define the word 'Minority', it only refers to 'Minorities' and speaks of those minorities that are 'based on religion or language through Article 30. Accordingly, Muslims, Christians, Parsis, Buddhists, Sikhs and Jains are normally considered as Minorities in India. In the State of Jammu and Kashmir, Mizoram, Meghalaya and Lakshadweep Hindus are considered as a religious minority<sup>22</sup>. The other articles applicable to all the citizens are applicable to minorities too. In a number of judgments, the courts have liberally interpreted the provisions of the constitution in tune with the human rights philosophy and upheld the various concessions extended by the state to minorities.

#### **2. 'Common Domain' and 'Separate Domain' of rights of minorities provided in the Constitution**

The Constitution provides two sets of rights of minorities that can be placed in 'common domain' and 'separate domain'. The rights, which fall, in the 'common domain' are those, which are applicable to both minorities and non-minorities. The rights, which fall in the 'separate domain', are those exclusively applicable to minorities. The distinction between

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<sup>20</sup> TSN Sastry Human Rights and Minorities –An International Perspective: Indian Journal of Law and Justice, Vol. 2, 2010, pp 1-5

<sup>21</sup> Information note: Protect the human rights of all migrants, OHCHR.

<sup>22</sup> Irfan Engineer: Rights of Minorities under the Constitution of India, <http://twocircles.net/2007may13/rightsminorities-under-constitution-india.html> 16/11/13 07:06 am

‘common domain’ and ‘separate domain’ and their combination have been well balanced and protected by the Constitution. The Preamble to the Constitution declares the State to be ‘Secular’ and this is especially relevant for the Religious Minorities. Equally relevant for them, is the declaration of the Constitution in its Preamble that all citizens of India are to be secured ‘liberty of thought, expression, belief, faith and worship and ‘equality of status and of opportunity.’

### **3. ‘Common Domain’, the Directive Principles of State Policy – Part IV of the Constitution**

Part IV of the Constitution of India, containing non-justiciable Directive Principles of State Policy, includes the following provisions having significant implications for the Minorities :-

- (i) obligation of the State ‘to endeavour to eliminate inequalities in status, facilities and opportunities’ amongst individuals and groups of people residing in different areas or engaged in different vocations; [Article 38 (2) ]
- (ii) obligation of State ‘to promote with special care’ the educational and economic interests of ‘the weaker sections of the people’ (besides Scheduled Castes and Scheduled Tribes); [Article 46] and

### **4. ‘Common Domain’, the Fundamental Duties – Part IVA of the Constitution**

Part IVA of the Constitution, relating to Fundamental Duties as provided in Article 51 A applies in full to all citizens, including those belonging to Minorities. Article 51A which is of special relevance for the Minorities stipulates as under :-

- (i) citizens’ duty to promote harmony and the spirit of common brotherhood amongst all the people of India ‘transcending religious, linguistic and regional or sectional diversities; and
- (ii) citizens’ duty to value and preserve the rich heritage of our composite culture.’

### **5. ‘Common Domain’, the Fundamental Rights – Part III of the Constitution**

The Constitution has provided a definite space for both the ‘domains’ i.e. ‘common’ as well as ‘separate’. In Part III of the Constitution, which deals with the Fundamental Rights it is divided into two parts viz. (a) the rights that fall in the ‘common domain’ and (b) the rights which fall under ‘separate domain’. In the ‘common domain’, the following fundamental rights and freedoms are covered:

- (i) people’s right to ‘equality before the law’ and ‘equal protection of the laws’; [Article 14]
- (ii) prohibition of discrimination against citizens on grounds of religion, race, caste, sex or place of birth; [Article 15 (1) & (2)]
- (iii) authority of State to make ‘any special provision for the advancement of any socially and educationally backward classes of citizens’ (besides the Scheduled Castes and Scheduled Tribes); [Article 15 (4)]
- (iv) citizens’ right to ‘equality of opportunity’ in matters relating to employment or Appointment to any office under the State – and prohibition in this regard of discrimination on grounds of religion, race, caste, sex or place of birth; [Article 16(1)&(2)]
- (v) authority of State to make ‘any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State; [Article 16(4)]
- (vi) people’s freedom of conscience and right to freely profess, practice and propagate religion – subject to public order, morality and other Fundamental Rights; [Article 25(1)]

- (vii) right of 'every religious denomination or any section thereof – subject to public order, morality and health – to establish and maintain institutions for religious and charitable purposes, 'manage its own affairs in matters of religion', and own and acquire movable immovable property and administer it 'in accordance with law'; [Article 26]
- (viii) prohibition against compelling any person to pay taxes for promotion of any particular religion'; [Article 27]
- (ix) people's 'freedom as to attendance at religious instruction or religious worship in educational institutions' wholly maintained, recognized, or aided by the State.[Article 28]

### **6. 'Separate Domain' of Minority Rights**

The Minority Rights provided in the Constitution that fall in the category of 'Separate Domain' are as under:-

- (i) right of 'any section of the citizens' to 'conserve' its 'distinct language, script or culture'; [Article 29(1)]
- (ii) restriction on denial of admission to any citizen, to any educational institution maintained or aided by the State, 'on grounds only of religion, race, caste, language or any of them'; [Article 29(2)]
- (iii) right of all Religious and Linguistic Minorities to establish and administer educational institutions of their choice;[Article 30(1)]
- (iv) freedom of Minority-managed educational institutions from discrimination in the matter of receiving aid from the State;[Article 30(2)]
- (v) special provision relating to the language spoken by a section of the population of any State;[Article 347]
- (vi) provision for facilities for instruction in mother-tongue at primary stage;[Article 350 A]
- (vii) provision for a Special Officer for Linguistic Minorities and his duties; and [Article 350 B]
- (viii) Sikh community's right of 'wearing and carrying of kirpans; [Explanation 1 below Article 25]

### **7. National Commission for Minorities**

In spite of the constitutional guarantee, and legal enactments, there is a sense of insecurity, inequality and discrimination that persists among the minorities. In order to wipe out such feelings, and to augment their rights, the Government of India in the year 1992 enacted a National Commission for Minorities Act. Accordingly, in the year 1993, it established a Minority Commission. According to Section 9 of the Act, the commission exercises the following functions to augment the rights of the minorities.

- (i) evaluation of the progress of the development of minorities under the Union and States;
- (ii) monitor the working of the safeguards for minorities provided in the Constitution and in laws enacted by Parliament and the State Legislatures;
- (iii) To make recommendations for the effective implementation of safeguards for the protection of the interests of minorities by the central or state governments;
- (iv) To look into specific complaints regarding deprivation of rights and safeguards of minorities and taking up such matters with the appropriate authorities;
- (v) To undertake studies into the problems arising out of any discrimination against minorities and recommending measures for their removal;

- (vi) To conduct studies, research and analysis on the issues relating to socio-economic and educational development of minorities;
- (vii) To suggest appropriate measures in respect of any minority to be undertaken by the Central Government or the State Governments;
- (viii) To make periodical or special reports to the Central Government or any matter pertaining to minorities and in particular the difficulties confronted by them; and
- (ix) On any other matter, which may be referred to it by the Central Government

### **8. Minorities Ministry**

In the year 2006, the Government of India established a separate Ministry to augment the rights of Minorities in the country. The aim and objectives of the Ministry are to ensure more focused approach towards issues relating to minorities. Its responsibility is to facilitate formulation of policy perspectives, planning, coordination, evaluation and review of the regulatory framework and developmental programmes for the benefit of the minority communities. It is also the vision of the Ministry to develop a healthy environment for the free exercise of rights by minorities and to halt all kinds of discriminatory practices.

### **9. Sum Up:**

The above brief discussion subtly brings out that both at international and national sphere there are a number of initiatives that have been adopted for the promotion of the rights of the socially and economically disadvantaged people. However, in spite of this, a number of discriminatory practices adopted towards these groups are witnesses in many societies across the world. It is the duty of the majority groups' of the world to desist from such practices and to extend a helping hand towards the development of the human rights of these people.

## (F) MIGRANT WORKERS IN INDIA

In Indian context, the definition of migrant workers needs to be differently construed from that of the International definition. Accordingly, migrant workers, include non-nationals who move from other countries to India, or citizens who move from one state to another to seek work.<sup>23</sup> In India, migration has taken place, especially after the rapid urbanization and economic liberalization. Many people move to cities and neighboring states wherever there are chances for work. In India after agriculture, migrants are predominantly found in the construction industry. Although these people possess all the rights as citizens, they may not have certain benefits such as residential benefits that are available to the people of the state or may not be able to procure ration cards under the Public Distribution system to purchase their food grains at a subsidized price supplied by the State in which they currently reside.<sup>24</sup>

In order to improve the conditions of these workers, the Government of India passed the Inter-State Migrant Workers (Regulation of Employment and Condition of Service) Act in 1979. Based on the provisions of the Act a number of State Governments too enacted separate legislations to prevent discriminatory practices against these workers. However, due to a number of reasons, many a times these workers are denied a number of rights that are legally eligible to claim.<sup>25</sup>

The Supreme Court of India in **Bachapan Bacho Andolan v Union India in 2011**, while addressing the rights of the children of various sections of people in the country, directed the executive to take necessary steps in order to protect the rights of children of migrant workers and their families. In **People's Union for Democratic Rights and others v. Union of India, in 1982**, emphasizing the role of the State in the protection of the rights of the workers under various laws of the country including the constitution, the court in no uncertain terms expressed its displeasure about the negligence of the state in preventing the violations with respect to the payment of wages to the workers and forceful employment of workers in the Asiad Project. It accordingly held that it is the duty of the state to prevent any such violations and to prevent any kind of forced migrations against the wishes of any person.<sup>26</sup>

### 3. Sum UP:

Whatever the reason for which a person migrates from one place to another either within the country or outside the country in search of work, they cannot be ill-treated on any count. According to human rights, every person has a right to live, reside and work in any avocation of his/her choice. Hence, the efforts of the international community and the states need to be supported by every individual of who has a duty to protect the rights of their fellow men irrespective of their working nature. Then only the efforts of law will yield the results in protecting the rights of these migrant workers.

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<sup>23</sup> <http://www.herstoria.com/discover/eglantynejebb.html> 17/11/13 07:13 am

<sup>24</sup> <http://www.ilo.org/global/standards/subjects-covered-by-international-labourstandards/migrant-workers/lang--en/index.htm> 15/11/13 06:38 am

<sup>25</sup> [http://www.imfmetal.org/files/08102914241866/Migrant\\_workers\\_in\\_India.pdf](http://www.imfmetal.org/files/08102914241866/Migrant_workers_in_India.pdf) 14/11/13 07:17 am

<sup>26</sup> OHCHR website, Migration and Human Rights, <http://www.ohchr.org/EN/Issues/Migration/Pages/MigrationAndHumanRightsIndex.aspx> 16/11/13 08:08am

## **(G) HIV/AIDS VICTIMS**

Human Immunodeficiency Virus/ Acquired Immune Deficiency Syndrome is a serious disease discovered in 1981. As of date, no definite cure has been found. According to UN the diseases affect more than 60 million people.<sup>27</sup> In this around, and 50% of people affected by the disease have lost their lives, around 36 million people in the world are living suffering from HIV/AIDS.<sup>28</sup> Taking into consideration of the magnitude of the disease and its effect on the human rights of these people, a number of human rights organizations started their work in this area since 1981<sup>29</sup>.

### **(i) National Scenario:**

In India the first case of HIV/AIDS victim was found in 1986. According to Family Health Survey III, 2006, of the Government of India, around two to three million people are affected by the disease.<sup>30</sup> In the national average, people living in the urban areas are more in number suffering with the disease compared to that of rural population. The Government of India even before the increase of the patients suffering from this chronic disease as a preventive care, in the year 1987 launched the National AIDS Control Programme. Accordingly the objectives of the programme are:

- (i) Covered Surveillance
- (ii) Blood Screening
- (iii) Health Education<sup>31</sup>

However, considering the increase in the rate of infection among the populace of the country, in 1992 National AIDS Control Organization. The aims of the organization are to oversee the formulation of policies by various states and the Government of India, Prevention work and control programme in combating the HIV/AIDS. Apart from the organization, the National Institute of Health and Family Welfare has also been entrusted to evolve suitable policy formulations at regular intervals to tackle the dreaded disease.

### **(ii) Sum up**

The subtle examination of the rights of HIV/AIDS affected persons brings the point to the fore that these people too possess human rights and their free exercise like any other normal individual. The society and the international community need to provide opportunities for these people to lead a life with dignity, instead of living at the mercy of others.

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<sup>27</sup> <http://www.ohchr.org/Documents/Publications/HIVAIDSCartoonen.pdf> 14/11/13 06:09 am

<sup>28</sup> <http://www.unaids.org/en/aboutunaids/unaidstrategygoalsby2015/> 14/11/13 06:14 am

<sup>29</sup> <http://en.wikipedia.org/wiki/HIV/AIDS> 14/11/13 06:46 am

<sup>30</sup> National Aids Control Organisation, Know your rights, [http://www.nacoonline.org/Quick\\_Links/Know\\_Your\\_Rights/](http://www.nacoonline.org/Quick_Links/Know_Your_Rights/) 17/11/13 06:18 am

<sup>31</sup> Susan Timberlake: UNAIDS: Human Rights, Ethics, and Law; Health and Human Rights, Vol.3. No.1 1996 available at <http://www.hhrjournal.org/archivespdf/4065286.pdf.bannered.pdf> 15/11/13 06:12 am

## **(H) DISABLED PERSONS:**

### **(i) Definition of Disability**

Disability is a broad term. It generally refers to any person suffering from physical, cognitive, mental, sensory, emotional, developmental problems, or some combination of any of these problems.<sup>32</sup>

. According to World Health Organization,

*An individual may also qualify as disabled if he/she has had impairment in the past or is seen as disabled based on a personal or group standard or norm. Such impairments may include physical, sensory, and cognitive or developmental disabilities, mental disorders (also known as psychiatric or psychosocial disability) and various types of chronic disease may also qualify as disabilities.*

### **(ii) Rights of persons with disability in India:**

The principles of International Law of human rights of disabled persons are reflected in Indian Constitution by way of provisions dealing with Fundamental Rights as well as Articles on Directive Principles of State Policy. The Constitution does not provide for any specific provision dealing with the rights of disabled persons. However, Entry 9 of the State List in the Seventh Schedule of the Constitution refers to – Relief of the disabled and unemployable. Apart from the constitutional provisions, the Government of India enacted specific legislations for the protection and augmentation of the Rights of the Disabled.

### **(iii) Laws Relating to Disabled**

In order to discharge its international and constitutional obligations, the government of India has enacted a number of legislations concerning the rights of differently able persons. Among the various legislations, the most important of them are:

- (i) The Indian Lunacy Act 1912,
- (ii) The Lepers Act, 1899.
- (iii) Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995
- (iv) National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act 1999.
- (v) Rehabilitation Council of India Act 1992
- (vi) The Mental Health Act 1987.

Under the Persons with Disabilities Act 1995, disability means, any person suffering not less than 40% of any disability as certified by a medical authority. The provisions of the Act further include disability as Blindness; Low Vision; Leprosy-Cured; Hearing Impairment; Loco-motor disability; Mental Retardation and Mental illness as part and partial of the concept of disability. In order to ensure its commitment for the development of the rights of disabled, India has signed and ratified the UN Convention and Protocol on the Rights of Persons with Disabilities, 2006.

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<sup>32</sup> TSN Sastry ( Ed) **India and Human Rights Reflections**, Concept Publishing Company, New Delhi, 2005

### **(I) ELDERLY PERSONS:**

People those who are of 60 years and above in age are normally described as old age people or elderly persons. Very often, the rights of these people are violated by family members, society and in other fronts. Being elders, their rights need to be protected. In order to protect their rights, the UN adopted a number of resolutions and declared every **October 1** to be celebrated as the **International aged people's day**. It conducted a world congress in 2002 at Madrid and plan to adopt a convention to protect the rights of the aged people. As per the official agency of social policy and development division of the UN there are 737 million aged people living in the world today.<sup>33</sup>

By 2050, it may cross 2 billion, which may outnumber the children of the world aged below 14 years. It is important to protect their rights considering their contributions to each society during their young and Middle Ages.

In the national scenario, the Government of India adopted a national policy of older persons in 1998. In view of the increasing number of older persons and to protect their rights, the Government of India enacted the **Maintenance and Welfare of Parents and Senior Citizens Act 2007**, in order to extend legal protection to the rights of the elderly persons in the country. It has also constituted a National Council for elderly persons to address various aspects concerning the rights of elderly persons.

The aged in India have a number of pressing concerns which include, amongst others, abuse of the elderly, safety of persons and property, medical facilities and medical insurance, old age homes, pensions, crime against older people, loneliness, shrinking finances and health and nutrition etc.

In India, the Constitution under Article 41 directs the state, within the limits of economic capacity and development, to make effective provisions for securing the right to public assistance in cases of old age.

The Government of India adopted a National Policy for Older Persons on January 13, 1998 in order to accelerate welfare measures and empower the elderly in ways beneficial to them. The Policy, among others, provides that:

- a) Parents cannot be evicted from the house in contravention of the law.
- b) As per the Hindu Adoption and Maintenance Act, an aged parent is entitled to maintenance from their children.
- c) According to section 125 of CrPC (Criminal Procedure Code) a magistrate can order a person to maintain his old parents under the maintenance of Parents Act. But the parent has to prove that the son has neglected or refused to maintain the parent and that he or she is unable to maintain him / her.
- d) As per the provisions of the Domestic Violence Act, the elderly parents have a right to seek relief from any kind of abuse.

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<sup>33</sup> <http://www.eqavet.eu/qa/gns/glossary/v/vulnerable-group.aspx> 15/11/13 06:18 am

**(i) Maintenance and welfare of parents and senior citizens act 2007**

The Government enacted the **Maintenance and Welfare of Parents and Senior Citizens Act 2007** as answer to the insecurities faced by older persons of the country. This Act accords prime responsibility, on children, grand children or even relatives, who may possibly inherit the property of their parents/ grandparents to maintain and protect the rights of such elderly people. It also calls upon the State to provide facilities for poor and destitute older persons. The Salient features of the Act are:

- (i) Parents who are unable to maintain themselves through their own earnings or out of their own property may apply for maintenance from their adult children. The maintenance includes the provision for proper food, shelter, clothing and medical treatment.
- (ii) Parents include biological, adoptive and stepmothers and fathers, whether senior citizens or not.
- (iii) A childless Senior Citizen who is sixty years and above, can also claim maintenance from relatives who are in possession of or are likely to inherit their property.
- (iv) The application for maintenance may be made by Senior Citizens themselves or they may authorize a person or voluntary organization to do so. The Tribunal may also take action on its own.
- (v) Tribunals on receiving these applications may hold an enquiry or order the children/ relatives to pay an interim monthly allowance for the maintenance of their Parents or Senior Citizen.
- (vi) If the Tribunal is satisfied that children or relatives have neglected or refused to take care of their parents or Senior Citizen, it shall order them to provide a monthly maintenance amount, up to a maximum of Rs.10,000 per month.
- (vii) The State Government is required to set up one or more tribunals in every sub-division. It shall also set up Appellate Tribunals in every district to hear the appeals of Senior Citizens against the decision of the Tribunals.
- (viii) No legal practitioner is required or permitted for this process.
- (ix) Erring persons are punishable with imprisonment up to three months or a fine of up to rupees five thousand or with both.
- (x) State Governments should set up at least one Old Age Home for every 150 beneficiaries in a district. These homes are to provide Senior Citizens with minimum facilities such as food, clothing and recreational activities.
- (xi) All Government hospitals or those funded by the Government must provide beds for Senior Citizens as far as possible. Also, special queues to access medical facilities should be arranged for them.

## **(J) ROMA/GYPSIES/SINTI:**

The term Gypsy is commonly used who are connected with the ethnic name of Roma. They are also called as Sinti in some parts. There are number of people residing in various parts of the world. The people belonging to these tribes move frequently from one place to other either within the same country or region or in the other parts of the world. They live mostly in the Western and Latin American countries. The UN, to augment the human rights of these people, initiated a number of efforts.<sup>34</sup>

rights of the Roma population. It is estimated that there are more than 14 million Roma around the world, but an exact number is difficult to determine, as the Roma are often not included in official census counts. The Roma are a distinct ethnic minority dispersed worldwide and generally form a separate social group distinguished from mainstream society where they live.<sup>35</sup> This group of people suffers a wide range of human rights violations, in particular racial violence and discrimination in the enjoyment of rights, such as the right to adequate housing and right to education. This situation is particularly severe in Central and Eastern European countries where the Roma are, in general, in an extremely vulnerable position in social, economic and political terms. This vulnerability is manifested in widespread and acute poverty, unemployment, illiteracy, lack of formal education and segregation in the educational system, substandard housing, and other problems. Prejudice against the Roma is persistent and, as reported by several human rights organizations, Roma populations are frequently targeted as scapegoats for the ills of society at large, resulting in violent attacks against them and their property.

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<sup>34</sup> <http://www.erces.com/journal/articles/archives/volume3/v02/v03.htm> 11/11/13 06:17 am

<sup>35</sup> The Office of the High Commissioner for Human Rights (OHCHR) Homepage for indigenous people, <http://www2.ohchr.org/english/issues/indigenous/index.htm> 11/11/13 06:30 am

## (K) SEXUAL MINORITIES: LESBIAN/GAY AND TRANSGENDER:

Due to the sexual orientation and other habits of these people, they are ill-treated in many parts of the world. Even the UN could not take a rigid stand in the protection of human rights of these people due to opposition of majority of its members<sup>36</sup>. These people are often targeted by society for their sexual preference.<sup>37</sup> However, some of the countries including UK have recently enacted legislations to protect the rights of these people. Among the various groups of sexual minorities, transgender face many problems in the society including their basic right to life and liberty. In India, these people are gradually acquiring few rights and receiving judicial recognition.<sup>38</sup>

The UN Special Procedures have increasingly dealt with abuses related to sexual orientation and gender identity. An example is the Special Rapporteur on extrajudicial, summary or arbitrary executions who has included sexual orientation as a factor to consider in his investigations. In its resolution 63/182 on extrajudicial, summary or arbitrary executions, adopted on 18 December 2008, the UNGA reaffirmed the mandate of the Special Rapporteur and urged all states

*[t]o ensure the effective protection of the right to life of all persons under their jurisdiction and to investigate promptly and thoroughly all killings [...] committed for any discriminatory reason, including sexual orientation, [...] and to bring those responsible to justice before a competent, independent and impartial judiciary at the national or, where appropriate, international level, and to ensure that such killings, including those committed by security forces, police and law enforcement agents, paramilitary groups or private forces, are neither condoned nor sanctioned by State officials or personnel.*

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<sup>36</sup> TSN Sastry Sex Workers and Human Rights: Indian Scenario in the Proceeding the ISIL of the International Conference 2001, Vol II pp 526-538)

<sup>37</sup> [http://www.google.co.in/imgres?q=cedaw+convention&hl=en&biw=1600&bih=799&gbv=2&tbn=isch&tbnid=Q\\_uOSlZlaX75BM:&imgrefurl=http://feministcampus.blogspot.com/2010/06/women-deliver-conference-andcedaw.html&docid=lZLFty8pIEPqTM&imgurl=http://1.bp.blogspot.com/112/11/13\\_06:36am](http://www.google.co.in/imgres?q=cedaw+convention&hl=en&biw=1600&bih=799&gbv=2&tbn=isch&tbnid=Q_uOSlZlaX75BM:&imgrefurl=http://feministcampus.blogspot.com/2010/06/women-deliver-conference-andcedaw.html&docid=lZLFty8pIEPqTM&imgurl=http://1.bp.blogspot.com/112/11/13_06:36am)

<sup>38</sup> Oishik Sircar, Even if we start now, we have much to do for sex workers: Vocational training is fine, but sex workers have been fighting for rights, Tehelka, Opinion, 16 February 2011

## (L) SEX WORKERS

### (i) Definition of Sex Work

According to the **Preamble of the UN Convention on the Suppression of the Traffic in the persons and the Exploitation of the Prostitution of others, 1949;**

“Prostitution and the accompanying evils of trafficking of persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family, and the community.”

### (ii) Indian Scenario

In India, prostitution has been prevalent since ancient periods. Among the various works, the work of Arthashastra of Kautilya comprehensively dealt with the position of prostitutes in the ancient periods. In the ancient India, In the middle ages, the profession was named after a traditional customary name called devadasi (Temple Servant) which was widely prevalent in many parts of the country<sup>39</sup>. During the Muslim reign, prostitutes were recognized as dancing and singing girls. The initiation of legal measures to regulate sex work and its eradication, during the British period, could not bring about the desired results<sup>40</sup>.

After independence, the Government of India and the State Governments have taken a number of steps. In 1956, the Government of India enacted the Suppression of Immoral Traffic in Women and Girls Act. This Act was extensively amended in 1986 and renamed as the Immoral Traffic (Prevention) Act 1956 based on the Recommendations of the National Law Commission of India. Though the Act empowers the various organs of the state, especially the police to curb prostitution in any form, nowhere the profession of sex work or prostitution is explicitly banned nor officially recognized.<sup>41</sup>

Apart from the above, the Government constituted the National Commission of Women, 1990 to study the issue relating to women and modesty of women<sup>42</sup>. The National Human Rights Commission also undertook measures to prevent prostitution. The Government of India along with the State Governments constituted a number of committees based on the Judgment of the Supreme Court of India in 1997 in **Gaurav Jain V Union of India**<sup>43</sup> to protect the prostitutes and their children. In **Vishal Jeet V Union of India in 1990**<sup>44</sup>, the Supreme Court of India laid down a number of stiff norms and directed the Union and the States to submit detailed reports in protecting the rights and the rehabilitation activities employed by the state. In **Budhadev Karmakar V State of West Bengal**<sup>45</sup> in 2011, it had passed a number of directions to protect the rights of sex workers, including their rehabilitation.

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<sup>39</sup> [http://en.wikipedia.org/wiki/Carol\\_Leigh](http://en.wikipedia.org/wiki/Carol_Leigh) 14/11/13 06:56 am

<sup>40</sup> SubirBhaumik, Calcutta India sex workers demand rights, BBC News.

<sup>41</sup> Manjima Bhattacharjya , **Sex workers as economic agents, Info Change News & Features, October 2008**

<sup>42</sup> <http://www.ruhama.ie/easyedit/files/5.Prostitution%2520as%2520a%2520violation%2520of%2520human%2520> 14/11/13 06:06 am

<sup>43</sup> 1990 Supp.SCC 709

<sup>44</sup> AIR 1990 SC 292

<sup>45</sup> 2007 CriLj 3677)

## (M) SC/ ST AND OTHER INDIGENOUS PEOPLES IN THE INDIAN LEGAL SCENARIO

The hierarchical caste system along with other socio-cultural practices prevailing in India for many centuries has resulted in discrimination and inequality.<sup>46</sup> Despite the abolition of “Untouchability” by article 17 of the Indian Constitution, segregation of persons belonging to Scheduled Castes persists, particularly in some pockets of rural India, in access to places of worship, housing, hospitals, education, water sources, markets and other public places. The framers of the Indian Constitution provided for many provisions to address historical injustices. The **Fundamental Rights** contained in Part III of the Constitution, consisting of Articles 12 to 35, is considered the ‘sole’ of the Constitution. Accordingly, to augment the rights of these communities the Union and the States of the country enacted a number of legislative enactments. Some of these articles are stated here in for an understanding of the constitutional position.<sup>47</sup>

Article 14, stipulates that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. It also prohibits the practice of discrimination on grounds of religion, race, caste, sex or place of birth. The state adopted a number

According to Article 15, the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. It specifically adds that no citizen shall be subjected to any kind of disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, and places of public entertainment; or to the use of wells, tanks, bathing Ghats, roads and places of public resort maintained wholly or partly out of State Funds or dedicated to the use of general public.

Article 15(4) permits the State to make special provision for the advancement of any socially and educationally backward class of citizens as well as Scheduled Castes and Scheduled Tribes. It is under this provision that the States and the Union are permitted to make reservations in educational institutions for these groups of citizens.

Article 16, provides for equality of opportunity in matters of public employment. It also stipulates that no citizen shall on grounds only of religion, race, **caste**, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of employment or office under the State. This Article further provides for **affirmative action**, through the reservation of appointments or posts, in favour of any backward class of citizens, which, in the opinion of the State, not adequately represented in the services of the State. It also covers promotions and provides further for the carry-forward of unfilled vacancies of the quota for succeeding years. The Court reiterated that Article 14

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<sup>46</sup> Website of the Ministry of Tribal Affairs, <http://tribal.nic.in> 11/11/13 06:28 am

<sup>47</sup> Loenen, T., ‘Indirect discrimination: oscillating between containment and revolution’, *Non-discrimination law: comparative perspectives*, T. Loenen and P. Rodrigues (eds.), Martinus Nijhoff, 1999., McCrudden, C., ‘Changing notions of discrimination’, *Equality and discrimination: essays in freedom and justice*, S. Guest and A. Milne (eds.), Franz Steiner Verlag Wiesbaden GMBH, 1985,

guarantees the general right of equality; Articles 15 and 16 are instances of the same right in favour of citizens in some special circumstances.

Article 17, abolishes “Untouchability”, and forbids its practice in any form.

Article 21, which protects life and personal liberty, mandates that “No person shall be deprived of his life or personal liberty except according to procedure established by law”. The Supreme Court of India while interpreting the real meaning of this Article has stated that “Life”, in Article 21, does not mean only animal existence but also to live with dignity

In the words of Justice Krishna Iyer,

*‘... Necessary conditions which must be fulfilled if everyone in the society is to be assured a life of basic human dignity and complete self-fulfillment which is the objective and goal of human rights. ... I do not want any people just to survive. I want them to live a life of human dignity and for that they must have the basic necessities of life including food and health. This right is not merely lexical and legal, but expands as we conceptualize the dignity and divinity of the human personality.’<sup>48</sup>*

Article 23, prohibits trafficking in human beings and forced labour. Clause ( 1) of this article further prohibits all forms of forced labour, including selling and buying human beings as slaves and also includes immoral traffic in women and children for immoral or other purposes.

According to Article 29(2), no person be denied of admission to any educational institution on grounds only of religion, race, caste, language or any of them.

Article 36 to 51 of the Constitution are termed as “**The Directive Principles of State Policy**”, which are fundamental in the governance of the country and the State is mandated to apply these principles in making laws and to secure a social order in which social, economic and political justice shall in all the institutions of national life.

- I. According to Article 39(a), the State has a duty to draft its policy formulations to ensure equal treatment to all its citizens in securing and to see that the right to an adequate means of livelihood be met. Under Article 39 (d), the State shall direct its policy towards securing equal pay for equal work for both men and women.<sup>49</sup> Further Article 39 (e) is aimed at protecting the health and strength of workers, both men and women.
- II. Similarly, Article 42 of the Constitution imposes an obligation upon the State to make provisions for securing just and humane conditions of work and for

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<sup>48</sup> Justice Iyer, Krishna, *Social Justice –Sunset or Dawn*, 15-16 (1980) E.B.C. ,Lucknow

<sup>49</sup> *Randhir Singh v. Union of India*, AIR 1982 SC 879; see also, *State of M.P. v. PramodBhartiya*, AIR 1993 SC 286. To

give effect to this Article, the Parliament has enacted the Equal Remuneration Act, 1976 which provides for payment of equal wages to both women and men workers and prevents discrimination on the ground of sex.

maternity relief.<sup>50</sup> The Supreme Court held that the benefits under the Maternity Benefits Act, 1961 extend to employees who are casual workers or workers employed on daily wage basis.<sup>51</sup>

- III. Article 44 provides that the State shall endeavour to secure for the citizens, a Uniform Civil Code, throughout the territory of India. However, for assorted reasons, the state could not achieve this objective of the constitution until date. Accordingly, even while ratifying the CEDAW Convention, the Government of India reserved the clause on Uniform Civil Code.
- IV. Article 46 enjoins the State to promote with special care towards the educational and economic interests of the weaker sections of the people, and in particular of the Scheduled Castes and the Scheduled Tribes, and to protect them from social injustice and all forms of exploitation. Basing on this provision coupled with other provisions of the constitution, the state has introduced a number of steps in the form of concessions.
- V. Article 51-A of the Constitution of India lays down certain **Fundamental Duties** upon every citizen of India<sup>52</sup>. Accordingly, the citizens are expected to respect the law of the land to denounce all kinds of discriminatory practices, to extend their support to the socially, economically, and culturally weaker sections of the society to augment their rights on par with the other developed sections of the Polity.
- VI. Article 325 prohibits disenfranchisement on grounds of caste.
- VII. Articles 243 D and 243 T of the Constitution of India provide for reservation of seats for women in election to the Panchayat and the Municipalities.<sup>53</sup> This provision enabled the state to reserve seats in various parts of the country to reserve seats to women especially that of the reserved categories.
- VIII. Articles 330 & 333 provide for the reservation of seats for members of the Scheduled Castes and Scheduled Tribes in Union and State Legislatures.
- IX. Article 335, states that the claims of the members of the Scheduled Castes and Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in the affairs of the Union or of a State. In Eighty Second Amendment Act 2000, provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts.
- X. According to Article 341 of the Constitution, Scheduled Castes are such castes, races, tribes, or groups within such castes, races, or tribes, which have been declared as such by the President of India through a public notification for each state.

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<sup>50</sup> In pursuance of this Article, the State has enacted the Workmen's Compensation Act, 1923, the Employees State Insurance Act, 1948, the Minimum Wages Act, 1948, the Maternity Benefit Act 1961, the Payment of Bonus Act, 1965.

<sup>51</sup> *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*, AIR 2000 SC 1274

<sup>52</sup> The Fundamental duties were added under Part IV of the Constitution through the Forty-Second Amendment of the Constitution in 1976.

<sup>53</sup> In furtherance to 73rd and 74th Amendments to the Constitution, the Constitution (81st Amendment) Bill was introduced in the Parliament in 1996 to reserve one-third of seats for women in the Lok Sabha and the State Assemblies, and is yet to receive the assent of the Parliament.

- XI. According to Article 342 of the Constitution, the Scheduled Tribes are such tribes or tribal communities, or groups within these tribes or tribal communities, which have been declared as such by the President through a public notification for each state.
- XII. Article 366 clause (24) defines Scheduled Castes and to mean such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purposes of the Constitution.
- XIII. Article 366 (25) defines “Schedule Tribes” means such tribes or tribal communities or parties of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purpose of this Constitution.

In addition to Constitutional provisions, a number of legislations were enacted to end discrimination against Scheduled Castes and Scheduled Tribes. These include:

- a) The Protection of Civil Rights (Anti-Untouchability) Act, 1955.
- b) The Bonded Labour (Abolition) Act, 1976.
- c) The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
- d) The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993.

As Per the Government of India 2011 Census, the SC’s constitutes around 16.2% population of the country, 166,635,700.

#### (i) Scheduled Tribes

As per the Government of India 2011, census, the Scheduled Tribes population comprise 84,326,240 (8.2%) of the total populations. The State with highest proportion of Scheduled Tribes is Mizoram (94.5%), while the lowest proportion being Goa (0.04%)<sup>54</sup>.

The following are some important characteristics of STs:-

- a) Geographical isolation - They live in cloister, exclusive remote and inhospitable areas like hills and forests;
- b) Backwardness- Livelihood based on primitive agriculture, low cost closed economy based on low level of technology which leads to their poverty and have a low level of literacy, employment and health.
- c) Distinctive culture, language and religion

These communities are generally associated with a territory or a habitat, mostly in hilly and forest regions. They are governed by their own customs and traditions. Many of them have their own distinct language or dialect.<sup>55</sup>

By virtue of the Constitution (Sixty-fifth Amendment) Act, 1990, the Government of India Constituted a **National Commission for Scheduled Castes and Schedules Tribes** for the promotion and protection of their legal rights. However, in order to specifically cater to needs of schedule casts and scheduled tribes, the government in 2004 bifurcated the Commission and constituted two separate commissions viz., National Commission for Scheduled Castes and the National Commission for Scheduled Tribes respectively. The judiciary has also in a number of cases upheld the validity of various acts of the

<sup>54</sup> GOI, Office of the Registrar General and Census Commissioner, India, Census 2011 <http://censusindia.gov.in/> 14/11/13 06:29 am

<sup>55</sup> B.D. Sharma, Rights of Tribals, *Journal of the NHRC*, Vol. 1, 2002, 79-132

government for the promotion and protection of the rights of these categories of people and has also directed the state many a times to evolve a number of policy formulations in order to promote, protect and preserve their interests.

## (N) STATELESSNESS:

Statelessness is a major problem. It arises due to a number of reasons including discrimination against minority groups in a nation, failure to include all residents in the body of citizens when a state become independent, or takes birth as a new state according to law of state succession in International Law and or due to conflict between states.<sup>56</sup>

Statelessness means any person or group of persons who do not possess the nationality of any state. These people are highly vulnerable in the free exercise of their human rights, since they do not possess nationality of any country.<sup>57</sup>

### (i) Concept and Causes of Statelessness

According to the 1954 UN Convention on Status of Stateless Persons, stateless person means, “A person who is not considered as a national by any State under the Operation of its Law.” (Article 1). However, the following do come within the purview of the above definition. They are;

- a) Refugees who are under the protection of United Nations High Commissioner for Refugees (UNHCR);
  - b) Persons who have committed a crime against peace;
  - c) War criminals,
  - d) Persons who have committed a crime against humanity;
  - e) Persons whose acts are contrary to the purposes and principles of the United Nations and
  - f) Persons who commit a serious non-political crime outside the country of their residence
- Statelessness normally arises in two ways. One is *de jure (temporary)* where in a person is unable to either establish citizenship, or to be considered a national by any state under operation of a state’s law temporarily. *De jure (Permanent)* statelessness may arise when a person fails according to the law of a state to acquire nationality by birth. *De facto* statelessness encompasses what is known as ‘subsequent’ or ‘relative’ statelessness, where by an individual loses their nationality without acquiring another.

Statelessness is a serious impediment for anybody. It normally denies various basic rights that a person cannot enjoy as compared to that of a citizen of a State. Such persons cannot move freely across borders of states because they cannot obtain passports or visas. They cannot participate in the political process of any country and usually lack the political, legal, physical, social, cultural, or diplomatic protection. Though their status may not be comparable to that of refugees, they are still prone to the legal and humanitarian problems similar to that of refugees. A person may be stateless knowingly or unknowingly or without his or her fault.<sup>58</sup>

### (ii) The most Common causes in which a person may become stateless are:

- a) **Conflict of Laws between States:** A person may become stateless due to *Jus Sanguine* i.e. Nationality granted by descent in a country in which an individual is

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<sup>56</sup> Jeffery F Addicott et. Al., (Eds) *Globalization, Interntional Law and Human Rights*, Oxford 2012

<sup>57</sup> [http://www.google.co.in/search?q=stateless+persons+and+UN+Images&hl=en&prmd=imvns&source=lnms&tbn=isch&sa=X&ei=doHwT6mBIo6qrAfDrdG9DQ&ved=0CD8Q\\_AUoAQ&biw=1600&bih=799](http://www.google.co.in/search?q=stateless+persons+and+UN+Images&hl=en&prmd=imvns&source=lnms&tbn=isch&sa=X&ei=doHwT6mBIo6qrAfDrdG9DQ&ved=0CD8Q_AUoAQ&biw=1600&bih=799)  
16/11/13 06:16 am

<sup>58</sup> Nationality and Statelessness, A Handbook for Parliamentarians, Published by the Inter- Parliamentary Union with the United Nations High Commissioner for Refugees, 2005

born and *Jus Soli* i.e. when citizenship is granted based on the State in which the parents of the individual hold nationality.

- b) **Legal Transfer of territory or Sovereignty:** Individuals may be stateless because of state succession. (State Succession means the birth or death of states, or creation of new states from the existing ones; for example, the creation of Pakistan from India during the time of Independence.) In such situations if a new state adopts a new set of laws or procedures contrary to customary or general principles of international law, the subjects residing in its territory at the date of succession may become stateless due to the legal technicalities adopted by the new state.
- c) **Loss of Citizenship due to marriage Laws:** The Citizenship laws of some states may provide for automatic loss of nationality for women marrying a foreign national. At times even men may be temporarily stateless, if they marry a foreign woman, and choose to acquire the nationality of that of the wife.
- d) **Administrative Modulations:** Many a times the numerous administrative and procedural requirements of a State can create statelessness. For example in a state where lot of procedural aspects or high amount of fees or lack of compliance with laws governing with respect to information, on births and identity may result in statelessness.
- e) **Application of *Jus Sanguine*:** Although the nationality laws of many countries rest on *jus sanguine* or *jus soli*, at times if a particular state is in strict adherence of *jus sanguine*, it has the potential to produce statelessness.
- f) **Renunciation:** If a person voluntarily or by compulsion of the law of a state renounces the citizenship of a state before acquiring the citizenship of another state, he/she become stateless persons.
- g) **Automatic loss of citizenship by operation of Law:** Statelessness may result due to the practice of states which provides for the automatic loss of citizenship after a set period of absence from the state or residence abroad.

### (iii) Statelessness and International Legal Standards:

According to available estimates by the UNHCR there are an estimated 12 to 17 million stateless people that are residing in almost all regions in the world. Nationality has an important bearing on an individual's legal capacity in both domestic and international law as it effectively provides the link between an individual and a state. Hence, statelessness is a problem of identity under law, which ultimately deprives the enjoyment of legal rights conferred by law upon individuals.

In order to protect the interests of the individuals and to eliminate statelessness, a number of legal standards and instruments have been adopted under international law. Article 15 of the Universal Declaration of Human Rights provides that all persons have a right to nationality and that no person shall be arbitrarily deprived of one's nationality or forced to change nationality. In order to discharge this commitment, in 1954, the UN adopted the convention relating to the Status of Stateless Persons, which came into force in 1969. Parties to the Convention need to observe and respect the minimum standards in the protection and promotion of human rights of the stateless persons residing in its country without discrimination based on race, religion, sex, or country of origin. According to the Convention, a Stateless person is entitled to a number of rights and protection in the territory of residence. Accordingly the most important ones are:

- a) They have freedom to practice their religious ceremonies and religious education to their children.
- b) They should be accorded same treatment on par with their citizens in various matters.
- c) No adverse legal effect or treatment to them in various matters in the exercise of their fundamental human rights, especially with respect to acquisition of movable and immovable property including that of their Intellectual Property Rights.
- d) They need to be permitted to get access to the Law and Justice Machinery of the country.
- e) They need to be given equal treatment in matters of employment, wages, and social security on the same lines that are applicable to the citizens of a country.
- f) They need to be provided with travel documents to travel to foreign countries as per the provisions of law.
- g) They should not be expelled in a discriminatory fashion or to be sent to another country against their wish where in their security is in jeopardy their human rights.

Although, the Convention specifies a number of rights and benefits to stateless persons, it has not provided any mechanism to protect the expulsion or return to countries of expulsion of these people by the country in which they reside.

In order to strengthen the international commitment to eliminate the concept of statelessness in the year 1961, the UN adopted another convention on the Reduction of Statelessness, which came into force in 1975. As its name suggests, the main aim of the Convention is to reduce statelessness. The convention presented more scope to the contracting states in order to facilitate the states to expand the methods of nationality, beyond the purview of *jus soli* and *jus sanguinis*.<sup>59</sup> The Convention followed the path of the 1930 Convention on the Conflict of Nationality Laws of the League of Nations in order to avoid the conflict of laws with respect to marriage and birth of children. However, the Convention does not impose a blanket responsibility on a contracting state to extend its nationality to any stateless person. But, at the same time, it has extended the scope to confer nationality on ties held with the state on any genuine link that the national possess with that particular State.<sup>60</sup>

(iv) **Consequences of Statelessness on Human Rights:**

In spite of adoption of the convention guaranteeing the rights of stateless persons, these persons often face a number of difficulties in the free exercise of their human rights in the country of residence. They are:

- a) The stateless persons are often unable to obtain identity documents; International travel becomes almost impossible if one cannot obtain a passport or other travel document. As a result, some stateless people are regarded as illegal immigrants wherever they reside and face legal action by the country of residence.
- b) Denial of Minority status even if stateless persons fall within the category of minorities according to the law of the country of their residence.
- c) Children born in the territory of residence may face adverse effects in obtaining Birth Registration Certificates.

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<sup>59</sup> UNHCR: Statelessness: An Analytical Framework for Prevention, Reduction and Protection 2008 available at <http://www.unhcr.org/49a271752.html> 12/11/13 06:09 am

<sup>60</sup> Statelessness, UNHCR website, <http://www.unhcr.org/pages/49c3646c155.html> 17/11/13 06:18 am

- d) Discriminatory treatment in various free exercise of their rights especially with respect to matters of education, health, acquisition of property, and to receive social security benefits.
- e) There is every possibility for the abuse of their rights by the law enforcing agencies on flimsy grounds.
- f) There will be always tension and unrest in their lives with the fear of their displacement from the country of residence to another country, lack of stability etc.
- g) The moment stateless persons secure the citizenship or nationality of a country; they cease to be stateless, and are regarded as nationals of that particular country. Once they obtain the nationality of a country, they are able to exercise their rights freely on par with other nationals of that country.

**h) Some current challenges**

The **UN High Commissioner for Refugees (UNHCR)** has identified the following challenges:

- a) Statelessness has still not been comprehensively mapped worldwide and many stateless populations lack the identification documents (or entitlements) that would allow this to be corrected.
- b) Many nationality laws fail to include safeguards against statelessness, or contain discriminatory provisions causing statelessness among particular groups
- c) Very few procedures are laid down for determining the stateless status of a person and where procedures are laid down, the safeguards to protect the rights of the individuals are inadequate.
- d) Low public awareness of statelessness has resulted in a low level of concrete responses to situations of statelessness and the concerns of stateless people

**e) Sum UP**

The UNHCR calls upon States to adopt nationality legislation with a view to reduce statelessness, consistent with the fundamental principles of international law, in particular by preventing arbitrary deprivation of nationality and by eliminating provisions which permit the renunciation of nationality without the prior possession or acquisition of another nationality.

Apart from the efforts of the UN and its organs, it is the duty of the nation-states to prevent statelessness as per the general principles of international law and the numerous international treaties, conventions or covenants on human rights which impose a direct and indirect obligation not to deprive the free exercise of life and liberty of any individual.

**(O) CONCLUSION**

The brief over view of the rights of various vulnerable groups or disadvantaged people, amply presents the special categories of problems that affect their free exercise of human rights guaranteed both by international and national laws. A cryptic examination provided in the various units, certainly imposes a responsibility on each one of us to protect the rights of everyone without any discrimination based on sex, race, language, religion, caste or any other type of discrimination.

Accordingly, we the people of the United Nations have a solemn responsibility to pledge ourselves to promote the ideal of Dr. B.R. Ambedkar that social democracy alone could distance all the evils that exist in the contemporary world, compared to that of political or legal democracy.

The Strict adherence to social democracy would certainly lead us to achieve the path shown by international law of human rights to establish a World free from discrimination of any kind towards the fellow men.

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