

# War & Human Rights



**S.K. Khanna  
Amit Verma**



## War & Human Rights

---

S.K. Khanna  
Amit Verma



# War & Human Rights

S.K. Khanna  
Amit Verma

**W**  
**Wisdom Press**  
NEW DELHI

## **War & Human Rights**

*S.K. Khanna  
Amit Verma*

*This edition published by Wisdom Press,  
Murari Lal Street, Ansari Road, Daryaganj,  
New Delhi - 110002.*

ISBN: 978-93-81052-79-2

Edition: 2022 (Revised)

ALL RIGHTS RESERVED

•  
• This publication may not be reproduced, stored in  
• a retrieval system or transmitted, in any form or by  
• any means, electronic, mechanical, photocopying,  
• recording or otherwise, without the prior permission of  
the publishers.

## **Wisdom Press**

**Production Office:** "Dominant House", G - 316, Sector - 63, Noida,  
National Capital Region - 201301.  
Ph. 0120-4270027, 4273334.

**Sales & Marketing:** 4378/4-B, Murari Lal Street,  
Ansari Road, Daryaganj, New Delhi-110002.  
Ph.: 011-23281685, 41043100.  
e-mail : wisdompress@ymail.com

# CONTENTS

<b>Chapter 1 . Navigating the Nexus: Exploring the Juncture of International Humanitarian Law and Human Rights Law in Armed Conflict.....</b>	<b>1</b>
<i>—Amit Verma</i>	
<b>Chapter 2 . War's Complex Effects: Economic Growth, Demographic Impact, and Legal Measures for Prevention and Resolution.....</b>	<b>7</b>
<i>—Sourabh Batar</i>	
<b>Chapter 3 . Tracing the Evolution of Human Rights: A Comprehensive Historical Overview .....</b>	<b>13</b>
<i>—Bhircu Raj Maurya</i>	
<b>Chapter 4 . Humanitarian Law: Traversing Conventions and Protocols for the Protection of Vulnerable Populations.....</b>	<b>21</b>
<i>—Yogesh Chandra Gupta</i>	
<b>Chapter 5 . Unraveling the Role of National Human Rights Commissions: A Critical Examination.....</b>	<b>31</b>
<i>—Sushil Kumar Singh</i>	
<b>Chapter 6 . Empowering Vulnerable Groups: Safeguarding Minority Women, and Child Rights in India .....</b>	<b>40</b>
<i>—Amit Verma</i>	
<b>Chapter 7 . Ensuring Dignity and Rights: Constitutional Safeguards for Women, Children, and Minorities in India .....</b>	<b>47</b>
<i>—Sourabh Batar</i>	
<b>Chapter 8 . Protecting the Rights of Displaced Persons: Refugees and Internally Displaced People .....</b>	<b>55</b>
<i>—Bhircu Raj Maurya</i>	
<b>Chapter 9 . Champions of Equality: Tracing India's Human Rights Movement.....</b>	<b>66</b>
<i>—Yogesh Chandra Gupta</i>	
<b>Chapter 10 . Harmonizing Humanity: Peace and Conflict Resolution for the Promotion of Human Right .....</b>	<b>75</b>
<i>—Sushil Kumar Singh</i>	
<b>Chapter 11 . Globalization and Its Impact on Human Rights: Steering Challenges and Opportunities....</b>	<b>84</b>
<i>—Amit Verma</i>	
<b>Chapter 12 . Balancing Act: Security, Terrorism, and the Imperative of Safeguarding Human Rights....</b>	<b>94</b>
<i>—Bhircu Raj Maurya</i>	
<b>Chapter 13 . Nurturing Change: The Dynamic Role of Civil Society at National and International Levels.....</b>	<b>105</b>
<i>—Sushil Kumar Singh</i>	

## CHAPTER 1

# NAVIGATING THE NEXUS: EXPLORING THE JUNCTURE OF INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS LAW IN ARMED CONFLICT

---

Amit Verma, Associate Professor

College of Law, TeerthankerMahaveer University, Moradabad, Uttar Pradesh, India,

Email Id- amitverma2@gmail.com

### ABSTRACT:

This article delves into the intricate relationship between International Humanitarian Law (IHL) and Human Rights Law in the context of armed conflict. While both legal disciplines aim to protect human life and dignity, their origins, scope, and principles have historically diverged. This work examines the evolution of IHL and Human Rights Law, analyzes their coexistence and potential conflicts during armed conflicts, and evaluates the jurisprudence of international courts in navigating this complex nexus. By exploring case studies and theoretical considerations, the paper underscores the challenges and opportunities presented by the interaction of these legal frameworks. It is recognized today that human rights law is not generally displaced in times of armed conflict by international humanitarian law (IHL). Yet in large part this new insight remains to be particularized as to its actual consequences. In particular, IHL is still predominantly under the influence of the concept of Military necessity.

**KEYWORDS:** Human Rights Law, Human Dignity, International Humanitarian Law (IHL), Legislation, Military Necessity.

### INTRODUCTION

It is well known that human rights law and international humanitarian law (IHL) are two different fields of study. IHL has a history that dates at least to the 19th century, when Henri Dunant started his campaign in support of war victims. It has steadily expanded and become richer, finally reaching an incredibly high level under the two Additional Protocols of 1977. His responsibility has always been to evaluate and implement the interaction between IHL and international human rights legislation while carrying out all of these duties. He has been in a position to develop a profound knowledge of the imperative of never losing sight of the fundamental tenets of the whole system of contemporary international law, namely human life and human dignity, better than anybody else. The following observations aim to provide a modest complement to Antonio Cassese's rich intellectual body of work by offering advice to the community of international lawyers and thereby exerting decisive influence on the formulation of global policies that directly impact each individual person[1], [2].

Even in the worst possible scenario for human civilization, namely war, IHL is intended to provide a minimum level of protection. In times of armed conflict, warriors are free to murder members of the opposing camp who are also fighting. The hunting season will begin, someone stated in reference to the start of a conflict, evidently with a considerable deal of sarcasm. In light of this, life, the most valuable possession humans possess, or, to put it another way, the most precious gift a heavenly being has bestowed upon us, finds itself substantially imperiled during a war. Despite this upsetting starting place, IHL aims to

preserve what may be legitimately safeguarded despite the use of force. Human rights, on the other hand, are a product of the post-World War II era and developed from the atrocities perpetrated during that conflict, particularly by the German military but also by the victorious allied nations. Although everyone is aware that human rights have over the years greatly expanded beyond the bounds of purely "negative" freedom to impose on states many commitments to provide protection also against interference by private persons and generally to ensure their effectiveness ('positive' rights), they still serve the original purpose of providing protection against state interference[3], [4].

All human rights accords, whether they be global or regional, place the right to life at the top of the hierarchy of rights. These customs were mostly developed for peaceful times. Governments may legally recognize a national emergency if one occurs, which gives them the right to take actions that exclude them from the commitments they have made. They only thought the Covenant didn't apply in times of hostilities. There is a clear distinction between the law of war and the law of peace, according to many voices that have been heard and expressed over the past century: they do not touch one another, they do not overlap, only one of them is applicable, and there is no mixing of the two. Recently, Israel has shown that it adheres to the separation doctrine with regard to the occupation of Palestinian territory. This theory has been questioned, and it is evidently necessary intellectually to do so. Human rights were not a notion at the time IHL was developed. There is no question that the right to life has always served as the foundation of international humanitarian law, but it must be recognized that IHL originates from a time when military thought still heavily influenced its construction. Human life was safeguarded, for sure, but only to the extent necessary for military purposes, which runs the risk of discrediting the whole meticulously built IHL structure. Therefore, it is impossible to fully trust classic IHL in the modern day without raising some doubts.

## DISCUSSION

When the International Court of Justice (ICJ) was required to provide its advisory opinion on nuclear weapons in 1996, the issue gained significant attention. Some governments argued that nuclear weapons should be disregarded because they cannot be used to attack a military target with the necessary precision. It was argued that they violate the right to life because of their wide indiscriminate impact. Other states opposed, citing the conventional notion that IHL governs all issues that arise during an armed conflict.

The Court was forced to react in the face of these two diametrically opposed conclusions. The protection of the International Covenant on Civil and Political rights does not cease in times of war," while also embracing, somewhat contradictorily, the theory of *lexspecialis*. Whether a particular loss of life, through the use of a particular weapon in warfare, is to be considered an arbitrary deprivation of life contrary to Article 6 of the Covenant, can only<sup>8</sup> be decided by reference to the Covenant's Article 6.

Regarding the meaning the Court assigned to such terms, there is unquestionably a lack of clarity. One may argue that the Court supported the idea of a strict division between the two disciplines. However, it is also valid to assert that the Court preferred to emphasize the idea that Article 6 of the ICCPR must be read and interpreted in connection with the regulations of Since the first reading would have amounted to a full renunciation of the introduction



statement regarding the continuation of human rights in times of conflict, the second reading appears all the more logical[5], [6].

When the Court was asked to judge the legality of the construction of a wall in the occupied Palestinian territory eight years later, in 2004, the Court was forced to reevaluate the relationship between human rights and IHL.<sup>10</sup> In this context, it was necessary to make a decision regarding the responsibility of the Israeli authorities to uphold the rules of human rights law, in particular the provisions of the Covenant, in addition to IHL. It is commonly recognized that Article 2(1) of the Covenant may be difficult to interpret. The presence of a person on the territory of the state in question and its jurisdiction over that person are the two requirements laid forth in that clause. However, this is not the subject at hand. The coexistence of the laws set out by the Covenant and IHL is something we are interested in. This time, the Court's phrasing was far more nuanced while yet leaving certain questions about the problem unanswered. The Court makes three coexistence distinctions. First of all, it reaffirms with unwavering resolve that armed conflict does not render the protection of the human rights agreements null and void. After that, it goes on as follows:

There are thus three possible scenarios regarding the relationship between international humanitarian law and human rights law: some rights may be exclusively matters of international humanitarian law, other rights may be exclusively matters of human rights law, and still other rights may be matters of both these branches of international law. It reiterated that holding in the 2005 ruling in the conflict between Uganda and the Democratic Republic of the Congo. The Court recently assumed without reservation that the International Convention on the Elimination of All Forms of Racial Discrimination applies in any situation during an armed conflict in the order published on October 15, 2008 in relation to the dispute between Georgia and Russia: Although some of the claimed Georgian violations may also fall under other provisions of international law, such as humanitarian law, they seem to be susceptible of violating rights guaranteed by the CERD. This time, the three courses are no longer separated. The Court was asked to impose an interim measure, so this new version of the offer shouldn't be overvalued. Any other concern was subordinated to the urgency of the situation.

### **Courts for Human Rights' Jurisprudence**

One ought to applaud the Court's stance in the pivotal Wall decision. However, one can respond, "Your Excellencies, we are still perplexed, but on a higher level."<sup>14</sup> In actuality, it will always be important to understand what industry the pertinent events are in. For instance, prisoners of war are not covered by the broad protections that apply when someone is arrested in line with Article 9 of the ICCPR. According to the perfectionist model enshrined in Article 9 ICCPR, any judicial control mechanism used during armed conflict is unavoidably flawed and huge populations taken as prisoners of war may scarcely be brought before a court. However, most situations will be situated in a grey area with no obvious solutions. The legal framework of the regional institutions for the defence of human rights has previously given considerable thought to the application of human rights. The American Convention on Human Rights, one of the organizations of the Pact of San José, was first confronted with the problem. The Inter-American Commission determined that it was essential to evaluate the circumstances also in light of IHL in the matter of Las Palmas<sup>15</sup>, a Columbian case. The assault on a school by the state's military forces was in question. When

the armed forces deployed firearms against the school building and killed some of the people they had detained as they suspected the school was a guerrillero hideout, a kid, their teacher, and a number of nearby employees perished. The Court, on the other hand, disagreed with the position adopted by the Commission. It briefly said that its role was to implement the American Convention and that, as a result, it lacked the authority to go beyond of those bounds.<sup>16</sup> It made no mention of the possibility that the Convention's legislation may not be applicable.

This ruling is undoubtedly unpersuasive because it leaves open the issue of which standards should be used to determine whether a person's life was taken arbitrarily (American Convention, Article 4(1)).<sup>17</sup> This issue poses significant challenges, particularly during armed conflict. The justices of the European Court of Human Rights in Strasbourg frequently dealt with incidents related to the Chechen civil war. A town where guerilla fighters had also sought sanctuary was targeted by Russian soldiers. The locals attempted to leave the hamlet, but the Russian air force struck them as they tried to escape. Numerous individuals lost their lives. Invoking a breach of the right to life, the application's authorsrelatives of the victims of those attacksmade this claim. The Court evaluated the circumstances under Article 2 ECHR without the slightest hesitation, without considering whether such events were within the purview of the ECHR rationemateriae or if, in accordance with the subsidiarity principle, the law of peace had to give way to the law of armed conflict. On the other hand, its evaluation was based on standards that fundamentally fall within IHL since it carefully examined the approach that the Russian troops ought to have used. It came to the decision that the victims' right to life had indeed been infringed[7], [8].

Later instances support this strategy. Three young guys who were working in a field were murdered by missiles fired from helicopters by the Russian air force in the recent case of Khatsiyeva<sup>19</sup>. The military leaders thought they belonged to a prohibited combat organization. There can be no question in the Court's mind that the Russian side did not take the necessary safety measures. As a result, it was determined that Article 2 of the ECHR had been violated. Similar decisions were made at Mezhidow on September 25, 2008<sup>20</sup>, where an artillery barrage had hit a community. Five family members perished. The Court observes that the use of force was not wholly required under the circumstances and was thus not proportional to achieving the goals stated in Article 6(2) ECHR. Could the Court uphold this legal doctrine in the midst of an international military war of such massive proportions? There are many questions around that connection, but I completely agree with the Court that non-international war is the setting in which the right to life may influence conventional doctrine and should alter how traditional law is interpreted. The fact that IHL is firmly anchored in the past and that some of its components could seem 'raw and brutal' calls for a significant revamp.

However, the fundamental principle of humanitarian law is the separation between military goals and civilian objects. A collapse of the whole regime of differences between civilians and fighters is practically pre-programmed if it is no longer permitted to target the facilities and military units of an enemy if there are people in the area. The participants in an armed conflict have a duty to keep their military installations away from "densely populated areas" where their civilian population is concentrated. They must take full responsibility if they purposefully deploy such facilities into a civilian environment. Such strategies will not allow them to gain a military edge. To shift the military balance in favour of a party that disregards

the relevant norms of belligerence would be very improper. That outcome would be achieved by abolishing the right to strike military targets if civilian casualties must be anticipated. As a result, reciprocitythe idea that urges the parties to respect the laws governing the conduct of armed activitiescould no longer be maintained. As a result, any new regulation of this kind would be seldom followed, which would have severely negative effects on the overall regime for the protection of people. However, the inspection must be rigorous in any situation where it is reasonable to assume that civilians would be hurt during an assault on a military target. Extreme caution must be used while doing the proportionality test.

The Additional Protocol I's Article 57 offers crucial cues in this respect. Entire families cannot be obliterated by aerial bombardment in accordance with international law because there is a suspicion that a resident of a particular home is somehow connected to Hamas operations.

Because they believe this, Americans in Afghanistan feel justified in using jets to strike homes even when there aren't any active conflicts. Families as a whole have been ruined. Frequently, the outcome has been the death of a so-called "terrorist" who has been "disposed of," but this has been followed by the deaths of several more people who were, for all intents and purposes, civilians. Here, the significant effects of the divide between IHL and the law of human rights are extremely obvious. IHL states that a member of the enemy's 'armed forces'<sup>24</sup> may be targeted even when there are no actual hostilities. Every time the state wants to end a person's life, it is required under human rights legislation to take the greatest precautions and adhere to the stringent guidelines of the relevant sections in the laws safeguarding the right to life. It is necessary to consider the overall scenario and context. Self-defense case reviews are conducted in accordance with rigorous guidelines<sup>[9], [10]</sup>.

All of the instances of the use of force outside of open wars that we are now dealing with should be evaluated only in light of human rights. A license to murder is inadmissible when there is no physical conflict between opposing forces.

The law of war also cannot be leniently expanded by incorporating all members of a movement's political base that is actively engaged in hostilities as combatants or fighters. There is no justification for excluding attacks against the civilian population from the purview of human rights by obfuscating the distinction between that population and those engaged in armed activity. For example, policies that seek to eliminate anyone who has performed a political function for Hamas in the Gaza Strip would be obviously at odds with the requirements of IHL.

## CONCLUSION

The interaction between International Humanitarian Law (IHL) and Human Rights Law continues to be a lively area of research in the ever-changing context of armed conflict. This investigation of their interaction highlights the conflict between the need for military necessity and the need to maintain human dignity and individual rights.

The analyzed jurisprudence demonstrates the subtle strategies used by international courts to harmonize various legal systems. The idea that there is a distinct difference between peacetime and wartime has been contested, giving rise to a nuanced viewpoint that highlights

the continuum of human rights safeguards. It is crucial to promote discussion, research, and practical recommendations to negotiate this complicated nexus and assure the strong protection of core human values in times of war as both IHL and Human Rights Law change in response to modern circumstances.

## REFERENCES:

- [1] P. Cusack, S. McAndrew, F. Cusack, and T. Warne, "Restraining good practice: Reviewing evidence of the effects of restraint from the perspective of service users and mental health professionals in the United Kingdom (UK)," *Int. J. Law Psychiatry*, 2016, doi: 10.1016/j.ijlp.2016.02.023.
- [2] M. L. Marsal-Llacuna, "City Indicators on Social Sustainability as Standardization Technologies for Smarter (Citizen-Centered) Governance of Cities," *Soc. Indic. Res.*, 2016, doi: 10.1007/s11205-015-1075-6.
- [3] S. Ferreira, "Migratory crisis in the Mediterranean: Managing irregular flows," *Stability*. 2016. doi: 10.5334/sta.441.
- [4] A. Verdeja, "Integrating protection into disaster risk preparedness in the Dominican Republic.," *Forced Migr. Rev.*, 2016.
- [5] C. Barrs, "Preparing for self-preservation.," *Rev. Migr. Forzadas*, 2016.
- [6] W. Pei and M. van der Wolf, "A review of the new provisions for sanctioning mentally disordered offenders in China, in a broader historical context," *International Journal of Law and Psychiatry*. 2016. doi: 10.1016/j.ijlp.2016.05.006.
- [7] A. Nascimento, "Internally displaced persons: from the action of a sovereign state to intervention by the international community," *Sociol. Probl. e Práticas*, 2016, doi: 10.7458/spp2011667768.
- [8] L. E. Vogt, B. Rukooko, P. O. Iversen, and W. B. Eide, "Human rights dimensions of food, health and care in children's homes in Kampala, Uganda - A qualitative study," *BMC Int. Health Hum. Rights*, 2016, doi: 10.1186/s12914-016-0086-y.
- [9] Y. de Alwis and K. Horridge, "Safeguarding disabled children and young people," *Paediatrics and Child Health (United Kingdom)*. 2016. doi: 10.1016/j.paed.2016.06.008.
- [10] B. Derman and P. Prabhakaran, "Reflections on the formulation and implementation of IWRM in Southern Africa from a gender perspective," *Water Altern.*, 2016.

## CHAPTER 2

### WAR'S COMPLEX EFFECTS: ECONOMIC GROWTH, DEMOGRAPHIC IMPACT, AND LEGAL MEASURES FOR PREVENTION AND RESOLUTION

---

Sourabh Batar, Assistant Professor  
College of Law, Teerthanker Mahaveer University, Moradabad, Uttar Pradesh, India,  
Email Id- battarsourabh@gmail.com

#### ABSTRACT:

For many years, people have believed that war is a force for destruction with severe repercussions for both society and individuals. Due to its interruption of peaceful living and transformational effects on civilizations, war is often not well received in contemporary Western nations. This essay will examine two divergent elements of the complex effects of war: their ability to spur economic development and their unfavorable demographic effects. The research will also explore the legal strategies used by governments and international organizations to avert and end wars. It is possible to acquire a more thorough grasp of the intricacies of war's impacts and preventative strategies by looking at these several aspects. This research explores the many ramifications of war, looking at how it affects population dynamics, economic development, and the legal strategies used to avoid and end it. War has complicated effects that go beyond the immediate bloodshed, despite the fact that it is often decried for its devastating effects. In addition to exploring how conflicts might spur technical innovation and economic progress, this research also examines the negative effects of war on demography, including higher death rates and social unrest. Additionally, it examines the legal frameworks domestic and international that are used to avoid and end wars, emphasizing the need of an all-encompassing strategy that includes diplomatic efforts, economic measures, and military operations.

**KEYWORDS:**Economic, Legal Measures, Military Actions, Society, Violence, War.

#### INTRODUCTION

In general, war is seen unfavourably in contemporary Western nations as a phenomenon that disrupts society's peaceful way of life and drastically alters people's lives. Of course, a war's consequences on individuals vary and rely on a wide range of variables. According to one argument, the increased technical innovation that occurs during times of conflict stimulates economic development. Wars, like World War II, result in more employment opportunities for individuals whose involvement in the economy has previously been restricted (women, minorities). On the other side, wars have a lot of detrimental effects on society. It has a detrimental influence on the demographic situation primarily. It is apparent that a significant number of people perished as a direct result of conflict as well as indirectly via illnesses, plagues, and starvation that were tied to war[1], [2]. Additionally, murder rates are higher following conflicts, according to study. One of the causes of this problem is the return of aggressive ex-combatants to society and their inability to quit using violence. Many honourably discharged veterans misuse alcohol and narcotics after leaving active service. Recent studies have shown that those who have experienced especially stressful situations are more likely to misuse alcohol. War-related food shortages have a direct impact on how

healthy children will be in the future. People who experienced a famine as youngsters are more likely to have a weakened immune system later in life. Price increases result from supply disruptions brought on by a conflict. There is a belief that a war diminishes economic progress because lives are lost and industrial facilities are switched from making commodities for peacetime to making military weapons. On a governmental level, a significant mobilization during a conflict might result in an increase in administrative centralization. The state creates and sustains institutions that are focused on using coercion. As a result of an armed war, many refugees may travel to nearby nations that are unwilling to receive them[3], [4].

## DISCUSSION

Military, economic, informational, and diplomatic activities are the most efficient instruments. A higher impact is produced by applying all of these methods effectively than by using individual strategies. One of the most significant attempts to prevent and settle disputes amicably and to avert the pain of war is seen to be diplomatic measures. Informational and economic measures (such as a mix of inducements and penalties) may be used to support diplomacy. When used in a way that may help prevent perpetrators from taking undesirable actions, military and informational measures can also strengthen diplomacy. For instance, media coverage of deployment preparation to be ready for quick response or displays of force that can provide visible displays of military power and convey the message that the country can cause serious damage in the case of necessity for use of force are two examples. Deterring the use of force by making the offender aware that the Security Council may, if required, also take military action using the armed forces of the Member States may help prevent threats to the peace, breaches of the peace, or acts of aggression.

The prohibition of joining a foreign conflict is reportedly one of the national competency measures for the prevention of the danger to the peace. Regional institutions of certain governments began looking for methods to stop their nationals from fighting overseas in order to develop effective ways to combat terrorism and to avoid the possible threat of returning combatants. The concept of terrorism may be found in the Criminal Law of the Republic of Latvia. According to the Criminal Law, it is illegal to support terrorism, advocate for terrorism, threaten terrorism, and recruit and train others to commit acts of terrorism. The Criminal Law was amended by the Latvian Republic's Parliament in February 2015, making it illegal for Latvian citizens, non-citizens, and foreigners with a visa for permanent residence in the country to take part in armed conflicts abroad and to gather or transfer resources for those fighting for the territorial integrity or political independence of another state or other entity. These changes to the Criminal Law also prohibit the deployment of people to take part in armed combat outside without authorization[5], [6].

There are two ways to interpret this Criminal Law standard. Article 2 of the law "Participation of the Latvian National Armed Forces in International Operations" states that the Latvian National Armed Forces may take part in international operations if they are authorized by the United Nations or another international organization, or if they are authorized by laws of the Republic of Latvia, international agreements that bind the Republic of Latvia, or by a decision of the Latvian Republic's Parliament. Thus, joining the Latvian National Armed Forces might be the legal means to take part in an armed war elsewhere. It is also feasible for a civilian specialist to take part in an international mission. The civilian



experts take part in international missions based on requests from the European Union or the North Atlantic Treaty Organization as well as resolutions, recommendations, or requests made by international organizations, unions, or communities with which the Republic of Latvia has signed an international agreement. The decision to send civilian specialists on an overseas mission is made by the Cabinet of Ministers. Similar provisions for border guards, police officers, and state specialized civil workers participating in the State Fire-fighting and Rescue Service's involvement in foreign missions are included in the Border Guards Law, the Law on Police, and the Fire Safety and Fire-fighting Law. It becomes impossible to participate in such conflicts, for example, as a member of the armed forces established by any country for foreign nationals willing to serve in its armed forces, so long as there is no other law that can provide an order of lawful participation in an armed conflict abroad[7], [8].

The Citizenship Law mentions another risk for those who intend to take part in an overseas armed conflict. Under this law, citizenship can be revoked if a person serves voluntarily in the armed forces or military organizations of another nation without the Cabinet of Ministers' approval, with the exception of cases in which the person is serving in the armed forces or military organizations of a Member State of the European Union or a Member State of the European Free Trade Association. The above-mentioned regulation means that the person who serves in the armed forces of, for example, a Member State of the European Union or who had received an authorization of the Cabinet of Ministers to serve in the armed forces of s, can cause misunderstanding of proper behaviour for those who had complied with this obligation to receive authorization from the Cabinet of Ministers.

The following interpretations of changes to the Criminal Law are also possible: If a person fights in an overseas war while serving in the armed forces of a nation that is defending its political or territorial integrity, criminal culpability cannot be brought against them. The justification for involvement in an armed war in such a circumstance may be that the individual took part in an overseas fight that was waged to preserve the territorial integrity or political independence of the state. However, the relevance of belonging to a particular armed conflict side (fighting against or defending the interests of the state) for identifying a crime is not emphasized by article 771 of the Criminal Law. In accordance with the amendments to the Criminal Law, criminal liability may also be imposed for gathering or transferring funds or other property for or to a party engaged in an armed conflict abroad that is acting against the territorial integrity or political independence of the state or otherwise in violation of international law that is applicable to the Republic of Latvia. As a result, the stated article 772 of the Criminal Law emphasizes the illegality of supporting a foreign armed conflict party that works against the state's interests. Article 773 of the Criminal Law, which makes it a criminal to send or recruit a person to take part in an illegal armed conflict overseas, makes a further contribution to maintaining peace and stability. As was previously established, article 771 of the Criminal Law defines criminal involvement in an armed conflict overseas.

All citizens of the nation involved in an armed conflict see their lives significantly changed by a war. Soldiers and their families may suffer physical and mental injuries as a result of their participation in peacekeeping or peace enforcement operations. A conflict also has an indirect detrimental impact on the other nations that take in refugees. Modern-day circumstances accept that international law is not flawless and cannot always guarantee solutions that will avert future war. The inability to reach a peaceful resolution to the issue is often attributable to a lack of political will or is the outcome of inefficient policy-making

procedures. Different political interpretations may weaken international law, especially when parts of the restrictions, for whatever reason, do not serve the interests of the state. Because of this, the mechanisms for preventing threats to the peace that are included in domestic legal systems may be more effective in doing so. The changes to the Criminal Law were approved by the Latvian Republic's Parliament in February 2015. The goal of the amendments to the Criminal Law, according to their annotation, is to stop Latvian citizens from participating in foreign armed conflicts that violate their country's territorial integrity, political independence, or other obligations under international law. It's true that no one piece of legislation can address every unique event that arises in life. However, the success of both domestic and international law relies on how well the state has succeeded in putting them into reality[9], [10].

For millennia, the occurrence of war has changed the path of human history, altering civilizations, economies, and people as a whole. War is often seen negatively in contemporary Western nations and is associated with death, damage, and instability. The consequences of war, however, are complex and extend beyond the first acts of violence. This research explores the complex web of war's effects, highlighting two opposing factors: its capacity to spur economic development and its detrimental demographic effects. The essay also examines the legal steps used by governments and international organizations to avert and end wars. A deeper grasp of the complexity of war and its effects may be achieved by breaking down these elements.

### **The Economic Effects of War: Promoting Development Despite Devastation**

Contrary to popular belief, some academics believe that conflicts may be able to drive economic development through fostering technical innovation. In the past, mobilization for war has sped up development in a number of fields, including transportation, communication, and medical science.

For instance, the employment prospects for traditionally oppressed groups, such women and minorities, increased significantly as a result of World War II. During times of conflict, there is often an increase in output, which then fuels economic development. It is important to remember that this expansion often comes at a high price, requiring the transfer of funds from essentials for peacetime to those required for wartime purposes. Furthermore, it is important to take into account the long-term economic effects of conflict, including the damage of infrastructure and the interruption of trade links.

Mortality, societal upheaval, and health impact are some demographic consequences. The demographic effects of conflict are extensive and intricate. Wars cause a great deal of death, whether directly via bloodshed or indirectly through starvation and illness. Both fighters and civilians are included in death tolls, which may cause demographic imbalances that have a long-term impact on nations. Furthermore, social upheaval brought on by migration, refugee crises, and social breakdown may have a lasting impact on social structures and cultural coherence. In addition, the effects of conflict often result in weaker healthcare systems, decreased access to food and clean water, and increased disease risk. Due to weakened immune systems, children, especially those who suffer hunger during their formative years, may endure health issues for the rest of their lives.



### A thorough approach to legal measures for prevention and resolution

Conflict prevention and resolution need a multipronged strategy that incorporates diplomatic, economic, informational, and military instruments. By using diplomacy, mediation, and other forms of international collaboration, conflicts may be avoided. Both governments and non-state actors' behaviour may be affected by economic incentives and punishments. The capacity to respond quickly may be communicated and possible aggressors can be dissuaded by informational initiatives, such as media coverage of military preparedness. When employed as a last option in accordance with international law, the military instrument may support diplomatic efforts and preserve peace.

Developing successful measures for conflict prevention and resolution requires an understanding of the complexity of war's impacts. While a conflict may be able to boost the economy, this advantage must be evaluated against the negative effects, such as demographic imbalances and health issues. A comprehensive strategy is needed for the legal means used for prevention and resolution, one that includes diplomatic discussions, financial incentives, informational campaigns, and, if required, military action. The international community may work towards a more peaceful world that values human life and chooses stability and prosperity above violence and devastation by acknowledging the varied nature of war's effects and supporting comprehensive preventative strategies.

### CONCLUSION

The investigation of war's complex impacts exposes the delicate balancing act between its potential for economic progress and its damaging repercussions on demography. While conflicts may spur technical advancement and momentarily strengthen certain sectors of the economy, they often bring about serious demographic problems, such as higher death rates and social turmoil. A comprehensive strategy that incorporates legislative measures for prevention and resolution is needed to address these issues. The use of political, economic, informational, and military measures is still crucial in the field of prevention. When backed up by economic and informational measures, diplomacy may be a vital tool for resolving disputes and averting the misery that comes with war. Cooperation between countries is necessary to properly implement these laws, which play a crucial role in preventing disputes on both the local and international levels. In order to create successful measures for its avoidance and resolution, it is essential to understand the multifaceted repercussions of war. The human costs of fighting must be carefully evaluated against economic development and demographic effects. The international community may contribute to a more peaceful world by using legal tools and encouraging international cooperation, which will lessen the destabilizing effects of conflict and encourage stability and prosperity.

### REFERENCES:

- [1] P. F. Lai and W. L. Cheung, "Does demographic change impact Hong Kong economic growth?," *Res. Financ.*, 2016, doi: 10.1108/S0196-382120160000032009.
- [2] K. L. Thyberg and D. J. Tonjes, "Drivers of food waste and their implications for sustainable policy development," *Resources, Conservation and Recycling*. 2016. doi: 10.1016/j.resconrec.2015.11.016.
- [3] M. M. Islam, "Demographic transition and the emerging windows of opportunities and challenges in Bangladesh," *J. Popul. Res.*, 2016, doi: 10.1007/s12546-016-9174-z.

- [4] A. V. Korotayev and A. Y. Malkov, “A compact mathematical model of the World System economic and demographic growth, 1 CE – 1973 CE,” *Int. J. Math. Model. Methods Appl. Sci.*, 2016.
- [5] C. Fang, *China’s economic growth prospects: From demographic dividend to reform dividend*. 2016. doi: 10.4337/9781781005859.
- [6] G. Alfani and W. Ryckbosch, “Growing apart in early modern Europe? A comparison of inequality trends in Italy and the Low Countries, 1500–1800,” *Explor. Econ. Hist.*, 2016, doi: 10.1016/j.eeh.2016.07.003.
- [7] C. E. Castillo-Ramírez, F. Venegas-Martínez, and F. López-Herrera, “Efectos de saltos inesperados en el gasto público y variables demográficas en el crecimiento económico. El caso Mexicano con un enfoque GARCH con saltos (1936-2012),” *Trimest. Econ.*, 2016, doi: 10.20430/ete.v83i332.237.
- [8] R. W. NIELSEN, “Growth of the World Population in the Past 12,000 Years and Its Link to the Economic Growth,” *J. Econ. Bibliogr.*, 2016.
- [9] R. Moench-Pfanner *et al.*, “The economic burden of malnutrition in pregnant women and children under 5 years of age in Cambodia,” *Nutrients*, 2016, doi: 10.3390/nu8050292.
- [10] S. Biadgilign, A. Shumetie, and H. Yesigat, “Does economic growth reduce childhood undernutrition in Ethiopia?,” *PLoS One*, 2016, doi: 10.1371/journal.pone.0160050.

## CHAPTER 3

### TRACING THE EVOLUTION OF HUMAN RIGHTS: A COMPREHENSIVE HISTORICAL OVERVIEW

---

Bhirgu Raj Maurya, Assistant Professor  
College of Law, TeerthankerMahaveer University, Moradabad, Uttar Pradesh, India,  
Email Id- [brmourya.mourya321@gmail.com](mailto:brmourya.mourya321@gmail.com)

#### ABSTRACT:

A new world order came into being out of the ashes of the World War II in 1945, putting respect for human rights alongside peace, security and development as the primary objectives of the United Nations. The Universal Declaration of Human Rights, proclaimed in 1948, provided a framework for a series of international human right conventions. Presently almost all the national legislations influenced by these conventions. It is universally recognized that Human Rights and Fundamental Freedoms are the birth right of all Human being. The main objective of the study is to investigate the historical development of Human Rights and analyze the philosophical thinking. For conducting this study data was collected from several articles, books and related documents regarding Human Rights as a qualitative paper.

#### KEYWORDS:

Human Rights, Fundamental Rights, Historical Perspective, Conventions

#### INTRODUCTION

As the Second World War appeared to be drawing to a close, world leaders started planning for banishing war and resorting sustainable peace. The United Nations Charter envisaged the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion as one of the means for that end. On the 10th of December, 1948, the U.N. General Assembly adopted and proclaimed the Universal Declaration of Human Rights.

The Declaration, for the first time, generated a common standard of rights for all peoples and all nations without any discrimination. Human Rights are mostly inherent and natural rights; the execution, preservation, or enjoyment of Human Rights is simply impossible.

It is also true that without ensuring Human Rights, the development of life is quite impossible. In this regard, every nation follows the international instrument of Human Rights. In this sense, a National Human Rights Commission was established in Bangladesh in 2009 to protect the human rights of its citizens[1], [2].

#### Concepts of Human Rights

Rights are something people demand or desire for their self-development. Rights are those basic standards without which people cannot live in dignity. Human Rights are those basic standards without which people cannot live in dignity. The basic rights and freedoms, to which all humans are entitled, often held to include the right to life and liberty, freedom of thought and expression, and equality before the law. To violate someone's human right is to treat that person as though she or he were not a human being. These are basically few natural rights which cannot be denied, but at the same time, not guaranteed by Statutory Law. It is the obligation of the state to promote and protect human rights.

## Types of Human Rights

Human Rights are integrated, broad, and cover a wide range of rights. On the basis of the Universal Declaration of Human Rights 1948, there are the following classifications:

1. Civil rights & Political rights: Known as Fundamental rights, guaranteed by Article (27-44) part (III) of Bangladesh Constitution.
2. Economic rights & Social and Cultural rightsSolidarity rights: I) right to development II) right to self-determination.

The total number of Human Rights is 27; from which 25 are described by the Universal Declaration of Human Rights 1948, and the remaining two are described by the Declaration on the Granting of Independence to Colonial Countries and Peoples (DGICCP) and Declaration on the Right to Development (DRD).

## Salient Features of Human Rights

The evident characteristics of Human Rights make them different from other rights. The unique features are as follows:

I. Inherent: The most outstanding characteristic of Human Rights is that it is inherent and natural. None acquires it by any special quality of reputation. It is not the charity of any person or any social system. Every person is by birth entitled to these rights.

II. Not Exchangeable: Human Rights cannot be handed over, exchanged, or transferred. It is excessive for all. It could neither be given away nor could be stolen or taken away by snatching.

III. Universality: Universality stands out as the basic value of human rights. Everyone is entitled to all the rights and freedoms set forth in this Declaration.

IV. Equality: Human Rights refer to equal enjoyment of opportunities and resources for all. Justice, rule of law, and non-discrimination are the philosophies of Human Rights.

V. Feasibility: The important characteristic of Human Rights is its feasibility or effectiveness. Human Rights should never be viewed as a hypothetical or abstract concept. It is shaped by social values, norms, culture, and institutions.

## DISCUSSION

### Differences Between Human Rights and Fundamental Rights

- Human Rights: Human Rights are those basic standards without which people cannot live in dignity. Human Rights are inherent to each individual.
- Fundamental Rights: Fundamental Rights are those rights or Human Rights which are guaranteed by the constitution.

All Fundamental Rights Are Human Rights, but all Human Rights are not fundamental rights. Human Rights are concerned with all human beings in the world, but fundamental rights are related between one state and their citizens.

## Historical Perspective

The concept of Human Rights is as old as the ancient doctrine of natural rights. It is ultimately created after the creation of human beings. The ancient age can be stigmatized as the 'blooming stage' of concern and thought related to Human Rights.

### The Ancient Age

The ancient age expanded approximately from 500 years before A.D. to the 4th Century. Slavery was viewed as a legal custom in the social system during that time. During this period, a slave was considered as 'animal tools' or 'living possession' and was deprived of minimum basic needs. The slave had no political or economic freedom; they were absolutely used as an instrument of production without the enjoyment of any kinds of rights. In this context, the philosophy devoted to humanism and equality came to the surface of human thought in Greece and got momentum [3], [4].

### The Medieval Age

Moderately, the period from the 5th to the 15th century is estimated as the medieval age. Middle age is the dark, barren period of Human Rights. Christianity extended great influence both positively and negatively on the new socio-economic and political structure of that time.

### Magna Carta

The most important step of the middle age to promote Human Rights was taken by adopting 'Magna Carta'. It was the most famous written document of Human Rights in the middle age. It was a constitutional charter adopted by King John in 1215 A.D. and was reaffirmed by King Edward III. Magna Carta required the King to renounce certain rights, respect certain legal procedures, and accept that the will of the King could be bound by the law

### The Modern Age

At the beginning stage of the modern age, the practice of Human Rights had been developed in England. After 'Magna Carta,' an important step was taken by the parliament through adopting 'Petition of Right'.

### Petition of Right

The Petition of Right is a major English constitutional document that sets out specific liberties of the subject that the king is prohibited from infringing. Passed on 7 June 1628, the Petition contains restrictions on non-Parliamentary taxation, forced billeting of soldiers, imprisonment without cause, and restricts the use of martial law.

### Bill of Rights

The Bill of Rights was passed by Parliament on 16 December 1689. It was a restatement in statutory form of the Declaration of Right presented by the Convention Parliament to William and Mary in March 1689, inviting them to become joint sovereigns of England.

### After World War II

The Geneva Conventions came into being between 1864 and 1949 as a result of efforts by Henry Dunant, the founder of the International Committee of the Red Cross. The conventions

safeguard the human rights of individuals involved in conflict and follow on from the 1899 and 1907 Hague Conventions. The Second World War approached, global leaders began to strategize the establishment of lasting peace and the eradication of war. The United Nations Charter, a pivotal document, emphasized the importance of universal respect and observance of human rights and fundamental freedoms, regardless of factors such as race, sex, language, or religion. On December 10, 1948, the U.N. General Assembly adopted the Universal Declaration of Human Rights, a groundbreaking milestone that established a common standard of rights for all individuals and nations, free from discrimination. Human rights, primarily innate and intrinsic, play a vital role in the development of society. Every nation follows international human rights principles, and to reinforce these principles, Bangladesh established a National Human Rights Commission in 2009 to safeguard the rights of its citizens [5], [6].

### **Concepts of Human Rights**

Human rights encompass fundamental entitlements that individuals seek for their personal growth and well-being. These rights represent the essential standards that underpin human dignity, as articulated by philosopher Hobbhouse, who asserts that rights are reciprocal expectations between individuals and society. The term "Human Rights" was first coined by Frenchman Thomas Paine during his translation of the French Declaration of Rights of Man and the Citizen. These rights encompass fundamental privileges such as the right to life, liberty, freedom of expression, and equality before the law. Violating someone's human rights equates to treating them as less than human. While some of these rights are considered natural and undeniable, they may not be guaranteed by statutory law. It is the responsibility of governments to uphold and safeguard these rights.

In total, there are 27 Human Rights, with 25 described in the Universal Declaration of Human Rights (1948), while the remaining two are covered by the Declaration on the Granting of Independence to Colonial Countries and Peoples (DGICCP) and the Declaration on the Right to Development (DRD). Human Rights possess distinctive attributes that set them apart from other forms of rights. These salient features include:

- **Inherent Nature:** Human Rights are inherent and natural, not acquired through reputation or granted by any individual or societal system. Every individual is inherently entitled to these rights by virtue of being born.
- **Non-Exchangeable:** Human Rights cannot be transferred, exchanged, given away, stolen, or forcibly taken. They are universally applicable and not subject to transaction.
- **Universality:** Universality is a foundational principle of human rights. Every person is entitled to the rights and freedoms outlined in declarations and charters without discrimination.
- **Equality:** Human Rights emphasize equal access to opportunities and resources for all. Principles such as justice, the rule of law, and non-discrimination are integral to human rights philosophy.
- **Feasibility:** Human Rights are not hypothetical; they are shaped by social values, cultural norms, and institutions, making them practical and effective in real-world contexts.

## **The Ancient Age**

The ancient age spanned from approximately 500 years before A.D. to the 4th Century. During this period, slavery was deeply ingrained as a legal custom in the social structure. Slaves were considered mere "animal tools" or "living possessions," devoid of basic necessities. They had no political or economic freedom, serving purely as instruments of production without any rights. However, the philosophies of humanism and equality emerged in Greece, marking a significant shift in thought related to Human Rights. This period could be characterized as a "blooming stage" of concern and contemplation about Human Rights. Notable developments in this era include rules and punishments in various matters, encompassing women's rights, men's rights, children's rights, and even the rights of slaves. Some historians argue that the Achaemenid Persian Empire, particularly under Cyrus the Great in the 6th century BC, established remarkable principles of human rights. After conquering Babylon in 539 BC, Cyrus issued the Cyrus Cylinder, often seen today as the earliest human rights document. This cylinder has been linked to Cyrus's decrees mentioned in biblical books, allowing the return of Jews from their Babylonian Captivity. However, interpretations of Cyrus as a human rights advocate are debated among historians. The cylinder is currently housed in the British Museum, with a replica displayed at the United Nations Headquarters.

## **The Medieval Age**

The period from the 5th to the 15th century is generally considered the medieval age. It was a period marked by mixed influences of Christianity on the socio-economic and political structures of the time. The notion of equality before God and obedience to legal governments had both positive and negative impacts.

## **Magna Carta**

A significant advancement in promoting human rights during the medieval age was the adoption of the Magna Carta. This renowned written document, adopted by King John in 1215 A.D. and reaffirmed by King Edward III, was a constitutional charter. The Magna Carta compelled the king to relinquish certain rights, respect legal procedures, and acknowledge that the king's actions could be bound by the law. It consisted of 63 articles, including the Preamble, with Articles 39 and 40 being particularly noteworthy. Article 39 stipulated that no freeman could be arrested, imprisoned, outlawed, exiled, or harmed without lawful judgment, and Article 40 ensured that right and justice would not be denied or delayed to anyone [8], [9].

## **Influence of Magna Carta**

The Magna Carta was a groundbreaking document that guaranteed the liberty of individuals. Its influence extended to various common law and legal documents, including the United States Constitution and Bill of Rights. It is regarded as one of the most pivotal legal documents in the history of democracy. Almost all fundamental principles of the English Constitution can be traced back to the Magna Carta. According to Sir Edward Coke, it declared the principal foundations of England's fundamental laws, while historian Henry Hallam characterized it as the "keystone of English liberty."



## The Modern Age

As the modern age began, the practice of Human Rights continued to evolve, particularly in England. Following the Magna Carta, another crucial step was taken by the parliament through the adoption of the "Petition of Right. The Petition of Right holds a significant place in English constitutional history as it outlines specific liberties that the king is prohibited from infringing upon. Enacted on June 7, 1628, the Petition imposes restrictions on non-Parliamentary taxation, forced billeting of soldiers, imprisonment without cause, and the use of martial law[10]. The context leading to its enactment was marked by disputes between Parliament and King Charles I over financing the Thirty Years' War. Parliament's refusal to provide subsidies for the war effort led Charles to gather "forced loans" without parliamentary consent and imprison those who resisted payment. The war effort also involved the imposition of soldiers' lodgings within private homes and the declaration of martial law over parts of the country. The Petition of Right contains four articles:

Article 1: Prohibits taxation or benevolences without parliamentary approval.

Article 2: Bars imprisonment without valid cause, with royal command alone being insufficient justification.

Article 3: Prevents the quartering of troops in private homes without owner consent and compensation.

Article 4: Forbids the crown from issuing commissions that enable the implementation of martial law.

The Bill of Rights, passed by Parliament on December 16, 1689, restated the Declaration of Right presented to William and Mary in March 1689. This bill invited them to jointly rule England. The Bill of Rights outlines limits on sovereign powers, establishes parliamentary rights, protects freedom of speech within Parliament, guarantees regular elections, and ensures the right to petition the monarch without reprisals. It also reinstated the right of Protestants to possess arms for self-defense under the rule of law. These ideas, inspired by philosopher John Locke, gained popularity in England. The Bill of Rights has relevance in contemporary times and applies not only in England and Wales but also in Commonwealth realms. The Act articulates:

- No interference by the crown in the law. While the sovereign remains the source of justice, new courts cannot be unilaterally established.
- Taxes require parliamentary agreement; royal prerogative cannot unilaterally levy new taxes.
- Legal jurisdiction lies with civil courts, not ecclesiastical courts.
- Freedom to petition the monarch without fearing repercussions.
- A standing army in times of peace necessitates parliamentary consent.
- The freedom for individuals to possess arms for self-defense according to law.
- Non-interference by the crown in parliamentary member selection.
- Immunity of parliamentary speech and proceedings from challenge outside Parliament.
- Grants and promises of fines or forfeitures are void before conviction.
- Prohibition of excessive bail or "cruel and unusual" punishments.



## Development after World Wars

Between World War I and World War II, the League of Nations, established in 1919, aimed to ensure global welfare and prevent conflict. The League promoted rights later included in the Universal Declaration of Human Rights. Additionally, the International Labor Organization, an agency of the League of Nations, sought to safeguard certain rights present in the UDHR. After World War II, the Geneva Conventions emerged between 1864 and 1949 under the efforts of Henry Dunant, founder of the International Committee of the Red Cross.

These conventions safeguard human rights during conflicts and were revised post-World War II. The Universal Declaration of Human Rights (UDHR) was framed in 1948 with the contributions of international experts. Eleanor Roosevelt chaired the Human Rights Commission during this process.

The UDHR contains a preamble and 30 articles outlining fundamental human rights without discrimination. Civil and Political Rights are covered in Articles 3 to 21, encompassing rights to life, freedom, nationality, property, expression, thought, and more. Economic, Social, and Cultural rights are outlined in Articles 22 to 28, addressing social security, education, participation in cultural life, and scientific advancement. The UDHR's principles have had a significant influence, guiding the development of international, regional, and national laws and policies in support of human rights.

The NHRC was created as an independent statutory institution to monitor and promote human rights. The commission plays a crucial role by identifying thematic areas, forming committees, and engaging stakeholders. It also conducts policy dialogues with government officials, collaborates with NGOs and UN agencies, and raises awareness about human rights issues through seminars and workshops. Through these efforts, the NHRC has successfully increased awareness and consensus on human rights issues among diverse segments of society.

It has addressed issues such as child rights, violence against women, and prosecution of crimes against humanity. The commission's work has not only fostered cooperation between government, NGOs, and the international community but also facilitated the preparation for the Universal Periodic Review (UPR) process. Overall, the NHRC has significantly contributed to enhancing awareness and advocacy for human rights.

## CONCLUSION

The preceding discussion gives an impression that natural Human Rights had to pass a long way to obtain the legal and international recognition. Universal Declaration of Human Rights created the stream of worldwide efforts and international co-operations for assuring human rights. Though Human Rights have a universal figure, it's scope and periphery differ because of different socio-economic and political structure of various countries.

In a well-developed social system of Europe or America, right to freedom or of thought or freedom of opinion can be regarded as the most important human rights whereas relief from poverty or ignorance is the standard of rights in a poor, developing country of the Third world. However, all countries recognized UDHR and the components of basic human rights have been enshrined in the constitution. But the widespread poverty, illiteracy, malnutrition,

want of social security and abuse of rights simply point out the fact that issues on human rights are confined still in the holy pages of the Constitution.

The scenario in the arena of Human rights in other developing or underdeveloped countries is more or less identical to that of Bangladesh. It is therefore implied that the political leaders, thinkers, economists, scientists, social workers and philanthropist must do something meaningful to ensure human rights around the globe and in case of failure in this regard the world will never be a happy abode for human beings.

## REFERENCES:

- [1] T. Cavanagh, J. C. Berbesque, B. Wood, and F. Marlowe, "Hadza handedness: Lateralized behaviors in a contemporary hunter-gatherer population," *Evol. Hum. Behav.*, 2016, doi: 10.1016/j.evolhumbehav.2015.11.002.
- [2] J. H. Langdon, *The science of human evolution: Getting it right*. 2016. doi: 10.1007/9783319415857.
- [3] K. McPhail and C. A. Adams, "Corporate respect for human rights: Meaning, scope, and the shifting order of discourse," *Accounting, Audit. Account. J.*, 2016, doi: 10.1108/AAAJ-09-2015-2241.
- [4] B. Regaiolli, C. Spiezio, and W. D. Hopkins, "Hand preference on unimanual and bimanual tasks in strepsirrhines: The case of the ring-tailed lemur (*Lemur catta*)," *Am. J. Primatol.*, 2016, doi: 10.1002/ajp.22549.
- [5] T. Landman, "Rigorous morality: Norms, values, and the comparative politics of human rights," *Hum. Rights Q.*, 2016, doi: 10.1353/hrq.2016.0014.
- [6] R. E. Cirlig, "Business and human rights: from soft law to hard law?," *Juridical Trib.*, 2016.
- [7] J.-B. Jeangène Vilmer, "Droits humains et conflits armés," *Philosophiques*, 2016, doi: 10.7202/1034743ar.
- [8] A. Gómez-Robles, W. D. Hopkins, S. J. Schapiro, and C. C. Sherwood, "The heritability of chimpanzee and human brain asymmetry," *Proc. R. Soc. B Biol. Sci.*, 2016, doi: 10.1098/rspb.2016.1319.
- [9] J. Schrempf-Stirling and G. Palazzo, "Upstream Corporate Social Responsibility: The Evolution From Contract Responsibility to Full Producer Responsibility," *Bus. Soc.*, 2016, doi: 10.1177/0007650313500233.
- [10] R. J. Morse and R. F. Wilson, "Realizing informed consent in times of controversy: Lessons from the SUPPORT study," *J. Law, Med. Ethics*, 2016, doi: 10.1177/1073110516667938.

## CHAPTER 4

### HUMANITARIAN LAW: TRAVERSING CONVENTIONS AND PROTOCOLS FOR THE PROTECTION OF VULNERABLE POPULATIONS

---

Yogesh Chandra Gupta, Assistant Professor  
College of Law, TeerthankerMahaveer University, Moradabad, Uttar Pradesh, India,  
Email Id- COGNITOR.YOGESH@GMAIL.COM

#### ABSTRACT:

A core tenet of international law, humanitarian law, commonly referred to as the law of armed conflict or the law of war, aims to lessen the suffering brought on by armed conflict and safeguard those who are most vulnerable. The agreements and protocols that create guidelines for behaviour among parties to armed conflicts are at the heart of this framework. Civilians, prisoners of war, and other non-combatants have rights and safeguards under these laws, which are commonly referred to as international humanitarian law (IHL). In order to ensure that the cruelty of armed conflicts is regulated by the principles of compassion, distinction, and proportionality, this study discusses the relevance of IHL treaties and protocols. In-depth analysis of humanitarian law is provided in this study, with an emphasis on the fundamental agreements and protocols that aim to lessen the effects of armed conflicts on civilian populations, prisoners of war, and other vulnerable groups. This research explores the role of humanitarian law in sustaining the values of humanity, difference, and proportionality during times of war via a thorough investigation of international legal frameworks, case studies, and practical ramifications. The abstract highlights the importance of these legal tools in defending human rights and reducing the toll that armed conflicts have on human life by looking at their development, difficulties, and enforcement methods.

#### KEYWORDS:

Civilians, Humanitarian Law, Human Rights, Humanity, International Law.

#### INTRODUCTION

A system of laws known as international humanitarian law aims to lessen the impacts of armed conflict for humanitarian reasons. It limits the tools and techniques of combat while protecting those who are not or are no longer taking part in the battles. The law of war or the law of armed conflict is another name for international humanitarian law. International law, the corpus of regulations controlling interactions between States, includes international humanitarian law. Treaties or conventions between States, as well as customary norms, which are state practices that States deem to be legally obligatory, and general principles, all include elements of international law. During armed conflicts, international humanitarian law is in effect. This component of international law, which is significant but separate, is outlined in the United Nations Charter. It does not address whether a State may actually employ force[1], [2].

Warfare has always been governed by a set of values and traditions, and international humanitarian law has its roots in the laws of ancient civilizations and faiths. In the eighteenth century, international humanitarian law started to be universally codified. Since then, based

on the traumatic experience of contemporary combat, States have agreed to a number of practical guidelines. These regulations seek a delicate balance between humanitarian considerations and a state's military needs. A growing number of States have contributed to the creation of those norms as the global community has expanded. A worldwide body of law now exists in the shape of international humanitarian law.

### **Conflicts and international humanitarian law**

In order to save lives and lessen suffering of both combatants and civilians during armed conflicts, international humanitarian law (IHL), a subset of international law, enshrines both humanitarian principles and international treaties. It is sometimes referred to as the Law of War (*ius in bello*) or the Law of Armed Conflict. Only armed conflicts involving international or non-international parties are covered by it. All participants to an armed conflict are required to uphold international humanitarian law. To put it more precisely, international humanitarian law regulates two areas: a) the protection of people who are not, or are no longer, engaged in combat; and b) limitations on the tools of war, particularly weapons, and the tactics of war. The terms "Protection" and "Restriction" need further clarification[3], [4].

#### **a) Security**

Those who do not participate in the conflict, such as civilians and medical and religious military staff, are protected by international humanitarian law. Additionally, it defends non-participants like prisoners of war, ill, shipwrecked, and wounded warriors. These groups of people have a right to respect for their lives as well as for the integrity of their bodies and minds. They also benefit from legal protections. In all situations, they must be safeguarded and handled with compassion without making any distinctions. More precisely, it is prohibited to murder or injure an adversary who submits or is incapable of resisting; the sick and injured must be gathered and taken care of by the party in whose control they are. Hospitals, ambulances, medical supplies, and staff members must all be safeguarded. There are certain guidelines controlling the treatment of civilians who are under the control of an enemy power as well as the terms of confinement for prisoners of war. This covers the supply of clothing, food, and healthcare, as well as the freedom to communicate with their family. The legislation specifies a variety of easily recognized symbols that may be used to designate protected individuals, locations, and things. The Red Cross, Red Crescent, and symbols designating cultural property and civil defence facilities are the primary emblems.

#### **b) Weapon and tactic restrictions**

In order to protect the civilian population, specific civilians, and civilian property, international humanitarian law forbids all means and methods of warfare that: a) fail to make a distinction between those participating in the fighting and those who are not; b) cause unnecessary suffering or severe or long-lasting environmental damage. As a result, several weapons including explosive bullets, chemical and biological weapons, blinding laser weapons, and anti-personnel mines have been outlawed under humanitarian law. Let's look at its early evolution and the four Geneva Conventions and their supplemental protocols that regulate contemporary humanitarian law in the parts that follow now that we have a fundamental knowledge of its definition and its application.

## Global human rights law and international humanitarian law

A body of international laws known as international humanitarian law (IHL) was created by treaty or custom with the express purpose of resolving humanitarian issues that result from armed conflicts on an international or non-international scale. It restricts the rights of parties to a conflict to employ the techniques and means of warfare of their choosing and protects people and property that are or may be harmed by an armed conflict. The term "International Human Rights Law" (IHRL) refers to a body of international laws that have been created by treaty or custom and on the basis of which people and organizations may demand particular actions or benefits from governments. The collection of international human rights standards also includes a number of recommendations and concepts that are not based on treaties (sometimes known as "soft law").

Humanity, impartiality, and neutrality are the cornerstones of international humanitarian law. Its origins may be found in ancient notions of justice like the Hammurabi Code from Babylon, the Justinian Code from the Byzantine Empire, and the Lieber Code used during the American Civil War. Henry Dunant, a Swiss merchant from the nineteenth century, is credited with helping to create contemporary international humanitarian law. He saw the deadly conflict between the French and Austrian soldiers at Solferino, Italy, in 1859. Men who were injured and dying were scattered around the battlefield by the retreating troops. Thousands of troops perished despite Dunant's brave attempts to organize relief for them. Dunant made the suggestion in *A Memory of Solferino*, his book on the incident, that volunteer relief organizations be given security during hostilities in order to care for the injured. In order to implement Dunant's recommendations, a body known as the Committee of Five (later to become the International Committee of the Red Cross) established itself in Geneva in 1863[5], [6].

New Geneva Conventions covering, respectively, the sick and injured on land (First Convention), the sick, injured, and shipwrecked members of the armed forces at sea (Second Convention), the prisoners of war (Third Convention), and the civilian victims (Fourth Convention), were drafted as a result of the decision to start over.

A global diplomatic conference that took place in Geneva from April to August 1949 approved these conventions. A significant innovation that all the Conventions share is the establishment of basic standards that must be followed during internecine violent conflict. Therefore, current international humanitarian law is comprised of the four Geneva Conventions and their additional Protocols, and it only applies to armed conflicts, whether they are international or not, despite the fact that international armed conflicts are subject to a much greater number of regulations.

The majority of these guidelines were initially created for international armed conflict, but they now form part of customary international law, thus they also apply to non-international armed conflict.

Regardless of the actions of the opposing party and under all circumstances, parties to a war must uphold international humanitarian law. By claiming that the opposing party is not abiding by international humanitarian law, a state party is not permitted to escape its own commitments. Even if an opponent has not ratified the agreements, states are nonetheless obligated by them. Although many of the articles of international humanitarian law are also

applicable to people, they are primarily designed for nations and other participants to a war (such as armed organizations). We examine these Conventions and Protocols in the part that follows.

### **International Humanitarian Law's Fundamental Principles**

Even if the IHL treaty texts include hundreds of pages, the fundamental ideas of IHL may be summed up in a short amount of time. To protect civilians and civilian property, the Parties to a war must always make a distinction between civilians and combatants. A civilian neither as a collective nor as an individual may be the target of an assault. Attacks are only permitted against military targets when they are absolutely necessary. The parties to the conflict do not have an unrestricted right to choose how to wage war, nor do members of their armed forces. It is forbidden to inflict needless pain on soldiers, and it is equally forbidden to utilize weapons that do so or that pointlessly worsen their suffering.

People who choose not to participate in the hostilities or who have stopped doing so have a right to respect for their life as well as for their physical and mental integrity. Such individuals must always be safeguarded and given humane treatment without making any adverse distinctions. An enemy who surrenders or who is unable to continue fighting may not be killed or injured. Captured soldiers and civilians who are placed under the control of the opposing Party have a right to respect for their life, their dignity, their personal freedoms, and other beliefs.

They must be shielded from any acts of retaliation or violence. They have the right to obtain assistance and to communicate with their family. They must be granted fundamental legal protections. The Party in the struggle with the injured and ill must gather them and take care of them. Medical staff, facilities, vehicles, and equipment must all be spared. The distinguishing symbol signifying that such people and things must be honoured is a red cross, crescent, or crystal on a white backdrop.

### **International agreements**

The four international treaties known as the Geneva Conventions of 1949, which were ratified by practically all countries in the world, serve as the foundational texts of international humanitarian law, as has been noted. These Conventions set out detailed guidelines to protect combatants (members of the armed forces) who are injured, ill, or shipwrecked, as well as prisoners of war, civilians, medical staff, military chaplains, and civilian military support staff. The Geneva Conventions are supplemented by the two Additional Protocols from 1977 and the third, which was approved in 2005[7], [8].

### **Special Requirements**

The parties to the war who are in control of the injured, ill, and shipwrecked individuals are obligated to treat them humanely and provide for their needs without regard to their gender, nationality, religion, political views, or any other comparable difference.

They must be shielded from any violent acts directed at them or attempts on their life. They cannot be killed, eliminated, tortured, or the subjects of biological experimentation. Additionally, they must get proper medical attention and help. They shouldn't be left in environments that might spread infections and infectious illnesses. All sex-related considerations must be provided to women. A combatant State's injured, ill, and shipwrecked



citizens have a right to be treated as prisoners of war by the adversary. The conflict's parties owe it to these individuals to protect their dignity and respect, as do the neutral authorities.

### **Geneva Convention III**

(The August 12, 1949 Geneva Convention relative to the treatment of prisoners of war). For the treatment of prisoners of war (POWs), the Third Geneva Convention lays forth particular guidelines. The 143 provisions of the Convention demand that POWs be treated humanely, given proper housing, and enough food, clothes, and medical attention. Along with setting out rules for work, punishment, fun, and criminal proceedings. The idea that prisoners of war are not criminals has now been codified into the international law of war. When held captive or under the command of an enemy force, they have the right to be respected and treated decently.

### **Special Requirements**

**Treatment:** The primary principles regulating the treatment of prisoners of war are covered in Part II of the Third Convention, which contains Articles 12 to 16. These principles include: first, that prisoners of war be treated humanely and not be subjected to bodily mutilation or medical or scientific experimentation. Retaliatory actions are absolutely forbidden against them; in addition, prisoners of war have a right to respect for their person and dignity, and women must be treated with complete consideration for their sex. Thirdly, the authority that detains prisoners of war should be required to provide for their upkeep and medical treatment on a free-of-charge basis. The detainees shall be accorded their entire status that they had in normal life. Finally, the authority holding them must not make any distinctions based on caste, nationality, religion, or any other factor.

This Convention's Part III contains provisions for the protection of prisoners of war held captive by an enemy power. These provisions cover interrogation of prisoners, their property and evacuations, their living conditions in camps or while being transferred, the locations and procedures for internment in camps or while being transferred, food and clothing, hygiene, and medical care. This Convention also covers the religious requirements of religious personnel retained to take care of prisoners, as well as their intellectual and physical activities, discipline, tanks, and transfers after arriving in the camp, labour, and final resources, correspondence, relief shipments, and penal and disciplinary procedures. Transfer of prisoners of war after they have arrived at a camp: The detaining power must consider the interests of the prisoners when deciding to move them to another camp, such as the climate conditions they are used to, and the conditions must never be harmful to their health. During this transition, they must have access to enough food and water, as well as the essential clothes and medical care[9], [10].

Prisoners of war are allowed to write directly to their families and the Central Prisoners of War Agency card after being captured, but no later than one week after arriving at a camp, to advise them of their arrest, his address, and condition of health. They may send and receive letters, cards, and, under some conditions, telegrams. However, if the Detaining Power determines that it is essential to do so, it may restrict the number of letters and cards; such a limited amount may not be fewer than two letters and four cards every month. They are permitted to accept individual packages or group shipments for example, those providing food, clothes, medical supplies, etc. By mail or any other method. Complaints regarding

prisons of war and their captivity: Prisoners of war have the right to bring their captivity to the attention of the military authorities in whose hands they are captives, or of the Protecting power. Such complaints must be immediately transmitted, and there is no penalty for filing such complaints, even if the complaints are found to be unfounded.

Right to choose their representatives: Every six months, prisoners of war have the right to choose by secret ballot who will represent them in front of military authorities, protecting powers, the International Committee of the Red Cross, and any other organization that may be able to help them. The senior officer among the prisoners of war in camps for officers will be acknowledged as the camp inmates' spokesperson.

Right to burial or cremation: If a prisoner of war passes away while being held captive, his corpse must be buried or cremated honourably in accordance with his religious customs. Such individuals' graves must be preserved, properly kept, and marked so they may always be discovered or found. Unless specific circumstances call for the usage of communal cemeteries, they must be interred in individual graves. Only if it is necessary for hygienic reasons, because of the deceased's religion, or in accordance with their explicit wishes may the corpses of prisoners of war be burned. To confirm death and, if required, verify identification, a medical examination of the corpse must be performed prior to burial or cremation.

### **Specific Protection Requirements**

The Second Article of the Fourth Convention deals with the general defence of the people against certain effects of war. Even those who are citizens of a combatant country or the occupying power are included in this concern's populations. According to Article 13 of this Convention, the provisions of Part II must apply to the whole populations of the warring parties without making any distinctions based on race, nationality, religion, or political viewpoint, and they must be designed to lessen the suffering brought on by war. The following guidelines may be taken into consideration with regard to general population protection from certain effects of war:

- If necessary, the high contracting parties may establish hospitals, safe zones, and locations for the protection of the injured, ill, and elderly, children under the age of fifteen, expectant mothers, and mothers of children under the age of seven from the effects of war on their own territory, including in occupied areas.
- The conflicting parties shall mutually agree in writing to construct a neutralized zone designed to provide sanctuary for the following individuals in the area where combat is occurring:
- The injured and ill, especially the elderly and expecting women, should be given special protection and consideration.
- The conflicting parties shall make every effort to reach local agreements for the evacuation of wounded, ill, elderly, and infirm people, children, and pregnant women from besieged or encircled areas, as well as for the passage of religious leaders of all kinds, medical personnel, and medical supplies on their way to such an area.
- Civilian hospitals that are set up to treat the ill and injured, the elderly, and pregnant women must never be assaulted. The sides to the dispute must respect and defend them.



The medical trucks, trains, and ships that transport ill and injured citizens, the elderly, and pregnant women must be respected and safeguarded, and they must be identified by a red-cross insignia on a white background. Attacks against aircraft that are used only to carry medical personnel and supplies, injured and ill people, the elderly, and pregnant women are prohibited. When flying at altitudes and at the times and routes that have been explicitly agreed upon by all parties to the dispute, they must be respected. They should be identified by a unique red-cross insignia on a white background. Even when the other High Contracting party is its enemy, the High Contracting party should provide free passage of all consignments of medical supplies, hospital supplies, and items necessary for religious worship intended solely for the citizens of the other High Contracting party. Additionally, it must provide free passage for all shipments of necessities like food, clothes, and tonics meant for children under the age of 15, expecting moms, and those in maternity situations. The conflicting parties must take the necessary steps to ensure that children under the age of fifteen who become orphans or are separated from their families as a result of the war are not left to fend for themselves and that all efforts are made to support their upkeep, exercise or practice of religion, and education. With the permission of any relevant protecting power, they must enable the acceptance of such children in a neutral nation for the duration of the war.

Everyone residing in a party to a conflict's territory or a territory occupied by one must have the ability to communicate purely personal information to and receive it from members of their families wherever they may be. Such communications must be sent quickly and without unnecessary delay. Each conflicting party should assist enquiries made by members of families divided by the war with the goal of reestablishing communication and, if feasible, meeting. It will specifically support organizations working on this mission as long as they are acceptable to them and comply with its security procedures.

1. Protection in general: In the territory of the parties to a war and in occupied areas, general protection for people is comparable or common. They have a right to respect for their person, their honour, their family, their religious beliefs and practices, as well as their manners and traditions, in all situations. They must always be treated with compassion, and they must be specially protected from all acts of violence, threats, insults, and public curiosity. In particular, women must be protected from rape, forced prostitution, and other forms of indecent insult. By a party to a dispute in whose authority they are, all protected individuals should be treated equally without any unfavorable discrimination, especially based on race, religion, or political opinion.

The Geneva Conventions of 1949's Additional Protocols. To provide victims of both external and domestic armed conflicts with additional protection, two Protocols supplemental to the Geneva Conventions were agreed at an international diplomatic conference in 1977. One or both of the Protocols have been ratified by more than 100 countries, and many more are considering doing the same. All of the provisions of the Geneva Conventions remain apply to any country that has ratified the Conventions but not the Protocols.

Protocol I: This rule applies to international armed conflicts and places limitations on how military operations may be carried out. Since they have no bearing on each State's right to self-defense by any legal means, the commitments outlined in this agreement do not place an unbearable burden on those in control of military operations. This pact was created as a result

of the development of new battle techniques and the deterioration of the current laws governing wars. The right to protection from the ravages of conflict now extends to civilians. Protocol I serves as a reminder that the parties to a dispute do not always have the freedom to select the tactics and means of their fight, and that it is forbidden to use weapons, projectiles, materials, or tactics that are intended to inflict undue pain or harm.

strengthens the provisions relating to relief for the civilian population; d) protects the activities of civil defence organizations; e) specifies measures that must be taken by the States to facilitate the implementation of humanitarian law. Conventions to all medical personnel, units, and means of transport, both civilian and military.

**Protocol II:** Protocol II goes into further detail on how victims of really intense internal conflicts, such civil wars, might be protected. Internal unrest like riots, protests, and sporadic acts of violence are not covered by it. The non-international safeguards in Article 3 of the four 1949 Geneva Conventions are expanded and supplemented by Protocol II. Although it lays forth fundamental guidelines for civilian protection during hostilities, Article 3 is insufficient to address the major humanitarian issues that occur during internal conflicts. Thus, Protocol II was created with the intention of ensuring that the fundamental principles of the law of war be applied to internal conflicts. However, it cannot be used to support foreign intervention and in no way limits the rights of the States or the tools at their disposal to maintain or restore peace and order. Therefore, adherence to Protocol II's requirements does not entail acknowledgment of any specific status for armed rebels. Protocol II specifically: a) reinforces the basic protections enjoyed by everyone who is not, or is no longer, participating in the hostilities; and b)

prohibits attacks on the civilian population, specific civilians, items necessary for the survival of the civilian population, works and installations containing dangerous forces, cultural artifacts, and places of worship; d) regulates the forced movement of civilians; e) protects the injured, sick, and shipwrecked; and f) provides judicial guarantees for those prosecuted in connection with an armed conflict.

### **Regarding the introduction of the Red Crystal, more Protocol III information:**

Known as the red crystal, Protocol III was established in 2005 and includes a third symbol in addition to the red cross and red crescent. It is made up of a red frame in the shape of a square standing on the summit. This new logo fills the requirement for an extra choice free of any connotations and applicable anywhere in the globe since the red cross and the red crescent are often seen as having political connotations. It won't have any religious, political, or other overtones and will look as a white backdrop with a red square on a diagonal frame. The same individuals and organizations who are permitted to use the 1949 Geneva Conventions' symbols are also authorized to use the red crystal. Specifically, the International Committee of the Red Cross (ICRC), the national societies, and its International Federation, as well as the approved civil hospitals and the other International Red Cross and Red Crescent movement components, are included.

## **CONCLUSION**

In conclusion, current international law is made up of the aforementioned conventions, which inherit the vast majority of existing humanitarian principles, and their later modifications in the form of protocols. IHL has genuine legal regulations, not merely moral, philosophical, or

social principles. Naturally, the presence of a comprehensive regime of rights and responsibilities placed upon the many participants to an armed conflict is the consequence of these laws' legal/normative character.

The IHL accords have legal force for the governments that have ratified them. We have covered what humanitarian law is, how it differs from human rights law, its historical history, and the four Geneva conventions and the protocols that make up the current body of international law thus far in this lesson. We have made an effort to examine the unique clauses, relevance, and legal effect of each convention and protocol, as well as how they are binding on the accepting members. Conventions and protocols relating to humanitarian law serve as vital protections that lessen the devastation that armed conflicts do to civilian populations and other vulnerable groups.

These legal tools aid in safeguarding human dignity, enforcing the standards of international law, and defending the basic rights of those caught up in hostilities by setting guidelines that govern how participants to a conflict should behave. However, the correct application, enforcement, and adherence by all parties concerned are necessary for these conventions and protocols to be successful. The commitment to preserving humanitarian law continues to be a shared obligation for nations, international organizations, and civil society alike as armed conflicts continue to develop and pose new obstacles. Even under the most difficult circumstances, we may work to reduce human suffering and uphold human ideals by carefully following these norms and regulations.

## REFERENCES:

- [1] K. Egeland, "Lethal Autonomous Weapon Systems under International Humanitarian Law," *Nord. J. Int. Law*, 2016, doi: 10.1163/15718107-08502001.
- [2] A. Ripoll Gallardo, F. M. Burkle, L. Ragazzoni, and F. Della Corte, "Yemen's Unprecedented Humanitarian Crisis: Implications for International Humanitarian Law, the Geneva Convention, and the Future of Global Health Security," *Disaster Medicine and Public Health Preparedness*. 2016. doi: 10.1017/dmp.2016.50.
- [3] E. L. Camins, "Needs or rights? Exploring the limitations of individual reparations for violations of international humanitarian law," *Int. J. Transit. Justice*, 2016, doi: 10.1093/ijtj/ijv035.
- [4] M. I. Lubis, "The Relationship of International Human Rights Law with International Humanitarian Law in Situations of International Armed Conflicts," *J. Indones. Leg. Stud.*, 2016, doi: 10.15294/jils.v1i01.16565.
- [5] D. Saxon, "Violations of international humanitarian law by non-state actors during cyberwarfare: Challenges for investigations and prosecutions," *J. Confl. Secur. Law*, 2016, doi: 10.1093/jcsl/krw018.
- [6] M. Hailbronner, "Laws in conflict: The relationship between human rights and international humanitarian law under the African Charter on Human and Peoples' Rights," *African Hum. Rights Law J.*, 2016, doi: 10.17159/1996-2096/2016/v16n2a2.
- [7] Z. M. Teferra, "National security and the right to liberty in armed conflict: The legality and limits of security detention in international humanitarian law," *Int. Rev. Red Cross*, 2016, doi: 10.1017/S1816383118000012.

- [8] D. B. Hollis, "Setting the Stage: Autonomous Legal Reasoning in International Humanitarian Law," *Temple Int. Comp. Law J.*, 2016.
- [9] "International humanitarian law and the challenges of contemporary armed conflicts," in *The Applied Ethics of Emerging Military and Security Technologies*, 2016. doi: 10.4324/9781315241364-13.
- [10] L. Hastuti, "Enforceability Of International Humanitarian Law In Armed Conflict at Present," *UUM J. Leg. Stud.*, 2016, doi: 10.32890/uumjls.7.2016.4640.

## CHAPTER 5

### UNRAVELING THE ROLE OF NATIONAL HUMAN RIGHTS COMMISSIONS: A CRITICAL EXAMINATION

---

Sushil Kumar Singh, Professor  
College of Law, TeerthankerMahaveer University, Moradabad, Uttar Pradesh, India,  
Email Id- sushil2844@gmail.com

---

#### ABSTRACT:

National Human Rights Commissions (NHRCs) play a bigger role in upholding human rights as a result of global efforts led by the United Nations. This report critically examines the functions and results of NHRCs, with a focus on India. The study discusses the emergence of NHRCs, the significance of their defense of human rights, and its limitations. Through an investigation of their nature, capabilities, and functions, the research highlights the NHRCs' capacity for change. Although the study acknowledges the accomplishments of NHRCs, it also identifies structural problems with them and calls for a reconsideration of their role to increase their effectiveness in ensuring justice and accountability for violations of human rights. Examining National Human Rights Commissions reveals how important a role they play in promoting responsibility and safeguarding human rights. The evolving state of international human rights protections has given rise to these organizations, which were established to bridge the gap between international standards and national implementation.

#### KEYWORDS:

Constitution, Human Rights, National Commission, National Level Human Rights Commissions.

#### INTRODUCTION

The United Nations' attempts to secure domestic protection of human rights gave rise to the relatively young and cutting-edge human rights commissions. The growth of HRCs in several jurisdictions has been significantly influenced by the movement of international human rights rules toward national constitutionalization of human rights. Recognize the significance and function of the National Level Human Rights Commission in a nation. Learn about the nature, powers, and structural flaws of the NHRC in India; appreciate its accomplishments despite the Act that established it having a limited understanding of what constitutes a human right[1], [2].

India is dedicated to ensuring and defending all justifiable rights and freedoms of the populace in accordance with the duties of an established and accountable democracy. India has put in earnest efforts to safeguard and advance human rights. Diverse strategies for defending human rights have been created in India. The elements of the Indian polity that work to safeguard and advance people's human rights include a written Constitution that incorporates fundamental rights, a pluralist and accountable parliament, an executive that ultimately answers to the authority of elected representatives, and an independent, impartial judiciary. Human rights abuses have been continuously reported throughout India's post-independence history. But up until the 1990s, the Indian government gave little thought to advancing and defending human rights. As a result, apart from the provisions of the constitution, there was no official organization that could effectively protect human rights.

Gross human rights violations occurred in India throughout the ninth decade of the 20th century. Lethal human rights violations were caused by insurgency and counterinsurgency operations in the states of Punjab, Kashmir, and the North-East. Both domestically and internationally, the Indian government came under fire for incidences of human rights violations. Additionally, India has embraced the new globalization-based economic strategy since 1991. The Western world forced the Indian government to give the problem of the promotion and preservation of human rights greater earnest consideration. In 1993, the World Conference on Human Rights was held in Vienna concurrently with all of these events by the United Nations. At the Vienna Conference, India was also represented. All of the Conference's participants agreed to establish national human rights commissioners to ensure the advancement and defence of human rights at the domestic level[3], [4].

All three national commissions—the National Commission for Women, the National Commission for Scheduled Tribes, and the National Commission for the Scheduled Castes—shall be considered members of the commission. There is also a Secretary-General who will serve as the Commission's chief executive officer and perform all tasks assigned to that person by the commission. The Commission's main office is in Delhi, and it is permitted to open other offices around India with the Central Government's prior consent. The terms and conditions of service of members, vacancies, etc., not to invalidate the Commission's proceedings, the procedure to be regulated by the Commission, the officers, and other staff of the Commission are all covered by the appointment of the Chairperson and other Members as well as other provisions relating to the removal of a member of the Commission, the term of office of Members, a member's ability to serve as Chairperson or to carry out his duties in certain situations. are thoroughly covered by Sections 4 to 11 of the Act.

Characteristics, authority, and duties of the commission

The Commission has a number of authorities under Section 12 of the Act, including:

- investigate complaints of (i) human rights violations or aiding in such violations; or (ii) carelessness in the prevention of such violations by a public official, either on its own initiative or in response to a petition made by the victim or a representative on his behalf, or according to a directive or order of any court;
- with the consent of the court in question, intervene in any case involving a claim of a violation of human rights;
- visit any jail or other institution under the control of the State Government where people are detained or lodged for treatment, reformation, or protection, regardless of any other law currently in effect, to study the living conditions of the inmates and make recommendations to the government;
- Evaluate the protections established by or according to the Constitution or any already in effect legislation for the protection of human rights and suggest actions for their efficient implementation;
- examine the factors—including acts of terrorism—that prevent people from exercising their human rights and suggest suitable corrective actions;
- research human rights treaties and other international instruments and provide suggestions for their successful implementation;
- carry out and encourage human rights-related research;



- promote human rights literacy among diverse societal groups and raise knowledge of the protections provided for these rights via publications, the media, seminars, and other channels;
- support nongovernmental organizations' and institutions' initiatives in the human rights sector;
- Any other duties it may see essential for the advancement of human rights.

It adopts an independent stance because Parliament and It are dedicated to provide independent opinions on matters within the context of the Constitution or in current laws that are being applied to safeguard human rights. According to the Act, it has the same ability to provide temporary relief as a civil court. It has the power to suggest the payment of damages or compensation. Every year, it gets over 70 thousand complaints, which attests to both its reliability and the public's faith in it. It also includes a special system that allows it to keep track of how certain suggestions are being followed. However, the Commission cannot fully carry out the mandate set out in the Act of 1993 without the development of strong relationships with NGOs. Therefore, it is more than simply a question of complying with Section 12(i) of the Act for the Commission. The Commission acknowledged that the cause of human rights stands to benefit significantly from the assistance in practice as well as the constructive criticism that NGOs and the Commission may provide to their ongoing dialogue and relationship development. The Commission further acknowledges that encouraging NGOs' efforts, whether they are national or international, is beneficial to the nation because the promotion and protection of human rights depend on the courage and dedication that NGOs bring to their work. As a result, the Commission has been looking into complaints and NGOs from the outset. NGOs have bravely come forward with evidence of wrongdoing in regard to particular complaints made to the Commission in a number of locations during visits by the Commission[5], [6].

## DISCUSSION

The Indian government was not really serious about creating the Human Rights Commission, and it had to do so in response to pressure and criticism from the world community. This has been proven as an evident fact. Therefore, it is not unexpected that the "Protection of Human Rights Act 1993" itself has several flaws and limitations. It has a very limited perspective on human rights. It has been given a pretty flimsy framework to work off of. The Commission must function under a number of restricting criteria set out by the PHRA of 1993. It helps to have a general understanding of the NHRC's mission and make sense of how it operates in relation to custodial fatalities. To function successfully, a National Human Rights Commission has to have a clearly defined area of authority. The duties allocated to the NHRC should be clear to both the organization and the community it serves. It may also avoid potential jurisdictional problems with other independent bodies or with the courts thanks to a well-crafted mandate. But regrettably, the Indian NHRC lacks all these characteristics[6], [7].

### Blocking and Biased Composition

The NHRC has a strong leadership team since three of its five members are judges. The National Commission for Women, National Commission for Schedule Castes, and National Commission for Minorities Chairpersons are regarded as (ex-officio) members of the Commission. The chances to investigate allegations of deaths in custody of minorities, SCs,

STs, and women jointly and collaboratively seem to have been squandered, however, since there is no cooperation between the NHRC and these other national bodies. As the Act only permits a former Chief Justice of the Supreme Court to be appointed as the Chairperson of the Commission, this composition lends the NHRC some legitimacy, solemnity, and credibility, but it also draws criticism for being a "retired persons' den." Surprisingly, neither a woman nor a human rights activist has been chosen under the criterion "who have knowledge and practical experience in matters relating to human rights." The remaining two members are to be men and women.

Along with the NHRC, the PHRA of 1993 establishes provisions for the creation of State Human Rights Commissions. The PHRA's goal is to create a federal human rights culture that includes an intricate network of state human rights commissioners. However, in the case of the NHRC, this "complex web" of federal and several state human rights commissioners causes a great deal of misunderstanding among the general public over jurisdiction.

This is so because there is no required hierarchical link and the PHRA does not explicitly define the jurisdictional boundaries between national and state commissions. The State Human Rights body shall not investigate any subject that is already under investigation by the National Human Rights Commission or any other body. The NHRC is also prohibited from looking into any case that is being heard by a State body or another body[8], [9].

### **Exclusive Jurisdiction**

The NHRC only has a few strict requirements. The PHRA 1993, as previously mentioned, adopts a very limited definition of human rights, stating that they are "the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution of India or embodied in the International Covenants on Civil and Political Rights and the International Covenants on Economic, Social and Cultural Rights and enforceable by the courts in India." As a result, the main drawback of this statutory definition appears to be that it does not adequately address the issue of discrimination against In terms of how domestic law and international treaty law interact, India follows a dualistic structure. The Indian Parliament must pass domestic law containing the Covenants' rights in order for the Commission to fulfill its obligation to uphold them. India has also ratified a number of other international agreements, but because to this narrow definition, the NHRC's authority is confined to the two Covenants and the Constitution.

The widely recognized "UN Declaration on the Protection of all Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" and the "UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment" are not requirements for the NHRC to acknowledge in relation to custodial violence and deaths. In addition to having a limited concept of human rights, the NHRC does not have any authority over the Indian military services. The accusations against them cannot be looked upon by the NHRC. It must request a report from the Central Government and then offer the government its suggestions about the report. Although there are frequent reports of people dying while in the custody of the Indian Armed Forces in the terrorism- and insurgency-prone regions of Kashmir and North-East India, the NHRC has been unable to consider complaints of deaths in the custody of the Para-Military forces due to that restriction.



### **Ineffective Visits to Prisons**

Any prison or other facility run by the state government that houses people who are being held or housed for the purpose of treatment, reformation, or protection is open to inspection by the NHRC. However, the NHRC is permitted to visit these institutions with prior notification to the state government in question. The need that visitors to any jail or other facility under the state government's authority provide prior notice to the authorities completely negates the goal of the prison reforms. Second, the NHRC only sometimes pays a visit to the prisons in every State. The NHRC is unable to effectively monitor and address various inefficiencies that contribute to custodial fatalities in prisons, including unsanitary meals, unsafe water and sanitation systems, dirty kitchens, wards, and toilets, a lack of adequate medical facilities, etc[10].

### **Failure to Register Complaints**

After a year has passed after the purported date of the alleged human rights violation, the NHRC does not investigate any new cases. The NHRC has rejected multiple allegations of custodial fatalities on the basis of this rule. The majority of the time, victims are unable to report the death of a family member or close friend while in detention because of the accused's threats or pressure, particularly when the offender is a senior and prominent police officer. However, this does not imply that after a year their grievances lose the right to justice. However, in the NHRC, allegations of human rights breaches, including fatalities in custody, are considered to be more valid and reasonable and to have expired after a year.

### **Only an Advisory Status is available**

The PHRA 1993 limits the NHRC's ability to enforce by giving it civil court-like investigation authority. The NHRC's authority under Section 18 of the PHRA is limited to recommendations. Therefore, the decision of whether to follow the NHRC's recommendations or not ultimately lies with the governments of the involved States. The Central government and the State governments have both been chastised by the NHRC for unnecessarily delaying or failing to execute its recommendations.

### **Hypocritical Response to Deaths Occurring While in Court Custody**

According to statistical information provided by the NHRC in its yearly reports, the overall number of complaints about fatalities in police custody is more than 6 times higher than the total number of complaints about deaths in court custody. It claims that fatalities in judicial custody account for 86% of all complaints of custodial deaths received by the NHRC. However, it's noteworthy to note that the NHRC maintains that fatalities while in prison are rather uncommon, and as a result, in 2003, the necessity for videotaping the post-mortem examination in instances of deaths while in custody was removed. It reveals the duplicity of NHRC's vow to prevent and reduce fatalities in custody.

### **NHRC's Function and Success**

Despite the act's limited perspective on human rights, the Commission may nonetheless be proud of some of its accomplishments. The NHRC has dealt extensively with problems pertaining to the implementation of human rights since its founding. The NHRC has developed a solid reputation for impartiality and honesty. Campaigns against HIV patient discrimination are among the NHRC's well-known efforts. Additionally, it has requested that

all State Governments disclose any instances of rapes or deaths in custody within 24 hours of the incidence, failing which it would be deemed that an effort was made to cover up the crime. The Commission made a significant intervention about Nithari Village in Noida, UP, where children were sexually assaulted and killed. NHRC recently assisted in exposing a multi-crore pension fraud in Haryana. Additionally, it is researching the tragedy of Chattisgarh's sterilization.

The Central Government has signed the UN Convention against Torture and Other Forms of Cruel, Inhuman, and Degrading Punishment or Treatment thanks to the efforts of NHRC. It has drawn attention to the issue of custodial fatalities and taken action to ensure that they are not covered up by state authorities and that those responsible are held accountable for their commission and omission of crimes. The NHRC has also contributed to the creation of specialized human rights training modules for use in educational and training institutions. The Commission has proposed to the University Grants Commission (UGC) the creation of a Curriculum development committee for human rights education at different institutions as part of the promotion of human rights education. In response to this recommendation, the UGC established the Curriculum Development Committee on Human Rights and Duties Education, which was presided over by Honourable Justice V.S. Malimath. This committee produced the Model Curriculum for Human Rights and Duties in 2001, which was then implemented in universities and colleges all over the nation. Additionally, it includes the latest document on human rights.

The NHRC has faced controversy despite its great accomplishments. For instance, consider the recent Batla House encounter scenario. The Commission's report praising the Delhi Police received criticism from a number of sources. It was claimed that the Commission did not carry out a thorough investigation since its representatives never visited the scene and submitted a report based only on the police account.

It is apparent that the NHRC is a watchdog with little powers as you have learned during the class. To advance and defend human rights, it seems as if a giant is standing tall in documents. But a careful examination reveals it to be a paper-based behemoth without the necessary and anticipated firm capabilities. Unquestionably, the NHRC's contribution to reducing the number of custody fatalities is acceptable given that it was only through their efforts that all instances of custodial deaths could be properly reported and investigated. The issue has been reduced thanks to the NHRC's recommendations for changes to how the police, lockups, detention facilities, and prisons operate. As monetary compensations are suggested in almost every instance, the complainants, particularly the kin/relatives of the dead in situations of custodial deaths, are able to get acceptable relief. However, both Indian civil society and international humanitarian law anticipate much more from an NHRC than just reporting, looking into, and making optional recommendations about occurrences of custodial deaths. The NHRC stands out as one of the most watchful and tenacious State organizations to combat human rights abuses in India, particularly the steadily rising instances of custodial killings. However, the NHRC has been shown to be an inadequate government agency to stop custodial killings in India due to its limited scope, biased and obstructed makeup, and careless working. The NHRC is anticipated to adopt a more expansive definition of human rights that include all significant international agreements dealing to torture and/or fatalities in custody, including the UN Convention against Torture. It has to be rewritten with a clear representation of genuine human rights defenders and

members of civil society. Additionally, it shouldn't act as an agent of the Indian State by offering solely monetary assistance to the family or relatives of the dead in order to bury down complaints of custodial deaths and quiet them. Instead, it should take a scientific approach to address the issue of custodial fatalities by looking into its underlying causes, taking steps to stop them from happening again, and providing adequate justice to the victims.

Human Rights Commissions are innovative methods for defending human rights at the national level. They are the result of international efforts led by the United Nations. The worldwide movement to include human rights in national constitutions has had an impact on this invention. The importance and duties of National Level Human Rights Commissions (NHRCs) in the context of different countries are examined in this investigation, with an emphasis on India. Understanding NHRCs' nature, authority, and capabilities allows us to evaluate how effectively they can address human rights breaches.

### **Analyzing India's NHRCs' Relevance**

India's constitutional structure, which includes basic rights, a parliamentary system, and an independent judiciary, serves as an example of its dedication to safeguarding human rights. However, the necessity to confront human rights breaches more effectively became more pressing, which led to the creation of NHRCs. After post-independence human rights complaints revealed the absence of established mechanisms to protect human rights, this became clear.

### **Nature, Authority, and Purpose of NHRCs as They Change**

In order to guarantee the defence and advancement of human rights, NHRCs are given a special set of responsibilities. These include a broad variety of duties, including investigating abuses of human rights and interfering in court cases involving such violations. Visits to prisons and other facilities, reviews of safety measures, campaigns to increase awareness of human rights, and support for NGOs all play a significant role.

The belief that civil society and political entities must both actively participate in upholding our common commitment to human rights supports the creation of NHRCs. The make-up of the Indian NHRC indicates several fundamental flaws. Despite being powerful, its representation falls short of covering all key fields, which might leave gaps in how it addresses abuses of human rights. Furthermore, the Indian legal definition of human rights may seem limited since it leaves out important international agreements that might greatly expand the NHRC's authority. Nevertheless, the accomplishments of the NHRC should be commended. It has supported anti-discrimination initiatives, mandated prompt reporting of fatalities in custody, and revealed corruption and power abuse. It has pushed for changes in a number of areas, such as how jails and police departments operate. However, the controversy surrounding its investigations highlights the need for more authority and control to guarantee objective results.

## **CONCLUSION**

NHRCs are essential instruments for defending human rights. Even while the Indian NHRC has made progress in addressing abuses of human rights, its shortcomings are clear. The commission's function may be strengthened by broadening the concept of human rights,

reexamining its membership, and boosting its enforcement capabilities. The NHRC is most successful when it actively works to prevent breaches and see that victims get justice, rather than merely reporting and making recommendations. To do this, the NHRC must develop into a body that works with both state agencies and civil society organizations and targets human rights breaches from all angles.

Then and only then will it be able to achieve all of its revolutionary potential in fostering a culture of upholding human rights and guaranteeing justice for everyone. The NHRC's contributions to resolving human rights breaches in India are clear, but it is important to recognize their limits as well.

The influence of NHRCs may be considerably increased by broadening the concept of human rights, having a diverse membership, and having stronger enforcement capabilities. The NHRCs must transform from being purely advisory organizations to pro-active changemakers. They should actively work to avoid breaches and ensure that victims get justice in addition to conducting investigations and filing reports.

The requirement for a thorough and team-based approach is highlighted by the critique of NHRCs. NHRCs must actively interact with civil society, international agreements, and government agencies in order to realize their full potential. NHRCs may really act as change catalysts by adopting a larger understanding of human rights and addressing structural inadequacies, fostering a culture of human rights protection and accountability in nations all over the globe.

## REFERENCES:

- [1] K. Setiawan, "From hope to disillusion: The paradox of komnas ham, the Indonesian National human rights commission," *Bijdr. tot Taal-, Land- en Volkenkd.*, 2016, doi: 10.1163/22134379-17201002.
- [2] A. Chalabi, "Australia's national human rights action plans: Traditional or modern model of planning?," *Int. J. Hum. Rights*, 2016, doi: 10.1080/13642987.2016.1196191.
- [3] K. Linos and T. Pegram, "Architects of their own making: National human rights institutions and the united nations," *Hum. Rights Q.*, 2016, doi: 10.1353/hrq.2016.0059.
- [4] J. Liljeblad, "The 2014 enabling law of the myanmar national human rights commission and the un Paris principles: A critical evaluation," *J. East Asia Int. Law*, 2016, doi: 10.14330/jeail.2016.9.2.06.
- [5] B. Rudolf, "Human Rights in Germany – A View from Germany's National Human Rights Institution," *Int. J. Leg. Inf.*, 2016, doi: 10.1017/jli.2016.7.
- [6] E. Shor, I. Filkobski, P. Ben-Nun Bloom, H. Alkilabi, and W. Su, "Does counterterrorist legislation hurt human rights practices? A longitudinal cross-national analysis," *Soc. Sci. Res.*, 2016, doi: 10.1016/j.ssresearch.2015.12.007.
- [7] E. W. Sandlin, "Competing Concerns: Balancing Human Rights and National Security in US Economic Aid Allocation," *Hum. Rights Rev.*, 2016, doi: 10.1007/s12142-016-0426-2.

- [8] G. de Beco, "Transition to inclusive education systems according to the convention on the rights of persons with disabilities," *Nord. J. Hum. Rights*, 2016, doi: 10.1080/18918131.2016.1153183.
- [9] M. Scheinin, "International Human Rights Law," in *A Companion to European Union Law and International Law*, 2016. doi: 10.1002/9781119037712.ch29.
- [10] C. Methven O'Brien, A. Mehra, S. Blackwell, and C. B. Poulsen-Hansen, "National Action Plans: Current Status and Future Prospects for a New Business and Human Rights Governance Tool," *Business and Human Rights Journal*. 2016. doi: 10.1017/bhj.2015.14.

## CHAPTER 6

### EMPOWERING VULNERABLE GROUPS: SAFEGUARDING MINORITY, WOMEN, AND CHILD RIGHTS IN INDIA

Amit Verma, Associate Professor

College of Law, TeerthankerMahaveer University, Moradabad, Uttar Pradesh, India,

Email Id- amitverma2@gmail.com

#### ABSTRACT:

This study examines the need of giving vulnerable groups' rights first priority within the framework of human rights, highlighting the relevance of preserving the rights of minorities, women, and children. Even while the fundamental human rights principles are crucial, there are times when certain groups need extra care because of their particular vulnerabilities. This underlines the need to solve their particular difficulties rather than elevating these groups above others. In this sense, vulnerability refers to a greater susceptibility to discrimination and human rights abuses. One of the main objectives of human rights instruments is to safeguard these vulnerable people. Minorities, women, and children are among the populations that need extra protection. This essay examines the laws that guarantee their equal and effective enjoyment of human rights within the context of the Indian constitutional system. States are often judged by the rights they uphold for their citizens, particularly the weaker members of society whose rights are frequently infringed. In light of this context, you will learn about the numerous legal rights and safeguards offered to minorities, women, and children in India in the current lesson. Recognize the need of giving vulnerable groups including minorities, women, and children additional protections and rights. How these measures will enable these groups to fully enjoy their role as equal members of society; and Recognize the significance of adopting methods and including positive discrimination rules.

**KEYWORDS:** Culture, Discrimination, Human Rights, Indian Constitution, Rights of Minorities.

#### INTRODUCTION

The idea of human rights, which is based on universality and equality, emphasizes the need to provide each person with equal protection and dignity. But when you take into account the various difficulties that various groups confront, it becomes clear that special care must be taken to safeguard the rights of those who are more vulnerable to abuses. The rights of three especially disadvantaged groups in India are covered in this essay: minorities, women, and children. In the past, these groups have experienced discrimination and human rights breaches because of things like age, gender, and religion. The Indian constitution acknowledges the need for focused actions to protect their rights while preserving the ideals of equality. In order to promote a more inclusive and fair society, this essay examines the constitutional protections and global frameworks that protect various groups. Despite the need to see human rights in a global perspective and not only as a concern for the underprivileged, there are times when certain groups need extra care to protect their human rights. This does not imply that certain groups are given preferential treatment[1]–[3]. The unpleasant truth that certain groups are more prone than others to experience discrimination or other human rights abuses is referred to as their vulnerability. Therefore, the goal of



human rights instruments is to safeguard individuals who are at risk of having their basic human rights violated. Certain groups need special protection in order to exercise their human rights equally and effectively because they are weak and vulnerable or have a history of being wronged for different reasons. The Committee on Economic, Social, and Cultural Rights, for instance, has repeatedly emphasized that the International Covenant on Economic, Social, and Cultural Rights (ICESCR) is a vehicle for the protection of vulnerable groups within society, requiring states to extend special protective measures to them and ensure some degree of priority consideration, even in the face of severe resource constraints. Human rights instruments frequently set out additional guarantees for people belonging to these groups. Minorities, Women, and Children are among the 13 vulnerable groups who are either subject to institutional discrimination or have trouble defending themselves. Consequently, they need specific defence.

Minorities of one kind or another exist in almost every nation. According to UNICEF, there are more than 200 nations and territories with significant ethnic, religious, or linguistic minorities, and there are an estimated 5,000 minority groups worldwide.

A total of 900 million individuals, including 359 million who face limitations on their ability to practice their religion, are members of groups that are disadvantaged due to their identification. In many nations, minorities are among the most disadvantaged groups. Although the Indian Constitution does not define the term "minority" and only uses the term "minorities" to refer to individuals "based on religion or language," the Constitution clearly outlines the rights of minorities.

The position of women is often considered as lower and submissive to that of men in civilizations all throughout the globe. These presumptions about the "natural order" of humanity have served as the foundation for how societies have patterned gender roles. The subjugation of women to men is reflected in historical societal institutions.

Human rights principles recommend that aid be given to the vulnerable group if one group seems to be at a disadvantage or be the target of discrimination in relation to another group. It is not enough to just state that women have the same rights as men. As a result, women's human rights are given more weight in the framework of human rights, and the Indian Constitution includes several unique clauses that provide women more protection[4], [5].

Children have a unique role in the defence of human rights possibly even more so than women. Children are easily vulnerable to abuse and neglect and often lack the tools necessary to protect themselves from these wrongs. These wrongs may take many different forms, including child labour, child trafficking, commercial sexual exploitation, and many other types of violence and abuse.

The majority of child workers under the age of 14 are found in India. Some kid populations, like those of sex workers and street children, experience extra types of prejudice. There are reports of a significant amount of child trafficking to the nearby nations.

Children being trafficked continues to be a major issue in India. Evidence reveals that children in need of particular protection belong to populations experiencing poverty and social exclusion, such as scheduled castes and tribes, and the destitute (UNICEF, India). Systematic statistics and information on child safety concerns are still not always accessible. As a result, the Indian constitution outlines children's rights and forbids specific actions that



breach such rights. The rights of minorities, women, and children as guaranteed by the Indian Constitution are covered in the parts that follow.

### Indian minorities and their rights

A relatively small group of individuals who vary from others in race, religion, language, or political ideology is what the Oxford Dictionary means by "minority" as defined as "a smaller number or part; a number or part representing less than half of the whole." The United Nations Human Rights Commission designated a special subcommittee on the protection of minority rights in 1946. This committee defined the term "minority" as "non dominant groups in a population which possess a wish to preserve stable ethnic, religious, and linguistic traditions or characteristics markedly different from those of the rest of the population."

### India's many minority groups

The preservation of the rights of minorities in India is specifically guaranteed by just two particular articles, Articles 29 and 30, in the whole Indian Constitution. According to Article 29, every group of individuals living on Indian territory, or any portion thereof, with a unique language, script, or culture has the right to preserve it. According to Article 30, minorities have the freedom to create and run educational institutions of their choosing, regardless of their faith or language. As a result, three separate types of minorities—linguistic, religious, and cultural—have been mentioned in these publications. Language or religious differences are clear, but it might be difficult to explain what is meant by "culture." Many definitions place emphasis on the concept that culture is a collective term for human communities' artistic, religious, social, and cultural accomplishments, including traditions, conventions, and behavioural patterns, all of which are connected by shared ideals and principles. Values are the foundation of a culture and give it its unique character and tone. Because of the wide cultural diversity, it might be difficult to distinguish between the mainstream and minority cultures. Each community or religious group also had a distinctive culture and way of life that was centred on their own faith. Therefore, it is debatable if Indian culture as a whole exists. But when it comes to defining a community's culture, language and religion are two factors that are particularly important. Therefore, it is important to state that the Indian constitution only recognizes two sorts of minorities based on language and religion, as well as those based on both separately and together. This is to be more exact and scientific[6], [7].

### Minorities in religion

Since more than 80% [of the] population of the nation practices Hinduism, any individuals who practice a faith other than Hinduism are regarded as national religious minorities in India. Muslim Americans make up the biggest minority in the country. The size of other minorities is substantially smaller. The Christians (2.34%) and Sikhs (1.9%) are the next largest religious groupings after Muslims, but all the other faiths are still far smaller. There is no national majority for linguistic minorities, hence state/union territory governments are primarily responsible for determining the minorities' status. The majority of people are Muslims in the state of Jammu and Kashmir and the union territory of Lakshadweep, which is significant in a federal system like ours. Christians predominate in the states of Meghalaya, Mizoram, and Nagaland. In the state of Punjab, Sikhs make up the majority of the population. In no other state/UT does any other religious minority have a majority.

## Minority Languages

The Eighth Schedule of the Indian Constitution lists 18 recognized regional languages, with Hindi as the National/recognized language. The majority of Indian States employ regional languages for administrative functions. Malayalam, for instance, is spoken in Kerala, Tamil in Tamil Nadu, Hindi in Rajasthan, Telugu in Andhra Pradesh, Marathi in Maharashtra, Kannada in Karnataka, Gujarati in Gujarat, Bengali in West Bengal, Oriya in Orissa, Assamese in Assam, Punjabi in Punjab, Haryana, Uttar Pradesh, Bihar, Madhya Pradesh, and Himachal Pradesh, and Urdu in Jammu and Kashmir. Language minorities now exist in each State as a result of the majority of these languages being recognized as State languages. The phrase "Linguistic Minorities" is defined as "minorities who reside in the territory of India or any part thereof and who have their own unique language or script." The minority group's native tongue need not be one of the 18 languages listed in the constitution's eighth schedule. In other words, a "Linguistic Minority" at the state level refers to any group of individuals whose home tongue is distinct from the state's primary language, and at the district and taluk levels, distinct from the respective areas' primary languages. From this definition, it is clear that the phrase "Linguistic Minorities" has a broad and inclusive meaning[8], [9].

## Minorities' Rights

As stated in the Universal Declaration of Human Rights of 1948 and its two International Covenants of 1966, "all human beings are equal in dignity and rights" and "all forms of discrimination, including racial, religious, and other forms, are prohibited." All forms of discrimination based on religion are prohibited under the UN Declaration against All Forms of Religious Discrimination and Intolerance of 1981. The 1992 UN Declaration on the Rights of Minorities calls on states to protect minorities' existence and identity within their own borders and foster environments that will support that identity. It also urges states to ensure that people who identify as minorities can fully and effectively exercise their human rights and fundamental freedoms without facing any discrimination. In India, Articles 15 and 16 of the Constitution forbid the state from discriminating against citizens on the basis of religion, race, caste, sex, descent, place of birth, residence, or any combination of these grounds. This prohibition applies both generally (Article 15) and in situations involving employment or appointment to public office (Article 16). The provisions of these two articles do, however, adequately recognize the reality that there had been a significant gap in the social and educational standing of various groups in a society that was essentially caste-based, bound by custom, and marked by widespread poverty and illiteracy.

Obviously, if everyone had been treated equally, regardless of their individual disabilities, those disabilities would have continued to exist. Only among equals can there be equality. Not perfect equality but relative equality is what is meant by equality. Therefore, discrimination that benefits the weak, the disadvantaged, and the backward is permitted under the Constitution. While allowing discrimination with justification, it forbids discrimination without one. Reasonable categorization with a connection to things that are legally acceptable is required for discrimination with reasons. For women, children, "any socially and educationally backward class of citizens," scheduled castes, and scheduled tribes, the state is allowed to establish "any special provisions" under Article 15. The Constitution (93rd Amendment) Act of 2005 recently amended Article 15 to give the state the authority to enact

special legal provisions for the admission of socially or educationally disadvantaged classes of citizens or scheduled castes or tribes to educational institutions, including private educational institutions, whether funded by the state or not and aside from minority educational institutions. The enabling proviso in Article 16 also allows the state to make arrangements for the reserving of positions for "any backward class of citizens which, in the opinion of the state, is not adequately represented in the services under the state" in the appointment of employees. Notably, Article 16 refers to "any backward class of citizens," whereas Article 15 refers to "any socially and educationally backward class of citizens" as well as scheduled castes and scheduled tribes without defining backwardness in terms of social and educational characteristics and without making a specific mention of scheduled castes/scheduled tribes. While Articles 15 and 16 provide the state the authority to create specific protections for underprivileged "classes," they only prohibit discrimination based on "caste" or "religion"[10]."

Although minorities are not mentioned by name in Article 29's wording, it is clear that the provision is meant to safeguard the cultural and linguistic distinctiveness of minorities. Its reach isn't restricted to minorities, either. "Any section of the citizens residing in the territory of India" are eligible for protection under Article 29, which may very well refer to the majority. India, on the other hand, is a vibrant amalgam of many different races, religions, sects, languages, scripts, cultures, and customs. It seems sense that minorities, regardless of their basis in religion or language, are committed to maintaining and promoting their distinctive religious, cultural, and linguistic legacy. Exactly that is guaranteed under Article 29.

Article 30 is a minority-specific clause that safeguards minorities' ability to form and run educational institutions. The Constitution (44th Amendment) Act of 1978 added Clause (1A) to Article 30, which states that "all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice." It also states that "in making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the state shall ensure that" In addition, Article 30 states that "the state shall not discriminate against any educational institution on the ground that it is managed by a minority, whether based on religion or language, in granting aid to educational institutions."

It is important to note that minority educational institutions mentioned in Article 30's clause (1) are not covered by Article 15(4) of the Constitution, which allows the state to make laws for the advancement of any socially and educationally disadvantaged classes of citizens or scheduled castes/scheduled tribes with regard to their admission to educational institutions (including private educational institutions), whether they are assisted or unaided. It seems clear that Article 30 of the Constitution was designed to provide minorities protection from any legislative or executive interference with their ability to create and run educational institutions. Without such a clear provision, it could have been feasible for the state to implement legislation under Article 19's paragraph 6 to govern or regulate educational institutions founded by linguistic or religious minorities.

### **Female rights**

In India now, women make up 48.5% of the population. Women should be accorded the same rights and level of respect as men since they are equally capable of doing things that men can.

Human rights have, however, historically been predicated on gender, with most of them being reserved for males alone. Women's rights consequently assist women in obtaining the same rights as men. Since the country's independence, several laws have been put in place to ameliorate the social status of women and provide them with a platform where they may realize their potential and make a good contribution to the development of their nation. It is a reality that every nation's standing and progress in the modern day rely on how well off its women are socioeconomically. The laws that increased the worth of modern women may be grouped into two categories:

- Constitution-related rules
- Legal requirements

## CONCLUSION

In this manner, both the Indian Constitution and numerous legislative measures that have been periodically formed have served to protect the rights of the most vulnerable groups in Indian society. Even if everything is in writing, it is crucial to pay attention to implementation and monitoring. National level commissions for minorities, women, and children were established to fulfill these obligations. In order to carry out their duties, these commissions collaborate closely with the relevant ministries and NGOs. Additionally, a number of policies have been developed with each of these vulnerable groups in mind.

As a result, each of the sections mentioned above comprises a unique subject in and of itself, necessitating extensive explanation of several connected concerns. However, the most important rights and provisions have been covered while taking into account the appropriate duration of the class. It is crucial to recognize that, in the complicated world of human rights, vulnerability does not indicate inferiority or superiority, but rather the particular difficulties that certain groups encounter. A fair and equal society is built on the rights of minorities, women, and kids. These communities must be protected and given equal access to opportunity and dignity, according to the Indian constitution and international human rights agreements. Respecting the rights of marginalized groups is a commitment to redressing previous injustices and avoiding new ones rather than an act of preferential treatment. In our collaborative efforts to create a society that really respects and maintains the rights of all of its members, the empowerment of minorities, women, and children should continue to be at the forefront as society develops.

## REFERENCES:

- [1] K. Linos and T. Pegram, "Architects of their own making: National human rights institutions and the united nations," *Hum. Rights Q.*, 2016, doi: 10.1353/hrq.2016.0059.
- [2] J. Liljeblad, "The 2014 enabling law of the myanmar national human rights commission and the un Paris principles: A critical evaluation," *J. East Asia Int. Law*, 2016, doi: 10.14330/jeail.2016.9.2.06.
- [3] L. G. M. K. I. G. P. Ariana, "Kedudukan Komisi Nasional Hak Asasi Manusia Sebagai Lembaga Negara Independen Dalam Sistem Ketatanegaraan Indonesia," *Kertha Negara*, 2016.

- [4] A. E. C. Struthers, "Human rights: A topic too controversial for mainstream education?," *Hum. Rights Law Rev.*, 2016, doi: 10.1093/hrlr/ngv040.
- [5] B. Rudolf, "Human Rights in Germany – A View from Germany's National Human Rights Institution," *Int. J. Leg. Inf.*, 2016, doi: 10.1017/jli.2016.7.
- [6] S. Hincapie Jimenez and J. A. Lopez Pacheco, "Cycles of Mobilization and Human Rights Crises: Collective Action of National NGOs and Human Rights in Mexico," *Rev. Estud. Soc.*, 2016.
- [7] J. Rossi, "Sovereign Debt Restructuring, National Development and Human Rights," *Sur Int. J. Hum. Rights*, 2016.
- [8] E. A. Wilson, "Restrictive national laws affecting human rights civil society organizations: A legal analysis," *Journal of Human Rights Practice*. 2016. doi: 10.1093/jhuman/huw018.
- [9] G. de Beco, "Transition to inclusive education systems according to the convention on the rights of persons with disabilities," *Nord. J. Hum. Rights*, 2016, doi: 10.1080/18918131.2016.1153183.
- [10] J. O. Adeyeri and J. O. Ogunniyi, "Conflict between national interest and human rights: Britain's policy towards African immigrants, 1960 - 2013," *Africa Dev.*, 2016.

## CHAPTER 7

### ENSURING DIGNITY AND RIGHTS: CONSTITUTIONAL SAFEGUARDS FOR WOMEN, CHILDREN, AND MINORITIES IN INDIA

---

Sourabh Batar, Assistant Professor  
College of Law, TeerthankerMahaveer University, Moradabad, Uttar Pradesh, India,  
Email Id- battarsourabh@gmail.com

#### ABSTRACT:

This article examines the legal protections and constitutional measures put in place in India to defend minorities' rights, women's rights, and children's rights. It explores the importance of fairness, lack of prejudice, and focused actions to help these disadvantaged people. The debate focuses on significant constitutional clauses and important legislation that support safeguarding the welfare and empowerment of minorities, women, and children. This article examines the constitutional clauses put in place to protect minorities, women, and children's rights in India. It draws attention to how important equal protection, zero tolerance for discrimination, and particular protections for these vulnerable groups are. The article examines sections of the Indian Constitution and also looks at certain legislation intended to protect their rights. The topic of women's equality, child protection, and actions against crimes against these groups are all discussed.

#### KEYWORDS:

Child Protection, Indian Constitution, Minorities, Women's Rights.

#### INTRODUCTION

Groups who are susceptible to discrimination and rights abuses are given special consideration within the context of human rights. The Indian Constitution acknowledges the need of treating minorities, women, and children fairly. Equal protection under the law is guaranteed under articles 14 and 15, respectively, and discrimination is forbidden. In recognition of the historically disadvantaged status of women and children, Article 15(3) gives the state the power to legislate additional protections for these groups. Equal job possibilities are provided by Article 16, and Article 39 stresses equal rights to a means of subsistence and income for men and women. Employers are required under Article 42 to provide fair and compassionate working conditions, notably during maternity leave. Women are given seats in local government under Article 243. Various legislative measures also address the particular difficulties that these groups encounter [1], [2]. To guarantee that all women have respect for themselves and their own dignity, several measures have been included to the constitution. And in this part, we talk about the same thing. On Indian soil, equality before the law or equal protection under the law is guaranteed under Article 14 of the Indian Constitution. This crucial clause gives women the same legal protection as males against any offence that has a female focus. The creation of different laws and acts to guarantee the protection and enforcement of women's legal rights in India is also made possible by this clause. Additionally, Article 15 of the Indian Constitution forbids discrimination on the basis of race, religion, caste, sex, place of birth, or any combination of these on Indian soil. There was a great deal of prejudice against women in India at the time of



Independence, which article 15 eventually ended. The state has the ability to create any particular provisions for women and children under article 15(3) of the constitution.

Every Indian citizen is guaranteed equal work opportunities under Article 16 of the Indian Constitution. In accordance with article 16, no one shall be denied job opportunities by the State solely because of their religion, race, caste, sex, ancestry, place of birth, or place of residence. Women are now performing excellent job in politics and the private sector, as is evident.

They currently work for the government and organizations that are managed by the government. Additionally, Article 39 of the Indian Constitution guarantees that women will benefit from the guiding principles of public policy.

The term "directive principles of state policy" refers to standards that state governments should follow while drafting legislation. Article 39(a) of the Directive Principles of State Policy guarantees and instructs a state to implement policies that emphasize men and women have an equal right to an adequate means of subsistence, and article 39(c) guarantees equal compensation for equal labour for both men and women[3], [4].

Every employer in India is required by Article 42 of the Indian Constitution to provide fair and compassionate working conditions as well as maternity leave. In actuality, women in corporate workplaces have a terrible status and are mistreated by their superiors and supervisors.

The rules of article 42 are crucial in this situation, and it is now the employer's responsibility to provide everyone in the workforce comfortable working circumstances. In accordance with Article 243 of the Indian Constitution, women are guaranteed seats in gram panchayats.

The ability to participate in arbitration proceedings at the municipal level has increased the social status of women in rural regions. In order to protect Indian women's dignity and social respect, the constitution grants them a few rights. The state governments have also taken a number of legal actions to further defend these fundamental rights, which we shall go into depth about in this post.

### **Legal Protections for Women's Rights**

There was a need for the state and federal governments to create particular legislation to safeguard the safety and protection of women in order to assure adherence to constitutional requirements for their welfare. In order to guarantee that Indian women, live dignified lives, numerous legislative measures have also been implemented by the legislation of India. Parliamentary action refers to and involves the passing of different legislation and statutory measures to advance women's rights and halt violence against them. These actions have shown to be very beneficial for the advancement and security of women in society. With a few exceptions, all crimes are not considered crimes against women, even though women might be victims of every crime committed in society. However, significant legislative measures have been made that have served as weapons for women and assisted them to stand in a society where males predominate. Now, we'll talk about serious crimes against women and the laws that punish offenders.



## DISCUSSION

Several crimes that are classified as crimes against women include:

**Adultery:** In India, adultery is an extremely severe crime against women that mostly targets married women. Adultery is just having a sexual connection voluntarily with a married person other than your husband. Section 497 of the Indian Penal Code, 1860, which deals with the crime of adultery, defines it as the act of a man engaging in sexual activity with a married woman without her husband's permission when such activity does not constitute rape. However, different laws in various nations may define adultery differently. In India, adultery used to be punishable by death solely for males, but now both men and women are equally guilty of the crime. According to section 497, the perpetrator faces a sentence of up to five years in jail, a fine, or a combination of the two. In this scenario, the wife is exempt from punishment for participating in the crime.

**Child Marriage:** Child marriage is a terrible crime against children since it undermines not just their future but also society's morals. Additionally, the physicians have said that a significant contributor to female children's poor health is child marriage. Along with reducing prospects for education and work in the global market, child marriage limits societal growth. It seemed like a burden to society to follow this unofficial tradition. The Law Commission of India took a significant step by establishing the minimum age for marriage at 18 for females and 21 for guys. Primary education became required for all children, and the Indian government also offered free education for females, which was a significant move[5], [6].

**Female feticide:** is the identification and killing of a female fetus before it is born. The most horrific method of murdering women is this. The tradition of female feticide has been practised by society since ancient times, and it is quite disgusting to see that it is still widely practised now, when we believe ourselves to be educated and civilized. The government has made several efforts to educate the populace about the ramifications of this crime. The government runs a number of awareness campaigns to raise public understanding of the harmful social, psychological, and physical effects of this practice. The Pre Conception and Pre Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, stipulates that female feticides are punishable by 3 years in jail and a fine of Rs. 10,000. Female feticide should be punished as murder, according to a recent recommendation made to the central by the Maharashtra government.

**Prostitution and human trafficking:** Human trafficking refers to the import and export of people for sexual purposes. One of the world's largest issues, prostitution harms women in a variety of ways. Prostitution generally refers to the provision of sexual services in exchange for payment. There is a problem with prostitution everywhere in the globe. The Suppression of Immoral Traffic in Women and Girl Act of 1956 and the Immoral Traffic (Prevention Act) of 1956 are only two of the several laws in India that aim to prohibit the crime of prostitution. The state government has created a small number of commissions to safeguard girls and women against this practice.

**Domestic Violence:** For women, domestic violence has turned into a really severe issue. Domestic abuse often refers to the financial, psychological, physical, and emotional exploitation of a woman by her family. Family for domestic violence purposes includes the victim's spouse, his or her parents, siblings, brothers, and occasionally even acquaintances.

We consider ourselves to be educated, speak excessively about morals, ethics, and civilization, and depend on people to share our values in order to build a utopian society, but we often forget that without treating women with the respect they deserve, no country can advance. Domestic abuse is now considered a crime in India under section 498A of the Indian Penal Code, 1860. Domestic violence refers to mistreatment of wives by husbands. Physically, psychologically, monetarily, or emotionally, cruelty may be committed. To address domestic abuse incidents in India, the Domestic Abuse Act, 2005 was created. This law represents a very significant effort in India to criminalize domestic abuse. There were two different types of remedies accessible to women who had experienced domestic abuse prior to the establishment of this legislation. Divorce in civil court and section 498A application in criminal court were these two remedies.

**Rape and murder:** Rape is a particularly dangerous crime against women that is on the rise on a daily basis. Rape and kidnapping instances are now often reported in print and electronic media, which is a very sad development for all of us. The rising number of rape cases is sufficient evidence that we still have extremely low moral standards and need to improve our ability to recognize the worth of all women.

The term "rape" simply refers to sexual contact or penetration of another person without the victim's or other person's permission. Sections 375 and 376 of the Indian Penal Code, 1860 include provisions relating to rape. Section 375 describes the prerequisites needed to establish rape as a crime, whereas Section 376 outlines the associated penalties. According to Section 376, whomever commits the crime of rape will be punished with imprisonment for a time that must not be less than seven (7) years but which shall not be less than life or for a term that shall not be less than ten (10) years, and shall also be subject to fine[7], [8].

**Dowry:** In India, the practice of paying dowry was outlawed by civil law in 1961. In addition, Sections 304B and 498A of the Indian Penal Code, 1860, enable women to complain and request the restoration of their rights from severe harassment by the husband's relatives. One of the main and most significant causes of rising domestic violence is dowry. In India, there are recorded and documented hundreds of dowry deaths each year in addition to incidents of mental trauma. When the dowry is insufficient, the husband and his family often torment the ladies, burn them, and commit themselves. The "Protection of Women from Domestic Violence Act 2005" was established as a legislative measure to combat domestic abuse and safeguard women's rights in light of the rising number of dowry killings.

### **Children's rights**

The most vulnerable group in society is children. The crime committed against children is a global issue. But in India, where 19% of the world's children live and nearly a third of the population is under 18, the issue of crime against children has taken on a grave seriousness. In our nation, crimes and brutalities against children occur every day. The environment around the children should be favourable to their general growth, including being clean and healthy, receiving appropriate parental care, eating a nutritious meal, and attending school. But regrettably, in India, children have been sold and purchased for the flesh trade, killed, abducted, sexually assaulted, raped, and forced into prostitution for girls and drug smuggling for boys. In India, there is a severe and multifaceted issue with juvenile criminality. Estimating the quantity, frequency, or proportion of crimes committed against children in India is very difficult. due to the fact that most crimes against children go undetected. Crimes

against children come in a variety of shapes and sizes. Children's murder, infanticide, rape of children, kidnapping and abandonment, foeticide, aiding suicide, exposure and abandonment, procurement of young girls, buying and selling of girls for prostitution, child marriage, etc. are some of the major types of crime against children. They are also vulnerable to many forms of maltreatment. Neglect, emotional abuse, physical abuse, sexual abuse, and child labour are examples of such abuses. It becomes the top priority to give legal protection against child abuse.

When the Declaration of Geneva was issued in 1924, the concerns surrounding children's rights notably came to light following the First World War. Following that, the United Nations deserves the majority of the credit, and the Declaration of Children's Rights' adoption in 1959 serves as concrete evidence of this. Later, a number of programs were launched on a worldwide scale for the benefit of kids. The adoption of the International Convention on the Rights of the Child on November 20, 1989, marked a significant turning point in this regard by recognizing all of the children's basic rights and serving as the first international legally enforceable document. The International Covenant on Civil and Political Rights (especially Articles 23 and 24) and the International Covenant on Economic, Social, and Cultural Rights (especially Article 10) both recognized the rights of children. India also incorporated certain kid rights from the start and periodically passed additional legislation in accordance with international efforts.

### **Child Rights in India: Constitutional and Legislative Provisions**

Through several clauses in the Fundamental Rights under Part III and the Directive Principles of State Policy under Part IV, the Indian Constitution guarantees the promotion and preservation of children's rights.

The state may make exceptional measures for children under Article 15(3).

According to Article 21A of the Indian Constitution, all children between the ages of 6 and 14 must receive free and mandatory education in the way that the state may specify by legislation.

Forced labour and human trafficking are also prohibited by Article 23.

No kid under the age of fourteen may be hired to work in a factory, mine, or in any other dangerous occupation, according to Article 24.

According to Article 39(e), it is improper to exploit the strength and health of employees, men and women, and young children, and it is also improper for people to be compelled by economic necessity to choose careers that are inappropriate for their age or strength.

According to Article 39(f), youth and childhood are safeguarded against exploitation and against moral and material desertion. Children are also given the chance and resources to grow up in a healthy way, with freedom and dignity.

Article 45 stresses that the state must attempt to offer free and obligatory education for all children until they reach the age of fourteen within a period of 10 years after the start of this constitution.

According to Article 47, one of the state's main responsibilities is to enhance public health and raise the quality of life and nourishment for its citizens.

By designing entrust programs of women's and children's development via Panchayats, Article 243 (g) allows for the institutionalization of child care.

### **Legal Requirements**

#### **2000's Juvenile Justice Act**

The Juvenile Justice Act of 2000 addresses instances involving children in conflict and offers protection when a child's rights are violated. The ultimate goal of this law is to meet children's developmental requirements, particularly the urgent need for action on the problem of rehabilitating abandoned children.

To this end, the legislation created a number of institutions, which are now serving as the functional body. Juvenile Justice Board (JJB) acquires broad authority and functions as a well-trained body under the direction of a judicial magistrate to resolve disputes. Decisions are made at case hearings based on the majority view, and the inquiry is expected to be finished in four months. If a child is above 14 and makes money, they may be punished, but they cannot get the death penalty.

#### **2005's Protection of Child Rights Act**

The Protection of Child Right Act, 2005 was passed to give constitutional status to the creation of a National Commission and numerous State Commissions for protecting the rights of children. It also established child courts to provide swift adjudication of offences against children or violations of their rights, as well as for matters related to these.

#### **Act of 2012 Protecting Children from Sexual Offences**

Sincere efforts were undertaken by the Ministry of Women and Child Development to pass a specific legislation, the Protection of Children from Sexual Offences Act of 2012, which took effect on November 14, 2012. The Act protects minors with harsh penalties from crimes such as sexual assault, harassment, and pornography.

#### **Realization of Article 21 A (Right to Education) on a legal level**

The 86th Constitutional Amendment of India (2002) marks a crucial turning point in ensuring that all children between the ages of 6 and 14 have the right to an education, making this right a Fundamental Right under Article 21A of the Indian Constitution.

#### **Constitutional Protections for the Dignity of Women:**

Articles 14 and 15 fight discrimination, while Article 16 assures equal job possibilities. Article 14 guarantees equal protection under the law. The right to livelihood and the preservation of women's health and strength are mandated under Article 39. Female feticide is combated by the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. Domestic abuse is a crime according to the Protection of Women from Domestic abuse Act, 2005. Issues including infidelity, child marriage, and dowry-related offences are addressed through legal efforts[9], [10].

#### **Legal Protections for Kids:**

Child safety and conflict resolution are the main foci of the Juvenile Justice Act of 2000. National and state commissions for child protection are established under the Protection of

Child Rights Act of 2005. The 2012 Protection of minors from Sexual Offences Act covers crimes against minors and sets down severe penalties. Children ages 6 to 14 have the basic right to an education under Article 21A.

### **Increasing Minority Group Power:**

Minorities are guaranteed equality and protection under the Constitution. Their cultural and linguistic identity are preserved under Article 29. Minorities are granted the freedom to form and run educational institutions under Article 30. These rules encourage diversity and safeguard the distinctive characteristics of minority communities.

## **CONCLUSION**

Women, children, and minority groups all have fundamental rights and safeguards enshrined in the Indian Constitution. Specific issues that these groups encounter, such as domestic abuse and child exploitation, are addressed by legal regulations. While the framework is in place, ongoing work is required to make sure it is implemented successfully, track progress, and build a society where the dignity and rights of these vulnerable groups are really maintained. India's dedication to equality and diversity is shown in the constitutional protections for women, children, and minorities. The groundwork for a fair society is set by clauses like Article 14's equal protection, Article 15's anti-discrimination, and Article 16's employment equality. Furthermore, certain laws that address issues like domestic abuse, child exploitation, and discrimination against minorities provide as additional evidence of the country's commitment to defending these vulnerable populations. However, passing laws alone is not enough; ongoing work is required to guarantee efficient enforcement and continuing development. It takes a community effort from institutions, the government, and society to uphold dignity and rights. For India to really be egalitarian and inclusive, it is still necessary to pursue justice for minorities, women, and children with tenacity as the country develops.

### **REFERENCES:**

- [1] J. P. Coby, "The long road toward a more perfect union: Majority rule and minority rights at the constitutional convention," *Am. Polit. Thought*, 2016, doi: 10.1086/684558.
- [2] I. A. Pawar, "Impact of Microfinance on Tribal Development in Telangana," *Sumedha J. Manag.*, 2016.
- [3] Chauhan Ritvik and Baraik Vijay Kumar, "Mapping crime against women in India□: Spatio-temporal analysis, 2001-2012," *Int. J. Law Polit. Sci.*, 2016.
- [4] L. Wu, "Central-Subnational Fiscal Relation and Constitutional Safeguard of Subnational Fiscal Autonomy: A Comparative Study on Unfunded Mandates and Intergovernmental Grants in China and the US," *SSRN Electron. J.*, 2016, doi: 10.2139/ssrn.2843196.
- [5] E. Kibet and K. Wangeci, "Perspective on the Doctrine of the Separation of Powers Based on the Response to Court Orders in Kenya," *Strat. Law Rev.*, 2016, doi: 10.52907/slr.v1i1.90.
- [6] L. K. Nasrawin, "Protecting Human Rights Through Constitutional Adjudication - Jordan as a Case Study," *Dig. Middle East Stud.*, 2016, doi: 10.1111/dome.12086.

- [7] P. Svongoro, "Court Interpreter Training at the Crossroads: Challenges and Future Prospects for Zimbabwe," *Mediterr. J. Soc. Sci.*, 2016, doi: 10.5901/mjss.2016.v7n2p106.
- [8] A. Goswami, "Land Acquisition, Rehabilitation and Resettlement: Law, Politics and the Elusive Search for Balance," *J. L. Rural Stud.*, 2016.
- [9] K. Elayaraja and T. R. Manjunath, "Performance of Targeted Public Distribution System in Karnataka," *Int. J. Adv. Res. Manag. Soc. Sci.*, 2016.
- [10] C. O. Michael, "Communication of an interpreter and fair trial under Nigerian criminal justice system," *Int. J. Leg. Discourse*, 2016, doi: 10.1515/ijld-2016-0006.



## CHAPTER 8

### PROTECTING THE RIGHTS OF DISPLACED PERSONS: REFUGEES AND INTERNALLY DISPLACED PEOPLE

---

Bhirlu Raj Maurya, Assistant Professor  
College of Law, TeerthankerMahaveer University, Moradabad, Uttar Pradesh, India,  
Email Id- brmourya.mourya321@gmail.com

---

#### ABSTRACT:

Within the larger field of human rights, the rights of displaced people including both refugees and internally displaced people (IDPs) have become a crucial issue of concern. The preservation of these people's rights in the context of forced migration is the subject of this essay, which explores the difficulties and complexity involved. This study aims to highlight the urgent need for coordinated efforts from governments, international organizations, and civil society to safeguard the rights of refugees and IDPs by examining the legal frameworks, international agreements, and practical challenges faced by displaced populations. Through thorough research, it becomes clear that tackling the complex problems surrounding the rights of displaced people requires a diverse strategy that incorporates the legal, social, and humanitarian aspects. This essay emphasizes the significance of protecting the rights and dignity of those who have been forcefully removed from their homes, stressing that doing so is not only required by law but also reflects common human values.

#### KEYWORDS:

Economic, Human Rights, International Organizations, Indian Constitution, Migration, Refugee.

#### INTRODUCTION

The forcible removal of individuals from their homes, workplaces, or other environments is referred to as "displacement of people." It is a kind of societal transformation brought on by a variety of things, the most frequent of which is armed war. Other factors that contribute to relocation include development, starvation, natural catastrophes, and economic shifts. Wars, violence, and persecution have compelled more people than ever before to escape their homes in search of safety and sanctuary abroad. Currently, one in every 122 people worldwide is either a refugee, a person who has been forcibly displaced inside their own country, or who is seeking asylum. According to the UNHCR's yearly Global Trends Report, the number of persons who were forcibly displaced at the end of 2014 increased to a startling 59.5 million from 51.2 million the year before and 37.5 million a decade earlier[1], [2].

Regionally, the number of refugees and internally displaced persons is increasing, according to a recent UNHCR study. Eight conflicts in Africa (Côte d'Ivoire, Central African Republic, Libya, Mali, northeastern Nigeria, Democratic Republic of the Congo, South Sudan, and this year in Burundi), three in the Middle East (Syria, Iraq, and Yemen), one in Europe (Ukraine), and three in Asia (Kyrgyzstan, and in several areas of Myanmar) have erupted or reignited in the past five years (in addition to the decades- Some of these problems have been handled, but the majority continue lead to fresh displacement. The smallest number in 31 years, just 126,800 refugees were permitted to return to their home countries in 2014. The dramatic increase in the number of refugees seeking safety through perilous sea journeys, including on

the Mediterranean, in the Gulf of Aden and Red Sea, as well as in Southeast Asia, has been one of the most recent and highly visible effects of the world's conflicts and the terrible suffering they cause. 86% of refugees are located in areas and nations that are regarded as being less developed economically, and 50% of all refugees are children[3], [4].

### **Difference between an internally displaced person and a refugee**

A person who has left their home country in order to avoid persecution, other human rights abuses, or the impacts of war is known as a refugee. A refugee is someone who, in addition to having a well-founded fear of persecution because of their race, religion, nationality, membership in a particular social group, or political opinion, is also outside of their country of nationality (or former habitual residence if stateless), according to conventions like the 1951 Convention and 1967 Protocol relating to the Status of Refugees. It is important to keep in mind that a person only becomes a refugee due to external, often tragic circumstances. In order to avoid persecution, s/he has no choice but to run from civil conflict, ethnic unrest, generalized violence, socioeconomic instability, and breaches of human rights.

Contrarily, according to UNHCR guidelines on internally displaced people, internally displaced people are those who are forced to flee their homes for the same reasons that refugees do war, civil conflict, political unrest, and flagrant violations of human rights but who stay within their own nation and do not cross an international border. As a result, they are not entitled to the same international protection as refugees. Furthermore, no one international organization is in charge of providing them with security and support. However, some academics classify those who are displaced as a consequence of hunger, natural catastrophes, construction projects, and economic changes. The political, sociological, and humanitarian complexity of the IDP notion, as well as the contentious nature of the rhetoric around IDP protection, make it unique. Even though the conditions that lead to internal displacement are similar to those that lead to refugees, many of their requirements are different.

## **DISCUSSION**

The obligation of the government differs significantly between protecting refugees and protecting internally displaced people. Refugees are not required to be protected by their country of origin after they cross international boundaries. IDPs, on the other hand, stay in their nation of origin, where their protection is the duty of that government, regardless of that government's capacity to do so. IDPs are subject to a protection gap if they lack access to a specific body of legislation. IDPs are protected as civilians by domestic law, international humanitarian law (IHL), and human rights law even if they are not protected under refugee law. IDPs stay inside a single nation, although some provisions of Public International Law also apply to regulate how civilian populations are treated within their boundaries. IHL is applicable in all armed conflicts, whether international and domestic. Similar to this, HRL controls how a government interacts with its constituents at all times. Aspects of these legal systems are combined in the 1998 Guiding Principles on Internal Displacement to meet circumstances unique to displacement. However, unlike the Refugee Convention, which has legal effect, the Guiding Principles have no enforcement tools to guarantee adherence. Many nations have already included protective elements into their national law, and others are doing so right now. Due to the vulnerability of IDPs, further efforts have been undertaken by several groups to legally guarantee certain rights that are particular to their circumstance. However, protection is not absolute despite these advances[5], [6].

Over 25 million IDPs throughout the globe are struggling with concerns including housing, voting, and healthcare. As non-international armed conflicts increase, the issue of displacement becomes worse and calls for long-lasting solutions. Once a fight is over, internal displacement continues. The Inter-Agency Standing Committee identified four requirements that IDPs must meet in order to find a long-term solution to the issue.

The requirements are as follows: "(i) long-term safety, security, and freedom of movement; (ii) an adequate standard of living, including adequate food, water, housing, health care, and basic education; (iii) access to employment and livelihoods; and (iv) access to efficient mechanisms that restore their housing, land, and property or compensate them." Humanitarian actors will be better equipped to function in settings where there is a high incidence of population displacement if they are aware of the solutions that international organizations are seeking and the legal safeguards that are now given to IDPs. With this fundamental knowledge about refugees and internally displaced people, you may now learn about who is living as a refugee in India and who is internally displaced there, as well as what legal status they are given and what rights they have.

### **In India, refugees and their rights**

Refugees experience severe human rights abuses, as was mentioned in the introduction. They are a unique group of people who are not under the protection of the National State. The relationship between human rights and refugees is obvious since flagrant human rights violations allow for the safe repatriation of refugees. As a result of the participation of two or more governments and the fact that refugees are moving from one state to another, the issues relating to refugees have an international scope. Therefore, solving their dilemma will need international cooperation.

### **Separation of Refugees from Others**

Aside from "refugees," there are at least three more distinct categories of foreign nationals. It's crucial that the differences between them be acknowledged and that none of them are mistaken for or confused with "refugees." These groups include:

#### **Temporary residents, travelers, and tourists**

With the prior consent of the Indian government, individuals falling under this category go to India for a certain reason and time period. However, under certain conditions, anybody in this group might qualify for refugee status if, during their stay in India, the situation in their country of origin worsens to the point where it would risk their lives and freedom if they were to return. Many Iranians who had travelled to India for education when the Shah of Iran was in power have remained in India as refugees after the Shah of Iran's overthrow and installation of a revolutionary government in 1978. It should be noted that no one may immediately assert the right to 'refugee status' under this heading. The Indian government has the right to determine each case on its own merits and in light of its own facts.

#### **Unauthorized Economic Migrants**

Anyone from outside the country who may have departed without the proper consent of the relevant authorities, both in the country of origin and the country of destination, in order to better their economic prospects, is not a refugee. After all, the person is not being persecuted or being forced to leave their nation of origin. This group includes illegal immigrants from

Bangladesh, for instance. In addition to the IPC and CrPC, such individuals must be dealt with in accordance with the relevant laws that apply to foreigners, such as the Foreigners Act and Indian Passport Act.

### **Spies, infiltrators, militants, criminals, etc.**

None of them will ever be qualified to apply for refugee status. Even if some of them may be in possession of legitimate travel papers, they must be dealt with in accordance with the rules of the Indian criminal laws as well as any other special legislation that may be in effect.

### **According to India's Refugee Status**

India is the second-largest refugee-receiving nation in South Asia, behind Pakistan, and is home to millions of refugees. India has attracted many asylum seekers due to its multi-ethnic and multilingual population. The majority of the refugees in India are from Afghanistan, Iran, Sudan, and Sri Lankan Tamil refugees, Jumma refugees from Bangladesh, Chin refugees from Myanmar, and other tribal refugees. India lacks a national system for protecting refugees and is not a signatory to either the 1951 Refugee Convention or its 1967 Protocol. The UNHCR, located in New Delhi, performs refugee status determinations (RSD) for asylum applicants from non-neighboring countries including Myanmar in the absence of a national legal and administrative framework[7], [8].

For instance, up until 1993, Afghan refugees of Indian descent and others who entered India via Pakistan without proper documentation were permitted to do so. The majority of the migrants had crossed into India at the Atari border in Punjab, close to Amritsar. After 1993, the government changed its stance on allowing Afghan refugees to enter India without restriction. The GOI did not formally treat a substantial number of them many of them were Afghan Sikhs and Afghan Hindus who were forced to depart Afghanistan due to circumstances that met one or more of the criteria listed previously for being classified as "refugees." However, the UNHCR recognized them as refugees within its mandate and is providing aid to them with the approval of the GOI. Even while the local government is still involved in these situations, the UNHCR is now in charge of caring for and "administrating" the refugees, as well as making sure they do not in any way break the rules that govern them.

In contrast, the Government of India (GOI) stated that no genuine refugee from Myanmar would be turned back in accordance with well-accepted international norms defining refugee status, and in fact, they were accepted as refugees by the GOI in 1989 when the Myanmar authorities began repressing the pro-democracy movement in that country and about 3,000 nationals of that country sought refuge in India. Similar circumstances apply to migrants from Sri Lanka who cross the sea into the Tamil Nadu state in southern India. Despite the fact that the Sri Lankan refugees lacked travel permits, the Indian government followed a particular refugee policy and allowed them access.

When the Indian government accepts a specific group of refugees' claim to refugee status, the refugees experience little to no intervention, if any at all. Even though there may not be an official statement of any policy granting that group refugee status, this is the fact. However, there are occasions when refugees who have been accepted by the Indian government and given legitimate refugee identification credentials are subsequently charged with unlawful entrance or overstaying. The National Human Rights Commission successfully defended the rights of other Sri Lankan Tamil refugees who had also been charged with crimes.

## Refugees' Status in Legal Terms

The Foreigners Act of 1946 and the Citizenship Act of 1955 are the two primary laws that control the legal status of refugees in India. The Indian legal system deals with refugees on two different levels. There are rules that control their admission into India, their stay there, as well as a number of associated difficulties. Once they are on Indian territory, individuals may be held accountable for a range of acts of commission and omission under a variety of conditions, whether they are the complaint or the accused. These Acts equally apply to all non-citizens, making no distinction between refugees escaping persecution and other foreigners. Being without proper travel or residency documentation is a crime under the Acts. Refugees are subject to detention and deportation under these regulations. Refugees from Afghanistan, Burma, Palestine, and Somalia who have been recognized are given protection by the UNHCR. The YMCA, Don Bosco, and the Socio-Legal Centre (SLIC), the UNHCR's implementing partners in Delhi, provide assistance to all refugees, many of whom also get a meagre monthly subsistence stipend. The YMCA assists refugees in locating housing and offers children and young adults access to education in government schools by way of the distribution of an education stipend. Don Bosco offers emotional assistance as well as technical training, including computer and English language education. It also provides funding for additional vocational programs like driving instruction and beauty school. These organizations' assistance is essential since it helps the community of refugees to some extent.

In addition to these programs, SLIC also conducts file renewals for the UNHCR, offers legal aid, legal trainings, and awareness campaigns, as well as helps qualified refugees with the citizenship process. Despite the assistance offered by these groups, the bulk of refugees in India endure severe economic and social suffering.

The majority of the refugees in India are not covered by the UNHCR's mission but are nonetheless regarded as refugees by the government. Over 150,000 Tibetans and 90,000 Sri Lankans have now sought sanctuary in India after fleeing violence and persecution. The extent to which these groups are allowed to access housing, work, healthcare, and education is described in greater detail below.

## Rights guaranteed by the Constitution to refugees

Along with citizens, refugees are granted certain rights under the Indian Constitution; nevertheless, it is vital to first examine the non-refoulement principle.

### The Non-Refoulement Principle in Indian Law

a person who fled their own country because they had a legitimate fear of being persecuted. Rather from being a right of the refugee, it is often seen as the responsibility of the host state. The second concern is with the refugee's rights that have an impact on his daily existence in the host nation. These include things like the right to an education and the right to own property. Only when the first principle is followed do the latter rights become applicable. There is a perception that India is not formally obligated to adhere to the concept of non-refoulement since there is no special legislation for handling refugees or statutory requirement under international agreements. But according to three points, the Indian system indirectly offers a mechanism to keep the refugee once he arrives in the Indian Territory. One is the operation of judicial bodies like the UNHCR and the NHRC, which hinders the repatriation of legitimate refugees to their home nations. Another approach is to interpret it in



accordance with Article 21, which states that the State shall not deport or return a refugee in any way to the borders of countries where his life or freedom would be in danger due to his race, religion, nationality, membership in a particular social group, or political opinion because it may be unfair, unjust, or unreasonable to do so. Another perspective is that Article 51 of the Constitution immediately applies the principle of non-refoulement to internal Indian law.

### **The rights guaranteed by the Indian Constitution**

There are a few Indian Constitutional Articles that apply to refugees on Indian territory in the same ways as they apply to Indian Citizens. The Indian Constitution's Articles 22(1), 22(2), and 25(1) all state that common law regimes' natural justice principles apply equally in India, even to refugees. No individual, whether a citizen or an immigrant, should be deprived of his life, liberty, or property without the authority of law, according to the established principle of the rule of law in India. The common law precept is specifically included into the Indian Constitution, and the Courts have even gone so far as to elevate it to the level of one of the fundamental provisions of the Constitution that cannot be changed.

The Fundamental Right to Life and Personal Liberty guaranteed by Article 21 of the Indian Constitution extends to everyone, whether they are Indian citizens or foreigners, the Supreme Court of India has repeatedly ruled. In addition to recognizing the United Nations High Commissioner for Refugees (UNHCR) as having a significant role in the protection of refugees, the different High Courts in India have liberally applied the principles of natural justice to refugee concerns. Therefore, whether a citizen or a refugee, the state is required to preserve the life and liberty of every individual. As a result, no matter which state has refugees, that state's leadership will not stand for threats made by one group of people against another group of people. It has a responsibility to defend the treatment grouprefugees receiving protectionagainst such attacks; otherwise, it would be in breach of its legal and legislative duties.

### **Those who are internally displaced and their rights:**

The UNHCR defines internally displaced as people who are forced to flee their homes, often for the same reasons as refugees war, civil conflict, political strife, and gross human rights abuse but who remain within their own country and do not cross an international border. Currently, the UN Guiding Principles on Internal Displacement are used as a tool to address the issues of IDPs. As a result, they are not entitled to the same international protection as refugees. Furthermore, no one international organization is in charge of providing them with security and support. At the end of 2014, 38 million people were living in displacement within their own country's borders due to armed conflict and other forms of violence that had driven them from their homes. This is a 15% rise over 2013, and it includes the 11 million individuals who were newly displaced during the year roughly 30,000 people every day. Over the last 10 years, the number of internally displaced people has steadily increased, reflecting the evolving nature of warfare globally. The whole deprivation of community life, amenities, facilities, assets, access to natural resources, and the difficulties experienced before to, during, and after the process may be thought of as this involuntary relocation[9], [10].



### **The Guiding Principles Recognize Important Rights**

In general, the Guiding Principles aim to safeguard all internally displaced people in times of internal strife, tragedy, and other forced relocation circumstances. The Guiding Principles guarantee that IDPs are treated equally and have access to all rights and freedoms guaranteed by domestic and international law. Internally displaced individuals also cannot break both national and international law without consequences. These individuals are liable for war crimes, crimes against humanity, and genocide on an individual basis just like any other person. They are not, however, subject to any kind of discrimination. These Principles lay a strong focus on the IDPs' right not to be forcibly removed and clearly outline the reasons and circumstances under which displacement is not permitted. They explicitly state that displacement must not be carried out in a way that infringes on the affected people's right to life, dignity, liberty, or security. Additionally, States have a specific duty to preserve indigenous people and other groups that have a unique reliance on and connection to their territory.

The principles indicate that internally displaced people cannot be forcefully repatriated or relocated to situations where their life, safety, liberty, or health are in danger after establishing such broad rules against cruel and inhuman treatment. In terms of family life, principles also include rules that state that divided families should get back together as soon as feasible. Being acknowledged in front of the law is a fundamental human right.

The right is put into action by stating that any documentation required for IDPs to exercise their legal rights must be supplied to them, and that authorities must make it easy to replace any documents lost during relocation. The Guiding Principles provide particular attention to the concerns of women and children, particularly the proscription of violence against people based on their gender. The guidelines demand that women participate fully in the planning and administration of their relocation since they are often left out of community consultations and decision-making processes. The Guiding Principles also emphasized that women have access to female health care services due to the fact that women's health requirements are not always satisfied. Women now have the same rights as males to get official documents issued in their names. It is against the law to enlist children without their will, and attempts should be taken to reconnect youngsters with their families. The guiding principles make it clear that appropriate entities, including international humanitarian organizations, have the right to provide assistance and services to internally displaced people. The rights to freedom of movement and return, the right to humanitarian aid, and the mental health of IDPs are all specifically mentioned and discussed in the principles.

### **India's Internally Displaced Population:**

Despite its propensity for violence, India has not produced many refugees. However, a significant amount of internal displacement has been brought on by war, conflict, violations of human rights, development initiatives, community conflicts, and forced relocation. In the lack of a single organization to coordinate the data, estimating this number and keeping track of it have become challenging tasks.

The country's internal displacement reasons are too diverse in terms of their origin, frequency, and scope. According to Lama, the bulk of instances in which people have been forced to leave their homes are the result of the government's pursuit of political ambitions

and development objectives, and displacement brought on by development is mostly responsible for the IDP situation in India. As of April 2015, according to the Internal Displacement Monitoring Centre (IDMC), there were at least 616,140 persons living abroad due to armed conflict and intercommunal violence in India.

### **Major Displacement Categories in India:**

The reasons of the four major kinds of relocation identified by researchers in India are mentioned below.

Political factors, including separatist movements: In India, a great deal of people were displaced as a result of political factors and secessionist movements. Examples of this include the Naga Movement's displacement of people, the government's violent retaliation, the killing of Kashmiri Pandits, the general anarchy in Kashmir, and ongoing human rights abuses by both the state and militant groups that resulted in the large-scale displacement of Kashmiri Pandits. Movements for identity-based autonomy, such as those in Punjab and Assam, have also resulted in forced ethnic cleansing and camp living for non-natives.

**Localized Violence:** Caste conflicts in Bihar and Uttar Pradesh, religious extremism and riots in Mumbai, Coimbatore, Bhagalpur, and Aligarh, and aggressive denial of residency and employment rights to non-indigenous groups in Meghalaya and Arunachal Pradesh can be used as examples of this category of displacement.

The fourth kind of displacement is focused on the growth of industrial projects, dams, roads, mines, power plants, and new cities, in addition to the displacement brought on by nature. Due to the fact that the aforementioned development projects can only be completed by purchasing vast amounts of land, they force a significant number of people to relocate, and this kind of relocation is becoming worse every year. Regarding natural displacement, India continues to be the second-most flood-affected nation in Asia, and despite the building of several dams, the country's flood-affected territories are steadily expanding. Furthermore, following the first round of relief and rehabilitation aid, these sorts of disaster-related displacements are often not recognized. Thus, these displacements are quiet yet sharp and common in nature.

### **Internally Displaced Persons' Rights in India**

Even though India does not have a specific statute addressing the State's legal obligations to IDPs, the Court's writ jurisdiction and the Indian Constitution may nonetheless provide some remedy to this group of people. One of the most significant rights protected by the Constitution is Article 21, which establishes the foundation for protecting the right to life.<sup>104</sup> In addition, Article 39 of the Indian Constitution commands the government to provide individuals' access to appropriate means of subsistence. In addition, Article 41 of the Constitution requires the state to put in place adequate measures to guarantee the right to work, an education, and access to public assistance in the event of unemployment, old age, illness, or other impairments.

The Supreme Court of India broadened the definition of the right to life to include the "right to livelihood" in a historic ruling known as the "pavement dwellers case." In *Francis Coralie Mullin v., the Administrator, Union Territory of Delhi and Others*, the Supreme Court of India elaborated on the right to adequate shelter as part of the all-encompassing right to life.

The court ruled that any person deprived of his or her right to an adequate livelihood or right to work can challenge the deprivation of livelihood as a violation of the right to life as guaranteed by Article 21. The right to food, water, a good environment, education, medical treatment, and shelter are all included in the right to life, according to the Supreme Court in another decision. The Supreme Court expanded upon Article 21 in the Maneka Gandhi case by ruling that the right to life forbids the eviction of people who live in slums unless substitute housing is given. The Court ruled that the right to "live" includes the right to live with dignity, and that it is not only limited to bodily existence.

Regarding the rehabilitation concerns, the Indian Government's stance under the 1984 property Acquisition Act remained largely unchanged: "Rehabilitation is not a prime consideration when acquiring land for public purpose." As a result, the Supreme Court of India served as the lone venue for those whose property was seized by the government for public use. As a consequence, the rights of those who have been displaced have been severely limited. On the other hand, India passed a historic new law on September 26, 2013, that for the first time tackles internal displacement brought on by development. The new measure repealed India's Land purchase Act (LAA), which was enacted in 1894 and was based on forced land purchase by the state. Additionally, such action erroneously separated the gain from the terrible consequences of poverty and social unrest. Additionally, the LAA said absolutely nothing about compensating those who had been wrongfully deprived of their property or land.

In sharp contrast, the LARR establishes not only unique standards for land acquisition but also mandates that the project that results in the displacement must rehabilitate the affected communities via resettlement. Additionally, the LARR offers IDPs a measure of protection for their human rights, which had previously been violated and denied to them during past displacements. The LARR also outlines new financial rights for IDPs as well as new rights to information and consultation on the impacts that displacement imposes on their employment, income, and way of life as a whole. India's historic new legislation merits acclaim, global recognition, and assistance in its implementation for these and many more reasons.

Only the Indian State of Maharashtra has passed legislation recognizing the rights of those who have been forcibly relocated. Regarding the need for appropriate resettling and rehabilitation of displaced people, some States have merely approved resolutions and released circulars. These ad hoc judgments and initiatives, in the absence of legislative legislation, generally rely on strong public opinion and how effectively organized the impacted people are in a certain project area. As a consequence, it leads to inequity in how project displaced people are treated. Therefore, the constitutional guarantees of equality before the law and equal protection under the law under the same conditions are inapplicable.

A crucial basic right has been granted to displaced members of tribal groups under Article 29 of the Indian Constitution. The right protects everyone's basic right to have their cultural identity protected from governmental intrusion. The basic right outlined in the article is unalienable and unconstrained by any reasonable limitations. For instance, the restoration of tribal villages may be contested in court as a breach of their Article 29-guaranteed basic rights if it harms their traditional identity.

In conclusion, as we have stated, the Indian Constitution protects the rights of refugees and internally displaced persons. However, India often receives criticism for lacking any

institutional or regulatory structure to deal with either refugees or IDPs. India is sometimes charged with denying UNHCR access to the majority of refugee groups since it has not joined the 1951 Convention and the 1967 Protocol.

The political authorities have exclusive discretion over whether to award refugee status since there is no permanent institutional framework to manage refugee matters. There has only been fragmented and ad hoc action taken at the project and state levels due to the comparable lack of a national strategy on the relocation and rehabilitation of IDPs.

The government's responsibility for the effects of forced relocation must be addressed immediately. Large numbers of individuals go unaided and unaccounted for due to the absence of reliable information on the numbers and basic requirements of the displaced. Thus, it is necessary for national authorities to carry out surveys in regions impacted by conflicts in order to compile data on the number of internally displaced people and their particular requirements.

The establishment of a national institutional focal point on internal displacement as well as a national legislative framework respecting the rights of internally displaced persons would be part of a more cogent response to circumstances when people escape violent conflict. A proposed national displacement strategy that covers the rehabilitation of persons relocated as a result of development projects has been developed, however it has come under harsh criticism for neglecting to recognize the rights of the displaced.

## CONCLUSION

We've made an effort to understand the basic difference between refugees and internally displaced persons throughout this session, as well as the causes of both attaining refugee status and displacement. In addition to attempting to understand the status of these groups in India, the laws that regulate them, the rights that these groups have under the Constitution, and criticism of institutional responses in India, we have also made an effort to understand the international treaties and principles regulating both groups of people.

The protection of the rights of displaced people, including both refugees and those who are internally displaced, continues to be a vital need for the international community. These vulnerable communities' problems need a multifaceted, cooperative approach that cuts across political lines. International legal frameworks serve as a basis, but for implementation to be successful, governments must be committed, international organizations must be involved, and civil society must actively participate.

The intricacy of forced migration necessitates specialized solutions that recognize the different requirements of refugees and IDPs and cater to those needs. We must acknowledge that defending the rights of displaced people is an expression of our common humanity as the globe continues to struggle with violence, persecution, and environmental changes. We preserve the values of justice and contribute to the security and prosperity of society at large by offering refuge, guaranteeing access to essential services, and protecting fundamental rights.

**REFERENCES:**

- [1] E. Aloba and S. Obaji, "Internal Displacement in Nigeria and the Case for Human Rights Protection of Displaced Persons," *J. Law, Policy Glob.*, 2016.
- [2] D. S. J. Hollenbach, "Borders and Duties to the Displaced: Ethical Perspectives on the Refugee Protection System," *J. Migr. Hum. Secur.*, 2016, doi: 10.1177/233150241600400306.
- [3] C. Beyani, N. K. Baal, and M. Caterina, "Conceptual challenges and practical solutions in situations of internal displacement," *Forced Migr. Rev.*, 2016.
- [4] P. D. Warren, "Forced migration after paris COP21: Evaluating the 'climate change displacement coordination facility,'" *Columbia Law Rev.*, 2016.
- [5] S. Ekpa and N. H. Md Dahlan, "Sovereignty, Internal Displacement And Right Of Intervention: Perspectives From The African Union's Constitutive Act And The Convention For The Protection And Assistance Of Internally Displaced Persons," *UUM J. Leg. Stud.*, 2016, doi: 10.32890/uumjls.7.2016.4633.
- [6] Y. Zha *et al.*, "Global Estimation of Surgical Procedures Needed for Forcibly Displaced Persons," *World J. Surg.*, 2016, doi: 10.1007/s00268-016-3579-x.
- [7] R. Adeola, "The right not to be arbitrarily displaced under the United Nations Guiding Principles on Internal Displacement," *African Hum. Rights Law J.*, 2016, doi: 10.17159/1996-2096/2016/v16n1a4.
- [8] A. Vancleef, "Hydropower development and involuntary displacement: Toward a global solution," *Indiana Journal of Global Legal Studies*. 2016. doi: 10.2979/indjglolegstu.23.1.349.
- [9] A. Kassam and A. Nanji, "Mental health of Afghan refugees in Pakistan: a qualitative rapid reconnaissance field study," *Intervention*, 2016.
- [10] A. Humayun, N. Azad, I. ul Haq, F. R. Khan, A. Ahmad, and R. K. Farooq, "Mental health and psychosocial support for the internally displaced persons in Bannu, Pakistan," *Intervention*, 2016, doi: 10.1097/wtf.000000000000105.

## CHAPTER 9

### CHAMPIONS OF EQUALITY: TRACING INDIA'S HUMAN RIGHTS MOVEMENT

---

Yogesh Chandra Gupta, Assistant Professor  
College of Law, TeerthankerMahaveer University, Moradabad, Uttar Pradesh, India,  
Email Id- COGNITOR.YOGESH@GMAIL.COM

---

#### ABSTRACT:

The human rights movement is founded upon the bedrock principles of liberty, equality, justice, and fairness. It embodies the belief that every individual deserves equal treatment and protection from discrimination. These rights serve as the foundation for a life lived with dignity and the pursuit of one's fullest potential. This movement, inspired by profound philosophical ideals, has found its home in India, where it diligently advocates for the rights of individuals and groups, acting as a bridge between the people and the government. The journey of this movement in India has witnessed distinct phases that mirror the evolving socio-political landscape. The movement gained momentum in response to significant historical events, with the aftermath of the Emergency period (1975-1977) being a pivotal turning point.

The denial of basic rights during this period highlighted the urgency of safeguarding human rights. People from various walks of life joined hands in massive demonstrations to protect democracy and stand against authoritarianism, igniting a sense of collective purpose. The movement's birth can be traced back to the early 1930s when figures like Jawaharlal Nehru established the Civil Liberties Union to provide legal aid to nationalist dissenters. The struggle for civil liberties and rights came into focus with the emergence of the civil rights movement in the late 1960s. This movement illuminated the democratic rights of marginalized groups, revealing the need to enforce rights that had been officially granted but not upheld in practice.

#### KEYWORDS:

Democracy, Equality, Economical, Human Rights, Philosophical.

#### INTRODUCTION

Human rights are based on the fundamental principles of liberty, equality, justice, and fairness. It maintains that everyone should be treated equally and that no one should be discriminated against. These rights are fundamental assurances of rights and liberties that every person must possess in order to live with dignity and seek chances to reach their full potential. When put into practice, these are the methods by which human needs will be satisfied, human potential will be realized, opportunity will be equally accessible to everyone, benefits will be fairly distributed, and the most vulnerable will be included and safeguarded. The Human Rights Movement, which was founded in India and is inspired by this philosophical idea, is actively working to advance and defend the rights of people and organizations while often acting as a mediator between them and the government. The



origins, histories, ideologies, and intervention tactics of the organizations involved in this movement may vary, but they all have the same fundamental goal: to collect data and exert influence on how the state or government implements human rights[1], [2].

Due in large part to the push put forward by different human rights groups, Indian society saw a rising acknowledgment and importance of human rights throughout the final quarter of the 20th century. The deprivation of life and liberty that was a prominent part of the emergency (1975–1977) is the primary cause of the heightened focus on human rights. People were more aware of the ongoing human rights atrocities because of the lack of democratic rights throughout those eighteen months. Students, thinkers, political activists, and many other members of civil society were also inspired to take action at this time. Numerous thousands of people participated in large demonstrations to voice their opposition to the government's anti-democratic actions and to rally support for the preservation of Indian democracy. A process that is increasingly acknowledged as inherent in the very model of development, the National Emergency of the time exposed in a dramatic way not only the shortcomings of the post-Independence developmental strategies adopted by succeeding governments, but also the ongoing marginalization and poverty of millions of people. The lowest 40% of India's population has not benefited much from 40 years of "democracy" under democratically elected administrations. All of these concepts—distributive justice, engagement of the people, and warfare against poverty—remain, for the most part, lofty ideals. As a result, the Emergency era is often seen as a turning point in the history of the human rights movement, separating the later movement from the earlier one. The history of the movement's beginnings and development is covered in the section that follows[3], [4].

### **The start and development of human rights movements**

Jawaharlal Nehru and a few of his associates founded the Civil Liberties Union in the early 1930s with the explicit purpose of offering legal assistance to nationalists convicted of sedition against the colonial authority.

This endeavour, nevertheless, didn't last long. The national emancipation sparked great enthusiasm and optimism, which absorbed the political spirit of an independent watchdog project. Pre- and post-Emergency are the two main periods that make up the post-independence human rights struggle. In 1948, the West Bengal Civil Liberties Committee was established in protest of the state's persecution of communists. This part of the movement has not been documented.

### **The Movement for Civil Liberties**

The savage official crackdown on the naxalites in the late 1960s marked the beginning of the main civil rights movement. This movement brought up the subject of the downtrodden groups of society's democratic rights to justice and equality. In essence, the fight for democratic rights is an effort to enforce rights that are officially granted but not really upheld. The right to assert already-guaranteed rights is attacked when democratic rights are denied. Landless workers, marginal and small peasants, the unorganized working class, and their mobilizations and supporters among the articulate and conscientious were formed during this period, which set off both the privileged social classes and the government's systematic crackdown on groups fighting for the rights of traditionally oppressed peoples. To some extent, this is only now beginning to change. These included the Andhra Pradesh Civil

Liberties Committee (APCLC), the Association for the Protection of Democratic Rights (APDR) in West Bengal, and, more recently, the Association for Democratic Rights (AFDR) in Punjab.

While these organizations confronted and exposed the violent role of the state and brought attention to the expanding exploitation and repression in rural areas, their ability to pique interest and engage concerned liberal and progressive forces was constrained. Due to their fragmented and sectarian character, as well as the media's and the general public's apathy to the problems of the socially and economically disadvantaged, these organizations had a limited influence. Additionally, it was difficult to understand how the problems related, particularly how the political and economic ones did[5], [6].

Only after Jayaprakash Narayan began a significant campaign against Mrs. Gandhi's growing authoritarianism did a significant number of prominent liberals and humanists join forces with radicals to found the People's Union for Civil Liberties and Democratic Rights (PUCLDR), the nation's first (and only) national human rights organization. Within a few months, a number of political occurrences assisted in bringing together the disparate concerns for middle class dissidents' grievances and for the rights of the destitute and downtrodden. However, the declaration of the Emergency on June 26, 1975, turned out to be a significant catalytic event. The incarceration and exclusion of intellectuals and political activists sparked a national awareness and gave India's notion of democracy new meaning. Numerous people were locked up, some for the whole of the time period, in an attempt to quell protest. The press was silenced, and a slew of new laws severely curtailed both established and emerging opposition to the concentration of power, including the development of a robust literature of dissent, in certain instances via the politicization of important publications. But as the latter increased and the Emergency hesitantly entered its second year, the Centre tightened its controls, severely hampering the work of human rights groups.

Even after Mrs. Gandhi lost the election in 1977, these human rights advocates kept a low profile for over two years. This was mainly because attorneys and academics believed the new administration would be more receptive to discussion and remedial action. The emergence of investigative journalism and public interest litigation, as well as some considerable socioeconomic gains by the more radical organizations working among the landless and the tribals, however, defined this time. The latter were important since the Janata government's social base was more conservative and discriminatory against the lower classes, although being more liberal ideologically than the Congress Party.

There are several groups nowadays that are focused on concerns related to democracy and civil rights. While some new initiatives have taken shape and some attempts have been made to create a more federal all-India organization, the majority of the organizations were founded between 1968 and 1975. It is crucial to note that hundreds of organizations and movements working for distributive justice exist in India. Support and advocacy organizations are also available. These may all be categorized as human rights organizations on some way. The organizations that exist only for the purpose of promoting and protecting human rights are what we are worried about here. These movements have also teamed up with independent action groups and large-scale movements at times of significant crises to provide aid, promote rehabilitation, and lobby on behalf of the oppressed and the afflicted. Following the massacre of the Sikhs in November 1984 and the Bhopal tragedy a month later, this

complicity became abundantly visible. The considerable corpus of literature these organizations have generated that focuses on the nuanced root causes of social, political, economic, and cultural oppression is one of their major accomplishments. Some books have gone through many editions and sold tens of thousands of copies, such as *Who are the Guilty*, which was published a week after the Sikh massacre.

## DISCUSSION

Significant progress has been made in reducing some of the intricate causes of oppression. Bonded workers have been released and given fresh opportunities for rehabilitation, significant rulings by the judiciary's more sensitive members have created new opportunities for the achievement of justice, and corrupt public officials and police officers have been brought to justice. But more than anything, these organizations have helped preserve and, to some degree, enlarge the spaces for autonomous political engagement among a segment of the urban middle class. As a result, they have undoubtedly helped to broaden the nation's democratic awareness, if only little. These organizations' influence has given them more legitimacy, but it has also led to frequent assaults from outside and within the government from entrenched interests. This has led to the torture and murder of certain human rights workers, the banning of publications, and the arrest and imprisonment of the writers of such writings. The governing parties have started a campaign of demonization against specific organizations, attempting to portray them as anti-national or radical (especially PUCL, PUDR, and APCLC).

Each company has maintained its own identity during this whole process. Additionally, despite organizational and methodological distinctions, the majority of them have worked closely together. However, there are still some shortcomings. The main one of these is the issue of voluntarism, which results in a lack of consistent effort by a dedicated and well-known cadre of activists. This has hindered the development of each organization via widespread education and action as well as ongoing coordination between them. It has also hampered a uniform reaction to infractions. All of these obligations exist, but they are often triggered by a crisis or other dramatic occurrence. Additionally, none of these organizations take any funding from the government or from outside, and they all face significant financial limitations. Furthermore, the variety and regularity of infractions have kept them so busy (sometimes via intentional efforts to tie them down in fabricated legal claims and financial vengeance) that the majority of the work to far has been purely defensive. Even though there hasn't been much of a "early warning system," there is also a lack of knowledge about international human rights instruments, the significance of new organizational initiatives that must be made in order to strengthen each organization's effectiveness individually and collectively, and solidarity with pertinent global developments. The latter point will be of great importance in the coming years because it will be difficult to oppose the international foundations of authoritarian structures while also actively supporting movements for social and political change at all levels global, regional, national, and local [7], [8].

### **Movement for Women**

In the same time frame, a fledgling women's movement also came to be. Prior to the start of the International Women's Year in 1975, the Committee on the Status of Women in India delivered its report to the Indian government in December 1974. Contrary to conventional wisdom, the Status Report included practically all topics and situations that impacted women.

The Committee redrew the boundaries of women's position, issues, and goals and revised their preconceptions about how women live based on the experiences of women and communities they encountered, giving a boost to the newly emerging women's movement.

The women's movement has been one of the loudest and most well-spoken in the public sphere. One narrative has been the woman as a victim of dowry, domestic abuse, alcohol, rape, and custodial violence. Women in prostitution have gained exposure due in part to the women's rights movement and the fight against AIDS. There has been some debate over whether prostitution should be classified as "sex work," but there is increasing agreement that prostitution victims should be protected from harassment by the law.\

The fight over the Uniform Civil Code, which contests the unfairness that "personal" rules impose on women, has been revived, detoured, and restarted. Following the need of women's participation in panchayats, representation of women via reservations has been established in the federal and state legislatures. A contentious topic has been population policy, with the emergency's aftermath serving as a persistent background.

The idea that "women's rights are human rights" has called for a reconstruction of the notion of human rights as being directed at the state's actions and inactions as well as those of its agents. As it is fostering the criminal, patriarchy has entered the human rights arena. Some of the groups that have helped advance women's rights in India include Saheli in Delhi, Vimochana in Bangalore, and the Forum against Oppression of Women in Mumbai.

### **Lawsuits in the public interest**

The Supreme Court created an institutional structure for public interest litigation (PIL) in the late 1970s, but more firmly in the early 1980s. PIL weakened the locus standi rule, which allowed anyone to petition the court on behalf of a class of people who were unable to pursue their rights because of poverty, illiteracy, or any other kind of disability. This opened the court to issues involving rights violations and the non-realization of even basic non-negotiables.

The process was streamlined to make going to court less scary, and even a letter to the court could be turned into a petition. PIL was initially a mechanism that acknowledged rights and their denial that had previously been hidden from view. Prisoners, for example, who were imprisoned behind towering walls, discovered a place to express their human and basic rights. led to "juristic" activity, which increased the scope of individual rights.

The rights to dignity, a means of subsistence, a clean environment, to health, to education, and to workplace safety were included in the list of basic rights that was expanded. The possibility of interpreting the basic rights to include a variety of rights was investigated. Since then, individuals, organizations, and movements have utilized the court as a venue for conflict and struggle, with various effects on the definition of what constitutes a human right and how to prioritize when a right seems to clash with another[9], [10].

### **Fighting Pervasive Discrimination**

Caste persecution and caste-based injustice have been maintained in the public eye by dalit movements. Even as dalits refuse to suffer in silence or as they transcend the responsibilities assigned to them in the old caste system, the effort to get beyond untouchability, which still exists in virulent forms, has had to deal with an increase in violence against dalits. One

expression is the expansion of caste armies in Bihar. Another is the murder of dalit panchayat leaders in Melmashuvur, Tamil Nadu. The police shooting on dalits at the southernmost part of Tamil Nadu as they seemed to be standing up to their tyranny is the third. The issue of manual scavenging has been brought up in campaigns for policy and the legislation, and there have been attempts to overcome public resistance to acknowledge the existence of untouchability. Groups working on dalit problems are making attempts to internationalize severe caste prejudice in the interim by influencing the World Conference against Racism's agenda.

### **Defeating Projects of 'Development' That Cause Displacement**

The displacement caused by projects has been vigorously contested. The growing interaction between local communities and activists from outside the affected region as a result of the recognition of injustice and violations of the basic rights of the affected people has increased, and this interaction has shaped how the rights and injuries are articulated. In the early years of the protest movement, resource rights were raised in regard to forests; conservation, the right of the people to obtain forest products for their livelihood, and recognition of the historical tie between forests and those who live in and near forests. Over the years, environmentalists and people who support the rights of forest inhabitants and users have spoken together, broken up, then reconnected. The right to resources is a hotly debated issue.

### **Combating communalism**

Communalism has permeated politics since the 1980s, but more overtly since the 1990s. Following Indira Gandhi's murder, anti-Sikh riots served as a horrifying warning that communalism may be lurking just below the surface. Another major communal outburst was the Bhagalpur atrocities in 1989. On December 6, 1992, the Babri Masjid was demolished, marking a well-known turning point in majoritarian communalism and impunity. There is no denying the state's involvement. Another horrifying manifestation of communalism was the murder of Graham Staines and his kids in Orissa. In this environment, it is inevitable that anybody who questions conversions would be seen as having the community infection. The coercive "re-conversion" in Gujarat's Dangs region also has racial implications. The topic of impunity is being explored in these circumstances since attacks against Christians are often publicized in the media.

### **New Campaigns and Movements**

The non-governmental sector's professionalization has a bearing on the public discourse around certain concerns as well as the viability of the solutions. The financing of infrastructure development and assistance has found support and sustainability in the fight against violence against women, child labour, AIDS-related work, devolution, and assisting women's involvement in panchayat institutions. These have coexisted with civil liberties organizations and initiatives, grassroots campaigns like the Rajasthan-based Campaign for the Right to Information, the development struggle led by the Narmada Bachao Andolan, or the fishworkers' forum, which has fought, occasionally successfully, against the encroachments by the large-scale and capital-intensive into the livelihoods of traditional fishing communities. Human rights organizations have protested and challenged numerous extreme actions that movements for self-determination, militancy, dissent, and the Naxalite movement have sparked. One example is the TADA, or the Terrorist and Disruptive



Activities (Prevention) Act. A continuation of the Armed Forces Special Powers Act (AFSPA). The human rights-related situation is characterized by encounters with murder, disappearances, and the inefficiency of the legal system in areas where "extraordinary" conflict situations are prevalent. In these situations, a human rights jurisprudence has developed. It is common for people to network and assist one another during disputes and campaigns. There are hints of a human rights community developing or already existing in this. As a result, organizations and movements working in the fields of tourism, forest dwellers' rights, civil liberties, displacement, women's rights, and the environment, for example, found a way to protest the nuclear explosions in May 1999 or denounce the attacks on the "Water" filming, which had overtly communal overtones. Additionally, links between causes are being built, and an interconnected community of interests is emerging. Conflicts between rights have started to emerge as the range of rights has increased. The rights have been prioritized as a result. The entity that sets priorities has often varied; sometimes, it has been workers' organizations, other times, environmentalist organizations, and other times, the court.

In this sense, the human rights movement in India has unified behind the basic liberties recognized as human rights in the Indian Constitution. They persisted in advocating for secular humanism and raising the issues of those who were brutalized, oppressed, and oppressors. Their adherence to human rights is founded on both individual and community rights, not just those of the person. The UNO, Amnesty International, and domestic human rights organizations exerted pressure on the Indian parliament to enact the 1993 Protection of Human Rights Bill, which was later made into an Act in 1994. In order to boost the movement for the promotion and protection of human rights, this Act created the National Human Rights Commission (NHRC), as well as a number of State Level Human Rights Commissions and Human Rights Courts.

### **Future worries about the movement**

The human rights movement cannot become complacent despite its current successes. Human rights violations have increased nationwide in a variety of ways due to the growing influence of globalization and external demands to adapt Indian society. Therefore, the important challenge facing the Indian human rights community is to continually concentrate on the fundamental causes of human rights breaches both domestically and globally as well as its unique political environment. The rights and dignity of workers, the impoverished in urban and rural areas, and those fighting terrorism are under threat. Additionally, attention must be given to the reality that millions of cultures, economies, and ecosystems have been destroyed as a consequence of global human rights breaches brought on by unjust trading conditions. It is also necessary to track and expose the intelligence services' expanding involvement in the misinformation campaign and their infiltration of groups like the human rights movement. It is necessary to refute the justification that human rights must be foregone in the sake of national security. Since violations further alienate the victims, maintaining human rights norms is really the only way to guarantee the security of our country.

The movement must also call for the government to be more open in how it addresses militancy, which implies that all fascist and fundamentalist movements must be combated with same intensity. Criminals who are apprehended must be punished, but only in strict conformity with the law and norms pertaining to human rights. The criminal justice system is



undermined and encourages corruption within the investigative authorities when the politics of fear are used for short-term political and electoral benefits. As a result of everything you have learned so far, it is clear that the Indian human rights movement sees the state as its main rival and a key actor in the sphere of human rights. It is obvious that the intent is to draw attention to or stress those infractions that are committed by governmental entities or in collaboration with state authorities. The state is not the sole enemy, however; other different sorts of power systems have also been recognized. Thus, it has begun focusing on local power systems of control and oppression rather than merely the state. The idea that commonplace concerns of exploitation and oppression should be discussed in terms of human rights is quickly gaining support from both activists and the general public.

In fact, a large number of the groups were first founded with the express intent of drawing attention to political prisoner mistreatment. They progressively assumed a larger role as the focus increasingly switched to other issues. Today's groups deal with a variety of concerns, which puts them in direct confrontation with a number of governmental entities. There is no question that the government can significantly contribute to the advancement of human rights in the nation by using its influence and resources. But regrettably, the government's approach to indigenous groups has always been one of apathy, if not labelling them as acting against the "national interest." More lately, though, the government has proven that it is somewhat inclined to apply human rights rules throughout the nation. However, there is still work to be done, particularly in the crucial issue of defining and executing a policy of safeguarding and assisting groups in the nation that advocate for human rights. The state and the rights NGOs are the two most essential stakeholders, and there is a need for collaboration and improved coordination among them. The ultimate goal is to establish a society in which vigilante action is no longer necessary and human rights groups are unnecessary. But until that moment, constant work is required, and organizations must play a significant part in that endeavour.

## CONCLUSION

In a nutshell, the lesson thus far has attempted to explain the causes of the emergence of the Human Rights Movement in India, the issues that various movements addressed in the early stages, how the movement became active after the emergency period, and the various forms of state oppression that the movements were organized around. We have also made an effort to comprehend how these movements gradually redirected their attention away from the state and toward other concerns, such as regional systems of domination and oppression as well as gender-specific problems.

The conversation then turned to newly developing problems for the movement. The movement also confronted challenges posed by communalism, displacement due to development, and other contemporary issues. It has been an ardent advocate for social justice, consistently amplifying voices that might otherwise go unheard. In doing so, it has established itself as a vital counterbalance to oppressive forces, consistently reminding the state of its duty to protect and promote the rights of all citizens. As the movement moves forward, it is confronted with the dual imperatives of persistence and evolution.

The complexities of globalization, changing power dynamics, and emerging threats to human rights necessitate a continued commitment to vigilance and advocacy. While the establishment of the National Human Rights Commission marked a milestone, the movement must remain vigilant to ensure its effectiveness and independence. In the coming years, the

movement's strength will be in its ability to forge alliances, transcend differences, and adapt its strategies to effectively counter new challenges.

The evolution of the movement into a comprehensive force for social change underscores its indispensability in ensuring a just and equitable society. The human rights movement in India is an ongoing saga of courage, conviction, and compassion. It has weathered challenges, celebrated victories, and consistently reminded society that the struggle for equality and justice is unending. The movement's legacy serves as an inspiration for generations to come, reaffirming the belief that a just and equitable society can only be built through the relentless pursuit of human rights for all.

## REFERENCES:

- [1] L. Ross, "Fighting White Supremacy and White Privilege to Build a Human Rights Movement," *Underst. Dismantling Privil.*, 2016.
- [2] H. Laako, "Los derechos humanos en los movimientos sociales: el caso de las parteras autónomas en México," *Rev. Mex. Cienc. Polit. Soc.*, 2016, doi: 10.1016/S0185-1918(16)30025-3.
- [3] C. Wintle, "The Human Rights Movement Against Apartheid South Africa: The Impact of Boycotts, Divestment, and Sanctions," *Waterloo Hist. Rev.*, 2016, doi: 10.15353/whr.v8.74.
- [4] H. Laako, "Human Rights in Social Movements: The Case of Autonomous Midwives in Mexico," *Rev. Mex. Cienc. Polit. Soc.*, 2016, doi: 10.1016/S0185-1918(16)30025-3.
- [5] A. Jalata, "The Oromo National Movement And Gross Human Rights Violations In The Age Of Globalization," *Eur. Sci. Journal, ESJ*, 2016, doi: 10.19044/esj.2016.v12n5p177.
- [6] V. V. Nadkarni and R. Sinha, "Transforming Social Work Education in India: Integrating Human Rights," *J. Hum. Rights Soc. Work*, 2016, doi: 10.1007/s41134-016-0002-3.
- [7] N. Yuval-Davis, "Power, Intersectionality and the Politics of Belonging," in *The Palgrave Handbook of Gender and Development*, 2016. doi: 10.1007/978-1-137-38273-3\_25.
- [8] K. Amemiya and E. Naito, "Importance of human right inferior frontoparietal network connected by inferior branch of superior longitudinal fasciculus tract in corporeal awareness of kinesthetic illusory movement," *Cortex*, 2016, doi: 10.1016/j.cortex.2016.01.017.
- [9] M. Moran, "Center Connects Civil Rights to Broader Human Rights Movement," *Psychiatr. News*, 2016, doi: 10.1176/appi.pn.2016.2b45.
- [10] J. Rinker, "Narrative Reconciliation as Rights Based Peace Praxis: Custodial Torture, Testimonial Therapy, and Overcoming Marginalization," *Peace Res.*, 2016.

## CHAPTER 10

### HARMONIZING HUMANITY: PEACE AND CONFLICT RESOLUTION FOR THE PROMOTION OF HUMAN RIGHTS

---

Sushil Kumar Singh, Professor  
College of Law, TeerthankerMahaveer University, Moradabad, Uttar Pradesh, India,  
Email Id- sushil2844@gmail.com

#### ABSTRACT:

This study examines the complex relationships that exist between peace, conflict resolution, and the advancement of human rights. It explores the mutually beneficial link between these important elements of society well-being, looking at how pursuing peace helps to defend and develop human rights and how human rights fulfillment may, in turn, promote peaceful coexistence. This research emphasizes the importance of conflict prevention, mediation, and post-conflict reconciliation as ways to protect human rights on both an individual and a communal level by examining case studies, historical settings, and international frameworks. In contrast, the article argues that the achievement of human rights is inextricably related to the absence of conflict and violence, making it impossible to achieve durable peace without their acknowledgment and preservation.

#### KEYWORDS:

Human Rights, Resolution, Social Rights, Society, Violence.

#### INTRODUCTION

Human rights breaches are now widely accepted as both causes and symptoms of violent conflict by academics working in both the disciplines of peace and conflict studies and human rights. Gross human rights breaches may emerge from violent and destructive conflict, but they can also be the consequence of rights being consistently denied over time. Without promoting peace in our immediate surroundings, it is almost difficult to protect human rights, as we all know. Since social violence often results in the violation of fundamental human rights, several attempts to promote peace and settle disputes have been attempted. In this lesson, we'll look at how peacekeeping, conflict resolution, and advancing human rights are related[1], [2].

#### Human rights abuses as signs of hostile conflict

It is common knowledge that human rights breaches are symptomatic. We can all see how the basic right to life is being violated today. In various nations across the globe, indiscriminate assaults on citizens, the execution of captives, widespread famine, massacres, and even genocide are all occurring. People are often subjected to torture and have their freedom of movement restricted. Armed organizations and troops abuse women and girls, forcing them into prostitution, and kidnapping kids to enlist as soldiers. Tens of thousands of people are jailed because of conflicts every year, and many more "disappear," generally being slain and buried in secrecy. Numerous more are unlawfully detained and never put on trial, or they go through egregiously unfair processes. Other fundamental rights are also violated, including the destruction of homes, schools, and hospitals, attacks on relief convoys, crop destruction,

the inability to work, travel, or obtain food, as well as the destruction of significant cultural landmarks and symbols. The brutal war has also led some 26 million people to from their homes, turning them into refugees and internally displaced people (IDPs). Armed wars provide as a stark example of the interconnectedness and indivisibility of all human rights, one may argue. The harm and devastation to public buildings and institutions compromise a wide variety of civil, economic, political, and social rights[3], [4].

### **Violent conflict is a result of abuses of human rights.**

On the other side, the genesis of the most violent conflicts is also influenced by systemic violence and the denial of human rights. Human rights problems including restricted political involvement, the desire for self-determination, restricted access to resources, exploitation, forced acculturation, and discrimination have sparked a lot of wars. It is important to remember that denial of human rights may stem from passive as well as active violations, which are characterized as overt, direct, and purposeful acts by the State and its agents. violations (which can be defined as those violations brought on by the State's negligence or incapacity to protect citizens' rights, particularly in the socioeconomic domain; passive violations can contribute to the escalation or emergence of violent conflict by deepening societal cleavages and conflicts).

Several empirical research also implies that "violations of economic and social rights appear to play a facilitating role in conflict, but violations of civil and political rights appear to be more obviously associated with conflict." The underlying causes of grievances and group identities that may, in certain instances, inspire civil violence include discrimination and abuses of social and economic rights. Political and civil rights violations are more readily discernible as direct conflict-triggers. The part that collective identities like ethnicity, race, and religion play in the relationship between violent conflict and abuses of human rights is another significant aspect. Lethal acts of violence between ethnic groups and systematically large-scale human rights violations like ethnic cleansing and genocide are frequently the result of socioeconomic inequality aligning with ethnic stratification and political elites manipulating ethnic relations for specific purposes. The dominance of one ethnic group in state institutions (such the court or the police) as well as radio programs or other media that promote ethnic division and hate are signs of a potentially violent conflict in a society where there is ethnic division. The explanation above shows that there is a direct connection between conflict and human rights violations, and that any method for resolving conflicts and establishing lasting peace leads in the advancement of the fundamental human rights that people are entitled to. This conversation ought to naturally lead to the idea of peace, how to attain it, and how it might support the advancement of human rights. So, in the part that follows, we'll attempt to comprehend the idea of peace a little better.

### **Envisioning peace**

There are several ways to interpret the idea of peace. The meaning of peace has been interpreted differently throughout time by many individuals. The notion of negative peace is the most widespread. Negative peace is the absence of conflict or outright violence. The most prevalent use of this notion is in international affairs. According to the negative peace idea, when there is no overt aggression, there is peace. This kind of thought is criticized by the Norwegian peace researcher Johan Galtung for having an overly limited definition of peace and what constitutes a peaceful society. He believes that peace encompasses much more than

simply the absence of overt conflict and bloodshed. In light of this, he coined the phrase "positive peace," and claims that it is the greatest defence against violence. According to this perspective, a society is at peace when exploitation is reduced to a minimum or abolished and there is neither direct nor structural violence. Galtung coined the phrase "structural violence," which denotes that violence involves more than simply physical harm. A more covert kind of violence, structural violence is ingrained in people or social systems. It may be broken down into frameworks that are political, oppressive, and economically exploitation. Structural violence is a kind of violence in which people's fundamental rights are violated by society. People who are first seen as "non violent" may behave violently as a result of the societal oppression that they endure. In many cases, this may be the root of conflict in a community. The issue with structural violence is that it may go unnoticed for longer periods of time than overt, obvious violence. It operates more slowly and could have more serious outcomes. According to a pro-peace viewpoint, structural violence must be at a minimum or nonexistent for a society to be peaceful. Galtung contends that inequality is one of the main manifestations of structural violence and one of the main catalysts of war. So dealing with inequality is a key part of maintaining peace[5], [6].

## DISCUSSION

Negative ways to maintain Peace-Diplomacy, negotiations, and dispute resolution are the most frequent methods of maintaining peace in a bad meaning. These methods of achieving peace have been around for a while. A negative perspective of peace asserts that mutual agreement between the parties to a dispute is the key to bringing about peace. The two main leaders in dispute are often the parties to the discussions. In particular, this kind of negotiation was used during the Cold War. While some academics believe that this approach to dispute resolution is beneficial and effective, it has often been shown to be ineffective. This method of handling disputes during the Cold War often made matters worse. Using a combination of military force and diplomacy is another method of conflict resolution. According to some academics, military invasion or engagement and diplomacy are related. This has shown out to be true in several instances. To this end, Barash and Webel demonstrate how nations might employ military force against other nations and threaten them. However, some of these invasions and military threats have also fallen short and escalated the war. Track II diplomacy, often known as informal or "encounter group" diplomacy, is another kind of diplomacy that has shown to be extremely effective. The representatives of opposing parties communicate informally, often with a third party facilitator, in an effort to build rapport and a common understanding. Conflict resolution in this manner has had fruitful outcomes. When a third person is engaged, conflict resolution seems to be more successful than when the two parties to the disagreement work alone to resolve it. Other negative peacekeeping strategies include using military might or the distribution of power, disarmament and weapons control, as well as the creation and development of international institutions and international law.

Positive Ways to Promote Peace-We have spoken about a number of ways to bring about unrest. The commonality across all of these approaches is that they are all meant to put an end to fighting. However, others could argue that putting an end to outright violence isn't enough to build a peaceful community. As a result, proponents of constructive peace argue that preventing and opposing conflict is vital but insufficient. In addition, one must be in support of peace, or something like. Therefore, it is essential to concentrate on the building of

a desired and achievable peace as well as the knowledge of conflict and its prevention in peace studies. According to Galtung, fairness is necessary for a society to remain peaceful in a healthy manner. One of the main causes of structural violence is injustice, which may also lead to conflict [7], [8].

### **Relationship between human rights, conflict, and peace**

As Galtung notes, it is crucial to comprehend the connections between conflict, violence, and peace in this setting. Galtung believes that reducing and preventing violence is essential to achieving peace. Violence also refers to doing damage or inflicting injury. Violent acts may be committed against a person physically or mentally. Additionally, it is capable of enjoying pleasure that affects both the body and the intellect. Violence harms the body, mind, and soul. It is an insult to life in general and to the most fundamental human needs.

### **Groupings of Violence**

Johan Galtung offers the following three types of violence: direct, structural, and cultural, depending on how it manifests itself:

**Direct Violence:** Personal violence is another name for direct violence. There is a violent offender who desires to do harm. "Negative peace" is the absence of interpersonal violence.

**Indirect violence** is often referred to as structural violence. "Social injustice" is another term for it. This is a result of how society is structured. It may occur between individuals, groups of cultures, groups of allies, or even between geographical areas of the earth. It may be considerably more harmful and is unseen. Indirect, unintentional, and inner violence exist inside people and are a result of their personality makeup. Repression and exploitation are the two primary manifestations of outer structural violence in politics and economics. Both have a serious detrimental effect on the body and the psyche. Accordingly, structural violence may be the repressed direct violence of earlier acts of conquest or repression, such as colonialism, slavery, or economic exploitation. It may lead to violent revolutions and counterrevolutions. "Social justice" and "positive peace" are terms used to describe the absence of structural violence.

**Cultural Violence:** In terms of religion, philosophy, language, art, science, law, media, and education, cultural violence is symbolic. As well as being unseen, it indirectly harms or even kills via words or pictures; through symbolism. Priestly, intellectual, and professional violence is this. Its primary purpose is to justify institutional and direct violence. Galtung said that "cultural violence makes direct and structural violence look, even feel, right - or at least not wrong". Galtung thus sees cultural violence as a "invariant" and a "permanence," whereas direct violence is seen as a "event" and structural violence as a "process with ups and downs". Both personal and systemic violence often produce further forms of those same types of violence. Cross-breeding between two species does occur sometimes. Galtung has taken the idea of power and defined four aspects of power that have an influence on both positive and negative peace to explain the triangle of direct, structural, and cultural violence. These aspects include political, military, economic, and cultural. Galtung underlines that the virtuous spiral of peace, which flows from cultural peace through structural peace to direct peace, may break the vicious cycle of violence. Positive peace would result from this approach. And for any community to be peaceful in a healthy manner, fairness is a must.



### **Favorably, justice, peace, and human rights**

Thus, a fair society benefits greatly from the respect for human rights. Positive peace theory places a lot of emphasis on human rights. Even if there may not be a conflict or open hostilities, a nation cannot be considered peaceful in the positive sense if human rights are being infringed. Ife, another expert in the field, highlights the significance of the link between human rights and peace. According to him, you cannot have one without the other since they are both essential to one another. They are interdependent; without the protection and realization of human rights, peace cannot be attained, and without peace, human rights cannot be maintained. A weak peace can be one that does not respect human rights.

Human rights are interpreted differently by academics within the human rights movement. Some people define rights as being fundamental freedoms that each person is endowed with. Here, individual liberty is crucial. These rights are referred to as "negative rights" and they must be safeguarded. In contrast, "positive rights" rights that must be granted can be found. These rights may include the right to social security, health care, and education. Compared to negative rights, positive rights call for a bigger governmental involvement. The state has to play a greater and more active role because it must do more than merely protect. Instead than focusing on positive rights, it is quite common to emphasize negative, civil, and political rights.

A different method to organize human rights may be to separate them into civil-political rights and socio-economic rights. The first set of rights includes freedoms like the prohibition against torture, unjust imprisonment, and execution, as well as the freedoms of speech and expression in politics and the right to vote. Contrarily, socio-economic rights include things like the right to a job, an education, access to health care, and enough to eat. Human rights are sometimes linked to the first category, whereas they are sometimes linked to the last. Socio-economic rights are highly valued in developing nations, but in more developed nations, such as the West, the most significant rights are personal freedom, civil rights, and political rights. The importance of certain rights is often influenced by one's upbringing. This may help to understand why various human rights are prioritized differently in peacebuilding. Human rights and peace are two related categories. One may argue that denying human rights is equivalent to denying genuine peace. The reasons for achieving true peace may often go deeper than just putting a stop to hostilities. It's crucial that human rights development comes from the bottom up. Human rights were first created by a select few individuals. The implementation of rights into peoples' everyday lives is crucial for them to be valid and function in a society. A human rights culture must be established. Peace is comparable in this regard. It's crucial to use a bottom-up strategy while establishing a peaceful community. Human rights are also only partially protected when a peace is imposed from above. This demonstrates how human rights and peace are related. Both, in Ife's opinion, rely on building and maintaining robust, diverse communities that may serve as the foundation for both human rights and obligations. "Peace is not to be measured by the absence of conventional war, but constructed upon foundations of justice," Nobel Peace Prize recipient Mümtaz Soysal of Amnesty International stated in his remarks. Conflict is sown when there is injustice. Peace is threatened in areas when human rights are infringed.

The only way to secure the many civil-political, economic, social, and cultural rights that make up human rights is via democracy and the democratization of society. The idea of

democratization is crucial for fostering peace in society. It could seem that discussing democracy is necessary in order to discuss peace. And the first step toward a peaceful and developed nation is often the establishment of democracy. Scholars frequently assert that when democratic institutions are established in a society, conflicts are more likely to transform into peaceful change rather than violent conflict, and societies with democratic political institutions have a lower risk of experiencing civil war than those without.

As a result, democracy and democratization are important factors for peace because they allow for the peaceful resolution of conflict. The pursuit of peace via democracy and the protection of human rights through democratization may be seen as having a reciprocal relationship. Additionally, a society is more peaceful when human rights are upheld. Therefore, it is crucial to establish democratic institutions and structures in every nation. If this isn't done right away, potential disputes may start up again[9], [10].

Therefore, the democratization of society and the development of democratic institutions would contribute to the cessation of the cultural, structural, and direct forms of violence covered in the preceding section as well as the development of means of achieving cultural, structural, and direct peace. Therefore, establishing democracy is the first step in creating a society that is more fair and peaceful.

One may be able to resolve the civil strife in the nation by making it more democratic and ensuring that the populace has a chance to elect a new administration. This is related to what Bentham stated about how democracy allows for some degree of citizen influence over the government. If people are unhappy with the incumbent representatives, they may then opt to elect new ones using the given democratic rights.

All people have the right to participate and are entitled to equal democratic rights, which is one of democracy's fundamental tenets. This democratic equality contributes to the fight against injustice. Let's examine in the next part how structural causes of violence may be addressed in a democratic society, what judicial and legislative changes will support human rights, and how human rights must be maintained throughout the conflict prevention stage while establishing peace. Let's start by discussing how the causes of structural violence might be addressed in the promotion of human rights. As Galtung noted, injustice is a significant contributor to structural violence, the systemic causes of violent conflict are addressed: You may recall that the definition and range of human rights include standards like those related to freedom of speech, economic and social rights, and non-discrimination. In addition to pursuing justice and reconciliation and setting guidelines to strike a balance between victims' rights concerns and worries about socio-political stability, the actions and programs resulting from this larger view of human rights will also seek to:

- All industries should adopt global human rights norms.
- Assure the privacy and safety of both people and organizations; provide protections for the freedom of the press, unions, and all other groups in civil society; and prohibit all forms of discrimination (ethnic, religious, gender, etc.).
- Stop future wars from starting by implementing constitutional changes and reorganizing the government, security forces, and judicial system.
- Encourage more extensive social, political, and economic change (focusing on economic and social injustices, redistribution, and discrimination, as well as assuring legitimacy, accountability, transparency, and participation, etc.).

Even in the immediate post-settlement phase, ignoring economic, social, and cultural rights runs the risk of failing to address the immediate needs and expectations of those directly affected, even in post-conflict situations where there may be a tendency to focus attention and activities on civil and political rights as they may be seen as the most urgent and fundamental to be respected if peace is to be achieved.

### **Judicial and Legal Reform to Advance Human Rights**

Since most post-conflict states lack an effective and legitimate judicial system, reforms and efforts to (re)build that system are essential steps in the process of promoting and protecting human rights. Human rights promotion and protection depend on the existence of a justice system that functions effectively and laws that adhere to international human rights standards and norms.

Mechanisms for oversight and accountability must exist, and judges and attorneys who participate in illegal or unethical behaviour, including corruption, must answer for it. To manage such disciplinary measures, as well as to demonstrate to the public that nothing has changed and that no one is above the law, fair and open procedures must be developed. Some attorneys who practice in post-conflict environments contend that monitoring and accountability while sometimes overlooked may be the most crucial elements in the vast spectrum of human rights, justice, and rule of law operations.

### **Human Rights Protection During the Phase of Conflict Prevention**

Furthermore, nations must give particular attention to assuring minorities' protection, bolstering democratic institutions, achieving the right to growth, and ensuring that human rights are respected by everyone throughout any phase of conflict prevention.

Preventive action's main goals are to stop major human rights abuses from happening, react to violations before they turn into conflicts, and manage and end disputes before they get out of hand. Institutional transformation is a vital component in the phase of conflict prevention. In addition to addressing the root causes of violent conflict and so preventing future bloodshed, changing historically abusive State institutions is a crucial test of the political will to engage in substantive change and stop abuses. Serious conflict risks grow if changes are rejected or not properly implemented.

### **Human Rights Restoration and Protection During the Peacebuilding Phase**

Violence and mistrust often continue after any fight. The court and government institutions, which are primarily in charge of upholding human rights, are sometimes badly damaged by or implicated in the war. But for war-torn civilizations to recover, there must be a broad improvement in the state of human rights. Such activities in the pursuit of sustainability must have a prospective orientation, focusing on the creation of institutions and systems capable of producing long-term future outcomes. But they must also deal with the past, healing its wounds so that they are at the very least less prone to contaminate the present. In fact, many contend that if the truth about past crimes is not made public and if human rights are not safeguarded, mending the psychological wounds left by atrocities and rapprochement at the communal level cannot occur. Effective management of human rights implementation is required to maintain political stability. Here, a trade-off conundrum may arise between the demand for justice and the need to re-establish security, which may necessitate working with

those who committed prior human rights atrocities. More importantly, in a multiethnic nation in particular, the promotion and defence of human rights must continuously contribute to the formation of a nation through expanding the culture of human rights within a community. In this manner, disputes may be settled and a lasting peace established by establishing democratic institutions and taking into account the social fabric. When justice is upheld, justice wins, and as a result, human rights are promoted and come into being.

## CONCLUSION

In summary, we attempted to comprehend how human rights breaches are both signs and causes of violent conflict in this lesson. We have also looked at the significance of the connections between the war, human rights, and the process of establishing peace. We also made an effort to comprehend the good and bad meanings of peace as well as the reasons why positive peace must be established and different types of violence must disappear. To build a decent society and maintain lasting peace, violence and conflict must be eradicated. Therefore, building fair societies is essential to achieving constructive peace, and human rights also pursue justice. By the conclusion of the lesson, we had a better understanding of how democratization of society solves all three issues, what sort of procedures and reforms are required to advance such a society, and what specific considerations are required with regard to human rights when peacebuilding is being promoted. The advancement of human rights and the maintenance of peace and successful conflict resolution are inextricably linked. The pursuit of peace is based on the values of justice, equality, and human dignity, which are the pillars of human rights

A harmonic society is one in which disputes are resolved amicably, enabling people to exercise their rights unhindered by fear or repression. In contrast, achieving human rights requires a secure environment where people may freely express themselves, take part in decision-making, and have access to essential services like healthcare, education, and food without impediment. The convergence of conflict prevention, dialogue, and post-conflict rebuilding initiatives is necessary for the path toward a world defined by respect for human rights and sustainable peace. This mutually beneficial connection allows stakeholders from across governments, civil society, and international organizations to work together to create a future in which the promotion and defence of each person's inalienable rights go hand in hand with the pursuit of peace.

## REFERENCES:

- [1] Ms. A. Ukimeraj, "Promotion of Human Rights in the Republic of Kosovo," *Ilir. Int. Rev.*, 2016, doi: 10.21113/iir.v6i1.233.
- [2] S. Velluti, "The Promotion and Integration of Human Rights in EU External Trade Relations," *Utr. J. Int. Eur. Law*, 2016, doi: 10.5334/ujel.342.
- [3] L. Mapuva, "Negating the Promotion of Human Rights Through 'Claw - Back' Clauses in the African Charter on Human and People's Rights," *Int. Aff. Glob. Strateg.*, 2016.
- [4] M. Syafi'ie, "Instrumentasi Hukum Ham, Pembentukan Lembaga Perlindungan Ham di Indonesia dan Peran mahkamah Konstitusi," *J. Konstitusi*, 2016, doi: 10.31078/jk945.

- [5] L. Zimmermann, "Same same or different? Norm diffusion between resistance, compliance, and localization in post-conflict states," *Int. Stud. Perspect.*, 2016, doi: 10.1111/insp.12080.
- [6] C. Cassidy, "Promoting Human Rights through Philosophy with Children," *Int. J. Child. Rights*, 2016, doi: 10.1163/15718182-02403001.
- [7] J. M. Smith, "Climate change justice and corporate responsibility," *J. Energy Nat. Resour. Law*, 2016, doi: 10.1080/02646811.2016.1120074.
- [8] A. Agegnehu, "An assessment of Challenges That Impede the Effectiveness of Ethiopia Human Rights Commission Protection and Promotion of Human Rights," *Int. J. Emerg. Trends Sci. Technol.*, 2016, doi: 10.18535/ijetst/v3i12.06.
- [9] L. Stemple, P. Karegeya, and S. Gruskin, "Human rights, gender, and infectious disease: From HIV/AIDS to ebola," *Hum. Rights Q.*, 2016, doi: 10.1353/hrq.2016.0054.
- [10] United Nations, "Human Rights Council Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Brazil\*," *Ge*, 2016.

## CHAPTER 11

### GLOBALIZATION AND ITS IMPACT ON HUMAN RIGHTS: STEERING CHALLENGES AND OPPORTUNITIES

---

Amit Verma, Associate Professor  
College of Law, TeerthankerMahaveer University, Moradabad, Uttar Pradesh, India,  
Email Id- amitverma2@gmail.com

#### ABSTRACT:

The 21st century has witnessed an unprecedented era of globalization, characterized by the rapid exchange of goods, services, ideas, and cultures across borders. While globalization has brought about numerous benefits, including enhanced economic growth, technological advancement, and increased cultural exchange, it has also introduced intricate challenges to the protection and promotion of human rights. This paper aims to delve into the multifaceted relationship between globalization and human rights, shedding light on the ways in which these dynamics interact and shape the modern world. This paper critically examines the multifaceted relationship between globalization and human rights, elucidating the complex interplay between these two phenomena. Through an exploration of various dimensions, including economic, social, political, and cultural aspects, this study delves into the ways in which globalization has both advanced and challenged the realization of human rights on a global scale. By analyzing case studies and scholarly perspectives, this paper seeks to provide a nuanced understanding of the opportunities and challenges that arise from the intensification of global interconnectedness. The ultimate aim is to foster an informed dialogue on how to harness the positive aspects of globalization while mitigating its potential negative impacts on human rights.

**KEYWORDS:** Globalization, Human Rights, Political, Social.

#### INTRODUCTION

We now live in a time of "Globalization," when everyone seems to be travelling in the same direction both economically and otherwise. Technology advancements in information, transportation, and many other areas are erasing boundaries and bringing all of us closer together, regardless of our country, clothing, or musical taste. However, the globalization that we now understand to be the current international order is not a new development. Following European discoveries and the advent of global capitalism, it may be dated back to the early seventeenth century. The process of globalization may be broken down into many stages from that time to the present. But since the conclusion of World War II, there have been two distinct periods of globalization: the first, known as the Cold War era, lasted from 1945 to 1989 and was marked by conflicts between the US and the USSR and the worldwide struggle between communism and capitalism. The second phase, the current age, started in 1989 and has since seen the ascent of the United States as the only superpower in the world, the victory of neoliberal economics, and a revolution in communications made possible by technology associated to the Internet. In terms of breadth, extent, and intensity, the present phase or wave of globalization is undoubtedly greater than earlier ones. For instance, throughout the 1990s, international commerce grew twice as quickly as the world's GDP. While still a small portion of the rise, the proportion for emerging nations also increased dramatically. Over the last 25 years, financial flows have increased in both speed and volume. During the same time period,



significant human rights instruments were developed and put into effect. These instruments are now a part of a purported international human rights regime that links international organizations and networks, as well as victims and violators, to international institutions. Nations are finding it more and more difficult to abuse the human rights of their population without drawing the notice and wrath of concerned individuals, nations, and international organizations throughout the globe as a consequence of modern communications technology and growing interconnectedness[1], [2].

The current generation has seen considerable improvement in global human rights practices. This development hasn't been uniform or linear, however. On the one hand, technology advancements enable human rights activists to become more active, but on the other hand, they are also utilized by those who want to violate fundamental human rights. In order to shed some light on these opposing developments, our goal in this lesson is to evaluate the degree to which this push toward more global integration and economic liberalization is having an effect on fundamental human rights. In the parts that follow, starting with its description, you will learn how this globalization process has a notable influence on the exercise of human rights.

### **What is globalization?**

Different individuals interpreted globalization differently. According to Grey, globalization is "the linking together of cultural, political, and economic events across the globe by distance-eliminating technologies." According to Robertson, it is "both the world being compressed and the world's consciousness being intensified." It is most often described as the growth of economic activity beyond nation-states' political borders. The process of escalating economic openness, expanding economic interdependence, and advancing economic integration amongst the nations participating in the global economy are often mentioned. Though the U.N. It is crucial to consider some of the aspects of globalization, which the General Assembly has described as "not merely an economic process but one that has social, political, environmental, cultural, and legal dimensions that have an impact on the full enjoyment of all human rights[3], [4]."

### **Different aspects of globalization**

The following characteristics of globalization may be determined by looking at the many definitions given to it. The first characteristic of globalization is the greater interconnectedness of countries and peoples. In contrast to earlier times, when local people and towns had little to no interaction with the outside world, nowadays there aren't many places that are still untouched by the consequences of globalization. New communications technology and advancements in transportation modes and prices have encouraged transnational links in this regard across greater territories. Second, there has been a strengthening of ties between nations throughout the globe. Accordingly, it is possible to feel other people's presence and the social dynamics connected to it outside of the immediate area more intensely than in earlier times. For instance, the Internet enables technical advancements and cost-efficiencies that were not accessible in the era of telegraphs or expensive telephone lines, enabling more frequent and comprehensive global contact than ever before. Additionally, the Internet provides text, picture, and audio communication choices that might be seen as an intensification of international interactions. Third, human history has never seen the pace at which travel, communications, and

exchanges particularly those of a political, economic, and cultural nature take place now. Here, you may think back to older and contemporary instances of foreign journey periods, such as how it used to take a month and then weeks for an Air Mail to arrive at its destination, as well as the modern usage of e-mail and other communication methods. The number and intensity of such transnational contacts have increased along with the pace of global exchanges, which is faster than previously. Fourth, globalization has brought people closer together. People all throughout the world are more aware of the planet as a whole and where humanity fits into it. With globes in the classroom, global weather reports in the news, and global products in the cupboard, transworld dimensions of social life are now part of the everyday awareness for hundreds of millions of people around the world, whereas earlier, the global consciousness was generally limited to the fleeting perceptions in elite circles. Trans world solidarities increased as a consequence, and sympathy and aid from across the world increased. Beyond national boundaries, ties of class, gender, religion, and sexual orientation have also become stronger[5], [6].

The trend towards political integration throughout the 20th century was another aspect of globalization. Since the United Nations was established in 1945, nations have endeavoured to cooperate for the benefit of everyone by adopting universal norms of civilized national conduct and attempting to spread them across the globe. In the Americas, the North American Free Trade Agreement (NAFTA), which promotes free trade between Canada, Mexico, and the United States, is the first attempt to move beyond the Pan-American Union, a sort of regional UN without much power to influence individual members. The integration of Europe through the European Union (EU), which currently has 28 members, is the best regional example of political globalization. NAFTA is essentially an economic free trade zone, unlike the European Union, and is not concerned with political concerns between its members or inside member nations unless they have an impact on shared economic policies. The Association of Southeast Asian Nations (ASEAN) is an effort to unite the enormously populous and physically vast region of Asia-Pacific in the name of shared interests. The disparity in size and economic development between some of its members, notably China, Japan, South Korea, Thailand, and Malaysia, to name just the most prosperous states, is one reason why it hasn't yet been effective in establishing a single economic or political agenda. As a consequence, although the benefits and drawbacks of economic integration are evident practically everywhere in the globe, the benefits of political integration have been less pronounced. The modern institutional and legal structure under which international commerce, banking, and investment are being handled is inherent to globalization. Economic efficiency is often emphasized by economic globalization, with the aim of enhancing economic well-being via effective market exchanges. Based on the idea that benefits are greatest by the unfettered movement of products across national borders, the system is designed to improve the economic well-being of countries through trade. The foundation of the system is the idea that people are economic creatures who want to maximize their riches and satisfy their own selfish needs. Values other than efficiency are unimportant in a pure economic model and even harmful since they impede or complicate the trade mechanism. International economic law, the institutional design of the Bretton Woods multilateral financing institutions, and the WTO all represent the legal aspects of the framework. Institutions of international commerce and finance were primarily established to follow the economic model and to typically disregard other aspects of international society, such as the protection of human rights and the environment[7], [8].

## DISCUSSION

### The Effects of Globalization on State

The capacity of governments to regulate the freedom to seek for, receive, and send information both inside and beyond borders has been hampered by the aforementioned technological advancements, the information revolution, and global commerce. Individuals can move around more freely, and ideas and information can as well. This improves our capacity to enlighten everyone about their rights and options for redress. Additionally, it makes it harder for governments to hide infractions and makes it simpler for activists to use shame to influence changes in how governments operate. However, when the government is weak, it is also possible for information technology and the media to be exploited to violate human rights.

Thus, the rise of strong non-state actors as a result of globalization raises the possibility of human rights violations in ways that the contemporary human rights movement could not foresee. This development puts international human rights law under scrutiny because, for the most part, it was created to prevent abuses by strong states and state agents rather than to control the behaviour of non-state actors or to permit intervention in weak states when human rights violations occur.

Two recent changes in the worldwide political and economic order—a significant wave of democratization of governance and economic globalization devoted to the principles of free markets and trade liberalization—are primarily responsible for this transfer of power from states to non-state actors. It is a widely acknowledged fact that globalization, primarily economic globalization (political globalization being ineffective), has significantly reduced the significance of each individual state's jurisdictional lines for the conceptualization and resolution of issues facing its own citizens and the international community at large. As is often noted, large economic organizations, mostly multinational businesses, are the major winners from this process. They now have the opportunity to carry out those tasks that were formerly solely the province of the state thanks to the overall fall in the state's authority. This modification placed the person in a multi-actor system where each actor had a significant ability to directly impact his or her freedom and rights.

### Do human rights benefit from globalization?

The issue of whether or not globalization is helpful for human rights is one that is hotly contested. One perspective is that human rights are improved by globalization, which results in economic gains and subsequent political liberties. Even the idea that globalization should become a new human right has arisen as a result of its beneficial effects. Generally speaking, trade theory predicts that globalization will result in a considerable rise in global wellbeing, which will indirectly advance the achievement of the economic conditions required for the realization of economic and social rights. Thus, a lot of individuals think that market forces and trade liberalization will raise everyone's level of life. Others contend that free trade and economic freedom are prerequisites for political freedom, or at the very least help to promote the rule of law, which is a crucial element of human rights. International interactions that transcend the boundaries of a particular country or civilisation are undoubtedly made possible by globalization, enabling involvement in a global society. Additionally, it's possible to use economic might to more effectively punish those who violate human rights. The flow of

people, commodities, and services is made easier. Faster growth and more rights may result from greater governance, more open and competitive production, and more availability and efficient deployment of resources.

Globalization is seen as a danger to human rights by those who oppose it in various ways. First, when international corporations, the World Bank, and the IMF determine national economic and social policies, local decision-making and democratic involvement are weakened. Second, unchecked market forces put economic, social, and cultural rights like the right to health under danger, particularly when structural adjustment measures cut down on government spending on education and healthcare. Third, when power and riches are concentrated in the hands of foreign multinational corporations, unemployment, poverty, and the marginalization of weaker groups all rise[9], [10].

### **Globalization's Effect on Human Rights**

There is no question that some of the advantages of globalization improve human rights. Increased communication allows nations to learn from one another, while increased commerce often benefits poorer nations and helps to reduce poverty. Email communication has made it possible for human rights campaigners throughout the globe to collaborate on projects. Globalization does, however, have certain negative repercussions on human rights. The focus on economic expansion and competition hurts vulnerable populations including migratory labourers, indigenous peoples, and migrating women. As a result, abuses of the rights to life, to health protection, to safe and sanitary working conditions, and to freedom of association have been linked to globalization in many different nations.

### **A Cause of Human Rights Violations Is Globalization**

Investor protection has been a frequent target of criticism of globalization. The World Bank and IMF enforce economic "reform" that might result in human rights abuses, including an increase in baby and child mortality rates, in order to improve circumstances for investors. Additionally, structural change often calls for trade liberalization, which developed nations have not faced the same pressure to do. The poorest people inside states are progressively marginalized, whether or not states are weaker. Inability to exercise rights to political involvement or access information about important choices leads to a lack of accountability. Cutting public spending on housing, social security, health, and education may be necessary as a result of structural adjustment. In many nations, economic inequality and marginalization are exacerbated by labour deregulation, privatization, and manufacturing that is focused on exports. This leaves law enforcement and security as the state's primary duties, which might either result in increasing political repression or violent demonstrations and political instability.

Additionally, it is making it more difficult for states to uphold their commitments to respect economic, social, and cultural rights including the freedom to form and join unions, the right to employment, and the right to social security. Minorities may also be affected disproportionately by it. In the face of an undeniable concentration of wealth in the hands of multinational corporations that is bigger than the wealth of many nations, cooperation on a global scale and from non-state actors is required. In order to draw in foreign investment, it has also been claimed that governments feel pressured to reduce labour laws, tax laws, and other norms. This is particularly true in export production zones (EPZs), where employment

may be abundant but working conditions are subpar. According to labour unions, EPZs sometimes try to limit or deny the right to free assembly, association, and speech. Around 27 million people are engaged in such zones globally. Having women making up to 80% of the work force, it is predicted that the number of developing nations having EPZs has climbed from twenty-four in 1976 to four times more now. Several behaviours that emerged as a consequence of globalization are seen to violate a number of rights protected by international law.

### **Creating a Worker Strike**

Although international law, particularly human rights law, holds nations responsible for the achievement of human rights, mostly because of globalization, in the modern period, the most flagrant rights violators are typically the private global actors. With their immense influence, transnational corporations (TNCs) are often accused of being a danger to the exercise of human rights. They pose a far greater danger than any other player, even the state itself. The zealous pursuit of profit by these individuals was not adequately restrained by the law, if at all, which created a minefield for the Human Resource section. The following is a partial list of the rights that TNCs are accused of violating: the right to life, including the right to enjoy it; the prohibition against torture and other cruel, inhumane, or degrading treatment; the prohibition against forced labour or other forms of involuntary servitude; the freedom from arbitrary detention or deprivation of personal safety; the freedom to enjoy property; the prohibition against deprivation of or harm to health; and the enjoyment of a clean and healthy environment, the One should also take into account the rights that private corporations deny people, such as freedom of choice in employment, fair salaries, the ability to maintain a "decent living," compensation for labour of comparable worth, safe and healthy working conditions, protection against child labour, and protection for mothers. People often use the stories of Shell in Nigeria, Freeport in Indonesia, and Unocal in Burma as examples of how the aforementioned types of human rights have been violated.

Due to their lack of accountability, their business tactics often lead to strikes and protests that exacerbate working conditions, even in countries with a strong community foundation where individual political activity has been uncommon. In an attempt to manage the labour force, political authorities often respond to this conflict by tightening limits on civil and political rights and, sometimes, egregiously violating fundamental rights, such as the right to life. Human rights NGOs have widely recorded the rise of labour activism and the parallel rise in governmental persecution, notably in low-wage countries like Malaysia, Indonesia, and even China. It should be highlighted that non-Western countries have also been impacted negatively by globalization, as have advanced, industrialized Western European nations, the United States, and Japan. The poor and middle class in the United States are greatly impacted by globalization.

### **Impact on employment security**

The employment of contingent or temporary workers instead of permanent employees, who enjoy job security and benefits including health insurance, retirement plans, and collective bargaining agreements, has had a significant negative effect in many nations. The effects of this negative aspect of globalization are more severe for women, minorities, and migratory workers than they are for other aspects of it. Both domestically and internationally, the majority of migrant labour flows are made up of women. State labour laws often exclude



migrant labour, making women especially vulnerable. Only 20% of employees worldwide receive appropriate social protection overall. Additionally, 3000 individuals each day pass away from illnesses or accidents connected to their jobs.

### **Negative impact on women's rights**

Women obviously stand out among the many segments of society whose effects of globalization have been most revealing. Women are disproportionately affected by the constraints imposed by globalization because investors have shown a preference for women in "soft" industries like apparel, shoe and toy manufacturing, data processing, and semiconductor assembly. These industries require unskilled to semi-skilled labour. The path of economic liberalization has also boosted female involvement in the informal sector and contributed to its expansion. In general, work in the unorganized sector implies that protections and benefits are not accessible. As much of an issue as open unemployment seems to be underemployment.

The promotion of export-oriented economic policies, trade liberalization, and Transnational Corporations' activity in agriculture-related businesses have all had a negative impact on women working in the agricultural industry. In certain nations, the focus on export crops has forced female agricultural employees into seasonal labour instead of permanent employment. The changing economic climate has had a significant impact on subsistence farming, forcing women farmers to look for seasonal jobs. The Food and Agriculture Organization of the United Nations (FAO) has noted that, in addition to the shaky and low economic returns of seasonal agricultural employment, the destruction of subsistence farming, increased industrial pollution, and the loss of land to large commercial ventures, often financed by TNCs, have resulted in serious issues with food security and the health of the rural poor.

### **Increase in Religious and Ethnic Conflicts**

In addition to the conflict already discussed, it has been suggested that globalization is to blame for the rise in violence and ethnic and religious conflict. Local fragmentation has been triggered by globalization and the ensuing societal change. On the one hand, it is possible to see the rebirth of ethnic and religious conflict as an attempt to affirm identities and to attribute meaning in the face of universal forces that are beyond one's control. Examining another aspect of ethnic/religious conflict is necessary, however. What is the social status of a certain ethnic group both nationally and internationally? It's possible that the class and racial/religious groups overlap. For instance, it is commonly known that the majority of shops and merchants in Indonesia, where racial unrest has erupted, are Chinese. In these situations, it is crucial to consider whether class conflict or ethnic/religious conflict is the primary cause of the rise in violence.

### **Impact on the rights of indigenous people**

The rights of the indigenous people have long been violated, but current efforts to promote economic growth and global competitiveness have led to increased assaults on those rights. When the North American Free Trade Agreement went into force in 1994, the Indian uprising in Chiapas, Mexico, which brought attention to the infringement of their economic and social rights, served as a demonstration of the relationship between indigenous peoples' rights and globalization. In the guise of economic development, prospectors and business owners have been allowed to infringe on indigenous territories that are home to oil, uranium, minerals, and



forest. Indigenous territories have been invaded in many regions of the globe in search of traditional remedies that are subsequently sold on worldwide pharmaceutical markets. The right to health, the right to a healthy environment, the right to life, and the cultural rights of indigenous peoples have all been gravely violated as a consequence of economic growth.

### **Revolutionary Change in Social Values**

As a result of the destructive social change brought on by globalization, human rights violations (whether of individual civil/political, economic/social, or minority rights) may, at least in some cases, cause radical changes in a society's cultural values and norms, which may then cause a reconfiguration of the core of conventional or historical notions of human rights. Unpredictable results may occur from this quest for a reinvigorated identity and significance. A strengthening of an exclusive communalism with minimal personal liberty or a relaxing of community bonds and an increase of class-based individual demands are both possible outcomes. Both views are supported by the data. The complex of human rights has undoubtedly been negatively impacted by globalization, which has had a substantial negative impact on worldwide human conduct and beliefs.

### **Rise in Transnational Crime**

Another significant new sort of transnational criminal activity is a result of globalization. International crimes that involve or have an impact on human rights violations are growing; these crimes include trafficking in illegal drugs, weapons, money, and people. These crimes are all made easier by the same open markets and technological advancements that help protect human rights. Although it is believed that more than \$7 billion is traded in women for sex each year, there are other markets for people. It is also clear that manufacturing employees, household workers, and agricultural labourers are subject to coercion.

It suffices to state that, despite the fact that the Globalization age has resulted in substantial advances in a number of areas, including technical, social, economic, political, cultural, and sociological, its impact on basic human rights is mostly negative. This is due to the fact that corporate elites and so-called multinational firms engaged in profit-making activities and fulfilling commercial objectives are primarily responsible for driving and engineering the process of globalization itself. Globalization lacks any normative basis of justice and humanity since it is based on the neoliberal ideology and is market-driven. Social and human rights duties have sometimes been neglected in favour of business maximization. As a result of this phenomena, there have been an increasing number of threats to and abuses of human rights, including poverty, violations of basic human rights, and attacks on state sovereignty.

Since globalization is a process that cannot be halted, there have been growing worries about its negative effects and requests for a method to govern it. As a first step in controlling globalization, it is necessary to consider creating a regulatory transnational system that would not obstruct it but would make its participants more accountable and socially responsible. The International Council on Human Rights Policy notes that the efficacy of voluntary codes is totally dependent on commercial need or a company's feeling of altruism. Legal systems, on the other hand, place a strong emphasis on the idea of responsibility and remedy via damage compensation, restitution, and rehabilitation. They provide a stronger foundation for fair and consistent decisions (for all parties, including businesses). This means that unlike a variety of codes of conduct, international legal codes may set consistent worldwide norms and can also

offer a "level playing field" for all firms. There is no logical reason why TNCs cannot be held accountable for human rights-related commitments, even if the current international legal system places legal responsibility to protect human rights primarily on governments and intergovernmental organizations (IGOs). In the UDHR's preamble, "every individual and every organ of society" are included in addition to states. Therefore, non-state actors, including TNCs, cannot be excused from upholding international human rights standards by virtue of their activities having a significant influence on how well the general public is able to exercise their human rights.

To achieve this, the state must be strengthened and its obligation to prevent human rights breaches by non-state actors must be emphasized. In this approach, non-state actors will be held responsible when they obstruct state efforts to advance and safeguard human rights or participate in breaches committed by the state, even if states will continue to bear the main duty for accomplishing these goals. Due to globalization, the civil society, which was instrumental in the development of the legislation governing human rights, will now need to play a larger role in achieving this.

## CONCLUSION

We spoke about the process of globalization and its numerous facets in this class. We have made an effort to comprehend how globalization continues to be unaffected by the State and how it affects the State's position. After attempting to determine if globalization is beneficial or detrimental to human rights, we moved on to discuss how globalization affects human rights and how this influence might be reduced or controlled at the global, national, and civil society levels. Globalization's effects on human rights are a varied, intricate phenomenon that need serious analysis.

While globalization has made it easier for human rights-friendly ideas and ideals to spread, it has also highlighted weaknesses like labour exploitation, cultural deterioration, and unfair economic distribution. Stakeholders on the international stage are entrusted with managing these difficulties while maximizing the chances for constructive change in recognition of this dual character. In order to achieve a fair and equitable society, we must work together to prevent globalization from undermining people's basic rights and instead use it to advance their empowerment. We can forge a path where globalization and human rights complement and reinforce each other by fostering international cooperation, advancing fair trade principles, protecting labour rights, and valuing cultural diversity, ultimately leading to a more inclusive and prosperous global community.

## REFERENCES:

- [1] S. M. Meffert *et al.*, "Health impact of human rights testimony: Harming the most vulnerable?," *BMJ Glob. Heal.*, 2016, doi: 10.1136/bmjgh-2015-000001.
- [2] L. Forman and G. MacNaughton, "Lessons learned: a framework methodology for human rights impact assessment of intellectual property protections in trade agreements," *Impact Assess. Proj. Apprais.*, 2016, doi: 10.1080/14615517.2016.1140995.
- [3] N. Götzmann, F. Vanclay, and F. Seier, "Social and human rights impact assessments: what can they learn from each other?," *Impact Assess. Proj. Apprais.*, 2016, doi: 10.1080/14615517.2015.1096036.

- [4] M. Raftopoulos, "REDD+ and human rights: Addressing the urgent need for a full community-based human rights impact assessment," *Int. J. Hum. Rights*, 2016, doi: 10.1080/13642987.2015.1115266.
- [5] T. Bach, "Human Rights in a Climate Changed World: The Impact of COP21, Nationally Determined Contributions, and National Courts," *SSRN Electron. J.*, 2016, doi: 10.2139/ssrn.2734992.
- [6] D. Conduit and B. Rich, "Foreign Fighters, Human Rights and Self-Determination in Syria and Iraq: Decoding the Humanitarian Impact of Foreign Fighters in Practice," *Int. Community Law Rev.*, 2016, doi: 10.1163/18719732-12341341.
- [7] T. Degener, "Disability in a Human Rights Context," *Laws*, 2016, doi: 10.3390/laws5030035.
- [8] J. Schrempf-Stirling, "Book Reviews: Corporate Responsibility for Human Rights Impacts: New Expectations and Paradigms," *Bus. Ethics Q.*, 2016.
- [9] A. Mwenedata and J. Sehorana, "The Determination and Enforcement of Jus Cogens Norms For Effective Human Rights Protection," *IOSR J. Humanit. Soc. Sci.*, 2016, doi: 10.9790/0837-2108076682.
- [10] R. Freedman and J. McHangama, "Expanding or diluting human rights?: The proliferation of united nations special procedures mandates," *Hum. Rights Q.*, 2016, doi: 10.1353/hrq.2016.0012.

## CHAPTER 12

### BALANCING ACT: SECURITY, TERRORISM, AND THE IMPERATIVE OF SAFEGUARDING HUMAN RIGHTS

---

Bhirlu Raj Maurya, Assistant Professor  
College of Law, TeerthankerMahaveer University, Moradabad, Uttar Pradesh, India,  
Email Id- brmourya.mourya321@gmail.com

---

#### ABSTRACT:

It has become more difficult to protect both human rights and national stability as a result of the changing nature of international security and the enduring danger of terrorism. In the context of battling terrorism, this essay examines the fine line that must be drawn between practical security measures and the protection of essential human rights. This research offers insight on the complex processes that define this complex connection by looking at legal frameworks, historical examples, and modern case studies. In order to achieve security goals, it is crucial to maintain a coherent approach that preserves the rule of law, protects civil rights, and refrains from excessive measures.

This is what the abstract emphasizes. Through this investigation, the paper hopes to further the conversation on how countries may successfully manage security issues while maintaining the fundamental liberties and rights that make up democratic and fair society.

The convergence of security, terrorism, and human rights has emerged as a crucial and often divisive topic in a linked and complicated world. While safeguarding individuals from dangers and terrorist attacks is crucial for preserving stability, it must be done without sacrificing the core human rights and civil freedoms that support democratic nations. This essay explores the challenging balance between security precautions and the protection of human rights in the face of terrorism. This research aims to provide light on the difficulties and possibilities for negotiating this precarious balance by looking at legislative frameworks, case studies, and global views.

#### KEYWORDS:

Democratic, Human Rights, Safeguarding, Security, Terrorism.

#### INTRODUCTION

Human rights law mandates that the State take actions to safeguard the right to life, including preventative measures against terrorism. Any actions used to combat terrorism must, however, be reasonable and uphold democratic principles. Particularly, legislation enacted to safeguard citizens from the danger of terrorism must be consistent with peoples' rights and freedoms, and the State cannot use the fear of terrorism as justification for restricting our civil liberties and human rights. As a result, the States must exercise tremendous judgment, subtlety, and the capacity to strike a delicate balance in order to combat terrorism and protect human rights[1], [2].

Terrorism is not a recent development in either internal or international politics, but in the twenty-first century it is beginning to get attention on a worldwide scale. The League of Nations produced the Convention for the Prevention and Punishment of Terrorism in 1937,

which marks the beginning of attempts to combat terrorism on a global scale. Since then, the world community has taken rapid, firm action to denounce terrorism, notably in the wake of the September 11, 2001 terrorist assault on the United States.

According to the International Covenant on Civil and Political Rights (ICCPR), which derives from the right to life, all States have a responsibility and obligation to defend citizens inside their borders against terrorists. While counterterrorism measures are necessary for States to protect national security and guarantee everyone's safety, they must not infringe human rights or international law. The absence of a widely agreed-upon definition of terrorism makes it more likely that human rights will be violated and hinders the capacity of the international community to combat terrorism. Due to the lack of transparency and poor judicial review of counterterrorism measures, human rights are also at risk. To safeguard national security and defend human rights, counterterrorism strategies must be transparent.

The development of counterterrorism measures that States claim to be beyond the purview of international law has given rise to human rights issues. The counter-terrorist policies adopted to combat terrorism in the U.S. violate international conventions and treaties, such as the Geneva Conventions and the Convention against Torture.

This has happened in the past ten years in the United States, specifically in response to September 11th and the Bush Administration's "War on Terror." The "War on Terror" is allegedly distinct from all other wars, according to the US. The United States has used the word "enemy-combatants" to refer to terrorists rather than the terminology that are recognized internationally under the Geneva Convention: legal and unlawful combatants.

The United States' approach suggests that the prisoners accused of terrorism are not subject to the international law that governs armed combat by redefining the phrase. The authoritarian and democratic nations alike are opposing and abusing human rights, and this opposition is being led by the United States. These nations pose a danger to disregard human rights protections and undo the progress the movement has achieved in recent decades[3], [4].

In this regard, the current human rights framework is seriously threatened normatively by the new global security agenda. Governments are progressively violating fundamental human rights laws in the guise of fighting terrorism. International organizations like the United Nations not only do little to stop such activities, but in some cases actively support them.

However, human rights legislation is always applicable, and terrorist activity does not exclude a person from the Geneva Convention's safeguards. Despite the fact that terrorism poses a distinct and intricate danger to national security, all actions done must adhere to international law and not infringe upon basic human rights. Let's examine how the notions of terrorism and national security concerns are harming fundamental human rights in response to this.

## **DISCUSSION**

### **Defining and characterizing terrorism**

For some individuals, terrorism means different things. It is rife with political and philosophical uncertainty. Four elements are often used to describe terrorism, but not always: (1) the threat or use of violence; (2) a political goal; the desire to alter the status quo; (3) the purpose to sow fear by engaging in heinous public actions; and (4) the deliberate targeting of

people. It often entails the use of force, spreading fear, using intimidation tactics, particularly to achieve political goals, putting a stop to dissent, putting an end to revolt, guerilla warfare, etc. Thus, it might be said to be the systematic use of violence and intimidation, particularly for political ends.

In this regard, terrorism differs from all other crimes in terms of intent. Its goal is to terrorize the populace and keep them there while pressuring a government or other group to take action or not in a certain manner. It was first used in modern times during the Jacobin Reign of Terror and the French Revolution. It was first associated with governmental action but subsequently extended to individual or collective violence. It includes many other types of violence, such as indiscriminate bombing, hijacking, hostage-taking, assassination, and significant property devastation. Terrorism is a particularly aggressive kind of political violence that often arises in reaction to the ruler's political prominence or some other sort of political ailment. The proper definition of the word "terrorism" is one of the most difficult issues facing the legal regulation of terrorism[5], [6].

### **Terrorism's root causes**

As many different varieties of terrorism exist, so do their causes. Numerous academics have attempted to analyze the causes of human violence and rage, but no one theory can claim to thoroughly address the issue. It has been described by Robert Ted Gurr as the outcome of a mismatch between value expectations and value capabilities. According to Karl Marx, it is the result of the wealthy exploiting the poor economically. According to Fanon, it is the outcome of wrongdoings committed by colonialists and expansionists.

However, compared to the times of Marx and Fanon, current terrorism has a different look. Religious extremism has become a significant component of contemporary terrorism. However, as of yet, no theory has been able to definitively state the specific causes of terrorism, particularly international terrorism. It is difficult to examine international terrorism because of its wide range of operating environments, diverse population, and diversity of mentalities. However, the following are general categories for the causes of terrorism:

#### **1. Colonialism:**

Several significant terrorist organizations attribute their existence to colonialism and expansionist practices. Many groups have risen out in arms against colonial powers as a result of the cruel repression, physical torture, and dehumanizing that were unleashed during the years of colonialism. In the lack of genuine political engagement, the violent liberation movements became the last resort.

#### **2. Fundamentalism:**

Since a long time ago, one of the main causes of terrorism has been religious fundamentalism. The majority of terrorist actions in today's globe have some connection to fundamentalism. Examples of religious fundamentalism include the fundamentalism of Jews in Palestine, Sikhs in Punjab, and Muslims in Syria, Pakistan, Afghanistan, Russia, Chechnya, Iraq, Jammu and Kashmir, Xinxiang, etc. The fundamentalist group ISIS (Islamic State of Iraq and Syria), which has shown to be one of the largest terrorist and coup organizations in the world today, is also to blame for the current unrest in Iraq.



**Organized Crime and Drug Trafficking:** One of the factors contributing to the rise in terrorism throughout the globe is the relationship between international organized crime and drug trafficking. Today, it is difficult to distinguish between international terrorism and transnational organized crime. A lot of the time, terrorist organizations fund their own operations by selling narcotics and engaging in people trafficking. Drug lords sometimes provide funding for terrorist attacks against certain governments. One of the main industries of the groups involved in organized crime is the supply of children to be used as child soldiers. It is said that Afghanistan, Pakistan, Chechnya, Columbia, Sri Lanka, and several other nations house the global headquarters of organized crime that funds terrorism[7], [8].

**Modernization and Accessibility of Weapons:** The proliferation of terrorism throughout the globe is also a result of easy access to and availability of weapons and ammunition. With the development of technology, people now have access to light weapons with significant effect. The ease of usage and low cost of weapons and ammunition are partly attributable to recent advances in chemical research, armament engineering, and remote as well as computer exploding.

**contemporary technology:** The simplicity of communication, transportation, and other contemporary technical wonders has also made it simple for terrorist actions. These technical developments have made all kinds of material easily accessible in all parts of the globe. The attackers have exploited communication technologies to stay one step ahead of the security forces. The leaders of the biggest terrorist organizations are well educated individuals who are also knowledgeable in current technologies. Consider the engineer Osama Bin Laden as an example. Terrorists utilize computers, satellite phones, walkie talkies, and mobile phones to coordinate their operations.

**State complicity:** Open conflict has become an uncommon occurrence in the wake of collective security. The UN and other international organizations serve as the watchdogs in international relations. Due to this scrutiny, several states have discovered a means to support and fund terrorist organizations in rival states without declaring open war. With the aid of xeno terrorists and by giving money and weapons to the rebellious organizations in the enemy nations, this covert war is being waged against them. For instance, Pakistan has long been accused of funding terrorist activities against India, first in Kashmir and subsequently in Punjab. The terrorist organizations that target the West were funded by the Taliban regime. The rebels in Syria are receiving a variety of materials from Saudi Arabia.

**Economic factors:** One key factor in individuals becoming violent is the widening wealth disparity in emerging nations. The worsening living circumstances of the impoverished in emerging nations have given rise to several ideological terrorist organizations and actions. Dependency theory, Marxian theory, and other theories have shown that if there is a wealth imbalance, the underprivileged will turn to violence and terrorism. One illustration of this is Naxalism in India.

**Political Reasons:** There are a variety of political factors at play in the global upsurge in terrorism. One of the main causes of violence on a global scale is conflict between the developing and industrialized worlds. To keep developing nations under their control, developed nations have provided funding to terrorist organizations there. On the other hand, poor nations have retaliated, as seen by the assaults in rich nations. The United States has fought war on terrorism across the globe, but it is also accused of funding several terrorist

organizations to monitor other countries and their development. The States might address these problems either together or separately if they had a better understanding of the diverse causes and patterns of terrorism. By addressing these difficulties, the human rights would be immediately promoted. However, during the last several decades, the focus of the State has been on bolstering its legal framework for prosecuting terrorists. In the section that follows, we'll go through how the state's intensified security measures to combat terrorism led to violations of human rights by both those who carry out the violence and those who oppose it (military personnel and other forces).

Issues brought on by the absence of a common definition is the inability of States to prevent and fight terrorism is severely hampered by the absence of a common definition of terrorism. Additionally, it inhibits the UN from asserting its moral authority and from making it clear that using terrorism as a strategy is never acceptable, not even for the most legitimate of reasons. Additionally, the absence of a definition leads to the development of State counterterrorism policies beyond the purview of international law. There is a connection between human rights and the absence of a common definition of terrorism. Without a common understanding of what constitutes terrorism, states may adopt expansive, overbroad definitions and unintentionally penalize actions that are not related to terrorism. States may purposefully enact a wide definition and utilize this ability to repress unpopular movements or oppositional movements under the pretence of fighting terrorism. Due to ambiguous and broad domestic definitions of terrorism, people may be charged for exercising protected human rights in a legal manner. Without a definition that is universally accepted, States are free to develop their own, ambiguous meanings without any supervision from the UN, respecting the definition's appropriate scope.

Although progress has been made toward a global definition of terrorism, issues still exist. There are significant differences between States about what constitutes terrorism. Some members call for the definition to include state use of force against civilians. The inclusion of "State terrorism" in the definition has been proposed by several delegations. However, a number of international agreements, such as the Geneva Convention and the United Nations, already address state violence against people. It is not required to include State force used against civilians in a definition of terrorism, according to the UN Charter and the Rome Statute for the International Criminal Court. Some States demand that the definition refrain from making self-determination a crime. One possible compromise to these differences is excluding the word "comprehensive" from the definition of terrorism. These States want to protect "the right of a people to resist foreign occupation," but this argument is irrelevant to the definition of terrorism since there is "nothing in the fact of occupation that justifies the targeting and killing of civilians." This compromise could be a crucial first step in developing a flexible definition and achieving broad consensus. A uniform definition of terrorism is hampered significantly and needlessly by the differences between States. However, progress has been made in the direction of a definition. In a report delivered to the General Assembly in 2004 by the Secretary-General, recommendations for a potential definition were suggested. The definition in this report incorporates language from Security Council Resolution 1566 (2004) and covers acts committed against civilians with the intent to 1) cause death or serious bodily harm, or the taking of hostages, and 2) to incite terror in the general public or in a specific group of people, intimidate a population, or compel a government or an international organization to do or refrain from doing any act. With the help of this concept, States may

develop counterterrorism strategies that are more successful within certain parameters. This specific definition will safeguard human rights since States won't be able to defend their actions using general or ambiguous definitions[9], [10].

But in the lack of a clear definition, the word "terrorism" is used to refer to a wide range of actions, such as acts of terror, barbarism, or unusual violence committed not just by an individual or group of persons inside a state, but also by the military forces of one state against the forces of another state. State terrorism occurs when terrorism is institutionalized in the coercive use of state authority to muzzle even democratic opposition, and in the modern world, even democratic regimes are using this kind of terrorism. Since nations have the authority to operationally define it, the idea of state terrorism is, in many ways, highly hazy. States, as opposed to non-state organizations, may legitimately employ violence in many ways that civilians cannot, on a scale that civilians cannot. States also have the legal authority to define what constitutes terrorism and to impose the repercussions of that definition. However, insurgents or terrorists often label state-sanctioned violence as terrorism; for instance, Palestinian militants label Israel a terrorist state, Kurdish militants label Turkey as a terrorist nation, and Tamil militants label Indonesia a terrorist nation.

### **Anti-terrorism, human rights, and security legislation**

More than 140 governments have enacted anti-terrorism laws since September 11 in the USA. In fact, several nations have established many anti-terrorism laws or updated outdated legislation, thus expanding their legal options. Various factors have prompted the passage of the laws, including pressure from nations like the United States that had either experienced or expected assaults, United Nations Security Council resolutions, and massive strikes on the nation in certain circumstances. Massive damage has been done to the populace as a result of assaults. There were about 3,000 fatalities in the September 11 assaults. In the ten years afterwards, bombs and other assaults on civilians have claimed more than ten times that many lives in Pakistan alone. According to the UN Security Council's preamble to Resolution 1456 in 2003, "any acts of terrorism are criminal and unjustifiable, regardless of their motivation, whenever and by whomsoever committed and are to be unequivocally condemned, especially when they indiscriminately target or injure civilians." States have a duty to protect all people living under their control from such attacks in accordance with their obligation to ensure respect for the right to life. When taken as a whole, these post-September 11 legislations reflect a significant extension of the government's authority to conduct investigations, arrest, jail, and prosecute people at the price of due process, judicial scrutiny, and openness. Human rights defenders contend that such laws need special attention because they may be used to crush peaceful political opposition or to target certain racial, ethnic, or socioeconomic groups, in addition to the fact that many of them limit or violate the rights of suspects.

The propensity of these rules to include behaviour well outside of what is often considered terroristic is particularly concerning. The definition of terrorism in legislation is sometimes vague and open-ended. The fear of terrorism has been used by governments to justify the extraordinary powers granted to police and other state agencies under these laws, yet some of the behaviour they cover may have nothing to do with such prospective attacks. It was also discovered that several anti-terrorism legislation altered procedural laws, which are meant to assure that the legal system follows due process and protect fundamental human rights and guarantees of a fair trial. The power of law enforcement authorities to take action without

seeking approval from a court or any other external authority has improved as a result of these reforms. Others provide prosecutors or other members of the executive branch, who could have a special interest in how police investigations turn out, the authority to make decisions.

This demonstrates how the counterterrorism laws are evolving to have two sides. While the States assert that they use these mechanisms to protect their national security and the safety of their innocent citizens, human rights advocates frequently claim that such laws also violate the human rights of all individuals who the State deems to be terrorists in addition to breaking international human rights law. They claim that in the guise of combating terrorism, these procedures enable the state to violate the human rights of terrorist suspects, including via torture, cruel treatment, and enforced disappearance, without making any attempt to legalize such actions. Some Human Rights are most often violated when terrorism is used, whether by the state or by non-state actors, and we examine these Human Rights in the following Section.

### **Terrorism, counterterrorism, and the human rights issues involved**

As we continued to explore, terrorism seeks to undermine human rights by using fear and violence against people, often by non-State actors. Terrorists target respect for human rights, the rule of law, and democracy. Although essential, counterterrorism measures might jeopardize fundamental human rights.

The use of targeted killings, the prohibition against torture, arbitrary detention, racial and ethnic profiling, the right to due process, the freedoms of speech and association, the right to privacy, as well as numerous other social, economic, and cultural rights are all infringed upon by state counter-terrorism policies. Among these are (A) the outlawment of torture and other cruel, inhumane, and degrading treatment; (B) arbitrary imprisonment brought on by intrusive monitoring and intelligence measures; (C) the right to privacy; and (D) racial and ethnic profiling.

It is impossible to overstate the significance of upholding human rights while developing successful counterterrorism strategies. Significantly, breaking international law and human rights standards may actually encourage terrorism since many of the factors that contribute to its growth come from discrimination and deprivation of rights. Transparency and judicial scrutiny of State actions must be encouraged in accordance with international human rights legislation in order to guarantee that counter-terrorist measures won't lead to such circumstances.

### **Cruel, inhumane, and degrading treatment, including torture**

Concerns include the absence of accountability and judicial control for laws that gravely violate human rights, such as the ban on cruel, inhumane, and humiliating treatment. This problem is made worse by the fact that many anti-terrorism policies are veiled in secrecy, which makes it harder to respect human rights. Torture is never permitted and is now considered to be a *jus cogen* (mandatory) standard. Additionally, it is expressly forbidden under the ICCPR and the Convention against Torture. However, a lot of countries still torture suspects in terrorist cases.

In the war against terrorism, brutal, inhumane, and humiliating treatment, as well as arbitrary incarceration, have happened all across the globe. In addition to being against the standards of human rights, torture taints intelligence, making it untrustworthy. Allegations of torture include beatings, prolonged immobilization in uncomfortable postures, electric shocks, particularly to the genitalia, rape, and threats to harm the victim or other family members. Even if this behaviour is against international law and seriously violates human rights, it nonetheless goes on because it's necessary to fight terrorism and comply with emergency laws. Increased judicial scrutiny and openness will encourage States to always adhere to international law when using counterterrorism measures and assist ensure that it is being followed.

State involvement in torture and other human rights breaches is a connected problem. States were often discovered to have worked with powerful nations to enable the arrest, torturing, and mistreatment of terrorism suspects. The threat of terrorism does not justify States engaging in serious violations of human rights or cooperation with other States known to engage in such violations, so States must "place serious constraints on policies of cooperation by States, including by their intelligence agencies, with States that are known to violate human rights."

### **Arbitrary Detention Occurring as a Result of Prolonged Surveillance**

Contrary to international law, several States use intelligence and surveillance practices that are only authorized by the battle against terrorism. Some countries have set up intelligence services with the legal authority to hold and arrest anyone suspected of knowing anything about terrorist operations. Due to the lack of judicial monitoring over these entities, there may be a greater chance of arbitrary detention and other human rights breaches. Some nations lack a formal foundation for the intelligence services established to combat terrorism. As a consequence, people have been arrested and detained for reasons that domestic law does not explicitly state. Therefore, all States are required to use counterterrorism strategies that adhere to recognized domestic and international law. In several nations, the military intelligence services tasked with combating terrorism specialize in apprehending and questioning suspects who are thought to have knowledge of terrorist actions by armed organizations operating in Algeria or by global terrorist networks operating overseas. But there is no civilian monitoring of these organizations. Political leaders are not notified of every arrest and detention this organization has made, and they are also not aware of the techniques employed to question captives. Due to the absence of control, these situations generate suspicions about the use of torture and arbitrary imprisonment. The international community would be able to monitor counterterrorism organizations and guarantee adherence to human rights if genuine judicial monitoring were to be enforced. Without inspection, there is still a chance that serious human rights breaches may take place in secret.

### **The privilege of privacy**

Procedures that violate the right to privacy are another area that needs more clarity and judicial scrutiny. With a few exceptions, arbitrary or illegal interference with privacy is expressly forbidden under Article 17 of the ICCPR. Due to the vast monitoring methods used in the Patriot Act's (2001) implementation, actions done in the United States have sparked controversy. Many of the Patriot Act's provisions are being questioned because they don't provide judicial supervision for intelligence gathering and monitoring techniques that could



violate the right to privacy. Despite privacy and civil rights concerns, numerous dubious measures have been extended even though the Patriot Act was just set to expire. The international community must make sure that counter-terrorist measures adhere to both local and international law in order for States to address potential infringement of privacy rights and other human rights. A "profound chilling effect on other fundamental rights," including the right to privacy, may be caused by surveillance methods used to combat terrorism. Therefore, it is crucial that surveillance practices be under constant observation to guarantee adherence to human rights and safeguard the right to privacy. Some States have constitutional protections for peoples' right to privacy. The Charter of Rights and Freedoms in Canada safeguards privacy and promotes a sustainable equilibrium between crucial individual rights and law enforcement. States should seek to preserve privacy rights and maintain security by enacting legislation that is comparable to that of Canada.

### **Racial discrimination and profiling**

The searches carried out in accordance with the UK's Terrorism Act caused issues with respect to the right to privacy, but they also put people at danger of racial and ethnic profiling in breach of the CERD. In several instances, British police. we're performing these random searches in the pretext of combatting terrorism, stereotyping Asian and Black individuals. There should be no one specific racial, ethnic, cultural, religious, or national group associated with terrorism. This kind of targeting not only violates the CERD but may also tend to marginalize some communities and raise the threat of terrorism. Serious questions about racial profiling are raised by the use of stop and search authority and listing methods while creating terrorist suspect lists. There is a chance of racial and ethnic prejudice since the listing methods are opaque. Transparency will guard against other potential human rights breaches and promote justice in these processes. When terrorist watch lists and "no-fly" lists are formed, there is a danger of racial profiling, which is made worse by a lack of openness and judicial monitoring. Since these lists are often not accessible to the general public, they cannot be checked or appealed for review. Since the listings are not made public, there is no independent review to verify accuracy, making them prone to inaccuracy and incorrect information. Although maintaining the secret of the lists may be crucial, this objective must be weighed against the danger of racial profiling, potential mistakes, and privacy violations. Increased openness might expose illegal ethnic or racial profiling while also lowering the likelihood of mistakes in the watch lists and enabling effective appeals of the lists. Enforcing conformity with international law and human rights while exposing the secrecy surrounding these processes is the first step in resolving these issues.

Without sufficient monitoring and procedural openness, there is a high danger that counterterrorism measures would violate human rights. States must abide by international law and make an effort to reduce the circumstances that encourage terrorism. Some of these issues, such as the dehumanization of terrorist victims, a lack of the rule of law and human rights violations, discrimination based on race, nationality, or religion, political exclusion, socioeconomic marginalization, or a lack of good governance, may be the result of intrusive and biased anti-terrorist measures.

Measures used to combat terrorism that include arbitrary incarceration, torture, racial and ethnic profiling, and invasion of privacy may create environments that encourage terrorism. States must be aware of this danger and endeavour to develop just and efficient



counterterrorism regulations. The rule of law and the human rights framework must and may be used to combat terrorism. We become less secure as a result of repression, injustice, and the criminalization of peaceful expression and protest. Additionally, these actions go against the fundamental principles that the State ought to defend, including human rights.

## CONCLUSION

In this lesson, we have attempted to comprehend how terrorism came to be the number one worry for the world in the twenty-first century, the numerous factors that contributed to its rise, and the issues it is facing in terms of violating human rights.

On the other hand, the state, as the main proponent of security and defender of its citizens' human rights, often engages in counterterrorism efforts and does so sometimes by violating those same rights. Since the September 11th attack in the USA, the US and other nations have strengthened human rights in an effort to combat terrorism and advance national security.

Then, we discussed the contradictory counterterrorism laws that a majority of the States had adopted, including how they violated the human rights of even suspects, what transparency needed to be added to these laws, and how, on the other hand, the States shouldn't use measures that undermine the very values they were trying to advance. A major dilemma of our day is how to balance the need for security with the defence of human rights.

It is essential to keep in mind that a strong approach to security should not come at the price of human rights as countries and international organizations struggle with the complexity of terrorism. Instead, they can and must coexist peacefully. Within the confines of international law and human rights norms, effective counterterrorism measures may be developed and put into action. We can respect people's rights and dignity while maintaining collective security via open legal systems, reasonable use of force, privacy protection, and a rejection of discrimination. We can only effectively combat the dangers presented by terrorists while protecting the values that characterize our society by taking such a fair-minded and morally upright stance. Our dedication to upholding human rights is an unbreakable touchstone that directs our activities and shapes our future in a world where security concerns are of the utmost importance.

## REFERENCES:

- [1] P. Cusack, S. McAndrew, F. Cusack, and T. Warne, "Restraining good practice: Reviewing evidence of the effects of restraint from the perspective of service users and mental health professionals in the United Kingdom (UK)," *Int. J. Law Psychiatry*, 2016, doi: 10.1016/j.ijlp.2016.02.023.
- [2] M. L. Marsal-Llacuna, "City Indicators on Social Sustainability as Standardization Technologies for Smarter (Citizen-Centered) Governance of Cities," *Soc. Indic. Res.*, 2016, doi: 10.1007/s11205-015-1075-6.
- [3] S. Ferreira, "Migratory crisis in the Mediterranean: Managing irregular flows," *Stability*. 2016. doi: 10.5334/sta.441.
- [4] A. Verdeja, "Integrating protection into disaster risk preparedness in the Dominican Republic.," *Forced Migr. Rev.*, 2016.

- [5] L. E. Vogt, B. Rukooko, P. O. Iversen, and W. B. Eide, "Human rights dimensions of food, health and care in children's homes in Kampala, Uganda - A qualitative study," *BMC Int. Health Hum. Rights*, 2016, doi: 10.1186/s12914-016-0086-y.
- [6] M. Aizawa, "Staying human-centric at the intersection of climate change and human rights," *J. Energy Nat. Resour. Law*, 2016, doi: 10.1080/02646811.2016.1117897.
- [7] F. S. Taebloo and M. T. Naini, "Observing the Accused Person Interrogation Rights in Pretrial Period in Iran's Law and the International Charter of Human Rights," *J. Polit. Law*, 2016, doi: 10.5539/jpl.v9n9p126.
- [8] K. Crowe, "Secure Welfare Services: Risk, Security and Rights of Vulnerable Young People in Victoria, Australia," *Youth Justice*, 2016, doi: 10.1177/1473225416639396.
- [9] M. Moosa-Mitha and L. Dominelli, *Reconfiguring Citizenship: Social Exclusion and Diversity within Inclusive Citizenship Practices*. 2016. doi: 10.4324/9781315603964.
- [10] X. Peea, "Collective Property Leads to Household Investments: Lessons from Land Titling in Afro-Colombian Communities," *SSRN Electron. J.*, 2016, doi: 10.2139/ssrn.2782527.

## CHAPTER 13

### NURTURING CHANGE: THE DYNAMIC ROLE OF CIVIL SOCIETY AT NATIONAL AND INTERNATIONAL LEVELS

---

Sushil Kumar Singh, Professor  
College of Law, TeerthankerMahaveer University, Moradabad, Uttar Pradesh, India,  
Email Id- sushil2844@gmail.com

#### ABSTRACT:

This title examines the influential role of civil society organizations in shaping and driving social, political, and Civil society stands as a vibrant force that bridges the gap between citizens and governance structures, playing a pivotal role in shaping societies and influencing policies at both the national and international levels. Comprising a diverse range of non-governmental organizations, grassroots movements, and advocacy groups, civil society plays a critical role in galvanizing public participation, promoting accountability, and championing human rights. This paper delves into the multifaceted role of civil society in driving positive change, enhancing democratic processes, and fostering collaboration among nations. humanitarian change both within individual nations and on the global stage. By analyzing the diverse functions and contributions of civil society, this study explores how these organizations empower citizens, advocate for justice, and bridge gaps between governments and the people. With a focus on both national and international contexts, the paper elucidates the various mechanisms through which civil society fosters accountability, inclusivity, and cooperation. By shedding light on the multifaceted dimensions of civil society engagement, this abstract provides insights into the significance of citizen-led initiatives in advancing social progress and global cooperation.

#### KEYWORDS:

Civil society,Cooperation,Democratic, Human Rights,Non-Governmental Organizations (NGOs).

#### INTRODUCTION

Market failures and harmful externalities have historically been addressed by the State as the principal player. States, however, are often unable to meet the entire range of requirements of the inhabitants as a consequence of these market failures due to growing political and administrative limitations. Consequently, civil society is made up of its members and serves as "a public space between the state, the market, and the average household, in which people can debate and take actions that try to do right and struggle to right wrongs non-violently." According to this definition, civil society includes nonprofits, neighbourhood self-help groups, international organizations like the Red Cross, pressure groups based on religion, human rights organizations, and non-governmental organizations that work to raise the welfare, health, education, and living standards of people. The important political and economic changes that occurred in the past two to three decades as a result of the end of the Cold War and the advent of globalization placed a strong emphasis on democratic governance and economic growth across all nations, particularly in the fields of civic and human rights. Organizations in the civil society are seen to be a natural democratization and

population protection force. CSOs now play a significant part in the democratization of national societies, the advancement of fundamental human rights, and the establishment of fundamental labour rights via legislation or norms. Thus, the growth of dynamic civil society movements has coexisted with the development of democratic regimes. Thus, the aforementioned changes together with new communication technologies, particularly the internet, had a considerable impact on the Civil Society's emergence as a new regulatory force both at the national (or regional) and worldwide levels[1].

### Initiatives by Civil Society and Global Change

At least five distinct sectors have seen significant political and social advancements because to civil society activities. Women's rights are one of them. Others include ecological justice and environmental protection; the human rights of ethnic, religious, racial, and sexual minorities; movements for citizen participation and accountable governance; and resistance and protest against unfair economic globalization and unilateral militarization.

However, during the last 30 years, millions of people and hundreds of organizations throughout the globe have consistently mobilized and advocated on behalf of women's rights and green politics, placing them at the forefront of every political and policy conversation. More than 11 million people participated in protests against the Iraq War and unilateral militarization on February 15, 2003. In actuality, social movements and other members of the civil society came together at the World Social Forum in Porto Alegre in January 2003 and coordinated in a very spontaneous manner, leading to the unprecedented, coordinated worldwide mobilization that took place on the same day. This coordination was primarily made possible by digital mobilization[2], [3].

The majority of the novel policy framework and laws that have been passed in India over the last 25 years have been made possible by the persistent lobbying and advocacy of civil society organizations. The Right to Information (RTI) Act, the National Rural Employment Guarantee Act, the Right to Education Act, the new Act to stop domestic violence, and the one aimed at protecting the land rights of tribal communities were all passed as a result of people-centered advocacy, campaigning, and mobilization by hundreds of civil society organizations in India. Women's political engagement and the 33% female quota in Parliament are at the forefront of political debate in India thanks to the work of women's rights organizations and civil society initiatives[4], [5].

Activism on the part of the civil society has emerged as a political force against authoritarian regimes in several Asian and African nations. It has also made an effort to combat unfair economic globalization. This was made clear by the battle of Nepal's citizenry and members of civil society against the monarchy and other authoritarian governments. Civil society evolved became the platform for various interest groups and political organizations to work together to overthrow authoritarian governments in several Latin American nations. In truth, Brazil's political process was significantly shaped by the civil society, which brought together social movements, progressive NGOs, progressive church groups, labour unions, and public intellectuals to reform politics and public policy. Due in part to these historical and political circumstances, the World Social Forum process was developed in Brazil, where it assisted in the transition of state power. Global civil society projects and movements are becoming more integrated as a result of the Internet's development, digital mobilization, and reasonably priced air travel. The extraordinary mobilization and campaigns for trade justice and fair

trade, as well as against the unfair WTO system, showed the strength of citizen action and mobilization outside of the state and market. Many nations' political and policy decisions as well as the G20 process were impacted by the broad spectrum of anti-WTO mobilization in Seattle, Cancun, and Hong Kong. Millions of people in both wealthy and poor nations, rural villages and megacities, supported the Jubilee movement to eliminate the unfair debt of impoverished countries. The effective campaign against landmines served as yet another illustration of the global mobilization and action of civil society. The World Social Forum has grown into an open forum for discussion, coordination of efforts, and collective visioning across disparate ideological and political lines. The creation of a global justice solidarity movement had a wide range of effects on how politics were conducted in many nations.

### **Civil society's role in advancing and defending human rights**

The world community addressed human rights for the first time ever in history during the second part of the 20th century. Official and non-state actors collaborated after World War II to address a wide variety of rights, including civil and political, economic and social, and non-discrimination rights, and to codify many of them in the form of enforceable agreements. The states' readiness to put restrictions on their sovereignty is shown by this legal obligation. The democratization trend, the development of accountability in international law, and the expansion of transnational civil society, particularly Non-Governmental Organizations (NGOs), are three historical trends that have existed for a reasonable amount of time and support the legalization of international human rights. The United Nations Organization has acted as a catalyst for the growth of these tendencies, thus it is acceptable to start talking about the role of civil society in human rights with that acknowledgement.

### **United Nations and civil society**

Civil society has seen a rebirth of political awareness during the previous several decades. At the national and international levels, a wide variety of new organizations, citizen formations, social movements, knowledge-action networks, and policy advocacy groups have formed. This was partially a result of the change in assistance architecture that followed the end of the Cold War and the change in global politics, which placed more emphasis on local control of the development process. Following the Vienna Human Rights Summit in 1993, there was a renewed emphasis on human rights, and these groups that integrated civil, political, economic, social, and cultural rights were given new places and international legitimacy. Beginning with the Rio Summit in 1992, a succession of UN gatherings developed a supportive global environment for civil society organizations and activities. The Durban Summit on racism, the Copenhagen Summit on social development, and the Beijing Summit on women's rights all gave civil society movements a worldwide stage to push a new conversation on politics and public policy. A new synergy between nations and communities in the South and the North started to emerge as a result of the sharing of information, connections, and resources. In reality, the UN emerged as a crucial forum for negotiation between different countries and civil society. The United Nations gained fresh legitimacy and a new function as a result of playing this mediating position between civil society and the state. A valid space for international action and civil society campaigns was established by the renewed emphasis on human development, human rights, and global poverty. International networking and a new tendency of "globalization from below" were aided by new technology and financial resources. The emergence of new social movements and the

ensuing civil society process provided a platform for a new politics of protest and resistance against unjust globalization as a result of the new hegemony of power politics fueled by unilateral militarism, conservative politics, and a neoliberal policy paradigm began to rule the world. Communities led a new civil society process in this way.

A consideration of the changing environment for international human rights legislation would also be incomplete without mentioning the expanding significance of global civil society. Along with the UN, civil society organizations have grown in importance. There are already more than 2 million NGOs in existence, with 1 million alone in India. Some non-governmental organizations were even granted "consultative status" with the UN Economic and Social Council in 1948 after being officially recognized by the UN. The civil society, particularly NGOs, played a significant role in monitoring human rights in the late 1980s and particularly in the 1990s. They also participated in non-voting capacity at UN conferences and commissions that dealt with human rights and economic growth.

### **Role of NGOs in the U.N. Human Rights Organizations and Laws**

NGOs that promote and defend human rights have grown in number over the last 60 years in an almost exponential manner. 15 NGOs having consultative status participated in the creation of the Universal Declaration of Human Rights at the time. Around 1,500 NGOs took part in the Vienna World Conference on Human Rights in 1993. Following the conclusion of the East-West conflict, the 1990s were known as the decade of NGOs; they emerged from the Cold War's shadows, joined the civil society conversation, and increased their influence and strength. The emergence of all these organizations on the international scene and their activities within many nations of all five continents, Africa, Asia, the Americas from North to South, Australia, and Europe, are more than symbolic evidence of the universality of the human rights constituency. Human Rights, valued this broad human rights movement as one of the most significant and hopeful developments after World War II. The foundation of the human rights movement is this evolution. The state of human rights throughout the world would be worse without the efforts and contributions of this movement.

### **The Human Rights Council and NGOs**

The active involvement of NGOs in the old Commission on Human Rights is generally acknowledged to have contributed significantly to the development of international instruments, the adoption of resolutions, the completion of research, and the establishment of special processes, among other things. In accordance with Article 71 of the UN Charter, the Economic and Social Council (ECOSOC) is in charge of policing NGOs' involvement. The principles and rights pertaining to NGOs' formal involvement are defined in this context by ECOSOC Resolution 1996/31, with the grant of consultative status to civil society groups serving as its primary regulatory mechanism. The Human Rights Council took over from the sexagenarian Commission on Human Rights in 2006, which was facing a serious credibility crisis as a result of accusations of bias and overly partisan response to global human rights violations from Non-Governmental Organizations and States. The Human Rights Council (HRC) is now the main international organization for the promotion and protection of human rights. Its mission is to promote universal respect for the preservation of all basic freedoms and human rights for all, without any kind of discrimination and in a just and equitable way. The Res. 60/251 clearly guarantees NGOs' participation in the future Human Rights Council. The establishment of the HRC's institutions has benefited greatly from the contributions of



the NGOs. In its first year, 284 NGOs took part in Council meetings, which was a little fewer than the previous Commission. NGOs are seen as playing a crucial role in the Council by calling its attention to the realities in areas where human rights abuses are happening and by contributing their own unique knowledge. Additionally, it is crucial for NGOs to monitor the stances adopted by HRC Member States and observers in order to influence them as needed[6], [7].

## DISCUSSION

In addition to the fact that these nations account for the majority of the most serious breaches of basic rights, it is crucial that more NGOs from the Global South participate in the HRC since their representation offers them a numerical advantage. Asian and African countries together occupy 26 seats on the Council, making up more than 55% of all seats. This number increases to 72% when the eight nations from Latin America and the Caribbean are included. Many of these nations are skeptical of the actions' legality and the veracity of the material provided by NGOs based outside of their own nations or regions. However, just 33% of the 3050 NGOs holding consultative status with ECOSOC, which allows them to fully participate in Council meetings, are now from the Global South.

Numerous obstacles prevent NGOs from participating, but the following stand out as the most significant ones: (1) the challenging procedure for obtaining consultative status for those who do not already have it; (2) the high costs and lack of staff available to attend the sessions in Geneva; (3) the lack of familiarity with the workings and procedure in the HRC; (4) the lack of access to information, including language barriers; and (5) the challenge of deriving any concrete benefits. Considering these difficulties, it's essential to create original kinds of activity. For instance, it is crucial that NGOs from impoverished and emerging nations work constantly with their own governments. The views to be adopted by each country's diplomatic missions and delegations in the Human Rights Council are determined on a national level, usually through the Foreign Relations Ministries. The creation and execution of the rules that will direct their behaviour in the HRC must thus be facilitated by more formal channels and calls for more openness from NGOs to their national governments.

In order to reinforce individual efforts, make the most of available resources, and exchange experiences, it is necessary for NGOs to coordinate tactics and create collaborative initiatives for coordinated action inside the HRC, both in Geneva and at home. There is no question that the nations that make up the new organization, the HRC, bear full responsibility for its achievement. According to Resolution 60/251, the Council's position within the UN's organizational structure will sometimes be reviewed and it may eventually be elevated to the rank of one of its main organizations, alongside the Security Council and the Economic and Social Council. More than merely being symbolic, such a structural transformation would highlight how interconnected human rights, development, and peace are. This kind of evaluation will undoubtedly serve as a reliable benchmark for assessing the Council's first five years of operations. By that time, the Council will have to demonstrate its effectiveness in preventing human rights breaches, wherever they may occur. Monitoring and exerting pressure on States to put the defence of human rights and human dignity above all other interests will fall to non-governmental organizations. It is not too soon to say that NGOs have a lot of work ahead of them and that now more than ever, their participation with the HRC is essential.

## **NGOS for human rights: types and operations**

Small pressure groups to large multinational organizations with hundreds or even thousands of branches or members in various areas of the globe make up the human rights NGO spectrum. In this part, we take a quick look at how these NGOs operate and how they contribute significantly to the defence of human rights throughout the globe in order to uphold people's individual dignity when it is endangered by the authority of the state. NGOs are essential, particularly in:

1. Defending specific 'test cases' in front of the appropriate tribunals, or combating individual human rights crimes directly;
2. Giving people whose rights have been infringed immediate support;
3. Advocating for modifications to local, regional, or global legislation;
4. Assisting in the creation of those laws' substantive ideas; and
5. Encouraging public awareness of and adherence to human rights.

The contribution of NGOs is significant not only in terms of the outcomes attained, and consequently for the optimism that people may feel about the defence of human rights globally, but also because NGOs are, in a very real sense, tools that can be used by individuals and groups globally. Like many organizations, they are run and coordinated by private persons, but a significant portion of their power comes from other members of the community who donate their time and energy to furthering their cause.

## **NGOs working for human rights**

There were 841 NGOs from all over the globe present at the 1993 UN globe Conference on Human Rights, often known as the Vienna Conference, all of which identified themselves as working with a human rights mission. Although a significant number in and of itself, this really only represented a very small portion of all human rights NGOs operating globally. The majority of self-described "human rights organizations" often work to defend civil and political rights. Amnesty International, Human Rights Watch, the International Federation for Human Rights, Human Rights First, and Interights are some of the most well-known of these organizations, at least on a global scale. The many diverse human rights recognized by the international community, including civil and political rights, are just one category of those rights, as we have seen, and new rights are still being created today. This means that the actual number of NGOs working to protect human rights, in one way or another, is well into the hundreds of thousands worldwide when we also take into account the NGOs fighting against issues like poverty, violence, racism, health issues, homelessness, and environmental concerns, to name a few[8], [9].

## **Influence of Civil Society on the Process**

The strategies that NGOs use will vary depending on the nature of their objectives, such as their specificity or generality, their long-term or short-term nature, their local, national, regional, or international scope, and so on. NGOs may attempt to engage in the protection of human rights at various different stages or levels.

## **Direct Support**

For NGOs focusing on social and economic rights, providing some kind of direct assistance to persons who have suffered human rights breaches is a typical practice. These services

might be in the form of humanitarian aid, security, or instruction in order to learn new skills. If the right is legally protected, they may also involve legal representation or suggestions on how to file claims. Direct aid to a victim of a violation or a human rights activist, however, is often either impractical or may not represent the best use of an organization's resources. In these circumstances, which probably constitute the majority of instances, NGOs must adopt a longer-term perspective and consider other methods of either redressing the breach or avoiding future incidents of the same kind.

### **Gathering reliable information**

The principle of trying to "show up" the perpetrators of injustice may be the primary approach behind all of the many kinds of NGO activity. Because the effects of their actions are sometimes unknown to the broader public, governments frequently have the ability to avoid their commitments under the international treaties or other rights standards to which they have committed. NGOs routinely gather such data and utilize it to encourage openness in governments' treatment of human rights, which is crucial for keeping them accountable. They choose a problem that will appeal to people's feeling of injustice and then make it public in an effort to exert pressure on individuals or governments. Amnesty International and the International Committee of the Red Cross are two of the most well-known organizations with a reputation for reliable monitoring and reporting. Both of these organizations have sway over the general populace as well as the UN, where their findings are considered as part of the formal procedure for overseeing governments that have consented to be bound by the provisions of international treaties.

### **Lobbying and campaigning**

International actors often engage in lobbying and campaigning to alter policy. Again, there are many forms, and an NGO will attempt to choose the most suitable one based on the goals it has in mind, the characteristics of its "target," and, of course, its own resources. Here are some typical procedures. Amnesty International and other NGOs have utilized letter-writing campaigns to considerable success in the past. Government authorities are "bombarded" with letters from thousands of people and organizations throughout the globe. When organizations wish to engage the public's support or bring something to the public's attention in order to "name and shame" a government, they may resort to street activities or demonstrations, with the media attention that they often draw. Social media and the Internet are now taking on an increasingly large role in lobbying techniques, and the media will often play a big role in these efforts as well. To provide an NGO perspective on the actual situation regarding the enjoyment of human rights in a certain country, shadow reports are presented to UN human rights monitoring agencies[10], [11].

NGOs may participate in secret meetings or briefings with authorities in addition to public displays of support or indignation. Sometimes changing a policy or practice just requires the threat of bringing it to the public's attention. Unlike in the past when it was mobilized using cassettes, posters, and faxes, now it is mobilized via email campaigns, online petitions, blogs, and electronic social networks. In general, a campaign's chances of success increase with the amount of support it receives from the general public or other powerful players (such as other governments). NGOs may make sure that their message is heard even if they do not always directly employ this assistance by merely stating that a sizable public movement might be organized against one or more governments.

## **Education and Awareness of Human Rights**

Many human rights NGOs also engage in some kind of public awareness or educational activity, at least as part of their operations. NGOs often attempt to educate the public about problems pertaining to human rights since they are aware that this is where they will get the majority of their support. Greater understanding of these problems and the strategies for protecting them is probably going to inspire more respect, which will raise the possibility of being able to rally support in specific cases of human rights breaches. The effectiveness of the NGO community in enhancing the climate for human rights depends on this support, or prospective support.

## **Leading NGOs for the Advancement of Human Rights**

There are several NGOs working to enhance the human rights of diverse demographic groups around the globe. Some of these NGOs focus on a specific topic, while others address a wide range of problems. In the part that follows, we'll have a brief discussion of a few well-known NGOs with a solid worldwide reputation.

### **The International Red Cross Committee**

The International Red Cross and Red Crescent are both part of the International Committee of the Red Cross. Both engage in humanitarian endeavours, with Red Crescent emphasizing the Muslim world. The International Red Cross was established in Geneva, where it is now based, in 1863. Its mission is to "protect and assist people affected by armed conflicts and internal disturbances throughout the world on a strictly neutral and impartial basis." There are more than 12,000 employees working out of 60 permanent offices. The ICRC employs thousands of volunteers and conducts activities in more than 80 countries. The ICRC also maintains an office in New York for its permanent mission to the UN. The office in Washington, D.C., provides coverage for Canada and the United States. Monitoring and visiting detainees whose cases may include human rights breaches is one of the ICRC's main responsibilities. Regular visits are made to the detainees kept by the American military in Guantanamo Bay, Cuba. The Abu Ghraib jail in Iraq, where American military troops committed human rights violations, has also been inspected by the IRC. Since 1967, the ICRC has kept an eye on both sides of the Israeli-Palestinian conflict elsewhere in the Middle East. In a similar vein, it helped NATO intervene in the war in Kosovo by drawing attention to human rights violations there. The search for the missing continues to be handled by the ICRC in Kosovo and other former Yugoslavian nations. Most people are familiar with the Red Cross largely via its efforts to aid those affected by calamities like hurricanes, floods, and earthquakes. But on a global scale, the ICRC plays a significant role in defending those who are at danger during genocidal conflicts and wars.

### **International Oxfam**

The Oxford Committee for Famine Relief, founded in England during World War II to aid war victims in Europe, was originally known by the acronym "Oxfam." Since then, 12 nations in Europe, North America, and Australia/Oceania have founded Oxfam groups to combat poverty and injustice to human rights.

To connect them, Oxfam International was established in 1995. One of the most effective NGOs fighting for economic equality, Oxfam believes that "poverty and powerlessness are

avoidable and can be eliminated by human action and political will." Through the use of its own staff, consultants, partner organizations, and volunteers, Oxfam seeks to empower the poor: "In all our actions our goal is to enable people to exercise their rights and manage their own lives." This, however, is just one aspect of a strategy that combines the particular with the broad. The work of Oxfam on grassroots improvements is linked to their work on lobbying and fighting for national and international change.

### **People's Rights Watch**

As Helsinki Watch, Human Rights Watch (HRW) was established in 1978. Its duty during the Cold War was to keep an eye out for violations of the 1975 Helsinki Accords' human rights provisions by the Soviet Union and its supporters. It established Americas Watch in the 1980s with an emphasis on Latin America, and the group expanded to include other continents. All of the "Watch" committees united in 1988 under the banner of Human Rights Watch. It is now the biggest human rights NGO with an American base of operations. Its headquarters are in New York City, and it also has offices there, as well as in Los Angeles, San Francisco, and Washington, D.C. Its European offices are in Brussels, London, and Moscow, while Hong Kong serves as its hub for coverage of Asia. Research is carried out by HRW, and the findings are then published in books and reports, "generating extensive coverage in local and global media." When HRW targeted Nepal at the beginning of 2005, King Gyanendra had employed the Royal Nepalese Army to overthrow the government, proclaim a state of emergency, and arrest critics while doing so. This exposure helped to make abusive regimes seem bad in the eyes of their people and the rest of the world. Additionally, HRW releases "Monthly Update," an email newsletter that covers the most recent human rights abuses and, in certain instances, includes a "What You Can Do" section with the contact information for the highest-ranking official involved in the abuse, including a phone number and/or postal address. It is advised for supporters to get in touch and join the global public outcry against the human rights infringement.

### **Rights of Humanity**

The first human rights NGO to operate online was Derechos Human Rights. Derechos, which translates to "rights" in Spanish, emphasizes the group's mission, which is to advance human rights globally, inform the public about these rights, look into cases of human rights violations, advance the rule of law in international relations, and support other human rights organizations as well as those who have suffered abuse. Although the organisation has done most of its work in Latin America, it is also engaged in the United States and Europe.

Derechos Human Rights, with its headquarters in California, collaborates with EquipoNizkor, a partner with operations in Europe and Latin America, and has affiliates in Argentina. The mailing list is separated into parts for human rights NGOs, human rights attorneys, and human rights professionals, and an open forum that anyone may join. Derechos Human Rights also runs a "Human Rights Discussion List" and a "Human Rights Mailing List." The discussion list is accessible to everyone, but it is not a place for racial slurs, justifications for violations of human rights, insults directed at specific individuals, or any kind of advertisement. Additionally, it is not meant to be a venue for highlighting human rights abuses or making pleas on behalf of victims. These actions are carried out via "Human Rights News & Actions," an online newsletter that delivers up-to-date information on violations of human rights as well as archives pertaining to those rights, which are arranged by nation and



cover the majority of the globe. To sum up the discussion, it should be noted that numerous NGOs, or nongovernmental organizations, play a significant role in both the national and international levels of the promotion and defence of human rights through their membership in various organizations, advocacy for new international laws, and reporting on and monitoring of those laws' implementation. These organizations' start-up, organizational, and transaction expenses have drastically decreased, which has made them one of the most important players in the international human rights arena of the late 20th and early 21st centuries.

This has made Civil Society significantly more prominent than in the past, together with governments' (sometimes reluctant) desire to provide formal and informal access to official international decision-making forums. As human rights violations spread due to globalization, states are looking to civil society organizations to play a more active role in holding transnational corporations and other business organizations more accountable for upholding human rights protections as well as strengthening state control over these organizations' operations. As a result, the Civil Society should have a bigger place and a bigger role in the legislation and preservation of human rights.

## CONCLUSION

In this lesson on national and international civil society, we attempted to comprehend how the latter has become more active as a consequence of substantial global developments and their impact on national and local levels worldwide, particularly in developing nations. Further, we attempted to comprehend how the UN System accords Civil Society Organizations a specific status and location, as well as the function they perform inside different UN entities. Then we moved on to studying about the types and modes of operation of human rights NGOs, and ultimately we made an effort to get familiar with some significant NGOs engaged in the promotion and defence of human rights. The role of civil society is still crucial in promoting a more fair, just, and inclusive international order in an era of complex issues and quick change. Whether at the local level or on the global scale, the vitality of civil society groups demonstrates their ability to hold governments responsible, elevate underrepresented voices, and spark revolutionary initiatives. For the purpose of tackling global challenges that cut beyond national boundaries, such as environmental catastrophes and breaches of human rights, civil society, governments, and international organizations must coordinate their efforts. A more responsive, participative, and cooperative world, where the aspirations of people are at the centre of policy and decision-making, may be achieved as we go ahead by recognizing and fostering the role of civil society at both the national and international levels.

## REFERENCES:

- [1] J. Kamstra, B. Pelzer, W. Elbers, and R. Ruben, "Constraining is enabling? Exploring the influence of national context on civil society strength," *Voluntas*, 2016, doi: 10.1007/s11266-016-9697-0.
- [2] A. Salim, "Gender Responsive Budgeting: State and Civil Society Initiatives at National and Sub-national Levels in Indonesia," 2016. doi: 10.1007/978-3-319-24496-9\_10.



- [3] E. Rafighi, S. Poduval, H. Legido-Quigley, and N. Howard, "National health service principles as experienced by vulnerable London migrants in 'Austerity Britain': A qualitative study of rights, entitlements, and civil-society advocacy," *Int. J. Heal. Policy Manag.*, 2016, doi: 10.15171/ijhpm.2016.50.
- [4] E. A. Wilson, "Restrictive national laws affecting human rights civil society organizations: A legal analysis," *Journal of Human Rights Practice*. 2016. doi: 10.1093/jhuman/huw018.
- [5] P. ten Hoop-Bender *et al.*, "Using advocacy and data to strengthen political accountability in maternal and newborn health in Africa," *Int. J. Gynecol. Obstet.*, 2016, doi: 10.1016/j.ijgo.2016.10.003.
- [6] E. Nulman, *Climate change and social movements: Civil society and the development of national climate change policies*. 2016. doi: 10.1057/9781137468796.
- [7] A. Abayomi, S. Gevao, B. Conton, P. Deblasio, and R. Katz, "African civil society initiatives to drive a biobanking, biosecurity and infrastructure development agenda in the wake of the West African Ebola outbreak," *Pan African Medical Journal*. 2016. doi: 10.11604/pamj.2016.24.270.8429.
- [8] A. Gonzalez, "Poverty, oil and corruption: the need for a Quad-Sector Development Partnership (QSDP) in Nigeria's Niger Delta," *Dev. Policy Rev.*, 2016, doi: 10.1111/dpr.12164.
- [9] A. Bukh, "Korean National Identity, Civic Activism and the Dokdo/Takeshima Territorial Dispute," *J. Asian Secur. Int. Aff.*, 2016, doi: 10.1177/2347797016645459.
- [10] D. Podger, E. Hoover, G. Burford, T. Hak, and M. K. Harder, "Revealing values in a complex environmental program: a scaling up of values-based indicators," *J. Clean. Prod.*, 2016, doi: 10.1016/j.jclepro.2015.08.034.
- [11] K. P. Norman, "Between Europe and Africa: Morocco as a country of immigration," *J. Middle East Africa*, 2016, doi: 10.1080/21520844.2016.1237258.