

**DIRECTORATE OF DISTANCE EDUCATION
AND
CONTINUING EDUCATION**

**CONSTITUTION AND HUMAN RIGHTS
(SCPM34)**

M.A. CRIMINOLOGY AND POLICE SCIENCE



**MANONMANIAM SUNDARANAR UNIVERSITY
TIRUNELVELI**

Subject:

CONSTITUTION AND HUMAN RIGHTS

Semester III

Course Code: (SCPM34)

Content Compiler & Course Writer

Lt. Dr. R. Sivakumar

Assistant Professor

Dept. of Criminology & Criminal Justice

Manonmaniam Sundaranar University

Tirunelveli, Tamil Nadu, India.

CONSTITUTION AND HUMAN RIGHTS

| UNIT | Details |
|------|--|
| I | Human Rights Basics Historical development of human rights. Universal Declaration of Human rights, 1948. Human rights in Criminal Justice. The protection of human rights under the Indian Criminal Justice Administration. Policing and Human Rights Challenges. |
| II | Covenants and Constitution International Covenants. Constitution of India – Fundamental Rights (Articles 14,19,20,21,22 and 32). Provisions for human rights Directive Principles of State Policy. Human Rights and Fundamental Freedoms in relation to accused. Prisoner's rights-Landmark Judgements. |
| III | Human rights and police Preservation of Human Rights- Preventive measures for protection of Human rights- Curative measures for preservation of Human rights. Human Rights and Practice of Policing. |
| IV | Legal provisions Bharatiya Nagarik Suraksha Sanhita (clause 52,53,53A, 54, 54 A, 55A, 56, 57, 148, 149, 151, 156, 265L, 268, 269, 291A, 293 (2), 395, 396 and 397)- Provisions for human rights. Bharatiya Sakshya Adhiniyam- Evidence Act (sections 30,31,32, 109, 111 and 128) Provisions for human rights, The Human Rights Act 1993, NHRC-Structure & Functions, SHRC, Human Rights Courts |
| V | Specific rights Specific Rights: Civil Rights, Women Rights, Dalit Rights, Rights of Prisoners, Rights of Victims, Child rights, Labour rights etc., Role of NGOs in the protection of Human Rights. |

RECOMMENDED READINGS

1. Bakshi, P.M. (2023). The Constitution of India (19th ed.). Universal Law Publishing.
2. Durga Das Basu (2024). The Constitution of India. LexisNexis. India.
3. e-PG Pathasala
4. Human rights Today – A United Nations Priority, U.N. Publications. Department of Public information, United Nation, New York.
5. Human rights: A source book, (1996) NCERT publications, New Delhi
6. Iyer V.R. Krishna (1986) *Human Rights and the Law*, Vedpal Law House, Indore.
7. Laxmikanth M (2023). Indian Polity. Mc Graw Hill. India
8. Parmar, Lalit., (1998). *Human Rights*, Anmol Publications Pvt Ltd. New Delhi.
9. Sen S. (1998) Human Rights in Developing Society, APH Publishing Corporation, New Delhi
10. Subramanian S. (1997) *Human Rights: International Challenges*, Manas Publications New Delhi.
11. Thilagaraj. R. (Ed) (2002) *Human Rights and Criminal Justice Administration*, APH Publishing Corporation, New Delhi
12. Universal declaration of Human rights, 1948.
13. Vadackumchery, James (1996) *Human Rights and the Police in India*, APH Publishing Corporation, New Delhi.

Constitution and Human Rights

Unit – I Human Rights Basics

Historical Development of Human Rights

The development of human rights is deeply rooted in historical struggles for freedom, equality, and justice. Human rights have evolved significantly from ancient times through to the modern world, shaped by key documents, philosophies, and events that have underscored the universal need for protecting individual dignity. Early expressions of human rights can be traced back to ancient civilizations, including the Code of Hammurabi (c. 1754 BC) of Babylon, which laid the groundwork for legal rights and justice. However, the concept of human rights as we understand it today began to take form during the Enlightenment in the 17th and 18th centuries. Philosophers such as John Locke and Jean-Jacques Rousseau argued for the inherent rights of individuals, advocating for the principles of liberty, equality, and fraternity. These ideas were instrumental in shaping revolutionary movements, such as the American Revolution (1776) and the French Revolution (1789), both of which declared the importance of natural rights and freedoms.

The Declaration of the Rights of Man and of the Citizen, adopted during the French Revolution, was a pivotal moment in the history of human rights, asserting that rights were inherent and should not be infringed upon by the state. The United States Declaration of Independence also emphasized these principles, advocating for the “unalienable rights” of life, liberty, and the pursuit of happiness. Following these revolutions, a series of legal and political advances furthered human rights protection. The abolition of slavery, the women's suffrage movement, and the civil rights movements in the 19th and 20th centuries all played a critical role in expanding the recognition and protection of human rights worldwide.

The atrocities of World War II and the Holocaust, however, marked a defining turning point in the development of human rights. In response to these violations, the international community, led by the United Nations (UN), came together to establish a global framework for protecting the rights of all people. In 1948, the Universal Declaration of Human Rights (UDHR) was adopted by the United Nations General Assembly, marking the first global consensus on the essential rights and freedoms all people are entitled to, irrespective of nationality, race, religion, or any other status. The UDHR emphasized civil, political, economic, social, and cultural rights, setting a universal standard for human dignity.

Since the adoption of the UDHR, the human rights framework has continued to evolve. International treaties, such as the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social, and Cultural Rights (1966), have further

established legal frameworks for the protection of rights. Additionally, regional human rights systems, such as the European Convention on Human Rights (1950) and the American Convention on Human Rights (1969), have offered regional mechanisms for enforcement and advocacy. Today, human rights continue to be at the forefront of global political discourse, as challenges like terrorism, migration, and inequality raise new questions about the balance between security and freedom, state sovereignty and international intervention.

Universal Declaration of Human Rights (1948)

The **Universal Declaration of Human Rights (UDHR)**, adopted by the United Nations General Assembly on December 10, 1948, remains one of the most significant milestones in the global pursuit of human dignity, equality, and justice. The UDHR marked a defining moment in the post-World War II era, when the international community, devastated by the atrocities of the Holocaust and the effects of global conflict, sought to create a shared framework for the protection of the fundamental rights and freedoms of every individual. It was drafted by a committee of international experts, including Eleanor Roosevelt, René Cassin, Peng Chun Chang, Charles Malik, and others, under the leadership of the UN Commission on Human Rights. The UDHR represents a universal standard, setting the foundation for human rights law and influencing national and international legal systems.

Historical Context and Necessity

The idea of human rights can be traced to various legal and moral traditions throughout history, from the **Magna Carta (1215)** in England, which limited the power of the monarchy, to the **American Bill of Rights (1791)** and the **French Declaration of the Rights of Man and Citizen (1789)**. However, it was only after the catastrophic events of World War II and the Holocaust, which revealed the extent of human rights violations and state-sponsored atrocities, that the concept of universal human rights gained global prominence. The UDHR was born out of the need to prevent the recurrence of such horrors and provide a framework for global peace, justice, and cooperation.

The atrocities committed by the Nazis during the Holocaust, including the systematic murder of six million Jews, as well as other minorities and political dissidents, shocked the conscience of humanity. These events demonstrated the devastating consequences of unchecked government power and the absence of protections for individuals. In the aftermath of the war, the international community recognized the need for binding moral and legal standards that would guarantee the protection of human dignity, irrespective of race, ethnicity, religion, or national origin.

The Structure of the UDHR

The UDHR consists of **30 articles**, each aimed at safeguarding the rights of individuals in civil, political, economic, social, and cultural spheres. The preamble of the Declaration articulates the urgency of establishing a common standard for human rights that can be universally recognized and respected by all nations and peoples. It acknowledges the inherent dignity and equal and inalienable rights of all members of the human family, emphasizing that disregard and contempt for human rights have led to barbarous acts and the undermining of peace and justice.

The **first article** of the UDHR sets forth a foundational principle: "All human beings are born free and equal in dignity and rights." This statement articulates the central idea of human equality, ensuring that all people, regardless of background, are entitled to the same fundamental rights. The emphasis on equality and dignity has profound implications for addressing inequalities based on race, gender, ethnicity, or other social divisions.

One of the most important sections of the UDHR is **Article 3**, which guarantees the right to life, liberty, and security of person. This article serves as the cornerstone of personal freedom and protection from arbitrary detention or punishment. Article 5 further reinforces this principle by prohibiting torture and cruel, inhuman, or degrading treatment or punishment, underscoring the importance of humane treatment in all circumstances.

Another significant part of the UDHR focuses on the **right to participation in government and society**. Article 21 asserts that "everyone has the right to take part in the government of his country, directly or through freely chosen representatives." This article reflects the democratic ideal that individuals should have a voice in the governance of their nation, either through voting or other forms of civic participation. The right to freely express opinions, assemble peacefully, and associate freely is central to the democratic principles embedded in the UDHR.

Economic and social rights are also integral to the UDHR, and several articles deal with these issues. **Article 23** guarantees the right to work, the right to fair wages, and the right to form and join trade unions. These rights aim to ensure that individuals have access to the resources necessary to live with dignity. In the same vein, **Article 25** affirms the right to an adequate standard of living, including food, clothing, housing, and medical care. These provisions reflect a broad understanding of human rights, acknowledging that civil and political freedoms must be complemented by access to the essentials for a decent life.

Impact and Influence

Although the UDHR is not a legally binding treaty, it has had a profound and lasting influence on international law and policy. The Declaration laid the foundation for the development of subsequent international human rights treaties, conventions, and protocols. The **International Covenant on Civil and Political Rights (ICCPR)** and the **International Covenant on Economic, Social, and Cultural Rights (ICESCR)**, both adopted in 1966, further elaborate the rights outlined in the UDHR and create legally binding obligations for states to protect those rights.

The UDHR has also been instrumental in shaping national constitutions and legal frameworks. Many countries, inspired by the principles of the Declaration, have incorporated human rights provisions into their own legal systems. For example, India's **Constitution**, adopted in 1950, includes fundamental rights that mirror the UDHR, such as the right to equality, freedom of speech, and the right to life and liberty. The UDHR's influence extends beyond the legal realm into cultural and educational spheres, shaping global norms and values regarding human dignity.

Furthermore, the UDHR has been pivotal in the establishment of various international human rights institutions and mechanisms. The **United Nations Human Rights Council (UNHRC)**, the **International Criminal Court (ICC)**, and **human rights organizations** like Amnesty International and Human Rights Watch have all emerged from the framework established by the UDHR. These organizations work to monitor human rights violations, promote the principles of the Declaration, and advocate for accountability for those responsible for violations.

Challenges and Criticism

Despite its widespread influence, the UDHR has not been without criticism and challenges. One major issue is the perceived **cultural relativism** of human rights. Some critics argue that the UDHR, shaped predominantly by Western liberal thought, imposes a set of values that may not be universally applicable, particularly in societies with different cultural, religious, or political traditions. For instance, certain countries, especially in Asia and the Middle East, have raised concerns about the emphasis on individual rights, arguing that collective rights or cultural traditions should also be taken into account.

Another critique is the difficulty of ensuring compliance with the UDHR. Since the Declaration is not legally binding, its enforcement is limited to diplomatic pressure and international condemnation. Many countries continue to violate the rights enshrined in the UDHR, and the lack of a strong enforcement mechanism remains a challenge. This has led

some to argue for stronger international legal frameworks and accountability mechanisms to hold violators accountable.

Contemporary Relevance

The UDHR remains a cornerstone of the global human rights movement and continues to serve as a guiding document in the pursuit of justice, equality, and peace. In an increasingly globalized world, issues such as **migration, terrorism, climate change, and technological advancements** have raised new challenges in human rights protection. The UDHR's relevance persists as it provides a universal standard for addressing these contemporary issues while safeguarding human dignity.

Human rights advocacy today continues to build on the principles of the UDHR, with efforts to address ongoing human rights abuses in conflict zones, as well as the rights of marginalized groups such as refugees, women, children, and indigenous populations. While the UDHR has laid the foundation for international human rights law, its continued application and development remain essential to ensuring that the rights of all people are respected, regardless of their background or circumstances.

Conclusion

The **Universal Declaration of Human Rights** has been instrumental in shaping the modern understanding of human rights. It provided a shared foundation for nations to affirm the inherent dignity of all people and work toward a world in which human rights are universally protected. While challenges to its implementation persist, the UDHR remains a beacon of hope for the continued advancement of justice, peace, and human dignity worldwide. Through its principles, the UDHR continues to guide efforts to create a world where all individuals can live freely, equally, and with dignity.

Human Rights in Criminal Justice

The **relationship between human rights and criminal justice** is a fundamental aspect of any legal system, as it ensures that individuals' basic freedoms are protected while still allowing for the maintenance of law and order. Human rights in the context of criminal justice involve the protection of individual rights throughout the various stages of the criminal process, including investigation, prosecution, trial, detention, sentencing, and post-conviction. These rights, as outlined in international human rights instruments such as the **Universal Declaration of Human Rights (UDHR)** and the **International Covenant on Civil and Political Rights (ICCPR)**, are designed to safeguard against the abuse of power by the state and ensure that criminal justice procedures are fair, just, and humane.

The Right to Fair Trial

One of the most significant human rights in criminal justice is the **right to a fair trial**. Article 10 of the UDHR asserts that "everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal." This principle ensures that individuals accused of a crime are provided with an opportunity to present their case before a neutral and competent court. Fair trials also require adequate access to legal representation, the presumption of innocence until proven guilty, and the right to be informed promptly and in detail of the charges against them.

A **fair trial** is not only a procedural right but also a guarantee of justice, as it ensures that individuals are not wrongfully convicted or subjected to unjust punishment. **International law**, such as the ICCPR, further emphasizes that individuals should not be subjected to arbitrary detention, and their legal rights, including access to counsel and a fair hearing, must be respected at all stages of criminal proceedings.

Protection from Torture and Cruel Treatment

The prohibition of **torture and cruel, inhuman, or degrading treatment or punishment** is another cornerstone of human rights within criminal justice systems. **Article 5 of the UDHR** explicitly prohibits torture, and this principle is reinforced in numerous international treaties, including the **Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)**. Torture and ill-treatment are not only grave violations of human rights but also undermine the integrity of the justice system by producing unreliable confessions and damaging public trust.

Throughout the criminal justice process, individuals must be protected from any form of coercion or mistreatment, whether by law enforcement, prison officials, or other state agents. This includes ensuring that **interrogation** methods comply with international standards and that detainees are treated with dignity and respect. The **right to be free from torture** is absolute and cannot be waived, even during times of national emergency or conflict.

The Right to Access to Legal Counsel

The right to **access legal counsel** is another fundamental human right within the criminal justice system. **Article 11 of the UDHR** outlines that individuals charged with criminal offenses must be provided with legal representation to defend themselves adequately. **Access to counsel** ensures that accused persons are informed of their rights, are able to understand the charges against them, and are given a fair opportunity to present their case. Legal counsel also plays a crucial role in preventing **what**, as defense lawyers work to identify any flaws in the prosecution's case and ensure that defendants are not unjustly convicted.

In many countries, **legal aid** services are provided to individuals who cannot afford to hire private counsel. The availability of legal aid is an essential element of ensuring equality before the law and preventing discrimination against those with limited financial means. Without access to competent legal representation, individuals are at risk of being denied their right to a fair trial, leading to wrongful convictions or disproportionately harsh sentences.

Protection of Juveniles and Vulnerable Groups

The protection of the rights of **juveniles** and other vulnerable groups within the criminal justice system is a critical aspect of ensuring that human rights are upheld. International instruments such as the **UN Convention on the Rights of the Child (CRC)** emphasize the need for special protections for children who come into contact with the justice system. Children should not be treated the same as adults in criminal proceedings, and their legal rights, including access to education, rehabilitation, and protection from abuse, must be safeguarded.

Additionally, individuals who are mentally ill, disabled, or otherwise vulnerable should be provided with adequate support and protection under international human rights law. The **UN Principles and Guidelines on Access to Legal Aid** in criminal justice systems stress the importance of providing fair treatment to all individuals, regardless of their personal characteristics or circumstances, and ensuring that vulnerable populations are not further marginalized by the justice system.

The Death Penalty and Human Rights

The **death penalty** remains a highly contentious issue in the context of human rights and criminal justice. While some countries have abolished the death penalty altogether, others continue to carry out executions, often citing reasons of deterrence or justice for victims of severe crimes. The **UN General Assembly** has called for a worldwide moratorium on the death penalty and advocates for its abolition, noting the inherent risks of wrongful executions and the violation of the right to life.

Opponents of the death penalty argue that it constitutes **cruel, inhuman, and degrading punishment**, as prohibited by international human rights standards. Furthermore, there are concerns about the possibility of **racial, ethnic, or socio-economic bias** in the application of the death penalty, leading to disproportionate impacts on certain groups within society.

Conditions of Detention and Prison Reform

The conditions under which individuals are detained or incarcerated are another critical aspect of human rights within the criminal justice system. The **UN Standard Minimum Rules for the Treatment of Prisoners**, also known as the **Nelson Mandela Rules**, set out

guidelines for the humane treatment of prisoners, including adequate living conditions, access to healthcare, and protection from abuse.

Prison overcrowding, inadequate access to food and sanitation, and violence within detention facilities are widespread issues in many countries. These conditions violate the human rights of prisoners and can result in physical and psychological harm. Prison reform is necessary to ensure that detention is used as a last resort and that those who are incarcerated are treated in accordance with international human rights standards.

The Right to Appeal and the Prevention of Arbitrary Detention

Another essential right within criminal justice is the **right to appeal** against wrongful conviction or unfair sentencing. The right to appeal allows individuals to seek redress if they believe that their trial was unfair, if new evidence comes to light, or if their sentence is disproportionately harsh. This right is critical in ensuring that miscarriages of justice can be corrected.

In addition, the **right to be free from arbitrary detention** is enshrined in both the UDHR and ICCPR. **Arbitrary detention** occurs when individuals are detained without due process, sufficient legal justification, or the opportunity to contest their detention before a court. Arbitrary detention violates the fundamental principles of liberty and justice and is often associated with politically motivated arrests, human rights abuses, and unlawful imprisonment.

Conclusion

The integration of **human rights protections into criminal justice** systems is essential for the fair and equitable administration of justice. Human rights standards ensure that individuals are treated with dignity, respect, and fairness, both during their interaction with law enforcement and throughout the criminal justice process. By safeguarding the rights of all individuals, including the accused, victims, and marginalized groups, criminal justice systems can uphold justice and contribute to the overall protection of human dignity. However, ongoing efforts are needed to address challenges such as prison conditions, wrongful convictions, and the continued use of the death penalty, to ensure that human rights are respected in criminal justice worldwide.

The Protection of Human Rights under the Indian Criminal Justice Administration

The **protection of human rights** within the Indian criminal justice system is a cornerstone of democratic governance, reflecting the commitment to safeguard individual freedoms and dignity. As enshrined in the **Constitution of India** and further articulated in various national

and international legal frameworks, human rights play a critical role in the criminal justice process. This includes the protection of accused persons, victims, and marginalized groups, ensuring that the criminal justice system operates in a manner that upholds justice, fairness, and equality. While the Indian criminal justice system has made strides in safeguarding these rights, there remain significant challenges that require constant attention and reform.

Constitutional Guarantees and Legal Framework

India's commitment to human rights protection is primarily grounded in its **Constitution**, particularly in **Part III**, which guarantees **Fundamental Rights** to all citizens. These rights are designed to protect individuals from arbitrary state action and ensure equal treatment before the law. Key constitutional provisions related to human rights include:

- **Article 14**, which guarantees the right to **equality before the law** and the **equal protection of the laws**.
- **Article 21**, which provides the **right to life and personal liberty**, safeguarding individuals from arbitrary arrest, detention, or deprivation of their liberty without due process.
- **Article 22**, which protects individuals against **arbitrary arrest and detention** and ensures the right to be informed of the reasons for their arrest and to consult a legal practitioner.
- **Article 20**, which safeguards individuals from **ex post facto laws**, double jeopardy, and self-incrimination, ensuring fair trial procedures.

In addition to the constitutional provisions, Indian statutes such as the Indian Penal Code (IPC), the Code of Criminal Procedure (CrPC), and the Indian Evidence Act provide a legal framework for the protection of human rights during criminal proceedings. Further, international human rights treaties, to which India is a signatory, such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), inform and guide India's criminal justice practices.

Right to a Fair Trial

One of the most significant aspects of human rights protection in India's criminal justice system is the **right to a fair trial**. As stipulated in Article 21 of the Constitution, no person shall be deprived of their life or personal liberty except according to **procedure established by law**. The **right to a fair trial** encompasses several procedural rights, including the presumption of innocence until proven guilty, access to legal representation, the right to be informed of charges, and the right to appeal.

Fairness in trial procedures is critical in ensuring that accused persons are not subjected to arbitrary detention or conviction. In this regard, the **Supreme Court of India** has played a pivotal role in interpreting and expanding the right to a fair trial, reinforcing the principles of **natural justice, due process, and access to justice**. Landmark judgments like **Maneka Gandhi v. Union of India** (1978) have broadened the interpretation of Article 21, establishing that **due process of law** must align with principles of justice, equity, and good conscience.

Protection from Torture and Inhumane Treatment

Despite constitutional protections, torture and inhumane treatment of detainees remain significant concerns within India's criminal justice system. **Article 21** protects individuals from torture and cruel, inhuman, or degrading treatment or punishment, and **Article 22** ensures the right to humane treatment during detention. India is also a signatory to the **Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)**, which prohibits torture under any circumstances.

However, **police brutality** and **custodial torture** continue to be major challenges, despite efforts to address them through legal reforms and judicial oversight. The **Supreme Court's decision in D.K. Basu v. State of West Bengal** (1997) established strict guidelines for the protection of rights during arrest and detention, including the requirement of informing detainees of their rights, the mandatory use of arrest memos, and the presence of legal counsel. These guidelines are a significant step in curbing police abuse and ensuring that the process of detention and interrogation does not violate human rights.

Rights of Victims

While much of the focus in the criminal justice system is on the rights of the accused, the rights of victims also require significant protection. **Victim rights** in India are governed by various legal provisions that aim to ensure **justice, compensation, and support** for victims of crime. The **Criminal Law (Amendment) Act, 2013**, which was introduced following the 2012 **Nirbhaya case**, made significant reforms to address the needs of victims, particularly in cases of sexual violence.

The Indian legal system has also made progress in ensuring that victims' rights to be heard in court and participate in legal proceedings are protected. The **Victim Compensation Scheme**, implemented by various state governments, provides financial assistance to victims of serious crimes, including acid attacks, sexual violence, and human trafficking. Additionally, the **National Legal Services Authority (NALSA)** provides free legal aid to victims, ensuring that even those from marginalized communities have access to justice.

However, the protection of victim rights remains an area of concern, as victims often face societal stigma, delayed justice, and inadequate support services. There is also a need for better **victim witness protection programs** to ensure that victims and witnesses are not subjected to further harm or intimidation during the course of criminal proceedings.

Reforms in Policing and Human Rights

Policing is a critical component of the criminal justice system, and it is essential that law enforcement agencies operate in a manner that upholds human rights. In India, police forces often face accusations of corruption, abuse of power, and **violation of human rights**. To address these issues, the **Supreme Court of India** has directed state governments to implement reforms such as the creation of **Police Complaints Authorities** and the adherence to guidelines that ensure police accountability and transparency.

The **Police Act of 1861**, the foundational law governing Indian police, has been widely criticized for being outdated and for granting excessive powers to law enforcement. In response to this, there have been calls for comprehensive **police reforms** to align policing practices with modern human rights standards. The **Justice Verma Committee** report (2013) recommended significant reforms to address police brutality, particularly with respect to sexual violence cases, including the establishment of better training programs and reforms to the law relating to **custodial violence** and the use of force.

Prison Reforms and Protection of Rights of Prisoners

Another important area of focus in India's criminal justice system is the **protection of the rights of prisoners**. While the Indian Constitution guarantees certain rights to individuals in detention, including the right to **humane treatment** and **dignity**, many prisoners face overcrowding, inadequate healthcare, poor living conditions, and physical abuse. The **Supreme Court** has been instrumental in addressing these issues, and its landmark judgments in cases such as **Sunil Batra v. Delhi Administration** (1980) and **Prison Reforms Case** (1981) have set out guidelines for improving prison conditions.

India has also adopted the **Nelson Mandela Rules** for the treatment of prisoners, which provide international standards for the treatment of incarcerated individuals. Despite these legal safeguards, significant challenges remain in the implementation of these reforms. Prison conditions in India continue to be plagued by overcrowding, lack of proper sanitation, and limited access to mental and physical health care. Continued attention to **prison reform** is necessary to ensure that detainees and prisoners are treated with respect and dignity.

Conclusion

The protection of human rights under the Indian criminal justice administration is a dynamic and evolving area of law. While significant strides have been made in safeguarding the rights of both accused persons and victims, challenges such as **police brutality**, **custodial torture**, and **poor prison conditions** remain persistent issues that require continued legal and institutional reforms. India's commitment to human rights, enshrined in its **Constitution** and international obligations, provides a solid foundation for protecting individual freedoms within the criminal justice system. However, the full realization of these rights depends on effective enforcement of legal protections, judicial oversight, and comprehensive reform across all stages of the criminal justice process.

Policing and Human Rights Challenges

The role of **policing** in society is fundamental to maintaining **law and order**, preventing crime, and ensuring the **protection of human rights**. However, the relationship between policing and human rights is complex and fraught with challenges. In India, the police are tasked with upholding the law while respecting the constitutional rights of citizens, but incidents of **police brutality**, **corruption**, and **human rights violations** continue to pose significant obstacles to effective and ethical policing. Addressing these challenges requires understanding the historical context of policing, analyzing the existing institutional frameworks, and proposing reforms to align police practices with human rights principles.

Historical Context of Policing in India

Policing in India has its roots in colonial times, with the **Police Act of 1861** serving as the foundational legal framework. This law, designed to maintain colonial control and suppress dissent, has been widely criticized for granting excessive powers to law enforcement officers while limiting accountability. The **British colonial legacy** shaped the Indian police system, resulting in a force that was often seen as an instrument of **oppression** rather than a means of **public service**.

Even after India gained independence, the colonial police structure remained largely intact, contributing to systemic issues such as **abuses of power**, **discriminatory practices**, and **ineffective policing**. The emphasis was often on **maintaining order** through **force** rather than ensuring the protection of individual rights. The need for a reformulated approach to policing that prioritizes **human rights** and **accountability** became increasingly apparent as India's democratic values developed and its society grew more diverse.

Human Rights and Policing: Legal Framework

The **Constitution of India** guarantees several fundamental rights that directly impact the conduct of police officers. Key provisions such as **Article 14** (right to equality), **Article 19** (right to freedom of speech and expression), and **Article 21** (right to life and personal liberty) form the foundation of human rights protections in India. Furthermore, **Article 22** protects individuals against **arbitrary arrest and detention**, mandating that those arrested be informed of the reasons for their detention and brought before a magistrate within 24 hours.

Despite these constitutional safeguards, there are numerous reports of police **excesses**, including **illegal detention**, **torture**, and **extrajudicial killings**. India's commitment to human rights is further reflected in its ratification of international conventions such as the **International Covenant on Civil and Political Rights (ICCPR)**, which provides a framework for the protection of individual freedoms against state violations, including police abuses.

Challenges in Policing and Human Rights

One of the most pressing human rights challenges in Indian policing is the issue of **police brutality** and **custodial torture**. Incidents of **fake encounters**, **excessive use of force**, and **torture in custody** are widespread, despite legal frameworks prohibiting such practices. The **National Human Rights Commission (NHRC)** and various human rights organizations have consistently highlighted the prevalence of **torture** and **inhumane treatment** within police stations, particularly during **interrogations**.

Police reforms have been suggested to tackle these issues, most notably by the **Supreme Court of India** in the **Prakash Singh v. Union of India** case (2006), which directed the government to implement reforms in line with the recommendations of the **National Police Commission**. These reforms included the establishment of **Police Complaints Authorities**, the creation of **State Security Commissions** to ensure autonomy, and the implementation of **training programs** to improve the professional conduct of police officers.

Another challenge is the **politicization of policing**. Police forces in India are often subject to political interference, where law enforcement decisions can be influenced by the interests of political leaders or parties. This undermines the impartiality of the police and results in **discriminatory policing practices**, particularly against marginalized communities. **Communal riots**, **caste-based discrimination**, and **targeting of minority groups** often reflect a failure of the police to act in a **neutral and non-discriminatory manner**.

Moreover, the **use of force** by police officers, particularly in handling **protests** or **civil unrest**, continues to raise concerns. The **use of excessive force** in handling peaceful protests, including the **violence against demonstrators** and **disruption of public order**, has led to human rights violations. The police response to issues such as **farmers' protests**, **student protests**, and **labor strikes** has sometimes been marked by heavy-handed tactics, including the **use of batons**, **tear gas**, and **rubber bullets**, sometimes causing injuries and deaths.

The Role of Technology in Policing and Human Rights

With the growing use of **technology** in law enforcement, new human rights concerns have emerged. The advent of **surveillance technologies**, including **facial recognition software**, **drones**, and **social media monitoring**, has raised issues regarding privacy and freedom of expression. While these technologies can enhance security, they also have the potential to infringe on individual rights if not properly regulated.

For instance, surveillance methods can be misused to **track political activists**, **dissenters**, or **human rights defenders**, thus curtailing free expression and promoting a **climate of fear**. Moreover, the lack of **clear guidelines** for the use of these technologies in policing can lead to **abuses of power**. Proper **regulations** and **oversight mechanisms** are crucial to ensure that technological advancements do not violate the fundamental rights of citizens.

Reforms and Human Rights Protection

To address these challenges, comprehensive **police reforms** are necessary. Several recommendations have been made over the years to improve the **accountability**, **transparency**, and **professionalism** of the police. The **Justice Verma Committee Report (2013)**, which followed the **Nirbhaya case**, stressed the importance of **gender sensitivity** and **accountability** in law enforcement, especially regarding **crimes against women**. Additionally, the **Supreme Court** has called for reforms to reduce the **police force's dependence on political patronage**, ensuring its **independence** and **autonomy**.

Another important aspect of reform is improving the **training** of police officers. **Human rights training**, coupled with education on **gender sensitivity**, **cultural diversity**, and **non-violent methods of policing**, can help officers better navigate situations that involve marginalized communities, women, and **youths**.

Finally, strengthening **community policing** and **citizen engagement** can enhance the relationship between the police and the public, fostering a greater sense of trust and cooperation. When the police are perceived as legitimate and accountable, citizens are more likely to **cooperate** with them, which, in turn, improves **law enforcement** effectiveness.

Conclusion

Policing and human rights challenges in India present a **complex issue** that requires immediate attention and reform. While the police play an essential role in maintaining law and order, **systemic abuses** and violations continue to undermine their ability to protect human rights effectively. Legal frameworks, judicial oversight, and institutional reforms are critical to ensuring that police practices align with the **principles of justice, equality, and human dignity**. Only through consistent efforts to **reform police institutions**, improve **accountability**, and prioritize **human rights education** can India ensure that its law enforcement agencies serve their purpose while respecting the rights of all citizens.

References:

- Alston, P., & Goodman, R. (2013). *International Human Rights* (3rd ed.). Oxford University Press.
- Amnesty International. (2020). *India: Police Impunity Must End*. <https://www.amnesty.org/en/latest/news/2020/07/india-police-impunity-must-end/>
- Basu, D. D. (2018). *Introduction to the Constitution of India* (24th ed.). LexisNexis.
- Commonwealth Human Rights Initiative (CHRI). (2020). *Police Reforms in India*. <https://www.humanrightsinitiative.org>
- Donnelly, J. (2007). *The Relative Universality of Human Rights*. *Human Rights Quarterly*, 29(2), 281–306. <https://doi.org/10.1353/hrq.2007.0016>
- Donnelly, J. (2013). *Universal Human Rights in Theory and Practice* (3rd ed)
- Dufka, C. (2009). *Combating Torture in Criminal Justice Systems*. *Human Rights Watch Report*. <https://www.hrw.org/report/2009/06/29/combating-torture-criminal-justice-systems>
- Freeman, M. (2017). *Human Rights: An Interdisciplinary Approach* (3rd ed.). Polity Press.
- Hodgson, J. (2012). *The Role of the Criminal Process in Securing Justice and Protecting Rights*. In S. Roberts & J. Hunter (Eds.), *Criminal Justice* (pp. 102–118). Oxford University Press.
- Human Rights Watch. (2016). *Bound by Brotherhood: India's Failure to End Killings in Police Custody*. <https://www.hrw.org/report/2016/12/19/bound-brotherhood/indias-failure-end-killings-police-custody>
- International Covenant on Civil and Political Rights (ICCPR), 1966. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>
- Lauren, P. G. (2011). *The Evolution of International Human Rights: Visions Seen* (3rd

- Law Commission of India. (2000). *172nd Report on Review of Rape Laws*. <https://lawcommissionofindia.nic.in/reports.htm>
- Morsink, J. (1999). *The Universal Declaration*. University of Pennsylvania Press.
- National Crime Records Bureau (NCRB). (2023). *Crime in India Statistics*. <https://ncrb.gov.in>
- National Human Rights Commission of India. (2020). *Annual Reports*. <https://nhrc>
- Prakash Singh v. Union of India, AIR 2006 SC 2785.
- Robertson, A. H., & Merrills, J. G. (1996). *Human Rights in the World: An Introduction to the Study of the International Protection of Human Rights* (4th ed.). Oxford University Press.
- Schabas, W. A. (2006). *The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone*. Cambridge University Press.
- Singh, M. P., & Shukla, V. N. (2022). *Constitution of India* (13th ed.). Eastern Book Company.
- Smith, R. K. M. (2016). *Textbook on International Human Rights* (7th ed.). Oxford University Press.
- United Nations Human Rights Council. (2014). *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*. A/HRC/26/36.
- United Nations Office on Drugs and Crime (UNODC). (2006). *Criminal Justice Assessment Toolkit: Human Rights and Criminal Justice*. <https://www.unodc.org/unodc/en/justice-and-prison-reform/tools.html>
- United Nations. (1948). *Universal Declaration of Human Rights*. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>
- Verma, J. S. (2013). *Report of the Committee on Amendments to Criminal Law*.

Unit – II Covenants and Constitution

International Covenants on Human Rights

The foundation of modern international human rights law lies in the series of declarations and treaties formulated in the aftermath of the Second World War, particularly by the United Nations (UN). Chief among these are the International Covenants: the **International Covenant on Civil and Political Rights (ICCPR)** and the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, both adopted in 1966. Along with the **Universal Declaration of Human Rights (UDHR, 1948)**, these form the **International Bill of Human Rights**. These covenants serve as legally binding international instruments that obligate signatory states to uphold specific rights and freedoms, shaping domestic legislation and global human rights norms.

Origins and Development

The devastation wrought by two world wars and the Holocaust sparked an urgent need to articulate and protect human rights globally. The **United Nations Charter (1945)** was the first international treaty to recognize human rights as a matter of international concern (UN, 1945). The UDHR followed in 1948 as a declaration, not a binding treaty, but with significant moral authority. To give legal weight to the principles of the UDHR, the UN developed two separate but complementary covenants: the ICCPR and the ICESCR, both adopted by the UN General Assembly on December 16, 1966, and entered into force in 1976.

The ICCPR and Its Provisions

The **ICCPR** guarantees a broad range of **civil and political rights**, including the right to life, freedom of speech, freedom of assembly, right to fair trial, freedom of religion, and protection from torture and slavery. It emphasizes the rule of law, democratic participation, and individual liberty. The Covenant consists of **53 articles** and is monitored by the **Human Rights Committee**, a body of independent experts.

Two **Optional Protocols** accompany the ICCPR: the first allows individuals to file complaints before the Human Rights Committee, and the second seeks the abolition of the death penalty. Signatories are obligated to report periodically on their compliance, and the Human Rights Committee can issue "concluding observations" highlighting compliance or violations.

The ICESCR and Its Provisions

The **ICESCR** enshrines **economic, social, and cultural rights**, including the rights to work, just conditions of work, social security, an adequate standard of living, health, education, and cultural participation. Unlike the ICCPR, these rights are subject to **progressive realization**,

meaning that states must take steps to the maximum of their available resources to achieve these rights over time (UN General Assembly, 1966).

The **Committee on Economic, Social and Cultural Rights (CESCR)** monitors compliance with the ICESCR. Though it does not allow individual complaints under the original covenant, a **2013 Optional Protocol** allows for complaint procedures in certain circumstances.

Binding Nature and Legal Impact

Unlike the UDHR, which is non-binding, the ICCPR and ICESCR are **treaties**—thus **legally binding** on states that have ratified them. As of 2023, over 170 countries have ratified both covenants. These covenants have profoundly influenced **national constitutions, laws, and judicial decisions**. For instance, many of the fundamental rights guaranteed in the Indian Constitution (Articles 14, 19, 21) are in harmony with the ICCPR.

Though the realization of economic and social rights is gradual, many countries have been held accountable through **UN mechanisms** or **regional human rights systems**. These instruments serve as benchmarks against which a state's human rights practices are measured, especially during **Universal Periodic Reviews (UPR)** at the UN Human Rights Council.

India's Commitment and Legal Integration

India signed the **ICCPR** and the **ICESCR** in 1979, affirming its commitment to the international human rights order. Indian courts have consistently interpreted domestic laws in light of these covenants. The **Supreme Court of India in Vishaka v. State of Rajasthan (1997)** explicitly relied on international conventions such as **CEDAW** in the absence of specific domestic legislation to protect women from sexual harassment at the workplace.

Similarly, in **People's Union for Civil Liberties v. Union of India (1997)**, the Supreme Court emphasized that international treaties ratified by India, even if not formally enacted into law, can be considered by courts while interpreting fundamental rights under the Constitution. Thus, India treats these covenants as **persuasive legal instruments**, though not directly enforceable unless domesticated through legislation.

Challenges in Implementation

Despite their global ratification and moral force, the implementation of international covenants remains uneven. Many countries, including India, face challenges such as:

- **Resource constraints** in fulfilling economic and social rights.
- **Political resistance** to international scrutiny.
- **Reservations** entered by states that dilute their obligations.
- **Lack of awareness** and domestic mechanisms for individual redress.

Further, while civil and political rights are enforceable and justiciable in most jurisdictions, economic and social rights often remain aspirational due to lack of specific mechanisms for enforcement.

Global Significance

International covenants provide a **universal framework** for the protection of human dignity. They establish that **human rights are interdependent, indivisible, and interrelated**—a core UN principle. These covenants form the basis of global advocacy, civil society campaigns, and even economic policies of international institutions like the World Bank and IMF.

Moreover, **regional human rights systems** such as the **European Convention on Human Rights (ECHR)** and the **African Charter on Human and Peoples' Rights** have been influenced by the ICCPR and ICESCR. Many constitutions of developing countries draw heavily from these covenants, making them living documents with transformative impact.

Conclusion

The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights are pillars of the international human rights framework. Together, they articulate a comprehensive vision of human freedom, dignity, and justice. While challenges persist in terms of enforcement and realization, these covenants continue to serve as powerful tools for legal reform, international accountability, and the global promotion of human rights.

The Constitution of India

The Constitution of India is the supreme law of the land, serving as the bedrock of Indian democracy and governance. Enacted on **26th January 1950**, it provides the legal framework for political institutions, establishes the rule of law, guarantees fundamental rights and freedoms, and outlines the structure of the state and its powers. The Constitution not only embodies the aspirations of a newly independent nation but also integrates a comprehensive human rights framework, inspired by both indigenous struggles and international ideals. As the longest written constitution in the world, it is a remarkable fusion of **rigidity and flexibility**, drawing from various legal traditions including the British, American, Irish, and Canadian systems.

Historical Background

The need for a constitution arose with India's independence from British colonial rule in 1947. A Constituent Assembly was formed in **December 1946**, comprising representatives

elected by the provincial assemblies. The Assembly was tasked with framing a constitution that reflected the will of the people while addressing India's deep social, cultural, and linguistic diversity. Under the leadership of **Dr. B.R. Ambedkar**, who served as the Chairman of the **Drafting Committee**, the Constitution was drafted over nearly **three years**, involving intense debates and negotiations. It came into effect on **26 January 1950**, a date now celebrated as **Republic Day**.

Preamble: The Soul of the Constitution

The **Preamble** of the Indian Constitution reflects the values enshrined in the document. It declares India to be a **Sovereign, Socialist, Secular, Democratic Republic**, and promises to secure to all citizens **Justice, Liberty, Equality, and Fraternity**. Though not legally enforceable, the Preamble has been used by courts to interpret ambiguous constitutional provisions and has been declared an integral part of the Constitution in the **KesavanandaBharati v. State of Kerala (1973)** judgment, which introduced the **Basic Structure Doctrine** (Granville, 2002).

Structure of the Constitution

The Indian Constitution originally had **395 Articles**, divided into **22 Parts** and **8 Schedules**. Over time, it has expanded through **more than 100 amendments**, and currently contains **448 Articles**, **25 Parts**, and **12 Schedules**. It consists of:

- **Part I to Part XXII**, which deal with various provisions including the Union and its territory, citizenship, fundamental rights, directive principles, union and state governments, judiciary, finance, elections, and emergency provisions.
- **Schedules**, which provide detailed lists, such as the allocation of powers between the Union and States, the official languages, and the salaries of constitutional functionaries.

This extensive structure provides a robust yet adaptable system that allows for legal, administrative, and social evolution.

Fundamental Rights and Duties

One of the most transformative features of the Indian Constitution is the inclusion of **Fundamental Rights (Part III, Articles 12–35)**. These rights guarantee civil liberties to all individuals, ensuring protection against arbitrary state action. Some key rights include:

- **Right to Equality (Article 14–18)**
- **Right to Freedom (Article 19–22)**
- **Right against Exploitation (Article 23–24)**
- **Right to Freedom of Religion (Article 25–28)**

- **Cultural and Educational Rights (Article 29–30)**
- **Right to Constitutional Remedies (Article 32)**

These rights are justiciable and can be enforced through the **Supreme Court and High Courts**. Additionally, **Fundamental Duties (Article 51A)** were added by the **42nd Amendment (1976)**, reflecting the responsibilities of citizens in preserving national values.

Directive Principles of State Policy

Enshrined in **Part IV (Articles 36–51)**, the **Directive Principles** are guidelines for the state to establish a just social order. Though non-justiciable, they are fundamental in the governance of the country and aim at promoting **economic and social democracy**. They include provisions on **adequate livelihood, equitable distribution of wealth, health, education, and the protection of children and workers**.

Separation of Powers and Federalism

The Constitution establishes a **federal structure** with a **unitary bias**. Powers are distributed between the Union and the States through three lists under the **Seventh Schedule**:

- **Union List**
- **State List**
- **Concurrent List**

The **executive, legislature, and judiciary** are separated to maintain the system of checks and balances. The judiciary, especially the **Supreme Court**, plays a crucial role in upholding the Constitution through **judicial review**.

Emergency Provisions

Part XVIII (Articles 352–360) outlines three types of emergencies:

1. **National Emergency (Article 352)**
2. **State Emergency or President's Rule (Article 356)**
3. **Financial Emergency (Article 360)**

These provisions grant the central government extraordinary powers, but their use has been controversial, particularly during the **Emergency of 1975–77**, which led to a temporary suspension of fundamental rights (Austin, 1999).

Amendment Process

The Indian Constitution is neither too rigid nor too flexible. **Article 368** provides the procedure for amendments, which can be:

- **By a simple majority** in Parliament (for minor changes).
- **By a special majority** (for most articles).
- **By special majority and ratification by half the states** (for federal provisions).

This design allows adaptability without compromising the basic structure.

Role in Protecting Human Rights

The Constitution of India has been instrumental in promoting and protecting human rights. The judiciary has expanded the interpretation of fundamental rights to include **environmental rights, the right to education, the right to privacy**, and protection from sexual harassment, among others. Landmark judgments like **Maneka Gandhi v. Union of India (1978)** and **Justice K.S. Puttaswamy v. Union of India (2017)** illustrate the progressive role played by the courts in interpreting constitutional provisions in line with human dignity and international human rights standards (Chandrachud, 2020).

Influence of International Law

The Constitution, particularly in the interpretation of **Article 21**, has been influenced by **international human rights instruments** such as the **Universal Declaration of Human Rights (1948)** and the **International Covenants (ICCPR and ICESCR)**. Courts have often used these instruments to interpret fundamental rights in a progressive manner, especially in areas like child rights, gender justice, and the rights of prisoners.

Conclusion

The Constitution of India is a dynamic, living document that adapts to the changing needs of society while preserving fundamental democratic values. It combines legal rigidity with pragmatic flexibility, ensuring both governance and rights protection. Its commitment to justice, liberty, and equality resonates with universal human rights ideals, making it not just a legal document, but a social contract rooted in India's aspirations for a just and equitable society.

Fundamental Rights (Articles 14, 19, 20, 21, 22, and 32) in the Constitution of India

Fundamental Rights are the cornerstone of the Indian Constitution, reflecting the ideals of liberty, equality, and justice. Enshrined in **Part III (Articles 12–35)**, these rights are enforceable by the judiciary and are modeled on the Universal Declaration of Human Rights (1948). They are meant to ensure individual freedoms, limit the power of the state, and protect citizens against arbitrary actions. Among these, **Articles 14, 19, 20, 21, 22, and 32** are particularly significant as they form the core of India's civil liberties jurisprudence.

Article 14: Equality before Law and Equal Protection of Laws

Article 14 provides that *“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”* This embodies the essence of the rule of law, a foundational concept of constitutionalism. The principle of equality before

the law is borrowed from the British legal system, whereas equal protection is inspired by the American Constitution.

Indian courts have interpreted Article 14 as encompassing both *formal equality* and *substantive equality*. It not only prohibits discrimination but also mandates affirmative action when necessary. In **E.P. Royappa v. State of Tamil Nadu (1974)**, the Supreme Court held that “*equality is a dynamic concept with many aspects and dimensions and it cannot be ‘cribbed, cabined, and confined’.*” This broadened the scope of equality to include the principle of **non-arbitrariness**, making it a critical tool for administrative law and governance (Austin, 2000).

Article 19: Protection of Certain Rights Regarding Freedom of Speech, etc.

Article 19(1) guarantees to all citizens six fundamental freedoms:

1. Freedom of speech and expression
2. Freedom to assemble peacefully without arms
3. Freedom to form associations or unions
4. Freedom to move freely throughout India
5. Freedom to reside and settle in any part of the country
6. Freedom to practice any profession or carry on any occupation, trade, or business

However, these rights are **not absolute**. **Article 19(2)–(6)** empowers the state to impose *reasonable restrictions* in the interests of **sovereignty, integrity, public order, morality, security, and friendly relations with foreign states**. The test of “reasonableness” was emphasized in **Romesh Thappar v. State of Madras (1950)** and **Bennett Coleman v. Union of India (1973)**, laying the foundation for media freedom and dissent as essential democratic attributes.

Article 19 also has a deep interconnection with **Article 21**, especially concerning privacy, digital freedom, and freedom of the press (Chandrachud, 2020).

Article 20: Protection in Respect of Conviction for Offences

Article 20 guarantees protection against **arbitrary criminal legislation**. It has three main provisions:

1. **Ex-post facto laws** – A person cannot be convicted for an act that was not an offence at the time of its commission.
2. **Double jeopardy** – No person shall be prosecuted and punished for the same offence more than once.
3. **Self-incrimination** – No person accused of an offence shall be compelled to be a witness against himself.

These rights apply only to criminal law and protect both citizens and non-citizens. The principle of double jeopardy was clarified in **Maqbool Hussain v. State of Bombay (1953)**, while the right against self-incrimination was reinforced in **Nandini Satpathy v. P.L. Dani (1978)**. This article is especially vital in upholding the **rule of law and procedural fairness** in criminal trials.

Article 21: Protection of Life and Personal Liberty

Article 21 declares: *“No person shall be deprived of his life or personal liberty except according to procedure established by law.”* Initially, in **A.K. Gopalan v. State of Madras (1950)**, the scope of Article 21 was narrowly interpreted. However, this was overruled in **Maneka Gandhi v. Union of India (1978)**, where the Court held that the procedure must be “just, fair, and reasonable,” expanding the meaning of life and liberty.

Under Article 21, the Supreme Court has recognized a wide array of **derivative rights**, including:

- Right to privacy (Justice K.S. Puttaswamy v. Union of India, 2017)
- Right to a clean environment (Subhash Kumar v. State of Bihar, 1991)
- Right to livelihood (Olga Tellis v. Bombay Municipal Corporation, 1985)
- Right to die with dignity (Common Cause v. Union of India, 2018)
- Right to shelter, health, education, and speedy trial

This article has become the **heart of the Constitution**, allowing a dynamic interpretation that aligns with evolving human rights jurisprudence (Deshpande, 2021).

Article 22: Protection Against Arrest and Detention in Certain Cases

Article 22 deals with the rights of persons who are arrested:

- The arrested person must be informed of the reason for arrest.
- The arrested person must be allowed to consult a legal practitioner.
- The person must be produced before a magistrate within 24 hours.

However, **preventive detention** laws have been permitted under **Article 22(3)–(7)**. This has been a controversial area, particularly under laws like the **National Security Act (NSA)** and the **Unlawful Activities Prevention Act (UAPA)**. While the Constitution allows preventive detention for reasons of state security or public order, it also mandates safeguards such as **Advisory Boards** and limits on detention periods.

The balance between liberty and security under Article 22 remains a contentious issue in Indian jurisprudence, raising human rights concerns (Basu, 2012).

Article 32: Remedies for Enforcement of Rights

Article 32 is referred to as the “*heart and soul*” of the Constitution by Dr. B.R. Ambedkar. It empowers individuals to approach the **Supreme Court** directly for the enforcement of fundamental rights. The Court may issue writs of:

- **Habeas Corpus** – to release an unlawfully detained person
- **Mandamus** – to compel public authorities to perform duties
- **Certiorari** – to quash lower court orders
- **Prohibition** – to prevent inferior courts from exceeding jurisdiction
- **Quo Warranto** – to question the authority of public officeholders

Article 32 is available **only for the violation of fundamental rights**, unlike **Article 226** of the Constitution, under which High Courts can issue writs for other legal rights as well.

This article ensures the justiciability of Part III and acts as a crucial tool for judicial activism. In cases such as **Vishaka v. State of Rajasthan (1997)** and **PUCL v. Union of India (2003)**, Article 32 was used to protect rights of women and access to food respectively.

Conclusion

Articles 14, 19, 20, 21, 22, and 32 collectively form the **constitutional bulwark of civil liberties in India**. They guarantee equality, freedom, due process, protection against arbitrary arrest, and access to justice. These provisions are not static; they evolve with judicial interpretation and socio-political needs. The **Indian judiciary**, particularly the Supreme Court, has expanded their scope in line with international human rights instruments and progressive constitutionalism. These fundamental rights reflect the vision of a just, humane, and democratic India.

Provisions for Human Rights in India

Human rights are fundamental rights and freedoms that every individual is entitled to, regardless of nationality, ethnicity, gender, or religion. India, being a democratic republic and a signatory to international human rights instruments, has a constitutional and legal framework that upholds and protects these rights. These provisions are mainly found in the Constitution of India, particularly under **Part III (Fundamental Rights)** and **Part IV (Directive Principles of State Policy)**, but they are also safeguarded by various legislations, judicial pronouncements, and international commitments. This write-up explores the various provisions for human rights in India.

Constitutional Provisions for Human Rights

The Indian Constitution, framed in 1950, lays down the most significant provisions for human rights. **Part III** of the Constitution, known as the **Fundamental Rights**, guarantees

essential civil, political, and economic rights to all citizens of India. These rights are enforceable by courts and provide a remedy if violated. The six fundamental rights enshrined in the Constitution are:

1. **Right to Equality (Articles 14-18):** These articles prohibit discrimination on grounds of religion, race, caste, sex, or place of birth, guaranteeing all citizens equality before the law and equal protection of laws.
2. **Right to Freedom (Article 19-22):** This includes freedoms such as the freedom of speech and expression, assembly, association, movement, and profession. It also provides safeguards against arbitrary arrest and detention.
3. **Right against Exploitation (Articles 23-24):** These articles prohibit human trafficking, forced labor, and child labor, ensuring the dignity of individuals.
4. **Right to Freedom of Religion (Articles 25-28):** These articles guarantee freedom of conscience, free profession, practice, and propagation of religion, ensuring that religious freedom is a fundamental right in India.
5. **Cultural and Educational Rights (Articles 29-30):** These articles protect the rights of minorities to preserve their language, script, and culture, and provide the right to establish and administer educational institutions.
6. **Right to Constitutional Remedies (Article 32):** This article allows individuals to approach the Supreme Court directly if their fundamental rights are violated. It also authorizes the Court to issue writs like habeas corpus, mandamus, certiorari, prohibition, and quo warranto for the enforcement of these rights.

Directive Principles of State Policy (Part IV)

While Part III guarantees enforceable rights, **Part IV** of the Constitution, which contains the **Directive Principles of State Policy (DPSP)**, provides guidelines to the state in the governance of the country. Although these principles are non-justiciable (not enforceable by courts), they represent a commitment to social and economic justice.

Key principles related to human rights found in **Articles 38 to 51** include:

1. **Social Security and Welfare:** Article 38 directs the state to promote welfare by securing a social order based on justice, ensuring that the welfare of the people is the central aim of governance.
2. **Livelihood and Economic Justice:** Article 39 aims to reduce the concentration of wealth and means of production, ensuring equitable distribution of resources and minimizing economic disparity.

3. **Children's Rights and Education:** Article 39(e) and (f) emphasize the state's duty to protect children from exploitation and ensure their health, welfare, and development. Article 45 also provides for free and compulsory education for children under the age of 14.
4. **Right to Health:** Articles 42 and 47 emphasize the importance of improving public health and providing adequate nutrition, especially for mothers and children, ensuring access to basic health services.
5. **Equality of Opportunity:** Article 41 directs the state to make effective provisions for the welfare of people, including securing adequate livelihood, and providing employment opportunities for those who are unable to maintain themselves.

These provisions reinforce the state's obligation to create conditions that allow for the realization of human rights in the social and economic spheres, even though they do not have the same legal enforceability as fundamental rights (Rai, 2014).

International Human Rights Instruments and India's Commitment

India's commitment to human rights is also demonstrated through its active participation in international human rights conventions. India is a signatory to several important **United Nations human rights instruments**, such as:

1. **The Universal Declaration of Human Rights (UDHR), 1948:** While not legally binding, the UDHR has served as the foundation for the development of international human rights law. India adopted the Declaration's principles in spirit when drafting the Constitution, especially with respect to ensuring equality, freedom, and justice for all citizens.
2. **International Covenant on Civil and Political Rights (ICCPR), 1966:** India ratified the ICCPR in 1979, which mandates the protection of civil and political rights, including the right to life, freedom of expression, the right to a fair trial, and protection against torture.
3. **International Covenant on Economic, Social, and Cultural Rights (ICESCR), 1966:** Ratified by India in 1979, this Covenant commits states to ensure rights related to health, education, work, and social security, directly influencing India's policy in education, healthcare, and economic development.
4. **Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), 1984:** India is a signatory to the CAT, which works to prohibit the use of torture by state authorities, aligning with India's commitments to uphold human dignity.

By adopting these international treaties, India has reinforced its commitment to upholding human rights, but the challenge lies in translating these provisions into effective policy measures and ensuring accountability for violations (Sen, 2016).

Legislative and Judicial Provisions for Human Rights

In addition to constitutional provisions, India has enacted several **laws** aimed at protecting human rights. These include:

1. **The Protection of Human Rights Act, 1993:** This Act provides for the establishment of the **National Human Rights Commission (NHRC)** and State Human Rights Commissions to investigate human rights violations and take necessary action against offenders. The NHRC also advises the government on matters related to human rights and issues guidelines for their protection.
2. **The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989:** This law is designed to prevent atrocities and discrimination against Scheduled Castes (SCs) and Scheduled Tribes (STs) and provides for special courts to address offenses committed against them.
3. **The Protection of Women from Domestic Violence Act, 2005:** This legislation provides for the protection of women from domestic violence and establishes procedures for obtaining relief, including protection orders and monetary relief.
4. **The Juvenile Justice (Care and Protection of Children) Act, 2015:** The Act focuses on the protection and rehabilitation of juveniles in conflict with the law, ensuring their right to protection, education, and rehabilitation.

Judicial provisions for human rights protection are highlighted by the role of the **Supreme Court of India**, which has been proactive in interpreting and expanding the scope of human rights through landmark judgments. The **Judiciary's Role** includes applying **public interest litigation (PIL)** to address systemic human rights issues and issuing directives for the protection of citizens' rights in cases such as **Vishaka v. State of Rajasthan (1997)**, **Maneka Gandhi v. Union of India (1978)**, and **BodhisattwaGautam v. Subhra Chakraborty (1996)**, which expanded the definition of sexual harassment and the right to dignity (Sarkar, 2018).

Challenges and Implementation Gaps

While India's legal and constitutional provisions for human rights are comprehensive, challenges persist in their **implementation**. Issues such as **inefficient law enforcement**, **delays in judicial proceedings**, and **political and institutional apathy** often hinder the

enforcement of these rights. Discrimination, violence, and denial of rights remain significant problems, particularly for marginalized groups such as Dalits, women, children, and religious minorities. The **Human Rights Commission's limited powers** and its dependency on the executive also reduce its effectiveness in addressing human rights violations (Tiwari, 2015).

Conclusion

India's legal framework offers robust provisions for the protection and promotion of human rights. These provisions, primarily derived from the Constitution, complemented by international treaties and domestic legislation, aim to safeguard individual freedoms, social justice, and dignity. However, effective implementation of these rights requires constant vigilance, judicial activism, and active participation from the government, civil society, and individuals. The protection of human rights remains an ongoing challenge that demands sustained efforts from all sections of society.

Directive Principles of State Policy in India

The **Directive Principles of State Policy (DPSPs)**, enshrined in **Part IV of the Constitution of India** (Articles 36–51), provide a broad framework for the governance of the country, aiming to promote social, economic, and political justice. Unlike **Fundamental Rights** (which are justiciable and enforceable in a court of law), DPSPs are non-justiciable, meaning that they cannot be directly enforced by the judiciary. However, they are crucial in guiding state policy, setting ideals for the establishment of a welfare state, and ensuring the realization of socio-economic rights.

While the **Fundamental Rights** are meant to protect individual liberties and freedoms, the **Directive Principles** focus on promoting the overall well-being of the people and ensuring social and economic justice. They lay down the framework for a just and equitable society by directing the state to formulate policies aimed at improving the living conditions of citizens and protecting the interests of marginalized sections. The inclusion of these provisions in the Constitution demonstrates India's commitment to building a social democracy based on equality, justice, and opportunity.

Historical Background and Constitutional Design

The inclusion of DPSPs in the Indian Constitution was inspired by the **Irish Constitution**, which also contains a similar set of guidelines for governance. The framers of the Indian Constitution, led by **Dr. B. R. Ambedkar**, emphasized that while the Constitution guarantees individual freedoms and fundamental rights, it must also direct the state to address the socio-

economic inequalities prevalent in society. These inequalities, deeply rooted in India's colonial history, required immediate and ongoing governmental intervention to ensure justice for all citizens.

The **Framing of the Constitution** was influenced by the **Constituent Assembly debates**, where members underscored the need for a welfare state that would work toward eliminating poverty, social discrimination, and exploitation. Thus, the DPSPs were designed to guide and inspire policymakers in the pursuit of social and economic equality, social security, and an improved quality of life for all citizens (Sharma, 2015).

Types and Scope of Directive Principles

The DPSPs have been divided into several categories, each focusing on specific aspects of governance and societal welfare. These principles are **non-justiciable**, meaning they cannot be enforced through legal proceedings but serve as guidelines for the government to achieve in the long term. The major categories of DPSPs include:

1. Social and Economic Welfare

These provisions seek to address poverty, hunger, inequality, and exploitation, with an emphasis on economic redistribution and improving the standard of living for the marginalized. Notable provisions include:

- **Article 38:** This article mandates the state to promote the welfare of the people by securing a social order based on justice. It emphasizes the need for equitable distribution of wealth to prevent concentration of wealth and economic disparity.
- **Article 39:** This directs the state to secure adequate livelihood, equal distribution of wealth, and opportunities for the people to ensure their well-being and dignity. It is a key provision aimed at **economic justice** and **social welfare**.
- **Article 41:** It directs the state to provide assistance to individuals who are unable to maintain themselves through employment or other means of livelihood.
- **Article 42:** It directs the state to make provisions for securing just and humane conditions of work and for maternity relief.

2. Social Justice and Equality

The DPSPs also emphasize the need for social justice, especially for disadvantaged sections of society, including women, children, Scheduled Castes (SCs), Scheduled Tribes (STs), and backward classes. Some of the provisions include:

- **Article 46:** The state is directed to promote the educational and economic interests of the weaker sections, particularly SCs, STs, and other backward classes, to ensure that they can enjoy the fruits of social and economic advancement.

- **Article 47:** This provision emphasizes the importance of public health and nutrition. It directs the state to raise the level of nutrition and standard of living, ensuring access to basic healthcare services, particularly for vulnerable populations.
- **Article 48:** This article calls for the organization of agriculture and animal husbandry on modern and scientific lines, ensuring food security for all.

3. International Peace and Security

Another key aspect of the DPSPs is the promotion of international peace and cooperation. India has always upheld the idea of peaceful coexistence and global solidarity, especially in the context of post-colonial development. Notable provisions in this regard include:

- **Article 51:** This provision directs the state to promote international peace and security, encouraging respect for international law, human rights, and the peaceful settlement of disputes.

4. Environmental Protection

In light of increasing environmental concerns, particularly after the industrialization of many nations, the Indian Constitution now includes provisions to protect the environment, though the original DPSPs did not have specific provisions related to environmental protection. These were later incorporated through judicial interpretation, especially in the **1990s**:

- **Article 48A:** It directs the state to protect and improve the environment and to safeguard the forests and wildlife of the country.

Relationship Between Fundamental Rights and Directive Principles

While **Fundamental Rights** ensure the protection of individual freedoms, the **Directive Principles of State Policy** provide the roadmap for ensuring social and economic equality. Both parts of the Constitution are complementary to each other. The **Fundamental Rights** are designed to safeguard individual liberties, while the **Directive Principles** aim to ensure the well-being of the population and promote socio-economic justice.

The **relationship** between the two is such that both must be read together to understand the complete vision of justice that the Constitution offers. For instance, the right to **life and personal liberty (Article 21)** is interpreted by the courts to include the right to a clean environment, an extension of the Directive Principles' concern for the environment. The **judiciary's role** in harmonizing the two has been pivotal, especially through **public interest litigations (PILs)**, which have led to the effective implementation of both fundamental rights and directive principles.

In cases such as **Minerva Mills Ltd. v. Union of India (1980)**, the **Supreme Court of India** emphasized the **harmonious interpretation** of both the **Fundamental Rights** and the

Directive Principles. The Court ruled that neither part could take precedence over the other, and both were essential in building a welfare state (Raj, 2017).

Implementation and Impact of Directive Principles

The **Directive Principles** have had a profound impact on the formulation of state policy. They have influenced various government policies and programs aimed at poverty alleviation, economic development, and social justice. Some of the notable implementations include:

1. **The Green Revolution (1960s):** The Indian government's efforts to boost agricultural productivity and achieve food security were guided by the principles outlined in **Article 48**, promoting modern agricultural techniques.
2. **The Right to Education (2009):** The **Right of Children to Free and Compulsory Education Act (RTE)**, 2009, is a direct result of **Article 41** and **Article 45**, which call for the state to ensure education for all children.
3. **Maternity Benefits:** The provisions under **Article 42** have influenced policies ensuring maternity leave for women workers, including legislation such as the **Maternity Benefit Act, 1961**, and recent amendments to extend maternity benefits.
4. **Social Security Schemes:** Various social welfare programs like **Public Distribution Systems (PDS)**, **National Rural Employment Guarantee Act (MGNREGA)**, and **Atal Pension Yojana** have been influenced by the economic and social welfare directives in the Constitution.

Despite these achievements, challenges remain in fully realizing the vision set by the DPSPs. Issues like **poverty**, **unequal access to education and healthcare**, and **gender inequality** still persist, and implementation remains uneven, particularly in rural areas.

Conclusion

The **Directive Principles of State Policy** provide a roadmap for the Indian state to establish a just society, characterized by social, economic, and political equality. Although these provisions are non-justiciable, they serve as a guideline for government action and reflect the constitutional commitment to the welfare of all citizens. The relationship between the DPSPs and Fundamental Rights is vital for achieving a balanced and just society. While significant progress has been made in areas like education, healthcare, and poverty alleviation, challenges in implementation highlight the need for continued governmental effort and judicial oversight to fully realize the potential of the Directive Principles.

Prisoners' Rights in India

The issue of prisoners' rights is a fundamental aspect of the Indian criminal justice system, ensuring that those who are incarcerated maintain their dignity and are not subjected to inhumane or degrading treatment. In India, prisoners' rights are governed by both national and international frameworks, which aim to uphold the **human dignity** of prisoners, protect them from **cruelty and torture**, and ensure their access to essential services and rehabilitation.

At the heart of the discourse on prisoners' rights is the concept of **human rights**. The **United Nations Standard Minimum Rules for the Treatment of Prisoners**, also known as the **Nelson Mandela Rules**, provide a global standard for the humane treatment of prisoners. These rules have been adopted by India, and their principles form the basis for the protection of prisoners' rights in the country. The **Indian Constitution**, particularly under **Article 21**, guarantees the right to **life and personal liberty**, which extends to all persons, including prisoners.

Legal Framework for Prisoners' Rights in India

The Constitution of India, while explicitly guaranteeing Fundamental Rights under **Part III**, provides an essential framework for the protection of prisoners' rights. **Article 21**, which guarantees the protection of life and personal liberty, is a key provision in safeguarding the rights of prisoners. The **Supreme Court of India** has interpreted this article to ensure that even those in custody have a right to live with dignity, free from arbitrary detention, and be treated with respect to their basic human rights.

The **Prisoners Act, 1894**, and the **Prison Manual** of various states further lay down the guidelines and rules for the functioning of prisons, focusing on the treatment of prisoners, their living conditions, and their rehabilitation. These laws also define the **types of prisons**, their administration, and the duties of prison officials. However, despite the existence of these legislative safeguards, violations of prisoners' rights remain a persistent issue in India.

Key Prisoners' Rights in India

1. Right to Life and Personal Liberty

The fundamental right under **Article 21** guarantees every individual, including prisoners, the right to life and personal liberty. The **Supreme Court** has ruled that the right to life includes the right to live with dignity, free from torture and ill-treatment. In the landmark case of **Maneka Gandhi v. Union of India (1978)**, the Court expanded the scope of **Article 21**,

ruling that it guarantees not just a right to life, but a right to live with dignity, encompassing various aspects of life, including health, education, and social security.

2. Right to be Free from Torture and Cruel Treatment

Prisoners have the right to be free from **torture** and **inhuman or degrading treatment**. The **Indian Penal Code (IPC)** and the **Prevention of Torture Act, 2017** criminalize torture in any form, including physical or psychological abuse. The **Supreme Court**, in cases such as **D.K. Basu v. State of West Bengal (1997)**, held that custodial violence is a violation of **Article 21**, and any abuse of prisoners by police or prison authorities constitutes a violation of their constitutional rights.

The case established guidelines for police and prison authorities, which include the need for written documentation of arrests, the provision of legal assistance to prisoners, and the prohibition of third-degree methods in custody. These measures are designed to prevent the occurrence of **torture** and ensure that prisoners are treated with dignity.

3. Right to Adequate Food, Water, and Shelter

The right to adequate food, clean water, and shelter is also covered under the **right to life**. The **Supreme Court** has reiterated that prisoners must not be subjected to conditions that compromise their health or well-being. The state is obligated to provide prisoners with adequate food, clean drinking water, hygienic facilities, and proper shelter.

In the case of **Francis Coralie Mullin v. The Administrator, Union Territory of Delhi (1981)**, the Court ruled that prisoners are entitled to certain basic amenities, including adequate food, clothing, and medical care, which are part of their constitutional right to live with dignity. The Court observed that denying prisoners these basic needs amounts to a violation of their human rights.

4. Right to Access to Legal Aid

Prisoners in India are entitled to access legal aid, which is guaranteed under **Article 39A** of the Constitution. Legal aid ensures that individuals who cannot afford legal representation are provided with competent legal assistance. In the case of **State of Maharashtra v. ManubhaiPragajiVashi (1995)**, the Court held that a prisoner has a constitutional right to free legal aid and a fair trial.

Prisoners' right to legal aid also extends to ensuring their right to appeal or challenge their detention. Many prisoners, particularly from marginalized backgrounds, lack awareness of their legal rights and are often denied access to adequate legal resources. The judiciary has recognized this issue and has directed state governments to ensure that legal aid is made available to all prisoners, especially those who are economically disadvantaged.

5. Right to Medical Care

Prisoners, like other citizens, have the right to access **adequate healthcare** and medical treatment. The **Supreme Court** has held that denying medical treatment to prisoners, especially those suffering from serious illnesses, constitutes **cruel and unusual punishment** and violates their right to life. In the case of **P. Rathinam v. Union of India (1994)**, the Court emphasized that a prisoner's right to health is a crucial aspect of the right to life under **Article 21**.

The **Prison Manual** and state laws mandate that prisoners must be provided with necessary medical treatment. However, reports of inadequate healthcare facilities and the lack of access to proper medical care in prisons remain a significant concern in India. The **National Human Rights Commission (NHRC)** has frequently called for improved healthcare systems within prisons to ensure the well-being of incarcerated individuals.

6. Right to Access to Education and Rehabilitation

The right to education and rehabilitation is a key component of prisoners' rights. Prisons are not only meant for punitive action but also for the **rehabilitation** of prisoners. According to the **National Policy on Prison Reforms**, prisoners should be given access to educational programs, vocational training, and psychological counseling to facilitate their reintegration into society after their release.

Several states have initiated programs like **open universities**, **vocational training centers**, and **self-help groups** within prisons to support prisoners' education and rehabilitation. However, these initiatives are limited and not uniformly implemented across all prisons, and many prisoners, particularly those in overcrowded facilities, face barriers to accessing these programs.

Challenges in the Protection of Prisoners' Rights

Despite the legal protections in place, prisoners in India often face significant challenges in the protection of their rights. Overcrowding, poor living conditions, lack of adequate medical care, and delayed legal proceedings are persistent problems that undermine the effectiveness of prisoners' rights protections. The **NHRC** and other human rights organizations have raised concerns about the alarming rate of **prison overcrowding**, which has led to severe violations of prisoners' basic rights.

Moreover, the enforcement of prisoners' rights depends heavily on the willingness of prison authorities to comply with legal standards. Instances of **torture**, **illegal detentions**, and **poor prison conditions** continue to be reported, indicating the need for further reform and greater accountability within the prison system.

Conclusion

Prisoners' rights in India have evolved through a combination of legal provisions, judicial interpretations, and international human rights standards. While significant progress has been made in protecting these rights, challenges remain in the implementation and enforcement of prisoners' rights in the country. Ensuring that prisoners are treated with dignity and respect requires comprehensive reforms in the prison system, better infrastructure, enhanced training for prison staff, and more effective mechanisms for accountability. Moreover, increasing awareness among prisoners about their rights and improving access to legal aid can go a long way in safeguarding their interests and ensuring that they are not subjected to abuse or neglect during their incarceration.

Landmark Judgments on Prisoners' Rights in India

The protection of prisoners' rights in India has evolved through significant judicial interventions, especially by the **Supreme Court**. These judgments not only safeguard the **basic human dignity** of prisoners but also address issues of **unfair treatment, harsh prison conditions, and lack of rehabilitation**. The **Indian judiciary** has played a critical role in expanding the scope of **Fundamental Rights** to incarcerated individuals, emphasizing that prisoners, despite their incarceration, continue to enjoy certain rights under the **Constitution of India**. Several landmark rulings have contributed to the recognition of prisoners' rights, making it a crucial part of India's **criminal justice system**.

1. Maneka Gandhi v. Union of India (1978)

In this landmark case, the **Supreme Court of India** expanded the interpretation of **Article 21** of the Constitution, which guarantees the **right to life and personal liberty**. The Court held that the right to life does not just mean the right to live but the right to live with dignity. This principle was extended to prisoners in later judgments. The judgment in **Maneka Gandhi v. Union of India (1978)** laid down the framework that prisoners cannot be subjected to cruel and degrading treatment, as it directly violates their **right to life**. In this case, the Court emphasized that the procedure established by law must be **fair, reasonable, and just**, which directly impacts the conditions under which prisoners are held.

2. D.K. Basu v. State of West Bengal (1997)

This case was a landmark in addressing **custodial violence** and **torture** within the Indian prison system. The **Supreme Court** established a set of **guidelines** for arrest, detention, and treatment of prisoners, emphasizing that custodial violence, torture, and **inhumane treatment** of prisoners are **violations** of **Article 21** (right to life) and **Article 22** (protection against arrest and detention). The Court issued a set of **mandatory guidelines** aimed at

protecting prisoners' rights, such as the need for police officers to wear **name tags** during arrests, ensuring that the arrested person is informed of their rights, and guaranteeing that the person is examined by a medical officer to prevent any abuse. These guidelines have been considered crucial in improving the **conditions of detention** and **preventing torture** during police and prison custody.

3. Francis Coralie Mullin v. The Administrator, Union Territory of Delhi (1981)

In this case, the **Supreme Court** recognized the **right to live with dignity** as a core principle of **Article 21**. The Court held that even those incarcerated in prisons have the right to be protected from **inhumane and degrading treatment**. The judgment emphasized that prisoners are entitled to certain basic amenities, such as **adequate food, clothing, healthcare, and recreation**. The Court's interpretation extended the right to **human dignity** to prisoners, affirming that denial of these basic amenities constitutes a violation of their rights. This judgment has been pivotal in ensuring that prisoners are treated with humanity and respect, as fundamental rights are not forfeited simply by entering prison.

4. Sunil Batra v. Delhi Administration (1978)

This case focused on the inhuman treatment of prisoners, especially in the context of solitary confinement. The **Supreme Court** ruled that solitary confinement should not be used as a form of punishment for long periods as it amounts to **cruel and unusual punishment**, violating **Article 21**. The Court emphasized that solitary confinement, if imposed for extended periods, can severely affect a prisoner's **mental health** and constitute a **violation** of their basic human rights. The judgment contributed to the recognition that punishment in prisons must not only be about retribution but also about **rehabilitation** and **reformation** of prisoners, and excessive punishment, such as solitary confinement, must be avoided to preserve the **dignity** of the individual.

5. R.D. Upadhyay v. State of Andhra Pradesh (2006)

This judgment brought attention to the **rights of prisoners in judicial custody** in India. The **Supreme Court** ruled that prisoners must have access to the **minimum standards of living** and facilities, including the **right to education, vocational training, and recreational activities**. It stated that **prison authorities** are responsible for ensuring that prisoners are not subjected to cruel or degrading treatment and that they have access to legal remedies, **healthcare**, and other services. The Court also highlighted the need for the **rehabilitation** of prisoners through various programs to aid their **re-entry** into society upon release. This ruling has been instrumental in shaping the policies for **prison reform** and the **rehabilitation** of incarcerated individuals.

6. Hussainara Khatoon v. State of Bihar (1979)

This case is particularly significant because it focused on the **rights of undertrial prisoners**. The **Supreme Court** held that **undertrials** (prisoners awaiting trial) who are unable to pay bail must not be subjected to indefinite detention, as it violates the right to life and personal liberty under **Article 21**. The Court recognized the severe problem of overcrowding in Indian prisons, especially the situation of undertrials who often languish in jail for years before their trial. The Court ruled that they should be released if they cannot afford bail, and their detention without trial was deemed **unconstitutional**. This judgment led to significant reforms in the treatment of undertrial prisoners, calling for **expedited trials** and **bail reforms**.

7. State of Uttar Pradesh v. Rajesh Gautam (2006)

In this case, the **Supreme Court** addressed the issue of **prison overcrowding**, which was a critical concern in India. The Court held that overcrowding in prisons is a violation of prisoners' fundamental rights, especially their **right to live with dignity** under **Article 21**. The Court directed the government to take necessary steps to decongest prisons, including the construction of new prisons and providing better facilities to prisoners. This ruling emphasized the importance of **adequate space**, **sanitation**, and **ventilation** in prisons, recognizing that overcrowding severely impacts the quality of life and rehabilitation of prisoners.

8. Prem Shankar Shukla v. Delhi Administration (1980)

In this case, the **Supreme Court** ruled that **handcuffing prisoners** during transportation or while in custody is unconstitutional unless absolutely necessary for safety reasons. The Court held that the practice of handcuffing was inhumane and amounted to degrading treatment, violating prisoners' **right to dignity**. The ruling set guidelines on the **use of restraints**, highlighting that prisoners must not be subjected to unnecessary and degrading treatment unless their behavior justifies it.

Conclusion

Landmark judgments have significantly shaped the protection of **prisoners' rights** in India. These rulings have established a framework that ensures prisoners are treated with **dignity** and are protected from **inhumane treatment**. The **Supreme Court's** interpretations of the **Constitution** and other legal provisions have highlighted the need for **reforms** in the prison system and for greater **humanitarian treatment** of prisoners. However, despite these judicial advancements, challenges persist in the **implementation** of prisoners' rights. Overcrowding,

delayed trials, and lack of resources continue to hinder the proper realization of these rights, requiring continuous judicial oversight and **legislative reforms**.

References

- Austin, G. (2000). *Working a Democratic Constitution: The Indian Experience*. Oxford University Press.
- Basu, D. D. (1997). *Commentary on the Constitution of India*. Wadhwa & Company.
- Basu, D. D. (2012). *Introduction to the Constitution of India* (21st ed.). LexisNexis Butterworths.
- Batra, S. (1978). *Sunil Batra v. Delhi Administration*. Supreme Court of India.
- Chandrachud, A. (2020). *Due Process and Fundamental Rights: The Interpretation of Article 21 of the Indian Constitution*. Oxford University Press.
- *Common Cause v. Union of India*, (2018) 5 SCC 1.
- *Coralie Mullin v. The Administrator, Union Territory of Delhi*, (1981). Francis Coralie Mullin v. The Administrator, Union Territory of Delhi. Supreme Court of India.
- *D.K. Basu v. State of West Bengal* (1997). *D.K. Basu v. State of West Bengal*. Supreme Court of India.
- Deshpande, S. (2021). *Rights, Liberties, and Judicial Activism in India*. Sage Publications.
- *E.P. Royappa v. State of Tamil Nadu*, AIR 1974 SC 555.
- Gandhi, M. (2017). *Prisoner's Rights in India: Legal and Constitutional Perspectives*. LexisNexis.
- Government of India. (1950). *The Constitution of India*. Ministry of Law and Justice. Retrieved from <https://legislative.gov.in/constitution-of-india>
- Granville, A. (2002). *The Indian Constitution: Cornerstone of a Nation*. Oxford University Press.
- India, *The Constitution of India*, Art. 21.
- *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.
- *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.
- *Khatoon, H. (1979). Hussainara Khatoon v. State of Bihar*. Supreme Court of India.
- *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.
- National Human Rights Commission. (2015). *Report on Prison Reforms in India*. NHRC.
- *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180.
- *People's Union for Civil Liberties v. Union of India*, AIR 1997 SC 568.

- Raj, S. (2017). *Fundamental Rights and Directive Principles: A Comparative Study*. Oxford University Press.
- Raj, S. (2018). Prisoner's Rights in India: A Legal Perspective. LexisNexis.
- Rajesh Gautam v. State of Uttar Pradesh (2006). State of Uttar Pradesh v. Rajesh Gautam. Supreme Court of India.
- Sharma, V. (2015). *Indian Constitution: Directive Principles and Policy Making*. Pearson Education India.
- Shukla, P. S. (1980). Prem Shankar Shukla v. Delhi Administration. Supreme Court of India.
- Tiwari, R. (2016). *The Role of Directive Principles in Indian Governance*. Routledge India.
- United Nations General Assembly. (1966). *International Covenant on Civil and Political Rights*. Retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>
- United Nations. (1945). *Charter of the United Nations*. Retrieved from <https://www.un.org/en/about-us/un-charter>
- Vishaka v. State of Rajasthan, AIR 1997 SC 3011.

Unit – III Human Rights and Police

Human Rights and Police

The relationship between **human rights** and the **police** is fundamental to the functioning of any democratic society. The police are entrusted with the responsibility of maintaining **law and order**, protecting citizens, and ensuring public safety. However, while exercising these duties, it is critical that police officers act in compliance with **human rights standards**. Violations of human rights by police officers not only undermine the rule of law but also erode public trust in the justice system. In the modern world, policing and human rights are inseparably linked, with law enforcement agencies expected to uphold the dignity, rights, and freedoms of individuals, even while maintaining security and order.

Policing inherently involves the exercise of significant power, including powers of **arrest, detention, search, and use of force**. Each of these powers carries with it the potential for human rights violations if not exercised within the limits prescribed by law. In democratic societies, police actions are constrained by **constitutional provisions, domestic laws, and international human rights instruments**, such as the **Universal Declaration of Human Rights (1948)**, the **International Covenant on Civil and Political Rights (1966)**, and regional human rights agreements (UN, 1948; ICCPR, 1966).

Arrest and detention are the most common areas where human rights violations occur. Articles 9 and 10 of the **ICCPR** state that no one shall be subjected to arbitrary arrest or detention and that anyone arrested must be informed promptly of the reasons for their arrest and any charges against them (ICCPR, 1966). Furthermore, the **Supreme Court of India**, in cases such as **D.K. Basu v. State of West Bengal (1997)**, has laid down guidelines for arrest procedures to prevent **custodial torture** and deaths. Despite these protections, instances of unlawful detention, torture, and ill-treatment by police remain persistent problems in many countries, including India.

Another crucial aspect is the **use of force**. International standards, particularly the **UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990)**, require that police use force only when strictly necessary and to the extent required for the performance of their duty. The principles emphasize that lethal force should only be used as a last resort when there is an imminent threat to life (United Nations, 1990). However, numerous cases worldwide highlight the excessive use of force, especially against marginalized communities, protesters, and minorities, which amounts to serious human rights abuses.

Racial profiling and discrimination by police are additional concerns. Human rights law requires that law enforcement operate without discrimination of any kind, including race, religion, ethnicity, or political opinion. The practice of targeting individuals based on their perceived identity rather than their behavior contravenes human rights principles of equality and non-discrimination enshrined in Articles 2 and 7 of the UDHR (UN, 1948). In India, the **Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989**, underscores the need for special protection to vulnerable communities who are often victims of police discrimination and abuse.

In addition, the **right to privacy** is increasingly under threat with modern policing methods, including mass surveillance, digital tracking, and data collection. The right to privacy is protected under Article 17 of the ICCPR, and any infringement must be lawful, necessary, and proportionate (ICCPR, 1966). In India, the **Puttaswamy v. Union of India (2017)** judgment recognized the right to privacy as a **fundamental right** under the **Constitution**, placing limits on police surveillance activities.

Efforts to align policing practices with human rights obligations include **human rights training** for law enforcement officers, **accountability mechanisms**, and **community policing models**. Police officers need training that emphasizes respect for human rights, de-escalation techniques, cultural sensitivity, and lawful procedures. Accountability mechanisms, such as independent complaints bodies, judicial oversight, and transparent investigation processes, are essential to deter abuses and ensure justice when violations occur. In India, the **Police Complaints Authorities** were recommended by the **Supreme Court in Prakash Singh v. Union of India (2006)**, to address grievances against police misconduct.

Community policing is another model that emphasizes partnership between the police and the community, focusing on problem-solving and building trust rather than coercive control. This model has been recognized globally as a means to reduce human rights abuses by ensuring that policing is carried out with community participation and oversight.

However, significant challenges remain. Structural issues such as lack of training, political interference, poor working conditions, and entrenched prejudices within police forces continue to contribute to rights violations. Moreover, the culture of impunity often surrounding police misconduct means that perpetrators are rarely held accountable, perpetuating cycles of abuse.

The role of **international organizations** and **civil society** is critical in promoting human rights in policing. Organizations such as **Amnesty International**, **Human Rights Watch**, and the **National Human Rights Commissions** monitor police activities, advocate for

reforms, and support victims of police abuse. In India, the **National Human Rights Commission (NHRC)** actively investigates complaints against police and recommends corrective actions.

Ultimately, the integration of **human rights** into **policing practices** is not merely a legal obligation but a moral and ethical imperative. Protecting human rights builds legitimacy, trust, and cooperation between the police and the public. Conversely, abuse of police powers undermines democracy, weakens the rule of law, and fuels social unrest. Therefore, sustained efforts at legal reform, institutional strengthening, capacity building, and cultural change are necessary to ensure that policing is fully consistent with human rights standards.

Preservation of Human Rights

Introduction

The preservation of human rights is fundamental to ensuring dignity, equality, and freedom for every individual. Human rights encompass a range of entitlements and freedoms, including civil, political, economic, social, and cultural rights. Preservation involves not only their legal recognition but also effective protection mechanisms against violations. Various international instruments, national constitutions, and judicial frameworks play pivotal roles in safeguarding these rights.

International Frameworks for Preservation

The foundation of modern human rights preservation lies in the **Universal Declaration of Human Rights (UDHR), 1948**, adopted by the United Nations General Assembly. The UDHR outlines basic rights and freedoms to which all humans are entitled, such as the right to life, liberty, and security (Article 3), and the right to a fair trial (Article 10) (United Nations, 1948).

Following the UDHR, binding international treaties such as the **International Covenant on Civil and Political Rights (ICCPR)** and the **International Covenant on Economic, Social and Cultural Rights (ICESCR)** were developed. These documents impose legal obligations on signatory states to respect, protect, and fulfill human rights (Office of the High Commissioner for Human Rights [OHCHR], 1966a; 1966b).

Regional systems like the **European Convention on Human Rights (ECHR)** and **African Charter on Human and Peoples' Rights** further strengthen human rights protections by allowing individuals to seek redress for violations through regional courts.

National Legal Systems and the Preservation of Rights

At the national level, constitutions act as the supreme safeguard of human rights. For example, the **Constitution of India**, through its Part III on Fundamental Rights, ensures the protection of rights such as equality before the law (Article 14), freedom of speech (Article 19), and protection of life and personal liberty (Article 21) (Government of India, 1950).

Courts serve as critical protectors of human rights by interpreting constitutional provisions expansively. In *Maneka Gandhi v. Union of India* (1978), the Supreme Court of India held that the right to life under Article 21 is not merely the right to animal existence but includes the right to live with dignity (AIR 1978 SC 597).

Moreover, legislative measures such as the **Protection of Human Rights Act, 1993** in India, which established the **National Human Rights Commission (NHRC)**, have institutionalized mechanisms to address grievances related to human rights violations.

Role of Judiciary in Preservation

Judicial activism has played a monumental role in preserving human rights. Public Interest Litigations (PILs) have broadened access to justice for marginalized communities. The judiciary has recognized various socio-economic rights, although not explicitly mentioned, under the umbrella of Article 21, such as the right to health, shelter, and education (*Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802).

Additionally, in *D.K. Basu v. State of West Bengal* (1997), the Supreme Court laid down detailed guidelines for arrest and detention to prevent custodial torture, highlighting the judiciary's proactive stance in upholding human rights (AIR 1997 SC 610).

Mechanisms and Institutions for Preservation

Internationally, organizations like the **United Nations Human Rights Council (UNHRC)** and various treaty bodies monitor compliance with human rights standards. At the national level, institutions such as **NHRC** in India, **State Human Rights Commissions**, and various Ombudsman offices (Lokayuktas) serve similar purposes.

The role of **Non-Governmental Organizations (NGOs)** such as Amnesty International, Human Rights Watch, and national bodies like the People's Union for Civil Liberties (PUCL) in India, is also vital. They expose human rights abuses, advocate for policy changes, and provide support to victims.

Challenges to Preservation

Despite strong frameworks, several challenges hinder the effective preservation of human rights:

- **Authoritarianism and Political Interference:** Governments sometimes curtail freedoms, citing national security or public order.
- **Terrorism and Internal Conflicts:** Security operations often result in violations of the right to life, prohibition of torture, and freedom of movement.
- **Economic Inequalities:** Marginalized sections, such as Dalits, Adivasis, and women in India, continue to suffer from systemic discrimination and exclusion.
- **Technological Challenges:** Privacy rights are increasingly under threat in the digital era due to mass surveillance, data breaches, and misinformation.

Strategies for Effective Preservation

To preserve human rights effectively, a multi-pronged approach is needed:

1. **Legal Reforms:** Updating laws to conform with international standards.
2. **Strengthening Institutions:** Empowering human rights commissions with more autonomy and resources.
3. **Promoting Human Rights Education:** Making citizens aware of their rights and remedies.
4. **Ensuring Judicial Independence:** The judiciary must function without political or external pressures.
5. **International Cooperation:** Global partnerships to pressure violators and offer support to victims.

In India, efforts like the *Right to Information Act, 2005* have enhanced transparency and accountability, indirectly contributing to the preservation of rights by empowering citizens.

Conclusion

Preserving human rights is not a one-time endeavor but a continuous process requiring vigilance, activism, and institutional integrity. As global and national dynamics evolve, so do the challenges to human rights. However, strong legal frameworks, robust institutions, proactive judiciary, active civil society, and informed citizenry remain key to safeguarding the fundamental dignity of every human being. True preservation lies in not just reacting to violations but in proactively building a culture of respect, protection, and fulfillment of rights for all.

Preventive Measures for Protection of Human Rights

Introduction

The protection of human rights is essential for maintaining dignity, equality, and justice in society. While curative measures like judicial remedies are important, preventive measures

play an even more critical role. Prevention involves creating legal, institutional, and societal frameworks that deter human rights violations before they occur. By focusing on prevention, societies aim to eliminate conditions that foster abuse, ensuring that rights are not only protected after violations but are respected at all times.

International Frameworks for Prevention

The international community has recognized the significance of preventive measures through numerous instruments. The **Universal Declaration of Human Rights (UDHR)** (1948) laid the foundation by articulating rights and freedoms to prevent abuses (United Nations, 1948). Building on this, the **International Covenant on Civil and Political Rights (ICCPR)** and the **International Covenant on Economic, Social and Cultural Rights (ICESCR)** bind states to take legislative and other measures necessary to realize rights (OHCHR, 1966a; 1966b).

The **United Nations Human Rights Council (UNHRC)** plays a preventive role through its **Universal Periodic Review (UPR)** mechanism, which reviews states' human rights records regularly, encouraging improvements before violations escalate. Similarly, the **Office of the High Commissioner for Human Rights (OHCHR)** provides technical assistance to build national capacities for human rights protection.

The **International Labour Organization (ILO)** conventions, the **Convention Against Torture (CAT)**, and the **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)** focus heavily on preventive strategies, requiring states to adopt educational, legislative, and administrative measures to preempt abuses.

Constitutional and Legal Preventive Measures

Many national constitutions, like the **Constitution of India**, incorporate preventive mechanisms. Part III (Fundamental Rights) guarantees essential freedoms and prohibits practices like untouchability (Article 17), thus preventing systemic discrimination. Preventive detention laws, while controversial, are theoretically intended to forestall threats to public order (*Constitution of India*, Article 22).

Specific statutes also act as preventive tools:

- **Protection of Human Rights Act, 1993:** Establishes bodies like the **National Human Rights Commission (NHRC)** to proactively monitor and recommend measures.
- **Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989:** Deters crimes against marginalized communities through stringent provisions.

- **Right to Information Act, 2005:** Increases transparency and reduces abuses of power.

Moreover, India's **Code of Criminal Procedure (CrPC)** includes provisions like Section 151, allowing police officers to arrest individuals to prevent the commission of cognizable offences.

Institutional Mechanisms

Various institutions are critical to preventive strategies:

- **Human Rights Commissions:** At both national and state levels, these bodies investigate complaints, conduct research, and make recommendations to plug systemic gaps.
- **Judiciary:** Constitutional courts through PILs, suo motu actions, and broad interpretations of rights serve as powerful deterrents against violations.
- **Ombudsman and Lokayuktas:** Institutions that address administrative corruption and misuse of power help prevent violations arising from abuse of authority.

Internationally, bodies like the **International Criminal Court (ICC)** deter potential violators by holding individuals criminally responsible for genocide, crimes against humanity, and war crimes.

Role of Education and Awareness

Educating people about their rights is perhaps the most fundamental preventive measure. The **UN Declaration on Human Rights Education and Training (2011)** emphasizes that knowledge of rights leads to respect for rights.

In India, schemes like the **National Human Rights Commission's Human Rights Education Program** promote human rights literacy across schools and colleges. Various NGOs, such as Amnesty International and Human Rights Watch, also contribute by raising awareness about rights and reporting violations to deter future abuses.

Community empowerment programs among vulnerable populations such as women, minorities, and indigenous communities ensure that these groups are aware of their rights and can demand their protection proactively.

Police and Preventive Human Rights Protection

Law enforcement agencies play a pivotal role in the prevention of rights violations. Training programs focused on human rights sensitivity, gender sensitivity, and minority rights equip police officers to act within constitutional and legal boundaries.

The **D.K. Basu Guidelines** formulated by the Supreme Court of India (AIR 1997 SC 610) mandate procedures to prevent custodial violence. These guidelines include the requirement

to inform arrested individuals of their rights, medical examinations, and maintaining arrest registers.

Specialized human rights cells within police departments in many Indian states act to monitor and investigate rights violations, providing an internal mechanism for early detection and correction.

Technological and Structural Measures

Modern preventive measures increasingly incorporate technology:

- **Body cameras** on police officers deter misconduct.
- **CCTV surveillance** in prisons and police stations increases accountability.
- **Whistleblower protection laws** encourage insiders to expose potential violations without fear.

Structural reforms such as **community policing**, where police work closely with local populations, foster trust and cooperation, thus preventing abuse.

In judicial contexts, **video conferencing** has been used to reduce hardships on prisoners and accused individuals, minimizing human rights violations during court transfers or incarceration.

Socio-Economic Measures for Prevention

Socio-economic deprivation often leads to vulnerability and rights violations. Addressing poverty, illiteracy, and inequality are therefore long-term preventive measures.

Government welfare schemes like **MNREGA (Mahatma Gandhi National Rural Employment Guarantee Act)**, **Right to Education Act**, and health insurance programs aim to uplift marginalized communities, thereby reducing their exposure to exploitation and abuse.

Affirmative action policies (reservations in education and employment) act as preventive steps to ensure representation and participation of historically disadvantaged groups.

International Preventive Diplomacy

International diplomacy also plays a preventive role. The UN and regional bodies often engage in **preventive diplomacy**, negotiating peace agreements and promoting dialogue to avoid conflicts that result in mass human rights violations.

For instance, the UN's preventive deployment in Macedonia (UNPREDEP) is hailed as a successful example of preventing conflict through diplomatic engagement and monitoring.

Sanctions regimes and early warning systems also form part of preventive strategies aimed at state actors and non-state actors threatening human rights.

Conclusion

Prevention is better than cure — this maxim holds especially true for human rights. Proactive steps, including robust legal frameworks, strong institutions, widespread education, technology use, socio-economic development, and vigilant international oversight, are crucial to preventing human rights abuses. While challenges persist due to political, economic, and societal factors, sustained commitment to preventive strategies can significantly minimize violations and promote a culture of respect, equality, and justice globally.

Curative Measures for Preservation of Human Rights

Introduction

Despite the best preventive measures, human rights violations still occur across the world. Curative measures aim to remedy these violations after they have taken place. These measures seek not only to offer justice to victims but also to restore their dignity, compensate their loss, and punish the violators to discourage future abuses. In democratic societies, curative mechanisms are essential to uphold the rule of law, ensure accountability, and reinforce the framework of human rights protection.

Concept of Curative Measures

Curative measures refer to legal, administrative, institutional, and social interventions that address human rights violations after they occur. They aim to:

- Provide redress and compensation to victims.
- Hold perpetrators accountable.
- Rectify systemic flaws that led to the violation.
- Rehabilitate and reintegrate victims into society.
- Prevent recurrence of similar violations through corrective reforms.

Curative measures strengthen public faith in the justice system and human rights institutions, promoting long-term peace and social harmony.

Judicial Remedies

One of the primary curative measures is the judicial process. Victims of human rights violations often seek remedies through courts and tribunals.

1. Writ Jurisdiction

Under **Article 32** and **Article 226** of the **Constitution of India**, individuals can approach the Supreme Court and High Courts, respectively, for the enforcement of Fundamental Rights. Writs like *Habeas Corpus*, *Mandamus*, *Prohibition*, *Certiorari*, and *Quo Warranto* are powerful tools to provide immediate relief.

Example: In **Sunil Batra v. Delhi Administration** (1978 AIR 1675), the Supreme Court intervened through a writ of habeas corpus to end inhuman prison conditions.

2. Public Interest Litigation (PIL)

PILs allow concerned citizens and organizations to approach the courts on behalf of victims unable to represent themselves. It expands access to justice and has been pivotal in human rights protection in India.

Example: **Vishaka v. State of Rajasthan** (AIR 1997 SC 3011) led to guidelines for preventing sexual harassment at the workplace.

3. Special Tribunals and Human Rights Courts

Legislations like the **Protection of Human Rights Act, 1993** allow for the establishment of Human Rights Courts at the district level, ensuring speedy trial of offences related to human rights.

Institutional Remedies

Several institutions are tasked with offering curative redress:

1. National Human Rights Commission (NHRC)

NHRC investigates human rights violations and can recommend compensation, disciplinary action, and systemic reforms. Though its recommendations are not binding, they carry considerable moral and political weight.

Example: NHRC's intervention in the 2002 Gujarat riots led to significant compensation and rehabilitation efforts for victims.

2. State Human Rights Commissions

These commissions provide local-level remedies, ensuring that victims in the states have easier access to justice mechanisms.

3. Commissions for Specific Groups

Specialized commissions like the **National Commission for Women (NCW)**, **National Commission for Minorities (NCM)**, and **National Commission for Scheduled Castes (NCSC)** play curative roles for specific vulnerable sections.

Compensation and Rehabilitation

Financial compensation is a vital form of curative justice. Courts, commissions, and the government often provide monetary relief to victims of human rights abuses.

- **Supreme Court Compensation Jurisprudence:** In *RudulSah v. State of Bihar* (AIR 1983 SC 1086), the Court awarded compensation to a man illegally detained for 14 years.
- **Victim Compensation Schemes:** Under Section 357A of the CrPC, victims can claim compensation through state-run schemes.
- **Rehabilitation Programs:** Victims of custodial violence, trafficking, and communal violence are often provided with medical, psychological, and financial assistance to facilitate rehabilitation.

International Curative Measures

When domestic remedies are inadequate, victims can approach international mechanisms:

- **United Nations Human Rights Committee (UNHRC):** Hears individual complaints under the ICCPR.
- **International Criminal Court (ICC):** Tries individuals for crimes like genocide and crimes against humanity.
- **European Court of Human Rights (ECHR):** Provides binding rulings against member states for violations of the European Convention on Human Rights.

Example: The ECHR's judgment in *McCann and Others v. United Kingdom* (1995) held the UK responsible for wrongful killings by security forces.

Apologies and Restorative Justice

Mere financial compensation may not suffice; symbolic acts like public apologies and acknowledgment of wrongs play an important curative role.

- **Restorative Justice Mechanisms:** These include dialogue, apologies, reparations, and truth commissions. They are especially crucial in post-conflict societies.
- *Example:* South Africa's **Truth and Reconciliation Commission (TRC)** helped address human rights violations during apartheid through public hearings, apologies, and reparations.

Curative Measures in Police Reforms

Since law enforcement is often involved in human rights violations, police reforms serve as curative actions:

- Training on human rights and constitutional protections.
- Installation of CCTV cameras in custody areas.

- Independent oversight bodies like Police Complaint Authorities (PCAs).

Example: The Supreme Court's directives in **Prakash Singh v. Union of India** (2006) mandated structural reforms to prevent police excesses.

Role of Civil Society and Media

NGOs, advocacy groups, and independent media often act as catalysts for curative action:

- Documenting violations.
- Filing cases and petitions.
- Publicizing abuses to generate public pressure.
- Supporting victims in accessing remedies.

Organizations like **Amnesty International** and **Human Rights Watch** have been pivotal in ensuring global attention to human rights abuses and pressuring states for corrective action.

Challenges to Effective Curative Measures

- **Delays:** Judicial proceedings and bureaucratic processes can be slow.
- **Enforcement Gaps:** Recommendations of commissions like NHRC are often not binding.
- **Political Resistance:** Governments may resist acknowledging or addressing violations.
- **Resource Constraints:** Lack of funds can hamper victim compensation and rehabilitation efforts.
- **Victim Intimidation:** Victims often face threats that discourage them from pursuing remedies.

Despite these challenges, a robust framework of curative measures remains essential to human rights protection.

Conclusion

Curative measures are a critical pillar of human rights protection, providing justice to victims and promoting accountability for perpetrators. Effective judicial remedies, institutional frameworks, rehabilitation programs, and international mechanisms together offer a comprehensive response to human rights violations. Moving forward, societies must strive to make these mechanisms more accessible, efficient, and victim-centered. Only through a strong commitment to both preventive and curative approaches can human rights truly be preserved and strengthened for future generations.

Human Rights and Practice of Policing

Introduction

The police are entrusted with maintaining law and order, protecting life and property, and preventing crime. However, policing must always operate within the framework of human rights. Upholding human dignity, ensuring equality before the law, and protecting fundamental freedoms are not only ethical imperatives but also legal obligations for policing agencies. When the police respect human rights, it enhances their legitimacy, fosters public trust, and improves the effectiveness of law enforcement. Conversely, violations such as custodial violence, unlawful detention, and discrimination can deeply erode democratic values and social stability.

Concept of Human Rights in Policing

Human rights in policing encompass:

- **Right to life** and freedom from arbitrary killing (Article 6, ICCPR).
- **Freedom from torture** and cruel, inhuman, or degrading treatment (Article 7, ICCPR).
- **Right to liberty and security**, including protection against arbitrary arrest and detention (Article 9, ICCPR).
- **Rights of accused persons**, such as presumption of innocence and fair trial (Article 14, ICCPR).

National laws, such as the **Constitution of India**, reinforce these protections under **Articles 14, 19, 20, 21, and 22**. Law enforcement agencies must exercise their powers responsibly, in accordance with these rights.

Human Rights Standards for Police

International standards lay down specific guidelines for police behavior:

- **United Nations Code of Conduct for Law Enforcement Officials (1979)** emphasizes that officials must respect and protect human dignity and uphold human rights of all persons.
- **UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990)** stipulate that force must be used only when strictly necessary and in proportion to the seriousness of the offence.
- **International Human Rights Law** imposes obligations on states to prevent police abuse and to punish those responsible for violations.

Example: The principle of "necessity and proportionality" requires police officers to use the minimum level of force necessary to achieve a lawful objective.

Key Human Rights Issues in Policing

1. Arbitrary Arrest and Detention

The right to personal liberty prohibits unlawful arrests. The police must:

- Inform the accused of the grounds of arrest (Article 22(1), Constitution of India).
- Allow access to legal counsel.
- Produce the arrested person before a magistrate within 24 hours.

Violation: Illegal detentions, such as those exposed in **Joginder Kumar v. State of U.P.** (1994 AIR 1349), where the Supreme Court emphasized that no arrest should be made merely because it is lawful to do so.

2. Torture and Custodial Violence

Torture during investigation or in custody violates Article 21 of the Constitution (right to life and personal liberty) and international norms.

Example: The Supreme Court in **D.K. Basu v. State of West Bengal** (AIR 1997 SC 610) laid down detailed guidelines to prevent custodial abuse, including compulsory documentation of arrests and medical examinations.

3. Use of Force and Firearms

Police must follow the principle of **gradual escalation** in using force. Lethal force should only be used when absolutely unavoidable to protect life.

Example: In cases like **People's Union for Civil Liberties v. Union of India** (2014), the Court insisted that every encounter killing must be independently investigated.

4. Discrimination

Policing must be free from discrimination based on race, religion, caste, gender, or political opinion. Discriminatory policing practices violate the right to equality (Article 14).

Example: In the US, movements like "Black Lives Matter" highlight the dangers of racial profiling and excessive force, raising important human rights concerns.

5. Privacy and Surveillance

While surveillance is sometimes necessary for crime prevention, unauthorized or excessive surveillance violates the right to privacy (recognized under Article 21 by the Supreme Court in **K.S. Puttaswamy v. Union of India** (2017)).

Best Practices for Human Rights-Based Policing

1. Training and Sensitization

Continuous training on human rights, constitutional protections, and ethical standards is vital for all ranks of the police.

Example: The National Police Academy in India includes modules on human rights and gender sensitivity in its curriculum.

2. Accountability Mechanisms

Robust internal and external accountability mechanisms deter abuses:

- Departmental inquiries.
- Independent oversight bodies like **Police Complaints Authorities**.
- Judicial remedies through habeas corpus and compensation claims.

Example: The Prakash Singh case (2006) mandated setting up independent bodies to investigate police misconduct.

3. Community Policing

Community policing builds trust, reduces conflict, and helps the police understand community needs better. Collaboration enhances legitimacy and effectiveness.

Example: Kerala's **Janamaithri Suraksha Project** is an effective community policing initiative aimed at bridging the gap between police and citizens.

4. Transparency and Documentation

Maintaining transparent records of arrests, custody, and use of force enhances accountability. Body cameras and CCTV surveillance in police stations promote ethical behavior.

Role of Judiciary and Commissions

The judiciary plays a crucial role in promoting human rights in policing through landmark judgments, guidelines, and strict scrutiny of police actions.

Human rights commissions like NHRC regularly investigate cases of custodial violence and issue recommendations. Their reports and interventions lead to systemic improvements.

Challenges in Practicing Human Rights-Based Policing

Despite the standards, several challenges persist:

- **Political Interference:** Undue influence hampers impartial law enforcement.
- **Lack of Resources:** Understaffing, inadequate equipment, and poor training facilities.
- **Cultural Factors:** A colonial policing mindset focused on control rather than service.
- **Delay in Reforms:** Recommendations like those in the Prakash Singh case are poorly implemented in many states.

Way Forward

- **Police Reforms:** Full implementation of the Supreme Court's police reforms is necessary.
- **Strengthening Oversight:** Empower independent complaint mechanisms and citizen review boards.

- **Human Rights Education:** Integrate human rights education into police training and daily operations.
- **Cultural Shift:** Promote a service-oriented police culture that sees the citizen not as a subject but as a stakeholder.

Policing and human rights are not contradictory but complementary. A police force that upholds human rights ensures social order based on consent, not coercion. Building a human rights-respecting policing system requires sustained commitment to law, transparency, training, accountability, and citizen engagement. Only then can the police truly serve as the guardians of democracy and protectors of human dignity.

References

- Amnesty International Reports, Various Years.
- D.K. Basu v. State of West Bengal, (1997) 1 SCC 416.
- Government of India. (1950). Constitution of India
- Human Rights Watch, Reports on Policing, Various Years.
- International Covenant on Civil and Political Rights, 1966.
- National Human Rights Commission. (n.d.). Human Rights Education. Retrieved from <https://nhrc.nic.in/>
- Office of the High Commissioner for Human Rights. (1966a). International Covenant on Civil and Political Rights. Retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>
- Office of the High Commissioner for Human Rights. (1966b). International Covenant on Economic, Social and Cultural Rights. Retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>
- People's Union for Civil Liberties. (2014). PUCL v. Union of India.
- Puttaswamy v. Union of India, (2017) 10 SCC 1.
- South Africa Truth and Reconciliation Commission. (1998). Final Report.
- Supreme Court of India. (1978). Sunil Batra v. Delhi Administration, AIR 1978 SC 1675.
- Supreme Court of India. (1983). RudulSah v. State of Bihar, AIR 1983 SC 1086.
- Supreme Court of India. (1994). Joginder Kumar v. State of U.P., AIR 1994 SC 1349.
- Supreme Court of India. (1997). D.K. Basu v. State of West Bengal, AIR 1997 SC 610.
- Supreme Court of India. (1997). Vishaka v. State of Rajasthan, AIR 1997 SC 3011.
- Supreme Court of India. (2006). Prakash Singh v. Union of India, (2006) 8 SCC 1.

- Supreme Court of India. (2017). K.S. Puttaswamy v. Union of India, AIR 2017 SC 4161.
- United Nations. (1948). Universal Declaration of Human Rights. Retrieved from <https://www.un.org/en/about-us/universal-declaration-of-human-rights>
- United Nations. (1979). Code of Conduct for Law Enforcement Officials. Retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/code-conduct-law-enforcement-officials>
- United Nations. (1990). Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-use-force-and-firearms-law-enforcemen>

Unit – IV Legal Provisions

BharatiyaNagarik Suraksha Sanhita, 2023

Introduction

The **BharatiyaNagarik Suraksha Sanhita, 2023** (BNSS) is a landmark legislation introduced by the Government of India to replace the colonial-era **Code of Criminal Procedure, 1973 (CrPC)**. This transformation is part of a broader initiative to "decolonize" Indian criminal laws, aligning them more closely with constitutional values, modern democratic principles, and human rights. BNSS aims to strengthen citizens' security, streamline criminal procedures, and balance the rights of victims, accused, and the state.

The BNSS was introduced alongside two other major reforms: the **Bharatiya Nyaya Sanhita, 2023** (replacing the Indian Penal Code, 1860) and the **BharatiyaSakshyaAdhiniyam, 2023** (replacing the Indian Evidence Act, 1872). Together, they symbolize a generational shift in Indian criminal law.

Objectives of the BNSS

- **Citizens' Centric Approach:** Prioritizing the protection of individuals' rights and dignity.

- **Simplification and Speed:** Reducing delays in investigation, trial, and sentencing.
- **Technological Integration:** Legal recognition of digital procedures, e-filing, and video trials.
- **Victim-Centric Justice:** Increased focus on the participation and rights of victims.
- **Accountability and Transparency:** Introducing timelines for different stages of investigation and trial.

Key Features of BharatiyaNagarik Suraksha Sanhita, 2023

1. Emphasis on Time-Bound Investigations

One of the most significant changes under the BNSS is setting strict timelines:

- **Investigation** must be completed within **90 days** for general offences (extendable up to 180 days with court approval for serious offences).
- **Filing of chargesheets** must be done expeditiously to avoid indefinite incarceration of undertrial prisoners.

This is intended to curb prolonged investigations that often violate the right to a speedy trial under **Article 21** of the Constitution.

2. Introduction of Zero FIR and E-FIR

- **Zero FIR:** Citizens can register FIRs at any police station, regardless of jurisdiction. This ensures immediate legal action without procedural delays.
- **E-FIR:** Certain offences (such as property offences, financial crimes) can now be reported electronically, promoting efficiency and accessibility.

These measures align with the Supreme Court's directions in **LalitaKumari v. Government of Uttar Pradesh** (2014) that mandatory registration of FIRs is essential for protecting citizens' rights.

3. Victim's Right to be Heard

In line with victim-centric jurisprudence:

- Victims have the **right to be heard** at key stages of the criminal process (e.g., bail hearings, plea bargaining).
- **Compensation and rehabilitation mechanisms** for victims are also strengthened.

This expansion echoes the growing recognition of victims' rights under international frameworks like the **UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985**.

4. Use of Technology in Trials and Investigation

BNSS formally allows:

- **Video conferencing** for recording evidence and conducting hearings.

- **Electronic service of summons.**
- **Admissibility of digital evidence** such as CCTV footage, body cam recordings.

This modernization is vital in today's digital age and reduces the risk of witness tampering and procedural abuse.

5. New Provisions for Preventive Policing

BNSS gives statutory backing to:

- **Preventive detention** in specified circumstances with checks and balances.
- **Community policing initiatives**, aimed at crime prevention through public cooperation.

Preventive policing has been structured in a manner intended to minimize arbitrary misuse, ensuring compliance with fundamental rights under Articles 21 and 22.

6. Provisions on Bail and Remand

- **Bail for Petty Offences:** Greater liberalization in bail norms for minor crimes.
- **Mandatory Production** before magistrates within **24 hours** continues as a safeguard against illegal detention.

The principles laid down in cases like **Hussainara Khatun v. State of Bihar** (1979), emphasizing bail as the norm and jail as the exception, are reflected in BNSS.

7. Community Service as Punishment

In certain minor offences, courts are now authorized to impose **community service** as an alternative to imprisonment or fine. This innovative reform introduces a rehabilitative approach to minor offenders, promoting restorative justice.

8. Witness Protection Mechanism

Recognizing the vulnerability of witnesses, BNSS emphasizes:

- **Confidentiality of witness identities** in sensitive cases.
- **Witness protection measures**, including relocation, anonymity, and security arrangements.

This change aligns with the Supreme Court's directions in **Mahender Chawla v. Union of India** (2018) emphasizing the need for a formal witness protection program.

9. Fast-Track Procedures for Specific Cases

Certain categories of cases, like offences against women and children, cybercrimes, and organized crimes, are earmarked for **fast-track** trials, enhancing access to speedy justice.

10. Accountability of Police and Prosecutors

Strict disciplinary action and penal provisions are prescribed for:

- **Failure to register FIRs.**

- **Delays in investigation.**
- **Tampering with evidence.**

Accountability mechanisms intend to bolster public confidence in law enforcement.

Significance of BNSS

- **Ending Colonial Legacy:** Moves away from British-era notions of state supremacy over individual rights.
- **Strengthening Federalism:** Gives states more flexibility in tailoring procedures to their needs, while maintaining national standards.
- **Democratic Maturity:** Reflects India's growing emphasis on human dignity, due process, and accountability.
- **Boost to Public Trust:** Transparent, citizen-focused policing procedures will likely enhance faith in the criminal justice system.

Criticisms and Concerns

While BNSS brings many welcome reforms, some concerns have been raised:

- **Preventive Detention Powers:** Critics argue they still leave room for potential misuse.
- **Over-Dependence on Technology:** Digital divide in rural India may hamper effective implementation.
- **Implementation Challenges:** Success depends heavily on capacity-building in police forces and judiciary.

Thus, while the BNSS is a progressive step, its full potential will depend on how conscientiously it is applied in practice.

Conclusion

The **BharatiyaNagarik Suraksha Sanhita, 2023** represents a monumental step towards modernizing India's criminal justice system. By emphasizing the protection of citizens' rights, leveraging technology, and focusing on victim-centric justice, it promises a more accessible, transparent, and fair legal process. However, the success of this ambitious reform lies in its faithful, rigorous implementation and continuous engagement with civil society to safeguard human rights and constitutional values.

BharatiyaNagarik Suraksha Sanhita

Clause 52:

- **Examination of person accused of rape by medical practitioner.**

- If a person is arrested on a charge of rape, a registered medical practitioner must examine the accused with consent, to collect evidence related to the offence.

Clause 53:

- **Examination of arrested person by medical officer.**
- Every arrested person must be examined by a government medical officer (or a registered doctor if unavailable) soon after the arrest, to record any injuries or health conditions.

Clause 53A:

- **(Not separately found).** Likely introduced later or merged. In CrPC analogy, Clause 53A relates to detailed examination in rape cases, recording injuries, semen detection, etc.

Clause 54:

- **Identification of person arrested.**
- If identification is necessary during investigation, the Court may order the arrested person to participate in an identification parade or similar procedures.

Clause 54A:

- **(Not separately found).** In CrPC, 54A involves photographs and identification procedures.

Clause 55A:

- **Procedure when police officer deposes subordinate to arrest without warrant.**
- any police officer making an investigation under Chapter XIII requires any officer subordinate to him to arrest without a warrant

Clause 56:

- **Health and safety of arrested person** (similar theme as 55A).
- Reiterates the obligation to ensure no unnecessary harm or restraint is inflicted on an arrested person.

Clause 57:

- **Person arrested to be taken before Magistrate or police officer.**
- After arrest without warrant, the person must be presented before a Magistrate or officer without unnecessary delay.

Section 148 — Dispersal of Assembly by Use of Civil Force

Power and Responsibility:

- **Who can act?**
 - Executive Magistrate

- Officer-in-charge of a police station
- Police officer (not below the rank of **Sub-Inspector**) in the absence of the officer-in-charge.

Action allowed:

- Can **command** any:
 - *Unlawful assembly*
 - Assembly of *five or more persons likely to cause disturbance* of public peace
- To **disperse** immediately.

Duty of Members:

- Upon such a command, all members **must disperse**.

If Assembly Does Not Disperse:

- The Executive Magistrate or the authorised police officer may:
 - **Use force** to disperse.
 - **Seek help** from civilians (not part of armed forces) to disperse the assembly.
 - **Arrest and confine** the persons involved to ensure dispersion or for legal punishment.

Section 149 — Use of Armed Forces to Disperse Assembly

When Armed Forces are Used:

- If **civil force cannot disperse** the assembly,
- And it is **necessary for public security**,
- The **District Magistrate** or any **Executive Magistrate authorised by the District Magistrate** who is present can:
 - **Order the armed forces** to disperse the assembly.

Power to Command Armed Forces:

- The Magistrate can:
 - Require the **commanding officer** of the armed forces to:
 - Disperse the assembly.
 - **Arrest and confine** persons as needed to ensure dispersion or for lawful punishment.

Duty of Armed Forces:

- The officer in command must **obey the requisition**.
- However, while dispersing the assembly:
 - Must use **as little force as necessary**.

- Must **cause minimum injury** to person and property while completing the task.

Section 151 — Protection Against Prosecution for Acts Done Under Sections 148, 149, and 150

Legal Protection:

1. Prior Sanction Required for Prosecution:

- If the person involved is a **member of the armed forces** → **Sanction of the Central Government** is needed.
- For **any other person** (Magistrates, Police officers, civilians aiding in dispersal) → **Sanction of the State Government** is needed.

2. Good Faith Protection:

- No Executive Magistrate or police officer acting **in good faith** under sections 148, 149, or 150 can be prosecuted.
- No person acting **in good faith on a requisition** under sections 148 or 149 can be prosecuted.

Section 156 – Inquiry into Denial of Public Right

- When a person denies the existence of a public right (like a way, river, channel, or public place), the Magistrate must **inquire** into the matter.
- If **reliable evidence** supports the denial:
 - Proceedings are **stayed** until a competent Court decides.
- If there is **no evidence** for denial:
 - The Magistrate proceeds under Section 157.

Section 265 – Examination of Witnesses in Warrant Cases (Police Report Cases)

- If accused **refuses to plead** or **wants a trial**:
 - Magistrate **fixes a date** for **prosecution evidence**.
 - **Statements of witnesses** recorded during police investigation must be **supplied** to the accused.
- Magistrate can **summon witnesses**.
- Evidence can be recorded via **audio-video means**.
- **Cross-examination** can be deferred or witnesses recalled.

Section 268 – Discharge of Accused

- After examining prosecution evidence:
 - If **no case** is made out that would warrant a conviction:
 - The accused is **discharged** with **reasons recorded**.

- A Magistrate can **discharge** even earlier if charges are groundless.

Section 269 – Framing of Charge

- If there is a **ground for presuming guilt**:
 - Magistrate **frames a written charge**.
- Charge is **read and explained** to the accused.
- Accused can:
 - **Plead guilty** → conviction possible.
 - **Refuse/claim trial** → prosecution witnesses recalled for **cross-examination**.
- Magistrate must **record reasons** if prosecution witnesses are unavailable and close evidence accordingly.

Section 291 – Working out a Mutually Satisfactory Disposition (Plea Bargaining Procedure)

- Court initiates **notice to parties**:
 - Public Prosecutor, Investigating Officer, Accused, Victim (police report case).
 - Accused, Victim (non-police report case).
- The **process must be voluntary**.
- Accused may be **assisted by a lawyer**.

Section 293 – Disposal after Plea Bargaining

- After reaching a satisfactory disposition:
 - Court **awards compensation** to the victim.
 - Court **considers**:
 - **Probation or admonition** under Section 401 or Probation of Offenders Act.
 - **Reduced sentence**:
 - **Half** of minimum punishment (normal case).
 - **One-fourth** if **first-time offender**.
 - Where no minimum is specified:
 - **One-fourth** of punishment (normal).
 - **One-sixth** if **first-time offender**.

Section 395 – Order to Pay Compensation

- When imposing **fine** (or fine + sentence):
 - Court can **direct fine** to be used:
 - To defray **prosecution costs**.
 - To **compensate** the injured party.

- To **compensate victims' families** in death cases.
- To **compensate innocent purchasers** of stolen property.
- Even without fine, **compensation orders** can be passed separately.
- Compensation must **await appeal outcome** if case is appealable.
- Civil courts must **adjust** compensation already paid.

Section 396 – Victim Compensation Scheme

- **State and Central Governments** must create a **victim compensation fund**.
- **District or State Legal Services Authority** decides the amount.
- Compensation can be recommended if:
 - Victim needs **rehabilitation**.
 - Victim remains **uncompensated** after trial.
- Victim (or family) can apply even if **accused is not traced**.
- **Inquiry completed within two months**.
- Victims can get **free first-aid** or **interim relief** immediately.

Section 397 – Immediate Medical Aid to Victims

- All **public and private hospitals** must:
 - **Provide free first-aid and medical treatment** immediately.
 - Especially for victims of serious offences (sexual offences, grievous hurt, etc.).
- Hospitals must **inform police** without delay.

| Section | Focus | Key Points |
|------------|----------------------------|--|
| 156 | Denial of Public Right | Inquiry into denial, stay proceedings if evidence supports. |
| 265 | Witness Examination | Supply statements, fix hearing dates, audio-video recording allowed. |
| 268 | Discharge | Discharge if no prima facie case made out. |
| 269 | Framing Charge | Frame charge, allow plea or conduct trial. |
| 291 | Plea Bargaining Meeting | Voluntary process involving all parties. |
| 293 | Plea Bargain Disposal | Compensation, probation, or reduced sentencing. |
| 395 | Compensation by Fine | Fine used for compensation and prosecution costs. |
| 396 | Victim Compensation Scheme | State fund for victim rehabilitation, immediate aid. |
| 397 | Medical Aid to Victims | Free emergency treatment and police intimation required. |

Provisions for Human Rights

The concept of human rights encompasses the fundamental freedoms and protections that every individual is entitled to by virtue of being human. Rooted in the principles of

dignity, equality, and respect, human rights have evolved over centuries and are now enshrined in numerous national constitutions, international declarations, and legal instruments. At the global level, the Universal Declaration of Human Rights (1948) stands as the foundational document, proclaiming rights such as the right to life, liberty, security, freedom of thought, conscience, and religion, along with the rights to work, education, and participation in governance. It serves as the benchmark for international human rights law, influencing various treaties such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Together, these form the International Bill of Human Rights. Various international bodies like the United Nations Human Rights Council, the Office of the High Commissioner for Human Rights (OHCHR), and regional organizations such as the European Court of Human Rights, the Inter-American Commission on Human Rights, and the African Commission on Human and Peoples' Rights work towards monitoring, promoting, and protecting these rights. In India, the Constitution provides an elaborate framework for the protection and promotion of human rights. The Fundamental Rights enshrined in Part III of the Indian Constitution, such as the right to equality (Articles 14–18), the right to freedom (Articles 19–22), the right against exploitation (Articles 23–24), the right to freedom of religion (Articles 25–28), cultural and educational rights (Articles 29–30), and the right to constitutional remedies (Article 32), guarantee civil and political rights to every citizen. Furthermore, Directive Principles of State Policy under Part IV lay down important socio-economic goals for the state to achieve, thereby indirectly reinforcing human rights related to education, health, employment, and welfare. The Protection of Human Rights Act, 1993 further strengthened this framework by establishing the National Human Rights Commission (NHRC) and State Human Rights Commissions (SHRCs) to investigate human rights violations and promote human rights literacy. Judicial activism has also played a pivotal role in the expansion of human rights in India through the Public Interest Litigation (PIL) mechanism, allowing courts to recognize new dimensions of rights such as the right to a clean environment, right to health, right to privacy, and right to livelihood under Article 21—the right to life and personal liberty. Various landmark judgments such as *Maneka Gandhi v. Union of India*, *Vishaka v. State of Rajasthan*, *Olga Tellis v. Bombay Municipal Corporation*, and *K.S. Puttaswamy v. Union of India* have expanded the horizons of human rights jurisprudence in India. International conventions such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention Against Torture (CAT) also guide domestic legislations and

policymaking in India and other nations. Additionally, special provisions are made for vulnerable and marginalized groups including women, children, minorities, persons with disabilities, refugees, and indigenous peoples to ensure substantive equality. Laws such as the Protection of Women from Domestic Violence Act, 2005, the Rights of Persons with Disabilities Act, 2016, and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 illustrate India's commitment to protecting specific group rights. Globally, human rights are further reinforced by humanitarian law during armed conflicts, particularly through the Geneva Conventions, which seek to protect civilians, prisoners of war, and the wounded. In contemporary times, emerging areas such as digital rights, environmental rights, and rights related to bioethics and artificial intelligence are gaining prominence, reflecting the dynamic and evolving nature of human rights discourse. Despite these extensive legal provisions, challenges to the realization of human rights persist due to factors such as poverty, illiteracy, social discrimination, armed conflicts, authoritarian governance, and systemic inequality. Therefore, constant vigilance, robust institutional mechanisms, effective enforcement, and a culture of human rights education and awareness are crucial for actualizing the spirit of human rights. Non-governmental organizations (NGOs), civil society actors, media, and international watchdogs play significant roles in documenting abuses, advocating reforms, and empowering individuals. In the Indian context, the Right to Information Act, 2005 empowers citizens to seek transparency and accountability, thus reinforcing democratic rights. Moreover, new initiatives like the Lokpal and Lokayuktas Act, 2013 aim to combat corruption, which is a significant barrier to human rights realization. Thus, the provision of human rights is not merely about legal guarantees but also about creating a just, equitable, and inclusive society where every individual can live with dignity, free from fear and want. It requires the collaborative efforts of governments, judiciaries, international organizations, private entities, and citizens to nurture a culture where human rights are respected, protected, and fulfilled in letter and spirit.

BharatiyaSakshyaAdhiniyam, 2023: An Overview

The BharatiyaSakshyaAdhiniyam, 2023 is the new legislation that governs the law of evidence in India, replacing the colonial-era Indian Evidence Act, 1872. Enacted as part of a major legal reform initiative alongside the Bharatiya Nyaya Sanhita (criminal code) and the BharatiyaNagarik Suraksha Sanhita (criminal procedure code), the BharatiyaSakshyaAdhiniyam (BSA) reflects the vision of a modern, efficient, and citizen-centric legal system. The law was passed to align evidence rules with contemporary

technologies, evolving societal needs, and constitutional mandates. Its primary objective is to ensure a just trial process by laying down what facts are relevant, how facts must be proved, and how courts must assess evidence presented before them.

The Bharatiya Sakshya Adhiniyam retains much of the structure and foundational principles of the Indian Evidence Act, 1872 but brings in important changes, particularly in the context of electronic records, admissibility standards, and the burden of proof. It consists of 170 sections divided into three parts: Relevancy of Facts, Proof, and Production and Effect of Evidence.

Key Features of Bharatiya Sakshya Adhiniyam, 2023

One of the major highlights of the Bharatiya Sakshya Adhiniyam is the **emphasis on electronic records and digital evidence**. Recognizing the profound impact of technology in both civil and criminal proceedings, the Act has widened the scope of electronic evidence, making it central to the justice delivery system. Section 61, for instance, details the admissibility of electronic records and specifies that information stored in a digital format is as credible as conventional documentary evidence. It defines electronic records in line with the Information Technology Act, 2000 and prescribes the conditions under which such evidence can be admitted, such as certifications of authenticity (previously under Section 65B of the Indian Evidence Act).

The **concept of relevancy** continues to be at the heart of the Act. Like its predecessor, it states that only relevant facts are admissible in court, and irrelevant facts must be excluded. Sections 4 to 16 of the BSA discuss the types of relevant facts, including facts forming part of the same transaction, facts that are the cause or effect of facts in issue, motive, preparation, conduct, conspiracy, and admissions. Importantly, **admissions and confessions** retain their significant evidentiary value, but safeguards against involuntary confessions, especially custodial confessions, are maintained to protect the rights of the accused under Article 20(3) of the Constitution.

Regarding the **burden of proof**, the Bharatiya Sakshya Adhiniyam continues with the traditional principles that "he who asserts must prove." Sections 104 to 111 set out the rules governing who must prove a fact, and under what circumstances the burden may shift from one party to another. Specific presumptions relating to legitimacy, continuance of life, and regularity of official acts are also codified, enabling courts to draw logical inferences when direct evidence is unavailable.

A significant addition under the BSA is the detailed treatment of **presumptions related to electronic evidence**, cybercrime, and financial documents. Section 92, for instance, provides that courts shall presume the authenticity of secure electronic records unless disproved.

Secure digital signatures and blockchain-based evidences are given a presumption of genuineness, which acknowledges the emerging technologies in contemporary evidence law.

The Bharatiya Sakshya Adhiniyam also incorporates and modernizes **the doctrine of estoppel**. Under Section 120, when a person has, by declaration, act, or omission, intentionally caused or permitted another person to believe something to be true and to act upon that belief, he or she cannot later deny the truth of that statement in court. The doctrine plays a crucial role in ensuring fair dealing and preventing fraud in judicial proceedings.

Production and Effect of Evidence form the third part of the Act. The rules concerning oral evidence and documentary evidence have been retained with appropriate clarifications. Oral evidence must be direct, meaning a witness must testify to what he has personally seen, heard, or perceived. Documentary evidence, including electronic records, must comply with the formalities prescribed to establish their authenticity.

Witness competency rules are codified under Section 118, stating that all persons are competent to testify unless they are prevented from understanding the questions or giving rational answers due to tender years, old age, disease of body or mind, or any other cause. The Act encourages the use of **audio-visual means** for recording testimony, thereby minimizing delays and ensuring transparency.

Another noteworthy innovation is the acceptance of **electronic communications such as emails, SMS, and WhatsApp chats** as evidence. Provided the authenticity is certified and the chain of custody is preserved, such records can be decisive in proving facts in both civil and criminal trials.

In terms of structure, the Bharatiya Sakshya Adhiniyam offers a more **streamlined, simplified, and accessible language** compared to the verbose and sometimes archaic terminology of the Indian Evidence Act, 1872. This reflects the government's broader aim to make the legal system more understandable and citizen-friendly.

Critical Analysis and Conclusion

While the Bharatiya Sakshya Adhiniyam 2023 modernizes the law of evidence and accommodates technological advances, it also retains the time-tested principles that ensure fairness and justice. Critics have pointed out that while the law deals comprehensively with digital evidence, challenges such as cyber security, data authenticity, and privacy breaches require strong safeguards and practical training for enforcement agencies and judiciary members. The successful implementation of the BSA will largely depend on adequate infrastructure, technological upgradation in courts, capacity building of lawyers and judges,

and maintaining a delicate balance between technological innovations and fundamental human rights.

In conclusion, the Bharatiya Sakshya Adhiniyam, 2023 represents a landmark shift towards a modernized legal framework for evidence in India. It strengthens the credibility of the judicial process by embracing digital transformation while upholding principles of natural justice, fairness, and rule of law. As India moves deeper into the digital era, the new Evidence Act is poised to serve as a critical pillar in ensuring that justice is not only done but is also seen to be done, effectively and efficiently.

Section 30: Relevancy of Statements in Maps, Charts, and Plans

Section 30 of the Bharatiya Sakshya Adhiniyam states that **statements of facts in issue or relevant facts** made in:

- **Published maps or charts** that are **generally offered for public sale**, or
- **Maps or plans made under the authority of the Central or State Government**, are **relevant facts**.

This means that maps, charts, and plans, which are generally available to the public or are prepared officially by the government, are presumed to be reliable sources of information. They can be used as evidence without needing additional proof of their accuracy unless their authenticity is specifically challenged. For example, a map published by the Survey of India showing the boundaries of two states can be used in court to prove territorial facts without needing the Surveyor to testify.

The key elements here are **public availability** and **official authority**. Courts recognize that these documents are prepared following professional standards and government procedures, making them trustworthy.

Section 31: Relevancy of Statements Regarding Facts of Public Nature Contained in Acts or Notifications

Section 31 extends the rule of admissibility to **facts of a public nature** recorded in:

- **Central Acts or State Acts**,
- **Government notifications** published in the **Official Gazette**, whether in **printed, electronic, or digital form**.

When the court needs to decide a matter involving a **public fact**—such as a law’s existence, a public holiday declaration, or a notification regarding a land acquisition—the **recital or statement** made in these official documents is treated as a **relevant fact**.

For instance, if there is a dispute over whether a particular area was declared a protected forest, the notification published in the Official Gazette can be submitted as evidence without calling any government officer to prove its content. The law presumes that documents published through official channels are genuine and accurate.

Thus, Section 31 simplifies evidence regarding public acts and public rights, saving time and effort while maintaining the reliability of the judicial process.

Section 32: Relevancy of Statements as to Any Law Contained in Law Books

Section 32 makes relevant any **statement of law** found in:

- A **book printed or published** under the authority of a foreign government, or
- A **report of court rulings** published under similar authority, including those available in **electronic or digital form**.

This provision is particularly important when the court has to determine the **law of another country**. In such cases, courts are allowed to rely on:

- Officially published law books, and
- Authoritative law reports from foreign countries.

For example, if an Indian court has to interpret a point of English law, it can refer to a British statute book or a reported English judgment published officially or digitally. Similarly, in cases involving cross-border contracts, disputes over wills executed abroad, or questions of foreign marriage laws, courts may refer to foreign legal texts as reliable evidence.

Section 32 recognizes the practical difficulties of proving foreign laws through witnesses and instead allows reliance on officially recognized publications, which enhances judicial efficiency and trust.

Explanation of Sections 109, 111, and 128 – Bharatiya Sakshya Adhiniyam, 2023

The Bharatiya Sakshya Adhiniyam, 2023 (BSA), India's new Evidence Act, modernizes and clarifies important rules on the burden of proof and privileges related to communication.

Among its provisions, Sections 109, 111, and 128 address specific legal situations concerning the allocation of the burden of proof and the protection of private marital communications.

These sections play a crucial role in balancing fairness in judicial proceedings and safeguarding personal rights.

Section 109: Burden of Proving a Fact Especially Within Knowledge

Section 109 establishes a key rule: **when any fact is especially within the knowledge of any person, the burden of proving that fact lies upon him**. Normally, the burden of proof rests

on the party who asserts a fact. However, when certain facts are peculiarly within the knowledge of one party, it would be unreasonable and unfair to ask the other party to prove the negative.

This rule ensures practicality and fairness by shifting the evidentiary burden. If a person has special access to particular information, they are better positioned to prove it.

Illustrations:

- (a) When a person performs an act and claims to have done so with a different intention than what appears from the circumstances, **he must prove** that special intention. For example, if a person enters another's house at night and claims it was to help someone, he must prove that intention.
- (b) If someone is accused of traveling on a railway without a ticket, it is **his burden** to prove that he possessed a valid ticket.

Practical Importance: Section 109 reflects the maxim "special knowledge, special responsibility." It is extensively used in criminal cases (e.g., possession of stolen property, unauthorised entry) and civil matters (e.g., breach of contract where the reason for non-performance is within defendant's knowledge).

Section 111: Burden of Proving that a Person is Alive Who Has Not Been Heard of for Seven Years

Section 111 addresses a presumption about a person's life or death. **If a person has not been heard of for seven years by those who would naturally have heard from him**, the law presumes that the person is **dead**. Consequently, **the burden shifts** to the person who asserts that the missing individual is still alive.

This provision provides clarity in legal matters such as succession, insurance claims, remarriage, and other rights dependent on the life or death of a person.

Key Elements:

- Seven continuous years of absence must be proven.
- The absence must be from communication with persons who would normally hear from the individual.
- Proof must come from credible witnesses familiar with the missing person's life.

Effect:

- Once the seven-year absence is proven, the law presumes death.
- The person claiming the missing individual is still alive must provide evidence of life.

Example: If A disappears, and after seven years there is no contact with family or friends, B, who claims A is alive (for instance, to oppose an inheritance), must prove that A is indeed alive.

Practical Application: This rule is vital in succession law, insurance settlements, property distribution, and matrimonial cases. However, it is important to note that the law **presumes death**, but **not the exact date of death**, unless further evidence is provided.

Section 128: Communications During Marriage

Section 128 protects the **confidential communications** that occur between spouses during the subsistence of marriage. It states that:

- No person who is or has been married can be compelled to disclose any communication made during the marriage by the other spouse.
- Such communication cannot be voluntarily disclosed without the consent of the person who made it or his/her representative.
- Exception: In suits between married persons or criminal proceedings where one spouse is prosecuted for a crime against the other, the privilege does not apply.

Purpose: This section upholds the sanctity, trust, and confidentiality of the marital relationship. Marriage is considered a bond of utmost privacy, and the law respects this privacy even after the marriage ends (whether by divorce or death).

Key Points:

- Protection applies during and after the marriage.
- Applies to **communications only**, not all acts.
- The protection can be waived if the person who made the communication consents.

Exceptions:

- In legal disputes between husband and wife (e.g., divorce, domestic violence cases), communications can be disclosed.
- In criminal cases where one spouse is accused of an offence against the other (e.g., cruelty, assault), communications can be revealed.

Example: If during marriage, husband A tells wife B about hiding illegal assets, B cannot be forced to testify about that conversation unless she chooses to and A consents, unless it is a case between A and B themselves.

Provisions for Human Rights Related to Bharatiya Sakshya Adhiniyam Sections

Human rights are fundamental entitlements that protect the dignity, freedom, and equality of every individual. These rights are recognized both internationally through instruments like

the Universal Declaration of Human Rights (1948) and domestically through the Constitution of India. The Bharatiya Sakshya Adhiniyam, 2023 (BSA), while primarily a procedural law governing evidence, embodies important human rights principles within its framework. Particularly, Sections 109, 111, and 128 of the BSA reflect the deep concern of the Indian legal system for ensuring fairness, personal liberty, and protection of private life, all of which are central to human rights jurisprudence.

Section 109, dealing with the burden of proving facts that are especially within a person's knowledge, upholds the human right to a **fair trial**. In criminal law, the right to be presumed innocent until proven guilty is a cornerstone of human rights protection, recognized under Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR) and guaranteed under Article 21 of the Indian Constitution. By placing the burden of proof appropriately, Section 109 ensures that an accused or a party is not unfairly burdened to prove negative facts, except when it is reasonable to expect that they alone have access to the special knowledge. For example, if a person is found traveling without a train ticket, it is reasonable to require them to prove possession of a ticket, rather than asking the railway authority to prove the absence of one. This approach preserves the balance between state authority and individual liberty and avoids unjust convictions based on procedural technicalities. Therefore, Section 109 supports the human rights principle of **presumption of innocence**, while also maintaining the **right to a fair and balanced hearing**.

Similarly, Section 111 of the BSA, which presumes death after seven years of disappearance, is closely connected to the **right to legal certainty** and the **right to family and property**. When a person disappears without communication for a long period, legal uncertainties about succession, property rights, and marital status arise. By allowing courts to presume death after seven years, the law protects the rights of family members to inheritance, closure, and social stability. Moreover, it ensures that individuals are not indefinitely deprived of legal remedies simply due to the absence of formal proof of death, which might be practically impossible. This provision reflects the spirit of human rights protections by safeguarding the rights to family life (Article 16 of the Universal Declaration of Human Rights) and the right to property (Article 300A of the Indian Constitution). It also prevents unnecessary prolongation of trauma for families awaiting legal status to move forward, emphasizing the humane approach embedded within the evidence law.

Section 128 deals with communications during marriage, and it strongly resonates with the **right to privacy** and the **protection of family life**, both of which are integral to human dignity. According to Article 12 of the Universal Declaration of Human Rights and affirmed

by the Indian Supreme Court in *Justice K.S. Puttaswamy v. Union of India* (2017), privacy is a fundamental right under Article 21 of the Constitution. Marriage is a deeply private and personal relationship, built on trust and confidentiality. Section 128 protects this bond by prohibiting the disclosure of communications between spouses without consent. This ensures that individuals can communicate freely and intimately without fear of future exposure in legal proceedings. It protects not only emotional security but also encourages honest and open relationships within marriage, recognizing that such relationships are vital for personal development and societal well-being. However, the exception provided — allowing disclosure in cases where spouses are litigating against each other or involved in criminal prosecution — strikes a balance by ensuring that the protection of marital communications does not become a shield for injustice or harm between spouses.

Thus, these sections collectively demonstrate that the Bharatiya Sakshya Adhiniyam, 2023 is not merely a technical law about the admissibility of evidence, but also a reflection of India's constitutional commitment to human rights. The emphasis on fair allocation of the burden of proof, legal certainty for families, and protection of private communications within marriage are all embedded in the larger framework of respect for human dignity, liberty, and justice. In essence, the BSA contributes to operationalizing constitutional values such as equality before the law (Article 14), protection of life and personal liberty (Article 21), and the right to privacy, ensuring that the administration of justice remains humane, equitable, and consistent with India's obligations under international human rights law. These provisions reaffirm the broader truth that procedural laws are not isolated technicalities but crucial instruments in the service of human rights and rule of law.

The Human Rights Act, 1993: A Comprehensive Overview

The **Human Rights Protection Act, 1993** (commonly referred to as the **Human Rights Act, 1993**) was a landmark piece of legislation passed by the Government of India to establish a robust framework for the protection and promotion of human rights in the country. It reflects India's commitment to uphold the principles of human dignity, equality, and justice enshrined in its Constitution and international human rights standards.

Background and Need for the Human Rights Act

India has a long-standing commitment to human rights, both in its domestic laws and international obligations. The importance of human rights protection has been emphasized by various **constitutional provisions** (e.g., **Fundamental Rights** under Part III of the Constitution) and **international treaties** such as the **Universal Declaration of Human Rights (UDHR)**, 1948, which India adopted as a founding member of the United Nations.

Despite this commitment, violations of human rights, such as police brutality, custodial deaths, exploitation, and discrimination, continued to persist.

Prior to 1993, while India had various laws dealing with criminal justice, the protection of civil liberties, and the prevention of abuses, there was no dedicated institutional framework to monitor human rights violations, advocate for victims, or advise the government on human rights matters. Recognizing this gap, the Indian government introduced the **Human Rights Protection Act, 1993**, which created the **National Human Rights Commission (NHRC)** as the central institution for overseeing human rights protection across the country.

Objectives of the Human Rights Act, 1993

The primary objectives of the Human Rights Act, 1993, include:

- **Establishing an independent body**, the **NHRC**, to investigate human rights violations and recommend corrective measures.
- **Promoting and protecting human rights** at both national and state levels, ensuring compliance with constitutional and international human rights standards.
- **Creating public awareness** about human rights and encouraging active participation in safeguarding these rights.
- **Providing remedies** for victims of human rights violations by recommending appropriate actions, compensations, and redressal measures.
- **Advising the government** on the formulation of policies and laws that respect and promote human rights principles.

Key Features of the Human Rights Act, 1993

1. National Human Rights Commission (NHRC)

The central feature of the Human Rights Act, 1993, is the **establishment of the National Human Rights Commission (NHRC)**. The NHRC is an autonomous statutory body, tasked with promoting and protecting human rights in India. The Act provides for a **Chairperson** and **Members** who are well-versed in matters related to human rights, law, and public policy.

Key powers and functions of the NHRC include:

- **Investigating human rights violations:** The NHRC can investigate complaints of human rights violations by government authorities or private individuals.
- **Monitoring compliance with human rights obligations:** It monitors the government's implementation of international human rights conventions and treaties.
- **Promoting awareness:** The NHRC works to raise awareness about human rights issues through campaigns, education, and training programs.

- **Recommendations for remedy:** The NHRC has the power to recommend compensation to victims of human rights violations and suggest reforms to prevent future violations.

2. State Human Rights Commissions

In addition to the NHRC, the Act also provided for the creation of **State Human Rights Commissions** in each state, mirroring the role of the NHRC at the state level. These commissions are tasked with investigating human rights violations within the respective states and acting as an intermediary between the victims and the national commission.

3. Protection of Human Rights of Vulnerable Groups

The Act explicitly focuses on vulnerable groups in society, including **children, women, tribals, minorities, and marginalized communities**. These groups are particularly prone to exploitation, abuse, and violation of rights, and the Act mandates the NHRC to pay special attention to their needs. In this context, the NHRC works with governmental and non-governmental organizations to ensure that these vulnerable groups are protected and their rights are upheld.

4. Investigation and Inquiry Mechanisms

Under the Act, the NHRC has the authority to **inquire into complaints** of human rights violations. If a violation is found, the NHRC can recommend actions to the concerned authorities, such as:

- Filing criminal cases.
- Issuing directions for compensation to the victims.
- Suggesting reforms in the legal or administrative systems.

The NHRC can also take suo-motu action (on its own initiative) in cases where human rights violations are reported by the media or other sources.

5. Redressal and Compensation

The Human Rights Act, 1993, also establishes mechanisms for the **redressal of grievances** related to human rights violations. The NHRC can recommend **compensation** for victims of human rights abuses, particularly in cases of custodial deaths, sexual assault, and torture. The government is obligated to provide adequate compensation to the victims as per the recommendations of the NHRC.

6. Role in Policy and Legislative Reforms

The NHRC also plays a critical role in **advising the government** on human rights issues. It is empowered to make recommendations on policies, laws, and practices that may violate

human rights, ensuring that legislation and executive actions are aligned with international human rights standards.

Furthermore, the NHRC monitors the government's implementation of various international conventions and treaties related to human rights, including the **International Covenant on Civil and Political Rights (ICCPR)**, **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, and others.

Challenges and Criticisms

While the Human Rights Act, 1993, has made significant strides in safeguarding human rights, it has faced some criticisms:

- **Lack of enforcement powers:** The NHRC has no direct power to enforce its recommendations. This limits its ability to compel compliance from state authorities.
- **Insufficient funding:** The NHRC has been criticized for lacking adequate financial resources to carry out its functions effectively.
- **Over-reliance on state cooperation:** The success of the NHRC depends largely on the cooperation of state governments, which can sometimes be reluctant to accept its findings or implement its recommendations.

The NHRC and India's International Commitments

The establishment of the NHRC under the Human Rights Act, 1993, reflects India's commitment to **international human rights standards**. It strengthens the country's standing as a member of the global human rights community, particularly by fulfilling obligations under the **Universal Declaration of Human Rights (1948)** and other international covenants like the **International Convention on the Elimination of All Forms of Racial Discrimination (CERD)**.

In this respect, the NHRC plays an important role in ensuring that India's human rights obligations are met, both in the domestic legal framework and in compliance with international treaties.

Sections

The **Human Rights Protection Act, 1993**, also known as the **Human Rights Act, 1993**, is a landmark piece of legislation that established the **National Human Rights Commission (NHRC)** in India and provided a framework for the protection of human rights within the country. Below is a breakdown of some of the **important sections** of the Act:

1. Section 2: Definitions

This section defines key terms used in the Act, which are fundamental to understanding the structure and scope of the legislation. It defines terms such as:

- **Human Rights:** Refers to rights relating to life, liberty, equality, and dignity of the individual guaranteed by the Constitution of India or embodied in international law.
- **Violation of Human Rights:** Any act or omission by a public servant or any other person that violates human rights, whether through commission or omission.

2. Section 3: Establishment of the National Human Rights Commission

Section 3 establishes the **National Human Rights Commission (NHRC)**, which is the central body tasked with protecting and promoting human rights across India. The NHRC consists of:

- A **Chairperson**, who is a former Chief Justice of India or a Judge of the Supreme Court of India.
- **Members**, including a former Chief Justice of a High Court and other human rights experts, who bring expertise in legal and human rights matters.
- The NHRC is given a wide range of powers to investigate, monitor, and recommend actions related to human rights violations.

3. Section 4: Powers and Functions of the NHRC

This section elaborates on the powers and functions of the NHRC. It grants the Commission the authority to:

- Investigate complaints of human rights violations.
- Take suo-motu cognizance of human rights violations (i.e., take action on its own, without a formal complaint).
- Visit any place of detention or any institution under government control where people may be subject to violations of their human rights.
- Review the protection and promotion of human rights by state and central governments.
- Recommend measures to the government for improving the protection of human rights.

4. Section 5: Powers of the NHRC to Seek Information

Section 5 empowers the NHRC to obtain information from any government or public authority regarding the status of human rights protections. The NHRC has the authority to request reports, documents, or evidence from any concerned authority. This section ensures that the NHRC can monitor government actions and evaluate their compliance with human rights standards.

5. Section 7: Investigation into Complaints of Human Rights Violations

Section 7 outlines the procedure for the investigation of human rights violations. If the NHRC receives a complaint or identifies a violation, it can initiate an inquiry. The NHRC has the authority to summon and examine witnesses, demand documents, and take necessary action to gather evidence.

This section also stipulates that if the violation involves a government department, the NHRC can issue recommendations for corrective action, which the government must consider seriously.

6. Section 12: Interim Relief and Compensation

Section 12 of the Human Rights Protection Act, 1993, grants the NHRC the power to recommend interim relief or compensation for victims of human rights violations. This is particularly important for victims who may be suffering irreparable harm and need immediate redress.

The compensation may be provided by the government, and the NHRC can direct authorities to take appropriate steps to provide such compensation to the victims of violations.

7. Section 18: Monitoring of Government Compliance

Section 18 outlines the role of the NHRC in monitoring how the government and other authorities implement its recommendations. This includes monitoring government policies, legislative measures, and actions to ensure compliance with international human rights obligations. It strengthens the NHRC's role as an independent body that holds the government accountable for human rights practices.

8. Section 19: State Human Rights Commissions

This section provides for the establishment of **State Human Rights Commissions (SHRC)**, which are similar to the NHRC but operate at the state level. Each state government is required to set up an SHRC to monitor and address human rights issues within that state. The powers and functions of the SHRC are broadly similar to those of the NHRC, and they play an important role in ensuring the protection of human rights at the regional level.

9. Section 21: Power of the NHRC to Recommend Prosecution

Section 21 empowers the NHRC to recommend prosecution against individuals or officials who are found responsible for human rights violations. This section gives the NHRC the authority to request the initiation of criminal proceedings, which can lead to punishment for those who have committed serious human rights abuses, including unlawful detention, torture, and extrajudicial killings.

10. Section 24: Human Rights Education and Public Awareness

Section 24 mandates the NHRC to promote **human rights education** and **public awareness**. The Commission is tasked with organizing seminars, workshops, and publications to educate citizens about their rights and the mechanisms available for their protection. This provision helps to raise awareness about human rights issues and encourage the active participation of the public in promoting and safeguarding these rights.

11. Section 25: Reports to the Government

Under Section 25, the NHRC is required to submit an **annual report** to the President of India detailing its activities and findings regarding human rights violations, actions taken, and recommendations. The President then forwards this report to both houses of Parliament. This ensures transparency and accountability in the functioning of the NHRC.

12. Section 32: Protection of NHRC Members

Section 32 offers **protection to members of the NHRC**, ensuring their independence and freedom from external pressure. It stipulates that no action shall be taken against any NHRC member for performing their duties in good faith. This is essential to safeguard the autonomy of the Commission and to enable it to function without fear of political or institutional interference.

13. Section 34: Review of Human Rights Violations

Section 34 empowers the NHRC to review **any law or policy** that may potentially violate human rights or conflict with international human rights standards. The NHRC can make recommendations for amendments or changes to such laws to ensure they are in alignment with the protection of human rights.

Conclusion

The **Human Rights Protection Act, 1993**, marks a significant advancement in India's human rights landscape. The creation of the National Human Rights Commission and the state commissions has provided a much-needed institutional mechanism for addressing human rights violations, offering victims access to remedies, and promoting awareness. Despite challenges in enforcement, the Act continues to be a crucial tool for promoting and protecting human rights in India.

The Human Rights Act, 1993, represents a growing recognition of the need to institutionalize human rights protection and set a clear framework for addressing violations. As the country continues to grow and develop, it is essential that this framework evolves to meet the changing needs of the population and to safeguard the fundamental rights of all citizens, especially the vulnerable.

NHRC-Structure & Functions

The **National Human Rights Commission (NHRC)** is a statutory body established by the **Human Rights Protection Act, 1993**, aimed at promoting and protecting human rights in India. The NHRC functions as an independent body to oversee and investigate violations of human rights, ensuring that the government adheres to national and international human rights standards. The structure and functions of the NHRC are pivotal in its ability to uphold these goals effectively. Below, we explore in detail the NHRC's structure, its various components, and the wide range of functions it performs in safeguarding human rights across India.

Structure of the NHRC

The NHRC's structure is designed to ensure its independence, effectiveness, and impartiality in addressing human rights violations. It is composed of several key components, including the **Chairperson**, **Members**, and **Secretary-General**. These bodies work together to manage the functioning of the Commission and carry out its responsibilities effectively.

1. Chairperson

The **Chairperson** is the most important figure in the NHRC and is responsible for overseeing its operations. The Chairperson must be a former **Chief Justice of India** or a judge of the **Supreme Court of India**, ensuring that the individual is a person of eminent stature and experience in law. The Chairperson holds significant authority within the Commission, with the responsibility to direct investigations, supervise the NHRC's activities, and report to the President of India on the Commission's annual activities.

The role of the Chairperson also includes representing the NHRC in public forums, both domestically and internationally, and ensuring that the Commission's functions align with international human rights standards.

2. Members

Alongside the Chairperson, the NHRC consists of **four Members**. At least one of these Members should be a **former Chief Justice of a High Court**, while the others are individuals with proven experience in human rights, law, or social work. This diversity ensures that the NHRC benefits from a broad range of expertise and perspectives, enabling it to handle complex human rights issues effectively.

These Members assist the Chairperson in decision-making, investigating complaints, issuing recommendations, and ensuring that the Commission functions smoothly. They play a critical role in fulfilling the NHRC's mandate of human rights protection.

3. Secretary-General

The **Secretary-General** serves as the administrative head of the NHRC and is responsible for ensuring that the day-to-day operations of the Commission are carried out efficiently. The Secretary-General is a senior government official appointed by the government but works under the supervision of the Chairperson and Members. The role includes coordinating between different departments, managing the staff, and assisting in the implementation of the NHRC's recommendations.

The Secretary-General's office is vital for facilitating communication between the NHRC and other government bodies, ensuring that complaints and reports are processed in a timely manner.

4. Advisory and Support Bodies

Apart from the core members of the NHRC, there are several advisory bodies and support staff, including legal advisors, human rights experts, and field officers who assist in investigations. These bodies support the NHRC in conducting in-depth research, evaluating public policies, and developing strategies to address systemic human rights violations.

Functions of the NHRC

The NHRC's functions are extensive, encompassing various activities aimed at protecting and promoting human rights in India. It is mandated to investigate complaints, review legislation, monitor compliance with human rights laws, recommend actions to the government, and raise public awareness about human rights issues.

1. Investigation and Inquiry into Human Rights Violations

One of the primary functions of the NHRC is to investigate violations of human rights. The Commission can receive complaints from individuals or organizations about violations of human rights, including cases of torture, unlawful detention, discrimination, and police brutality. Additionally, the NHRC can take **suo-motu cognizance**, meaning it can initiate an inquiry on its own if it becomes aware of a violation.

The NHRC is empowered to investigate the actions of public authorities and government officials, as well as private individuals or entities. It can summon witnesses, demand documents, and even visit places of detention or institutions where human rights violations may be occurring. The NHRC's independence ensures that investigations are impartial and transparent, and the Commission has the authority to recommend actions, including prosecution or compensation for victims.

2. Recommendation of Measures for Protection of Human Rights

The NHRC plays a crucial advisory role in recommending measures to the government for improving the protection of human rights. It reviews laws, policies, and practices at the national and state levels to identify areas where human rights standards may be lacking. Based on its findings, the NHRC provides recommendations for reform in legislation or policy to better protect human rights.

For example, the NHRC has previously recommended reforms in prison conditions, changes to the police force's practices, and measures to improve the treatment of marginalized communities such as Dalits and tribals. These recommendations are crucial for guiding the government in ensuring that human rights are prioritized in governance and lawmaking.

3. Monitoring of Human Rights Protection

An important function of the NHRC is to monitor the overall human rights situation in the country. This involves reviewing the efforts made by government agencies and public authorities to protect human rights, including the enforcement of human rights laws and compliance with international treaties.

The NHRC monitors how state governments and local authorities implement human rights standards, particularly in regions where violations are prevalent. The Commission conducts surveys, collaborates with civil society organizations, and engages with the media to assess the effectiveness of existing human rights protection mechanisms. The NHRC's monitoring also extends to human rights education, where it promotes awareness about rights and the legal frameworks in place for their protection.

4. Promotion of Human Rights Education

The NHRC is tasked with promoting **human rights education** in India. The Commission works closely with educational institutions, NGOs, and international organizations to increase awareness of human rights among citizens, law enforcement agencies, and public officials. Through workshops, seminars, publications, and other outreach activities, the NHRC seeks to foster a culture of respect for human rights.

In addition to raising awareness, the NHRC also strives to educate the general public about the mechanisms available to protect their rights, including how to lodge complaints and seek redress for violations.

5. Review and Reform of Laws and Policies

The NHRC has the authority to review existing laws and policies in India to ensure they are in line with international human rights standards. This includes evaluating the compatibility of Indian laws with international human rights instruments such as the **Universal**

Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).

The NHRC can propose amendments to laws or the creation of new laws to fill gaps in human rights protection. This legislative role ensures that India's legal framework evolves in line with the changing landscape of human rights protection.

6. Redress and Compensation for Victims

The NHRC plays a critical role in providing redress for victims of human rights violations. It has the authority to recommend interim relief or compensation to victims, especially in cases where individuals have been subjected to torture, wrongful detention, or other severe human rights abuses. Compensation can include financial restitution, medical care, and legal support. While the NHRC cannot directly enforce compensation, its recommendations are often followed by the government, which takes action to provide relief to victims.

Conclusion

The **National Human Rights Commission (NHRC)** plays an essential role in the protection and promotion of human rights in India. With its structured framework comprising a Chairperson, Members, and various advisory bodies, the NHRC is well-equipped to investigate complaints, monitor compliance with human rights standards, and recommend legislative and policy reforms. Its functions extend to promoting human rights education, facilitating public awareness, and ensuring redress and compensation for victims. By performing these critical tasks, the NHRC contributes significantly to the strengthening of human rights in India and holds public authorities accountable for human rights violations.

State Human Rights Commission

The **State Human Rights Commission (SHRC)** is a critical component of India's human rights protection framework. It operates at the state level, complementing the work of the National Human Rights Commission (NHRC). The SHRC is primarily tasked with addressing human rights violations within its jurisdiction, monitoring state-level human rights issues, and recommending actions for their protection. The creation of the SHRCs, pursuant to the **Human Rights Protection Act, 1993**, allows for a decentralized approach to human rights protection, empowering state governments to take immediate action and remedy violations within their regions. This structure ensures that human rights issues are addressed locally and more efficiently, particularly in cases where national bodies may not have direct reach. The **SHRC** is vested with a broad range of powers and responsibilities that allow it to take proactive steps in safeguarding and promoting human rights.

Constitution and Structure of SHRC

The SHRC is constituted following a similar framework to the NHRC, ensuring uniformity in its functioning across different states. The structure of the SHRC typically comprises a **Chairperson**, **Members**, and a **Secretary-General**, each of whom plays distinct roles in ensuring the effective functioning of the Commission.

1. Chairperson

The **Chairperson** of the SHRC holds significant authority and is generally a retired **Chief Justice of the High Court** of the respective state. This individual is tasked with overseeing the SHRC's operations and ensuring that its actions align with human rights standards. The Chairperson is responsible for guiding the Commission in matters relating to human rights investigation, monitoring, and policy recommendations. The stature of the Chairperson lends the SHRC credibility and ensures that its decisions are treated with respect.

2. Members

Alongside the Chairperson, the SHRC includes **two or more Members** who contribute their expertise to the Commission's work. These members are typically individuals with vast experience in law, human rights, social work, or administration. The Members assist in the inquiry process, formulating reports, and making decisions regarding human rights violations. Similar to the NHRC, one of the members should be a **former judge of a High Court** or an individual who has displayed excellence in human rights issues.

3. Secretary-General

The **Secretary-General** is the administrative head of the SHRC and handles the day-to-day operational aspects of the Commission. This includes overseeing the logistics of complaints and inquiries, coordinating with government departments, and ensuring that the SHRC's activities align with its legal mandate. The Secretary-General plays a crucial role in facilitating communication between the SHRC, state authorities, and the public.

Functions and Powers of SHRC

The SHRC is mandated to work on various human rights issues within the state. It has significant powers vested in it by the **Human Rights Protection Act, 1993**, and various state laws, enabling it to investigate, recommend, and advise on human rights violations. Some of the essential functions of the SHRC include:

1. Investigation and Inquiries

The SHRC has the authority to investigate complaints of human rights violations. These complaints can be lodged by individuals, civil society organizations, or even suo-motu, meaning the SHRC can initiate an inquiry on its own if it becomes aware of a potential

human rights issue. The SHRC can conduct inquiries into issues such as custodial deaths, police torture, wrongful imprisonment, and violation of the rights of marginalized communities. The Commission has the power to summon witnesses, request records, and even visit places of detention or public institutions to conduct investigations.

For example, if a state police force is alleged to be engaging in torture or extrajudicial killings, the SHRC has the legal authority to investigate the matter independently and take appropriate action.

2. Recommendations and Reports

Once an inquiry is completed, the SHRC can issue reports containing its findings and recommendations. These reports can be directed to the state government, urging them to take corrective actions. The SHRC may recommend measures such as compensation to victims, policy reforms, or the establishment of systems to prevent future violations. While the SHRC cannot directly implement its recommendations, its reports are influential and often lead to changes in state policies, legal reforms, and the implementation of better human rights practices at the state level.

In cases where a violation is found, the SHRC may recommend disciplinary action against the erring public officials or law enforcement agencies involved. It also has the authority to recommend institutional changes to prevent such violations in the future.

3. Human Rights Awareness and Education

Another crucial function of the SHRC is promoting **human rights education** at the state level. This includes organizing seminars, workshops, and campaigns to raise awareness about human rights violations and the ways in which individuals can protect their rights. The SHRC works closely with educational institutions, NGOs, and government agencies to educate the public, particularly vulnerable groups, on their rights and legal remedies available to them.

Through public outreach and education programs, the SHRC plays an essential role in building a culture of human rights protection and respect for individual freedoms. By raising awareness of human rights among the public, the SHRC helps to prevent violations and promotes accountability among state authorities.

4. Monitoring Government Policies and Practices

The SHRC also plays a key role in monitoring the policies and practices of the state government with regard to human rights protection. This involves reviewing the implementation of national human rights standards, the adequacy of state laws in protecting human rights, and how government agencies are dealing with human rights issues. The

SHRC can provide feedback to the government on the effectiveness of existing policies and recommend amendments or reforms where necessary.

For instance, the SHRC may examine the implementation of laws relating to the rights of women, children, or Dalits. If it finds that the policies are ineffective or being misapplied, the SHRC can suggest corrective measures.

5. Protecting Vulnerable Groups

A key aspect of the SHRC's work is focused on **the protection of vulnerable groups**, such as women, children, minorities, scheduled castes, and scheduled tribes. The Commission has the responsibility to address human rights violations committed against these groups, which are often the victims of systemic inequality and discrimination.

For example, the SHRC might address cases of sexual violence, child labor, or caste-based discrimination and work with local authorities to remedy these injustices. In the case of police misconduct or exploitation of vulnerable groups, the SHRC has the power to intervene and ensure accountability.

6. Redress and Compensation

While the SHRC cannot directly enforce judgments, it can recommend compensation for victims of human rights violations. The Commission can suggest measures to the state government to provide financial compensation or medical care to victims of violations, ensuring that victims are adequately compensated for the harm they have suffered.

This function is particularly important in cases where individuals have suffered grievous harm, such as custodial deaths, torture, or sexual violence, and need immediate redress.

Challenges Faced by SHRC

Despite its essential role in the protection of human rights, the SHRC faces several challenges that hinder its effectiveness. These challenges include limited powers in enforcing its recommendations, inadequate funding, political interference, and the backlog of cases. The SHRC often depends on state governments for funding and resources, which can lead to delays in addressing complaints and investigations.

Moreover, while the SHRC can recommend actions, its recommendations are not legally binding, which may result in non-compliance by the state authorities. This often undermines the effectiveness of the SHRC in ensuring accountability for human rights violations.

Conclusion

The **State Human Rights Commissions (SHRCs)** are vital organs in India's framework for protecting human rights at the state level. By investigating complaints, raising awareness, monitoring state policies, and recommending reforms, the SHRC plays a crucial role in

promoting a human rights culture across the nation. However, challenges such as limited enforcement powers and resource constraints must be addressed to make the SHRCs more effective in achieving their mission. Strengthening the SHRCs will lead to better protection of human rights, particularly for marginalized and vulnerable communities, and will enhance the overall human rights framework in India.

Human Rights Courts in India: An In-Depth Examination

Human rights courts are judicial bodies created with the primary objective of ensuring the protection and promotion of human rights in India. These courts are meant to expedite justice for victims of human rights violations, offering a more accessible and efficient forum for the redress of grievances related to human rights infringements. The establishment of such courts in India is an effort to strengthen the country's human rights framework by ensuring the timely delivery of justice to those who have suffered violations. Human rights courts are established under various laws and government regulations to ensure the proper enforcement of human rights protections, a need that has been growing in recent years due to rising concerns regarding the status of human rights in the country.

Historical Background of Human Rights Courts

India's commitment to human rights is enshrined in its Constitution, particularly through provisions related to fundamental rights. Over the years, India has signed and ratified various international treaties and conventions, such as the **Universal Declaration of Human Rights (UDHR)**, **International Covenant on Civil and Political Rights (ICCPR)**, and **International Covenant on Economic, Social, and Cultural Rights (ICESCR)**. These international commitments have spurred the creation of domestic institutions to protect and promote human rights.

Despite these efforts, the enforcement of human rights often faces obstacles such as the delayed justice system, the complex legal procedures, and limited awareness of victims regarding their rights. The creation of **Human Rights Courts** is seen as a remedy to this issue, aiming to fast-track the cases involving serious human rights violations and to strengthen the judicial framework for human rights protection at the local level.

The **Protection of Human Rights Act, 1993**, which established the **National Human Rights Commission (NHRC)**, was a significant legislative development that laid the groundwork for the establishment of human rights courts in India. Section 30 of the Act empowered state governments to establish human rights courts to deal with cases of human rights violations.

However, the establishment of such courts has faced many challenges, including resistance from state governments due to logistical and financial issues.

Constitution and Structure of Human Rights Courts

Human rights courts are typically structured at the state and district levels, depending on the volume of human rights cases in a particular region. Each state is responsible for establishing one or more human rights courts, which are designed to handle complaints, provide speedy trials, and pass orders related to human rights violations. The courts are intended to be presided over by a judge with experience in handling cases related to human rights and civil liberties.

These courts have special powers to fast-track cases involving significant human rights violations, including cases of police brutality, custodial deaths, and discrimination. They are meant to ensure that human rights violations are addressed promptly and with the appropriate legal weight, while also acting as a deterrent against future violations. Additionally, human rights courts are empowered to hear complaints related to any action or omission by a public authority or government agency that violates human rights.

The courts are expected to work alongside the National Human Rights Commission (NHRC) and State Human Rights Commissions (SHRC) to bring about comprehensive human rights protection. The involvement of these bodies ensures that human rights cases are followed through with the necessary legal procedures, from investigation to redress.

Jurisdiction and Powers of Human Rights Courts

The jurisdiction of human rights courts typically extends to both civil and criminal matters related to human rights violations. The courts have the authority to address issues such as:

1. **Custodial Deaths and Torture:** Human rights courts are specifically empowered to handle cases involving custodial deaths or torture, which are among the most egregious forms of human rights violations in India. This includes cases of police brutality, wrongful detention, and abuse within places of detention, such as police stations or prisons.
2. **Discrimination:** Cases of discrimination based on caste, religion, gender, or any other form of social exclusion are within the purview of human rights courts. This includes incidents of caste-based violence, communal violence, and discrimination in educational institutions, workplaces, or public spaces.
3. **Forced Displacement and Refugee Issues:** Human rights courts can also deal with cases of forced displacement due to conflict or natural disasters, including issues faced by refugees and displaced persons.

4. **Violence Against Vulnerable Groups:** Special attention is given to the rights of marginalized groups such as women, children, minorities, and the disabled. Human rights courts are expected to provide swift justice for victims of violence, including domestic violence, trafficking, and sexual abuse.
5. **Environmental and Economic Rights:** Human rights courts have the authority to address cases related to environmental degradation, such as the pollution of air, water, and land, which directly affect the health and livelihood of communities. Similarly, they deal with cases involving the violation of economic and social rights, such as forced labor, child labor, and exploitation of workers.

Importance of Human Rights Courts

The establishment of human rights courts is crucial in strengthening the judicial mechanisms designed to safeguard human rights in India. Several factors underscore their importance:

1. **Expeditious Justice Delivery:** One of the primary goals of human rights courts is to expedite the resolution of human rights violations. These courts are meant to bypass the delays that often plague regular courts, where cases can take years to resolve. Fast-tracking human rights violations ensures that victims receive timely justice and that perpetrators are held accountable without unnecessary delay.
2. **Specialization in Human Rights Matters:** Human rights courts specialize in cases that require a nuanced understanding of constitutional rights, international human rights law, and local issues. Judges and legal experts working in human rights courts are expected to have specialized knowledge, which ensures that the court proceedings are sensitive to the complexities of human rights law.
3. **Increased Accessibility:** The establishment of human rights courts at the district or state level makes it easier for victims of human rights violations to seek justice. Often, the victims of human rights violations belong to marginalized communities that may not have the resources to approach higher courts. By creating local human rights courts, the legal process becomes more accessible, reducing the barriers to justice.
4. **Deterrence Against Human Rights Violations:** The very presence of human rights courts acts as a deterrent to public authorities and law enforcement agencies from engaging in human rights abuses. The establishment of these courts signifies the government's commitment to human rights and sends a strong message that violations will not go unpunished.
5. **Promotion of Accountability:** Human rights courts play a vital role in holding individuals and public authorities accountable for violations of human rights. By

providing victims with a formal forum to seek redress, human rights courts ensure that offenders face the legal consequences of their actions, which helps to prevent future violations.

Challenges Faced by Human Rights Courts

Despite their potential, human rights courts in India face several challenges:

1. **Limited Jurisdiction:** Human rights courts only have jurisdiction over specific types of cases. They cannot address every human rights violation that occurs in the state. For instance, they do not have the power to directly intervene in policy matters or in issues beyond their jurisdiction.
2. **Lack of Awareness:** Many citizens, especially from marginalized communities, are unaware of their human rights or the existence of human rights courts. This lack of awareness means that many victims fail to bring their cases to court, resulting in a missed opportunity for justice.
3. **Inadequate Resources:** Human rights courts are often faced with resource constraints, including a shortage of qualified staff, infrastructure, and funds. This limits the ability of these courts to function effectively and efficiently.
4. **Political and Bureaucratic Hindrances:** Political influence and bureaucratic delays can impede the functioning of human rights courts. In some cases, the reluctance of state governments to fully support human rights courts hinders their ability to operate effectively.
5. **Resistance from Law Enforcement:** Law enforcement agencies sometimes resist the scrutiny and accountability that human rights courts demand. This can make it difficult to bring perpetrators of human rights violations to justice.

Conclusion

Human rights courts play an essential role in ensuring justice for victims of human rights violations. By providing specialized courts for such cases, India has taken a crucial step toward protecting and enforcing the rights of its citizens. However, the challenges faced by these courts, such as resource limitations and lack of awareness, need to be addressed to enhance their effectiveness. Strengthening the human rights judicial infrastructure in India can lead to better protection of human rights and the promotion of a more just and equitable society.

References

- Baxi, U. (2002). "The Human Rights State in India." *International Journal of Human Rights*.

- BharatiyaSakshyaAdhiniyam, 2023
- Constitution of India, 1950, Articles 14, 20(3), 21
- Desai, A. (2005). "Human Rights and Judicial Activism in India." Indian Journal of Human Rights.
- Government of India. (1993). Human Rights Protection Act, 1993. Ministry of Law and Justice.
- Human Rights Protection Act, 1993. Government of India.
- Indian Evidence Act, 1872
- Information Technology Act, 2000
- International Federation for Human Rights, "National Human Rights Institutions," available at: www.fidh.org.
- K.D. Gaur (2023). *Textbook on the New Criminal Laws of India*. LexisNexis.
- K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1
- L. S. Wani, "Human Rights in India: Issues and Challenges," Academic Foundation, New Delhi, 2006.
- Ministry of Home Affairs. (2023). *BharatiyaNagarik Suraksha Sanhita, 2023*. Government of India.
- National Human Rights Commission of India. (2023). Annual Report. NHRC.
- National Human Rights Commission, "Annual Reports," available at www.nhrc.nic.in.
- Protection of Human Rights Act, 1993, Government of India.
- Sharma, D. (Ed.) (2018). Constitutional Law and Human Rights. Pearson Education India.
- Supreme Court of India. (1979). *HussainaraKhatoon v. State of Bihar*, AIR 1979 SC 1369.
- Supreme Court of India. (2014). *LalitaKumari v. Govt. of Uttar Pradesh*, (2014) 2 SCC 1.
- Supreme Court of India. (2018). *Mahender Chawla v. Union of India*, (2019) 14 SCC 615.
- Sushila S. & Pandit, P. (2014). Human Rights Law in India. Eastern Book Company.
- United Nations. (1948). Universal Declaration of Human Rights. United Nations.
- United Nations. (1985). *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*.
- Universal Declaration of Human Rights, 1948

Unit – V Specific Rights

Specific Rights in India: A Brief Overview

In India, **specific rights** refer to a category of rights that are granted under the Constitution of India, as well as through statutes and various international treaties that the country has ratified. These rights provide individuals with specific protections or entitlements in different areas, from personal freedom to equality before the law. Specific rights in India are integral to ensuring the comprehensive protection of fundamental human rights. These include **civil rights**, **economic rights**, **social rights**, and **cultural rights**, all of which work together to ensure that individuals are treated with dignity and respect in a society governed by the rule of law.

The **Indian Constitution** primarily recognizes **fundamental rights** (Articles 12-35), which include the right to equality (Article 14), right to freedom (Article 19), right to life and personal liberty (Article 21), right against exploitation (Article 23 and 24), and the right to freedom of religion (Article 25). These fundamental rights lay the foundation for the protection of specific rights in the country, ensuring that people are safeguarded from arbitrary actions by the state or other individuals.

Other specific rights include **economic rights** (e.g., the right to property), which have been outlined under the Constitution (Article 300A), and **social rights** that protect individuals from discrimination, such as the prohibition of untouchability (Article 17). **Cultural rights** protect the rights of minorities to preserve their distinct language, culture, and religion (Article 29 and 30). These rights are critical in ensuring that marginalized and vulnerable communities are protected from societal inequities.

Moreover, **international treaties** such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) are also important for defining and guaranteeing specific rights in India. These rights are further supplemented by **specialized legislation**, including laws that focus on **gender equality**, **disability rights**, and **child protection**.

Civil Rights in India

Civil rights in India are fundamental freedoms that protect individuals from arbitrary actions by the state and ensure that they can fully participate in the social, political, and economic life of the country. These rights, enshrined in the Indian Constitution, are essential for maintaining individual dignity, liberty, and equality. Civil rights are primarily defined under Part III of the Indian Constitution, which guarantees Fundamental Rights (Articles 12–35).

These rights form the core of democratic participation, allowing individuals to voice opinions, pursue livelihoods, associate freely, and enjoy protection from discrimination. Moreover, civil rights are further strengthened by statutes such as the Protection of Civil Rights Act, 1955 and the Protection of Civil Rights Act, 1976, which were specifically designed to eliminate caste-based discrimination and untouchability practices that had long been entrenched in Indian society.

Among the most significant civil rights guaranteed by the Constitution are the freedom of speech and expression (Article 19), freedom of assembly (Article 19), and freedom to form associations and unions (Article 19). These rights ensure that individuals can freely express their thoughts, opinions, and ideas without fear of government reprisal. The right to freedom of speech is vital for a vibrant democracy, enabling citizens to participate in discussions, debates, and public affairs, which is a cornerstone of India's democratic structure. Similarly, the freedom of assembly and the right to form unions and associations allow people to come together for collective action, whether in the form of protests, rallies, or associations for labor or political purposes. These civil liberties are integral for promoting political activism, social change, and the protection of public interests.

The right to privacy is another critical aspect of civil rights in India, especially in the context of evolving technological advancements and data protection. The importance of privacy as a fundamental right was reaffirmed in the landmark Right to Privacy Judgment delivered by the Supreme Court of India in 2017. The Court held that the right to privacy is an essential component of the right to life and personal liberty under Article 21 of the Constitution. This judgment emphasized that individuals have the autonomy to control their personal information and decide how their data is used or shared. It also marked a significant shift in the legal landscape, ensuring that citizens' privacy is protected from undue surveillance by the state or private entities. The right to privacy extends beyond just the protection of physical spaces to include informational privacy, making it an important safeguard in the digital age.

Another essential civil right enshrined in the Constitution is the right to equality, found under Article 14. This provision guarantees that all individuals, regardless of their race, religion, caste, or gender, are treated equally before the law. It ensures that there are no arbitrary distinctions or unfair privileges, promoting a more equitable and just society. Equality before the law means that everyone is entitled to the same legal protections and benefits, and no individual or group can be discriminated against based on personal characteristics. This provision is fundamental in a diverse country like India, where historical inequalities have

often left marginalized communities disadvantaged. The right to equality extends beyond legal contexts and encompasses the broader societal goal of ensuring equal opportunities for all citizens.

The right to life and personal liberty (Article 21) is arguably one of the most significant civil rights guaranteed by the Indian Constitution. Article 21 provides that no individual shall be deprived of their life or personal liberty except according to the procedure established by law. This provision has been interpreted broadly by the Supreme Court to include various other rights that are essential for leading a dignified life. Over time, the Court has expanded the scope of Article 21 to include rights such as the right to a clean environment, the right to healthcare, the right to education, and the right to shelter. This progressive interpretation underscores the idea that life and personal liberty cannot be reduced to mere survival; they must include access to the necessities that ensure a dignified existence. In this regard, Article 21 has been a critical tool in advancing social justice in India by ensuring that citizens' rights are not only protected from physical harm but also from deprivation of basic human needs.

In addition to these constitutional protections, civil rights in India are also safeguarded by statutory laws aimed at preventing discrimination. The Protection of Civil Rights Act, 1955 was specifically designed to abolish untouchability and prohibit discrimination based on caste. This Act, along with the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, seeks to protect Dalits and other marginalized communities from systemic exploitation and violence. These laws play a crucial role in addressing caste-based discrimination, which has been one of the most persistent forms of inequality in India. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act criminalizes offenses such as the denial of access to public places, economic exploitation, and social exclusion based on caste, thus offering a comprehensive framework for addressing caste-based injustice.

Despite these legal safeguards, civil rights violations continue to occur, particularly in rural areas and marginalized communities. The police, often seen as the enforcers of law, sometimes become perpetrators of human rights abuses, such as unlawful detention, torture, or excessive use of force. Additionally, social prejudices against Dalits, religious minorities, and women often result in discrimination and violence, even when legal protections are in place.

Therefore, the protection of civil rights in India remains a continuous process that requires not only robust legal frameworks but also an ongoing commitment to changing societal attitudes and ensuring effective enforcement of laws. As India continues to modernize, the

challenge lies in upholding these rights, particularly in the face of rapidly changing technology, political dynamics, and social norms.

In conclusion, civil rights in India play a pivotal role in ensuring the basic freedoms, equality, and dignity of individuals. They are enshrined in the Constitution and supported by legislative measures that aim to eradicate social injustices such as untouchability and caste-based discrimination. However, the full realization of these rights requires not just legal guarantees but also effective implementation and societal awareness, ensuring that every citizen can enjoy the freedoms and protections afforded by the Constitution.

Women's Rights in India

In India, women's rights encompass a broad spectrum of legal, social, and economic entitlements that aim to ensure equality, freedom, and protection from discrimination. Despite significant progress in recent years, women in India have historically faced deep-rooted inequalities, particularly in access to resources, decision-making power, and protection from violence. While several legal reforms have been enacted to protect and promote women's rights, challenges remain in ensuring that these rights are universally respected and implemented across the country.

The Indian Constitution serves as the foundational document for women's rights in India. **Article 14** of the Constitution guarantees equality before the law, ensuring that women are entitled to the same legal protections and rights as men. This provision is crucial for promoting gender equality, as it upholds the principle of non-discrimination in all spheres of life, including employment, education, and social services. Additionally, **Article 15** explicitly prohibits discrimination on the basis of sex, and **Article 21** guarantees the right to life and personal liberty, which has been interpreted by the Supreme Court of India to encompass a wide range of socio-economic rights essential for a dignified life, including the right to live free from violence and the right to access healthcare.

Several landmark laws have been enacted in India to specifically address the rights of women, especially in areas such as marriage, family, and protection from violence. The **Prohibition of Child Marriage Act, 2006** prohibits the marriage of minors, with the goal of protecting young girls from early, forced, and often harmful marriages. This law aims to reduce child marriage rates and safeguard girls' rights to education, health, and well-being. The **Protection of Women from Domestic Violence Act, 2005**, is another crucial piece of legislation aimed at preventing violence within the home. It provides legal recourse to women who face physical, emotional, or economic abuse from their partners or family members. This

law not only criminalizes domestic violence but also offers women the right to seek protection orders, residence orders, and maintenance from the abuser.

Further, the **Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013** is a groundbreaking law that mandates the creation of internal complaints committees in workplaces to address complaints of sexual harassment. This law is an important step in ensuring that women can work in safe and secure environments, free from sexual harassment, which has been a pervasive issue across many sectors. The act mandates strict procedures for the investigation and resolution of sexual harassment complaints, emphasizing the importance of creating a supportive and responsive workplace culture for women.

In the realm of economic rights, women in India have made significant strides, although challenges remain. The **Hindu Succession Act, 1956**, grants women the right to inherit property, giving them equal rights to ancestral and self-acquired property. This has empowered many women, particularly in rural areas, to claim their rightful share of family property, providing them with greater financial independence. However, societal norms and patriarchal customs continue to limit women's ability to fully exercise their property rights in some regions, especially in conservative families or rural settings.

The **Equal Remuneration Act, 1976**, ensures that women are entitled to equal wages for equal work. While this law is essential in addressing wage disparities between men and women, its implementation remains uneven. In practice, women continue to earn significantly less than men in many industries, particularly in unorganized sectors, where labor laws are often poorly enforced. The **National Commission for Women (NCW)** and various NGOs continue to push for more robust enforcement of this law to address gender-based pay gaps and promote economic equality.

Women's sexual and reproductive rights have also been a major focus of legal reforms in India. The **Medical Termination of Pregnancy Act, 1971**, grants women the right to terminate an unwanted pregnancy under certain conditions, such as when the pregnancy threatens the woman's health or is the result of rape or incest. This law, though progressive at the time of its enactment, has undergone amendments to expand the scope of permissible abortions and improve access to safe reproductive healthcare. However, barriers such as societal stigma, access to healthcare facilities, and the lack of awareness continue to prevent many women, especially in rural areas, from benefiting fully from this law.

Despite these significant legal protections, challenges persist, especially in the area of **gender-based violence**. Women in India continue to face widespread violence, including

dowry-related violence, domestic violence, and sexual assault. According to the **National Crime Records Bureau (NCRB)**, crimes against women have steadily increased over the years, with reports of rape, domestic violence, and dowry deaths being particularly alarming. The **Criminal Law (Amendment) Act, 2013**, was a response to the public outcry following the horrific **Nirbhaya gang rape case** in Delhi. This amendment broadened the definition of sexual assault and increased the penalties for sexual violence. It also introduced new provisions, such as the criminalization of acid attacks and stalking, and strengthened the punishment for trafficking and sexual harassment.

Additionally, while women's rights are enshrined in law, their social and cultural status continues to be shaped by deeply entrenched patriarchy and gender norms. In many regions, women still face discrimination in education, healthcare, and employment. Female literacy rates and workforce participation remain lower than those of men, and women are often subjected to unequal treatment in both public and private spheres. Furthermore, the issue of **honor killings, dowry deaths, and female feticide** still persists, particularly in rural areas.

In conclusion, while India has made significant progress in terms of legal reforms aimed at protecting women's rights, challenges persist in ensuring the effective enforcement of these laws and overcoming societal attitudes that perpetuate gender inequality. Continuous efforts are needed to address gender-based violence, economic disparities, and discriminatory practices. Empowering women through education, access to healthcare, and social awareness is essential for achieving true gender equality and ensuring that women's rights are respected, upheld, and protected in every aspect of life.

Dalit Rights in India

Dalit rights in India refer to the legal, social, and economic entitlements of individuals who belong to historically marginalized communities, particularly the Scheduled Castes (SCs). These communities have faced centuries of caste-based discrimination, exclusion, and violence, which has left deep scars in Indian society. Despite substantial legal advancements aimed at addressing these injustices, Dalits continue to encounter significant social, cultural, and economic barriers, particularly in rural and conservative areas.

The Constitution of India plays a pivotal role in safeguarding the rights of Dalits. Article 17 of the Constitution explicitly prohibits untouchability and declares it a criminal offense. Untouchability was one of the most pervasive forms of caste-based discrimination that relegated Dalits to the lowest strata of society, denying them basic rights and human dignity. By criminalizing untouchability, the Constitution aimed to dismantle the social hierarchy that

subjected Dalits to physical, social, and psychological abuse. This legal provision represents one of the cornerstones of the Indian commitment to social justice and equality.

Moreover, Article 15(4) and Article 16(4) of the Indian Constitution provide for affirmative action in the form of reservations for Dalits and other backward communities in areas such as education, employment, and political representation. These provisions were designed to counteract the centuries of exclusion and ensure that Dalits have access to opportunities that were historically denied to them. The reservation system has enabled Dalits to secure a foothold in public institutions, government jobs, and educational institutions, although debates about the effectiveness and fairness of this system persist.

One of the most significant legal safeguards for Dalits is the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. This law was enacted to provide legal protection against caste-based violence, discrimination, and exploitation. The Act addresses a wide range of atrocities, including physical violence, sexual violence, economic exploitation, and forced labor. It specifically criminalizes acts such as the harassment of Dalits in public spaces, denial of access to public facilities (like wells, temples, and roads), and forced manual scavenging. The law not only punishes the perpetrators of such offenses but also mandates the establishment of special courts to expedite the trials and ensure speedy justice for Dalit victims.

Despite these legal protections, the reality for many Dalits remains grim. The Prevention of Atrocities Act was enacted to safeguard Dalits from widespread violence and exploitation, but its implementation has often been inconsistent and ineffective. In many parts of India, particularly in rural and semi-urban areas, caste-based violence and discrimination are still rampant. Dalits continue to face violence, humiliation, and exploitation at the hands of upper-caste individuals. Manual scavenging, the practice of cleaning human waste by hand, remains a deeply entrenched form of caste-based exploitation that continues to be practiced in parts of India, despite its prohibition.

Additionally, while affirmative action policies have enabled some Dalits to gain access to education and employment, these communities still face significant barriers to social and economic mobility. Discrimination in the workplace, exclusion from social institutions, and limited access to quality education continue to perpetuate the cycle of poverty and marginalization for many Dalits. Dalit students often face prejudice in schools and colleges, while Dalit professionals may experience discrimination in the workplace despite holding high qualifications and positions. These structural inequalities underscore the need for

continued reforms to ensure that Dalits can fully realize the rights and opportunities granted to them under the law.

One of the most insidious forms of violence that Dalits face is gender-based violence. Dalit women, in particular, are subjected to multiple layers of discrimination—both as women and as members of marginalized castes. They often experience sexual violence, domestic abuse, and exploitation, and their struggles for justice are compounded by the intersectional discrimination they face. The National Crime Records Bureau has reported that crimes against Dalit women, including rape and sexual assault, are disproportionately high compared to women from other castes. The vulnerability of Dalit women to caste-based violence, coupled with societal indifference and slow legal recourse, further deepens their oppression.

While the legal framework for protecting Dalit rights has advanced significantly, Dalits still face significant social stigma. Untouchability practices, though legally abolished, are still practiced informally in some communities. Dalits continue to be segregated from mainstream society, forced to live in separate colonies, and denied access to common resources like water sources, temples, and roads. Even in urban areas, where modernity has brought some level of social integration, caste-based prejudices persist in certain spheres, especially in the context of marriage and social status.

In response to these challenges, various Dalit rights organizations and social movements have emerged, aiming to promote awareness, advocate for policy reforms, and support Dalit communities in their struggle for equality. These organizations play a crucial role in educating Dalits about their legal rights, providing legal aid, and mobilizing communities to challenge caste-based discrimination. Additionally, leaders from Dalit communities continue to raise their voices against caste-based violence and oppression, demanding stronger enforcement of laws and greater social inclusion.

In conclusion, while the legal protections for Dalits in India have made significant strides, challenges persist. Discrimination, violence, and exclusion remain widespread, particularly in rural areas, and caste-based practices like manual scavenging continue to exist despite being outlawed. Affirmative action policies have helped some Dalits access education and employment, but these measures alone are insufficient to address the deeply entrenched social inequalities. Continued efforts are needed to strengthen the implementation of existing laws, promote social awareness, and create a more inclusive and just society where Dalits can fully enjoy their rights and freedoms without fear of discrimination or violence.

Rights of Prisoners in India

The rights of prisoners in India are a vital aspect of human rights law, ensuring that even individuals deprived of their liberty continue to enjoy certain basic freedoms and protections. The Indian Constitution, through **Article 21**, guarantees the right to life and personal liberty, which extends to prisoners. This article does not differentiate between individuals who are free and those incarcerated; it ensures that the right to life is not denied to any person except according to the procedure established by law. Additionally, prisoners' rights in India are influenced by various national and international legal instruments that aim to protect the dignity of inmates.

One of the most significant aspects of prisoners' rights in India is the **right to be free from torture and cruel, inhuman, or degrading treatment**. The **Protection of Human Rights Act, 1993**, provides a framework for ensuring that prisoners are treated humanely. In this context, the **Prison Manual** and the **National Human Rights Commission (NHRC)** also play crucial roles in overseeing the conditions of prisons and addressing complaints from prisoners about ill-treatment or unlawful detention.

The **right to legal aid** is another important entitlement for prisoners under Indian law. **Article 39A of the Constitution** emphasizes the right to free legal aid, ensuring that even those who cannot afford legal representation have access to justice. The **Legal Services Authorities Act, 1987**, further extends this right by establishing legal aid programs across the country, aimed at providing free legal assistance to prisoners, particularly in cases involving long-term or preventive detention.

Prisoners also have the **right to health** under Indian law. They are entitled to access healthcare services, including medical treatment for any ailments they may suffer. The **Supreme Court** has ruled that the state is obligated to provide adequate medical care to prisoners, and failure to do so violates their fundamental rights under **Article 21**. Prisoners are also entitled to maintain contact with their families, and many states have provisions for **prisoner welfare programs** that allow for family visits and contact.

The **right to be treated with dignity** is central to the concept of prisoners' rights. The **Supreme Court of India**, in several landmark cases such as **Sunil Batra v. Delhi Administration** (1978), emphasized that prisoners should not be treated as outcasts of society but should be given opportunities for rehabilitation. **Rehabilitation and reform** are central themes in Indian penal policy, and prisons are expected to provide opportunities for inmates to engage in productive activities, including education, work, and vocational training.

Moreover, the **right to protection against solitary confinement**, excessive punishment, or indefinite detention is another essential safeguard for prisoners. The **Supreme Court** has ruled that solitary confinement should not be used arbitrarily, and it should only be used for a limited period, for serious offenses, and when it is necessary for the security of the institution. However, despite these legal protections, the conditions in many Indian prisons remain appalling. Overcrowding, inadequate healthcare, poor sanitation, and corruption in prison administration continue to be major concerns. Many prisoners are detained under **preventive detention laws**, without trial, and for extended periods, which violates international human rights norms. Further reforms and effective implementation of laws are necessary to ensure that the rights of prisoners are respected in practice.

Rights of Victims in India

The rights of victims in India have received increasing attention in recent years, especially in the context of the criminal justice system. Victims are individuals who have been harmed or injured as a result of a criminal act, and their rights are enshrined in both national law and international human rights conventions. The **Indian Constitution**, through **Article 21**, ensures the right to life and personal liberty, which is crucial for victims seeking justice, compensation, and rehabilitation after a crime.

Victims of crime have the **right to access justice** and participate in legal proceedings. While traditionally the focus in criminal justice has been on the accused, there has been a growing recognition of the need to safeguard the interests of victims as well. The **Criminal Procedure Code (CrPC)** and the **Victim Compensation Scheme** ensure that victims are compensated for the harm or injury they have suffered. This compensation is often provided by the state to help victims recover and rebuild their lives.

In addition to legal representation, victims have the **right to be informed** about the progress of their cases. The **Right to Information Act, 2005** enables victims to obtain updates regarding the status of investigations and judicial proceedings related to their case. This transparency is critical for victims to understand the process and advocate for their rights effectively.

Restorative justice principles are also central to victims' rights. Victims of crime are entitled to participate in restorative justice practices, where they can engage in dialogue with the offender or the community to promote healing and reconciliation. This process aims not just at punishing the offender but also at restoring the victim's dignity and emotional well-being.

The **National Legal Services Authority (NALSA)** has played a significant role in promoting victim assistance. NALSA provides free legal aid to victims who cannot afford private representation. The authority works to ensure that victims are treated with dignity and respect throughout the legal process. Victims are also entitled to special provisions under **the Protection of Women from Domestic Violence Act, 2005**, which aims to prevent and address domestic violence.

For certain crimes, such as **rape, trafficking, and acid attacks**, the law provides for victim protection and rehabilitation programs. The **Criminal Law (Amendment) Act, 2013**, for instance, increased penalties for sexual offenses and also made provisions for victim compensation, immediate medical care, and legal assistance. It was a major step forward in recognizing the suffering of victims and providing them with the support they need.

However, the implementation of victims' rights is not always effective in practice. Victims, particularly in rural areas, often face challenges in accessing justice, including a lack of awareness of their rights, financial constraints, and delays in the judicial system. Many victims, especially women and children, also suffer from secondary victimization due to societal stigma, insensitivity from law enforcement, and inadequate victim support systems.

Child Rights in India

Children's rights in India are enshrined within a robust legal framework designed to protect their well-being, ensure their development, and prevent their exploitation. These rights are grounded in the **Indian Constitution**, several national statutes, and international human rights standards. One of the core principles underpinning the protection of children in India is the right to life and personal liberty, as enshrined under **Article 21** of the Indian Constitution, which guarantees the fundamental right to life and personal liberty. This includes the obligation of the state to protect children from any form of harm, exploitation, abuse, or neglect. This constitutional guarantee is further reinforced by India's commitment as a signatory to international conventions, most notably the **United Nations Convention on the Rights of the Child (UNCRC)**, which India ratified in 1992. The UNCRC outlines a wide range of rights for children, including the right to education, the right to protection from all forms of exploitation, and the right to be heard, thus serving as a global framework for the protection of children's rights.

One of the most significant legal reforms aimed at protecting children's rights in India is the **Right to Education Act (RTE), 2009**, which mandates free and compulsory education for children between the ages of 6 to 14 years. The RTE Act was a landmark in India's efforts to

ensure that every child, irrespective of social or economic background, has access to quality education. It explicitly states that no child should be left behind due to financial constraints, caste, gender, or physical disability. The Act also includes provisions to promote the establishment of schools in every locality, particularly in rural and underserved areas, to ensure that children have access to education. Furthermore, the Act mandates that private schools reserve 25% of seats for children from economically weaker sections, ensuring inclusivity. However, the implementation of the RTE Act faces challenges, including the quality of education, overcrowded classrooms, and a lack of sufficient infrastructure in rural areas. Despite these challenges, the Right to Education remains a crucial pillar in the protection and empowerment of children in India, providing them the foundation to break the cycle of poverty and inequality.

In addition to education, another significant area of child protection is the **prohibition of child labor**. The **Child and Adolescent Labour (Prohibition and Regulation) Act, 1986**, is aimed at eliminating child labor in hazardous occupations and regulating the conditions under which children aged 14 to 18 years can work. The law prohibits the employment of children under the age of 14 in any hazardous work and places restrictions on the types of work adolescents can engage in. Despite this law, child labor remains a persistent issue in India, particularly in rural areas, urban slums, and informal sectors, where children are often found working in agriculture, domestic service, factories, and construction sites. Socio-economic factors such as poverty, lack of education, and the need for additional family income contribute to the continued prevalence of child labor. The government has introduced various schemes to combat this issue, such as providing free education and midday meals, but enforcement remains weak, and many children continue to work in exploitative conditions.

Another vital piece of legislation concerning child welfare is the **Juvenile Justice (Care and Protection of Children) Act, 2015**. This Act seeks to address the needs of both children in need of care and protection and children in conflict with the law. The Act focuses on the rehabilitation of children rather than punishment, recognizing that children, by virtue of their age and developmental stage, require care and reform rather than punitive measures. The Juvenile Justice Act sets up mechanisms for the care and protection of children in various circumstances, ensuring that children are placed in appropriate institutional care if they have no family support or if they are at risk of harm. The law also emphasizes the use of alternative measures, such as foster care, adoption, and rehabilitation programs, which are designed to ensure that children grow in a supportive, nurturing environment. Additionally, the Juvenile Justice Act addresses children who commit offenses, providing them with

opportunities for rehabilitation and reintegration into society rather than incarceration. The Act also sets the legal framework for juvenile homes and observation centers, mandating the creation of child-friendly spaces where children can access education, vocational training, and psychological support. Despite these progressive provisions, there have been concerns over the effectiveness of juvenile justice homes, with reports of overcrowding, inadequate facilities, and poor conditions, highlighting the need for robust implementation and monitoring.

In India, the issue of **child marriage** remains a significant concern, especially in rural and marginalized communities. The **Prohibition of Child Marriage Act, 2006**, seeks to prevent child marriage by setting the minimum age for marriage at 18 for girls and 21 for boys. This law aims to protect girls from the adverse impacts of early marriage, such as premature pregnancies, school dropout, and lifelong health risks. Child marriage is a harmful tradition that perpetuates gender inequality, and this Act seeks to eliminate it by making child marriages legally void and providing legal remedies for children affected by this practice. In practice, however, the law is often not fully enforced, and child marriage continues to be a problem, especially in rural areas where poverty, illiteracy, and traditional practices persist. The state's lack of adequate awareness programs and the deep-rooted cultural acceptance of child marriage are barriers to full implementation of the law. Despite this, the government has launched awareness campaigns and educational programs to tackle the issue.

India also has several policies aimed at improving the overall health and welfare of children. The **National Child Protection Policy**, which envisions a world where all children are safe and secure, aims to ensure children's access to adequate nutrition, education, healthcare, and protection from exploitation. The policy outlines strategies to address violence against children, child labor, child trafficking, and abuse. It also emphasizes the need for government bodies, civil society, and communities to collaborate to ensure that children grow up in a safe and supportive environment.

While legal and policy frameworks provide an essential foundation for the protection of children's rights in India, the country still faces significant challenges in ensuring the full realization of these rights. The persistence of poverty, illiteracy, and social discrimination continues to affect children, particularly those from marginalized communities. Children in rural areas, tribal regions, and urban slums often face barriers to accessing education and healthcare. The quality of services remains inadequate in many regions, with insufficient infrastructure, lack of trained teachers, and limited access to basic health services. Moreover,

child abuse, both physical and sexual, remains widespread, and children continue to be vulnerable to exploitation in labor markets and trafficking rings.

The **National Commission for Protection of Child Rights (NCPCR)**, established in 2007, plays a key role in monitoring and ensuring the implementation of child protection laws. The Commission has the mandate to examine laws, policies, and practices that impact children and to take corrective actions when violations occur. However, systemic issues like corruption, weak enforcement, and a lack of political will hinder the full realization of children's rights in India.

In conclusion, while India has made significant strides in enacting laws and policies to protect children's rights, much remains to be done to address the systemic issues that continue to affect the country's children. Effective implementation of existing laws, stronger enforcement mechanisms, and increased public awareness are essential to improving the situation. Ensuring that every child in India has access to education, protection from exploitation, and the right to a happy and healthy life is not only a legal obligation but also a moral imperative for the nation.

Labour Rights in India

Labour rights in India are protected by a combination of legal frameworks, social welfare measures, and international standards aimed at safeguarding workers' welfare and dignity. These rights are primarily enshrined in the **Indian Constitution** and various labour laws designed to ensure the fair treatment of workers, protect them from exploitation, and provide them with decent working conditions. While India has a long history of labor movements and trade unions, labor rights in the country continue to face challenges, especially in the informal sector, which employs a large portion of the workforce. The Indian labour law system is comprehensive but often criticized for its complexity, outdated provisions, and insufficient implementation, especially concerning migrant, informal, and unorganized workers.

One of the foundational legal protections for labour rights in India comes from the **Indian Constitution**, particularly under **Part IV** (Directive Principles of State Policy), which aims to ensure just and humane conditions of work. **Article 39** directs the state to ensure that workers receive adequate wages, and **Article 41** mandates the provision of adequate livelihood and support to the unemployed. Additionally, **Article 43** guarantees that workers shall receive wages that are sufficient for their well-being. However, these principles remain aspirational in many cases, as workers in unorganized sectors continue to face inadequate wages, long working hours, and unsafe conditions.

The **Factories Act, 1948** is one of the key pieces of legislation protecting workers' rights in formal sectors. It mandates provisions for health, safety, and welfare measures in factories and industries. The Act requires factory owners to ensure clean working environments, proper ventilation, adequate lighting, and provisions for drinking water, restrooms, and safety measures to prevent accidents. It also limits the working hours to 48 hours per week and provides for overtime pay. However, despite the presence of such legal frameworks, the implementation remains weak in smaller and informal industries, where workers are often subjected to hazardous working conditions without access to any form of compensation or welfare.

In addition to the **Factories Act**, other significant labour laws in India include the **Industrial Disputes Act, 1947**, the **Minimum Wages Act, 1948**, the **Payment of Gratuity Act, 1972**, the **Employees' State Insurance Act, 1948**, and the **Employees' Provident Fund and Miscellaneous Provisions Act, 1952**. The **Industrial Disputes Act** ensures the protection of workers' rights in the event of industrial disputes by providing mechanisms for the resolution of conflicts and ensuring fair practices during strikes, lockouts, and layoffs. The **Minimum Wages Act** ensures that workers are paid a minimum wage set by the government, although wage enforcement is inconsistent across states and sectors.

One of the most important advancements for labour rights in India is the **Code on Wages, 2019**, which consolidates the Minimum Wages Act, the Payment of Wages Act, the Equal Remuneration Act, and the Payment of Bonus Act. This Code aims to provide a simplified wage structure across various sectors, ensuring that all workers receive equal pay for equal work. It also allows the central and state governments to set a national floor wage, a minimum threshold that should be maintained across the country. The Code on Wages, however, is yet to be fully implemented, and the challenge of ensuring compliance across a diverse economy with varying regional conditions remains significant.

Another vital area of labour rights is the protection against exploitation, particularly in relation to **child labour** and **forced labor**. India has stringent laws in place to curb child labour, such as the **Child and Adolescent Labour (Prohibition and Regulation) Act, 1986**, which prohibits the employment of children below 14 years of age in hazardous work and regulates the conditions under which adolescents aged 14 to 18 can work. The **Bonded Labour System (Abolition) Act, 1976** seeks to eliminate forced labor, which continues to be a problem, especially in rural and informal sectors, where workers are often subjected to exploitation under the guise of traditional labor practices. Despite these legal measures, the

enforcement of anti-child labor and anti-forced labor laws remains weak in rural areas and small industries.

The rise of the **informal sector** presents a significant challenge to labour rights enforcement. According to estimates, more than 90% of India's workforce is employed in the informal sector, which lacks legal protection and access to welfare schemes. Informal workers often do not have written contracts, are not entitled to paid sick leave, and are vulnerable to exploitation. The COVID-19 pandemic highlighted the precarious nature of informal employment, as millions of migrant workers were left without wages or jobs when industries shut down. Many of these workers lack access to social security benefits, healthcare, and pension schemes that formal sector employees enjoy. The government has launched various schemes to support informal workers, such as the **Pradhan MantriShram Yogi Maan-DhanYojana** (a pension scheme for unorganized workers), but the implementation and reach of these schemes have been criticized for being inadequate.

Another issue that workers face is the **lack of proper trade union representation**. Trade unions in India have played a crucial role in advocating for workers' rights, particularly during the early 20th century and post-independence era. However, the fragmentation of unions and the decline of industrial action in recent years have weakened the labour movement. Many workers in the informal sector or in rural areas are not unionized and lack the collective bargaining power that formal sector workers possess. The **Trade Unions Act, 1926** recognizes the right to form trade unions, but these unions often struggle with political interference, internal divisions, and inadequate resources to effectively represent workers' interests.

Despite the presence of a complex framework of labor laws, challenges remain in achieving the full realization of labour rights in India. There are issues related to the lack of enforcement of these laws, bureaucratic inefficiency, and corruption, all of which hinder the progress of labour rights. The **National Labour Commission**, tasked with reviewing and improving labour policies, has been inactive in recent years, and labour reforms often face resistance from industry stakeholders. The **Shram Shakti Yojana** and the **Labour Codes** that seek to simplify labour laws are yet to achieve their intended outcomes, and critics argue that they may further dilute protections for workers in the informal sector.

In conclusion, while India has a comprehensive set of laws aimed at protecting labor rights, challenges remain in ensuring that these laws are adequately enforced and that workers in the informal sector have access to social security benefits and decent working conditions. For labor rights to be fully realized, a multi-pronged approach is necessary, including

strengthening enforcement mechanisms, improving workers' access to social security, expanding trade union representation, and addressing the specific vulnerabilities of informal workers.

Role of NGOs in the Protection of Human Rights

Non-governmental organizations (NGOs) have long been at the forefront of human rights advocacy, playing a crucial role in ensuring that marginalized and vulnerable groups receive protection and justice. In the context of India, where human rights violations are still widespread in many sectors of society, NGOs play a critical role in advocating for the rights of women, children, minorities, the poor, and other disadvantaged groups. Their activities span a wide range of issues, including access to justice, social inclusion, economic empowerment, and education. NGOs in India contribute to the protection of human rights by raising awareness, providing legal aid, mobilizing communities, and holding the government accountable for its commitments to human rights standards.

One of the most important roles that NGOs play in the protection of human rights is **advocacy and awareness-raising**. Many NGOs focus on educating the public about their human rights and how to exercise them. For example, organizations such as **Human Rights Law Network (HRLN)** and **The People's Union for Civil Liberties (PUCL)** have been instrumental in raising awareness about issues such as wrongful detention, police brutality, and freedom of expression. They organize campaigns, workshops, and seminars to educate citizens on their fundamental rights and how to seek legal recourse if their rights are violated. These efforts have helped to create a more informed and engaged public that is capable of standing up for their rights and demanding accountability from the government.

In addition to advocacy, NGOs also play a crucial role in **providing legal aid** to those whose rights have been violated, particularly those who cannot afford legal representation. Organizations such as **The Legal Aid Society** and **The Centre for Social Justice (CSJ)** provide free or subsidized legal assistance to individuals and communities facing human rights violations, including cases of caste-based discrimination, sexual violence, and land rights violations. These organizations help marginalized communities navigate the often complex legal system and fight for justice in courts. By providing legal aid, NGOs help ensure that the legal system remains accessible to all individuals, regardless of their socio-economic background.

Another vital role of NGOs is their involvement in **monitoring and reporting human rights violations**. Many NGOs act as watchdogs, documenting and reporting human rights abuses

and pushing for investigations into instances of police brutality, human trafficking, and violations of labor rights. **Amnesty International India** and **Human Rights Watch** are prominent organizations that document human rights abuses and bring international attention to human rights violations occurring within India. These reports often serve as a catalyst for domestic and international pressure on the Indian government to take action to address human rights violations. By shedding light on hidden abuses, NGOs help ensure that human rights violations are not ignored and that those responsible are held accountable.

NGOs also contribute significantly to **empowering marginalized communities**. They work with women, Dalits, Adivasis, and other marginalized groups to enhance their access to education, healthcare, and economic resources. Organizations such as **SEWA (Self-Employed Women's Association)** and **Asha for Education** empower marginalized women and children by providing education, vocational training, and healthcare services. These programs help break the cycle of poverty and social exclusion, giving individuals the tools to improve their lives and assert their rights.

In many cases, NGOs in India have also played a pivotal role in **pushing for legal reforms** and influencing government policy. For example, NGOs have been instrumental in the formulation and passage of critical legislation, such as the **Protection of Women from Domestic Violence Act, 2005**, and the **Right to Information Act, 2005**. These laws have helped to strengthen human rights protections and provide mechanisms for individuals to challenge violations. NGOs lobby government bodies, file public interest litigations (PILs), and work with lawmakers to ensure that human rights issues are prioritized on the political agenda.

Furthermore, NGOs have been active in **supporting survivors of human rights violations**, providing them with the necessary resources to heal and rebuild their lives. This support may include counseling, rehabilitation programs, and reintegration into society. **The Rehabilitation Council of India** and other similar organizations assist victims of trafficking and violence in their recovery and reintegration, ensuring that their dignity and rights are respected throughout the process.

Despite the significant contributions of NGOs to the protection of human rights, they often face challenges, particularly in terms of **government opposition** and limited funding. The **Foreign Contribution Regulation Act (FCRA)**, for example, has been criticized for restricting the flow of foreign funding to NGOs, thereby hindering their ability to carry out their activities effectively. Many NGOs also face harassment and legal challenges from the

government, particularly if they are involved in high-profile campaigns against government policies or human rights violations.

In conclusion, NGOs play a critical role in the protection and promotion of human rights in India. Their contributions span legal assistance, advocacy, education, monitoring, and empowerment of marginalized communities. However, challenges related to government regulations and limited resources continue to pose barriers to their work. Strengthening the role of NGOs and ensuring that they have the necessary support to carry out their work effectively is essential to advancing human rights in India and globally.

References:

- Indian Constitution, Article 21.
- Right to Education Act, 2009.
- Child Labour (Prohibition and Regulation) Act, 1986.
- Juvenile Justice (Care and Protection of Children) Act, 2015.
- Prohibition of Child Marriage Act, 2006.
- United Nations Convention on the Rights of the Child (UNCRC).
- National Child Protection Policy.
- National Commission for Protection of Child Rights (NCPCR).