

## **Human Rights- Inalienable Rights of Every Human Being**



### **An Overview**

According to Professor Laski “ Rights are those conditions of social life without which no person can seek to be himself at his best. “

The statement of Prof. Laski makes it clear that the human rights are those basic conditions which are essential for the overall development of the personality of an individual and without these rights; neither moral nor material development of a person is possible. That’s the reason why the human rights are also called natural rights and it is essential for physical, mental, moral and spiritual growth of an individual.

The needs for Human Rights education has been emphasized in the Universal Declaration of Human Rights and other International Documents and Treaties. Human Rights concept finds expanded expression and constantly covers new areas as human society continues to evolve to higher levels of development. There is an urgent need for well informed, aware and committed young women/ men to create awareness among the most marginalized communities about

human rights issues and to collectively work for protecting and upholding the human rights of all.

Human rights are inalienable rights of every human being without which one cannot function as a person, having free will and intellect. Human rights refer to the basic rights and freedoms to which human being is entitled. Human rights imply the rights relating to life, liberty, equality and dignity of an individual. These rights guarantee to every individual better standard of life in larger freedom. They are the political, social and economic advantages to which one has a just claim---morally or legally. It's based on the principle that "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and one should act towards another in a spirit of brotherhood." These rights are necessary for being human and hence are Universal, Inalienable and Indivisible.

Human rights are based on fundamental principles of respect for human dignity, equality and non-discrimination. Examples of rights and freedoms which have come to be commonly through of as human rights, include Civil and Political Rights, such as the right to life and security, freedom of expression, equality before law, and Economic, Social and Cultural Rights including the right to participation in culture, right to food, right to work, right to family, right to property, right to contract, right to speech, right to religion, right to liberty and free movement, right to association etc.

Human rights are socially recognized to make life happy, contented, harmonious and prosperous. They are prior to the state as they fulfil the basic conditions of social life. Basically the right arise only in the society and without society there can be no rights. The state does not create rights. It only recognises, maintains and coordinates them so that all may realise the benefits of such rights and in case of violation, may protect them. The state guarantees equal rights to every citizen.

### Indivisibility and Categorization

Initially, there was some confusion surrounding about human rights around the belief that certain sets of rights, say civil and political rights have precedence over another sets of rights,

say economic, social and cultural rights. But, 1993 Vienna Declaration adopted by the ‘ UN World Conference on Human Rights’, dispelled this confusion by concluding that : ‘All human rights are Universal, Indivisible, Interdependent and Interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and the various historical, cultural and religious background must be borne in mind, it is the duty of states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.’

---Vienna Declaration and Programme of Action, World Conference on Human Rights .According to this Vienna Declaration, universality, inalienability and indivisibility are basic principles of human rights.

Universality means the human rights belong to everyone, everywhere, and they are same for all people irrespective of age, race, class, gender, ethnicity, language, colour or castes. These need to be upheld and protected at all times

Inalienability means all rights belong to all people’s right from the time of birth. A person is born with these rights and these rights cannot be taken away from him/her. Some human rights are said to be ‘inalienable rights’. The term inalienable rights refer to ‘a set of human rights that are fundamental, are not awarded by human power, and cannot be surrendered’.

Indivisibility means all human rights are related to each have precedence other; consequently rights are interrelated and interdependent. No sets of rights have precedence over other and they together provide wholesome existence to a person. So the universality, indivisibility and interdependence of all human rights have been confirmed by the 1993 Vienna Declaration and Programme of Action.

But, despite the declaration of above mentioned tenets of human rights there exists category of groups such as women, children, ethnic, minorities etc., whose rights are violated more often than those of others. In reality, they are generally deprived of their rights because they belong to particular category whose rights are not society recognized. This leads us to a discussion of rights of women and children within human rights discourse for these are the groups, who are most vulnerable to trafficking.

The most common categorization of human rights is to split them into civil and political rights, and economic, social and cultural rights. The following table shows the categorization of rights, human rights and rights holders:

Rights

Theoretical Distinctions

- Natural Rights & Legal Rights
- Claim Rights & Liberty Rights
- Individual rights & Group Rights
- Negative Rights & Positive Rights

Human Rights Division

Three Generations

Civil Rights

Political Rights

Economic Rights

Social Rights

Cultural Rights

Currently-Debated Rights

Environmental Rights

Future Generations

L G B T Rights

Trade Rights

Water Right

Reproductive Right

Rights Holders

Men ---- Women

Fathers --- Mothers

Children --- Youth --- Students

Minorities --- LGBT

The civil and political rights are enshrined in Article 3 to 21 of the Universal Declaration of Human Rights (UDHR) and in the International Covenant on Civil and Political Rights (ICCPR). Economic, social and cultural rights are enshrined in Article 22 to 28 of the Universal Declaration of Human Rights (UDH ) and in the International Covenant on Economic, Social and Cultural Rights ( ICESCR ).

“ The ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his social, economic and cultural rights”.

----- International Covenant on Civil and Political Rights and International Covenant on Economic, social and cultural Rights, 1966.

The UDHR included both civil and political rights and economic, social and cultural rights because it was based on the principle that different sets of rights could only successfully exist in combination and co-ordination. This really exist in every society whether it is traditional or modern without having civil and political rights, the citizens cannot assert their economic, social and cultural rights. Similarly, without livelihood, in a working society, a citizen cannot assert or make use of civil or political rights.

The statement about human rights which was given at the Vienna Declaration and Programme of Action, World Conference, 1993, was again endorsed at the 2005 World Summit in New York (paragraph 121). Although accepted by the signatories to the UDHR, most do not in practices give equal weight to the different types of rights. For example according to their political tradition and culture some western countries have often given priority to civil and political rights such as the right to work, to education, health and housing. In the United States there is no universal access to health care free at the point of use , that is not to say that western countries have overlooked these rights entirely. (The welfare states that exist in Western Europe are evidence of this). Similarly, the ex Soviet Bloc countries and Asian countries have tended to give priority to economic, social and cultural rights, but have often failed to provide civil and political rights to their citizens.

Categorization

The main philosophers who have criticized the concept of human rights are Jeremy Bentham, Edmund Burke, and Karl Marx. A recent critique has been advanced by Charles Blattberg in his essay "The Ironic Tragedy of Human Rights". Blattberg argues that rights talk, being abstract, demotivates people from upholding the values that rights are meant to assert.

Opponents of the indivisibility of human rights argue that economic, social and cultural rights are fundamentally different from civil and political rights and require completely different approaches. Economic, social and cultural rights are argued to be:

Positive, means that they require active provision of entitlements by the state (as opposed to the state being required only to prevent the breach of rights)

Resource – Intensive, means that they are expensive and difficult to provide

Progressive, means that they will take significant time to implement

Vague, meaning that they cannot be quantitatively measured, and

Whether they are adequately provided or not is difficult to judge

Ideologically divisive / political, means that there is no consensus on what should and shouldn't provide as a right

Socialist, means as opposed to capitalist

Non – justifiable, means that their provision, or the breach of them, cannot be judged in a court of law

Aspirations or goals, means as opposed to real legal rights

Similarly civil and political rights categorized as

Negative, means that the state can protect them simply by taking no action

Cost free

Immediately, means that they can be immediately provided if the state decides to

Precise, means that their provisions is easy to judge and measure

Non – ideological / non - political

Capitalist

Justiciable

Real ' legal ' rights

In *The No – Nonsense Guide to Human Rights* Olivia Ball and Paul Gready argue that for both civil and political rights and economic, social and cultural rights, it is easy to find examples which do not fit into the above categorization. Amongst several others, they highlight the fact that maintain a judicial system, a fundamental requirement of civil rights to due process before the law and other rights relating to judicial process, is positive, resource – intensive, progressive and vague, while the social rights to housing is precise, justiciable and can be a real ‘ legal ‘ rights.

Another categorization, offered by Karel Vasak, is that there are three generations of human rights:

First generation -- civil and political rights (right to life and political participation),

Second generation – economic, social and cultural rights (right to subsistence),

Third generation –solidarity rights (right to peace and right to clean environment).

Out of these generations, the third generation is the most debated and lacks both legal and political recognition. This categorization is at odds with the indivisibility of rights, as it implicitly states that some rights can exist without others. Prioritisation of rights for pragmatic reasons is however a widely accepted necessity.

Human rights expert Philip Alston argues : ‘‘If every possible human rights element is deemed to be essential or necessary, then nothing will be treated as though it is truly important’’.

Philip Alston urges caution with prioritisation of rights. According to him ‘‘the call for prioritizing is not to suggest that obvious violation of rights can be ignored’’.

According to Olivia Ball, Paul Gready –‘‘Priorities, where necessary, should adhere to core concepts (such as reasonable attempts at progressive realization) and principles (such as non-discrimination, equality and participation).

International Norms:

i) Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) is non – binding declaration adopted by the United Nations General Assembly, in 1948, party in response to the atrocities of world war 11. Although the UDHR is a non – binding resolution, it is now considered to be a central

component of international customary law which may be invoked under appropriate circumstances by national and other judiciaries. The UDHR urges member nations to promote a number of human, civil, economic and social rights, asserting these rights are part of the ‘foundation of freedom, justice and peace in the world’’. The declaration was the first international legal effort to limit the behaviour of states and press upon them duties to their citizens following the model of the rights – duties duality.

The UDHR was framed by members of the Human Rights Commission, with former first lady Eleanor Roosevelt as chair, who began to discuss an International Bill of Rights in 1947. The members of the Commission did not immediately agree on the form of such a bill of rights, and whether, or how, it should be enforced. The commission proceeded to frame the UDHR and accompanying treaties, but the UDHR quickly became the priority.

Canadian Law professor John Humphrey and French lawyer Rene Cassin were responsible for much of the cross – national research and the structure of the document respectively, where the articles of the declaration were interpretative of the general principle of the preamble. The document was structured by Cassin to include the basic principles of dignity, liberty, equality and brotherhood means, as is reflected in the third clause of in the first two articles, followed successively by rights pertaining to individuals ; rights of individuals in relation to each other and to groups ; spiritual, public and political rights; and economic, social and cultural rights. The final three articles place according to Cassin rights in the context of limits, duties and the social and political order in which they are to be realized. Humphrey and Cassin intended the rights in the UDHR to be legally enforceable through some means, as is reflected in the third clause of Preamble.

‘’ Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world’’.

--- Preamble to the Universal Declaration of Human Rights, 1948.

The Universal Declaration was bifurcated into two distinct and different covenants, a covenant on civil and political rights and another covenant on economic, social and cultural rights. Over the objection of the more developed states (capitalist), which questioned the



relevance and propriety of such provisions in covenants on human rights, both begin with the right of people to self-determination and to sovereignty over their natural resources. The drafters of the covenants initially intended only one instrument. The original drafts included only civil and political rights, but economic and social rights were added early. Western states then fought for, and obtained, a division into two covenants. They insisted that economic and social rights were essentially aspirations or plans, not rights, since their realization dependent on availability of resources and on controversial economic theory and ideology. These, they said, were not appropriate subjects for binding obligations and should not be allowed to dilute the legal character of provisions honouring political – civil rights ; states prepared to assume obligations to respect political – civil rights. There was wide agreement and clear recognitions that the means required to enforce or induce compliance with socio – economic undertakings were different from the means required for civil –political rights.

“Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law”.

--- Preamble to the Universal Declaration of Human Rights, 1948.

UDHR, 1948

Article 1 ... All human beings are born free and equal in dignity and rights

Article 3 ... Everyone has the right to life, liberty and security of person

Article 4 ... No person shall be held in slavery or servitude

Article 5 ... No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment

Article 7 ... All are equal before the law and entitled to equal protection without any discrimination

Article 13 ... Everyone has the right to freedom of movement

Article 14 ... Everyone has the right to asylum from persecution

Article 15 ... Everyone has the right to a nationality

Article 16 ... Every person has a right to marry and find a family

Article 23 ... Everyone has the right to work; free choice of employment and without discrimination is entitled to equal pay for equal work

ii) International Covenant on Civil and Political Rights, 1966 (ICCPR)

This covenant elaborates the political and civil rights identified in the Universal Declaration which include the right to life, privacy, fair trial, freedom of religion, freedom from torture and equality before the law. All these rights represent the first generation of human rights that are based on natural rights philosophy of the eighteenth century thinkers like Rousseau. Some of the rights mentioned in the covenant can be suspended in times of public emergency which threatens the ' life of the nation ' , provided that the derogation will not involve discrimination on grounds of race, colour, sex, language, religion or social origin.

Article 28 of the covenant provides for the establishment of a Human Rights Committee, which monitors the implementation of the Covenant in a number of ways. Two Optional Protocols elaborate on certain provisions of the Covenant on Civil and Political Rights, one provides mechanism for taking complaints from individuals, the other advocates the abolition of the death penalty.

ICCPR, 1966

Article 2 ... No discrimination based on sex

Article 3 ... Equal rights for men and women in the employment of civil and political rights

Article 7 ... Prohibits cruel, inhuman or degrading practices

Article 8 ... Prohibits slavery and servitude

Article 9 ... Right to liberty and security of person: no one shall be subjected to Arbitrary arrest or detention

Article 12... Freedom of movement

Article 14 ... Equality before the courts and tribunals

Article 26 ... Equal before the law, equal protection of the law

iii) International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR)

The Covenant on Economic, Social and Cultural Rights, represents the second generation of human rights, which were propagated and recognized after the advent of socialism in the twentieth century. Some of the rights recognized by this Covenant include the right to work,

favourable conditions of work and equal pay for equal work; social security, an adequate standard of living including adequate food, clothing and housing. The underlined idea behind this Covenant is that, without realization of economic, social and cultural rights, even civil and political rights cannot be realized. As human rights are independent and indivisible, this Covenant along with the Covenant on Civil and Political Rights needs to be looked into holistically as representing two important aspect of human rights jurisprudence. The monitoring body which oversees the implementation of ICESCR is known as the Committee on Economic, Social and Cultural Rights. The ICESCR together with the ICCPR, Universal Declaration and the International Bill of Human Rights.

#### ICESCR, 1966

Article 2 ... No discrimination

Article 3 ... Equal rights for men and women in the enjoyment of economic, social and cultural rights

Article 6 ... Right to work that one freely chooses under conditions protecting fundamental freedoms of the individual

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

Article 10 ... Marriage with the consent of both parties

Article 11 ... Right to adequate standard of living including food, clothing, housing

Article 12 ... Right to physical and mental health

#### iv) Women's Rights are Human Rights

Everyday women around the world are subjected to serious physical and psychological exploitation from human trafficking, domestic violence, HIV / AIDS, and other forms of violence against women. Vital voices and global partnership aims to expose violations of women's rights through research and fact finding field studies; raise issues of concern through intensive international public awareness campaigns; employ a multi-stakeholder approach to effectively integrate civil society, government, and business in a collaborative effort to combat violence against women; and promote better policies through connecting practitioners and policymakers to ensure the full protection of women's rights.

Equality on the basis of sex is at the core of the concept of all human rights. Article 1 of the United Nations Charter sets out three main purpose of the UN, the last of which includes ‘ ‘ to define and protect the rights and freedoms of every individual regardless of race, sex, language or religion.’ ’

Similarly, the Universal Declaration on Human Rights (UDHR), 1948, includes the proclamation that all human rights and freedoms are to be enjoyed equally by women and men without distinction of any kind. But, despite the existence of numerous human rights instruments proclaiming principles of equality and non-discrimination, women are denied these so called ‘protected’ rights. Therefore, over the last two decades the phrase ‘ ‘women’s rights as human rights’ ’ has been used to explore, assert and redress the gap between started international commitment to equality for women and the actual experience of women. Saying, women’s rights are human rights, is not claiming special rights for women. On the contrary it is call to recognize that women have some basic human rights as men. But international human rights law fails to recognize women even when they suffer same human rights abuses as men. Also it fails to recognize the specific gender discrimination of abuse that characterizes the denial of rights to women.

The public-private constitution of human rights law whereby state action is required before there is human rights violations and whereby private actors are beyond its scope has been critiqued as gendered.

Research has exposed the public / private divide with regard to domestic violence, violence of war and dowry deaths to name a few. A second critique has focused on the hierarchy of rights where civil and political rights enjoy a central position as violations within the human rights system. In contrast, social, economic and cultural rights, and group rights are more difficult to enforce and less accepted as judicable minimum standards. Given that women’s advancement is clearly linked to social, economic and cultural status, the lesser is the protection given to women’s rights.

v) Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW)

The Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations General Assembly on December 18, 1979, and entered into force on September 2, 1981. The object of the Convention is to implement equality between men and women and to prevent discrimination against women, in particular such specific forms of discrimination as forced marriages, domestic violence and less access to education, health care and public life as well as discrimination at work. The Committee on the Elimination of Discrimination against Women, established under Article 17 of the Convention, considers periodic reports from States Parties regarding their compliance with the provisions of the Convention. The Committee makes general recommendations on specific Articles of the Convention, or on issues related to the Convention. In General Recommendation No. 19 was made on the issue of violence against women. The Recommendation defines gender-based violence against women to be violence as discrimination that is directed against women because she is a woman, or that affects women disproportionately. The Recommendation identifies poverty, unemployment and armed conflict as casual factors of trafficking and exploitation of prostitution of women. The Optional Protocol to CEDAW enables individuals or groups of individuals to submit written individual complains to CEDAW. However the complaint can only concern countries that are party to the Protocol.

CEDAW, 1979

Article 2 ... States must eliminate discrimination by any person, organization or enterprise and abolish discriminatory laws, regulations, customs and practices

Article 6 ... State Parties shall take all appropriate measures including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women

Article 9 ... Marriage shall not automatically change nationality

Article 11 ... Right to free choice of employment

Article 12 ...Right to health care and services

Article 14 ... Protection for women in rural areas

Article 15 ... Equal protection of law

Article 16 ... Right to freely choose a spouse and minimum age of marriage

iv) UN General Assembly Declaration on Violence against Women, 1993

The Declaration on Violence against Women covers all forms of gender-based violence within the family and the general community as well as violence perpetrated or condoned by the State wherever it occurs. This Declaration sets out the internationally agreed definition of violence against women as, ‘any acts of gender based violence that results in or is likely to result in physical, sexual or psychological harm or suffering to women including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring on public or private life.’

The Convention imposes an obligation on States to ‘exercise due diligence to prevent, investigate and punish acts of violence against women whether these are perpetrated by the States or private persons.’ As a resolution of the General Assembly, the Declaration does not have force of law. However, its potential capacity to contribute to the development of customary international norm on the issue of violence against women should not be discounted.

vii) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

Torture and other cruel, inhuman or degrading treatment or punishment are particularly serious violation of human rights and, as such, are strictly condemned by international law. Based upon the recognition that such practices are outlawed, the Convention strengthens the existing prohibition by a number of supporting measures. The Convention provides for several forms of international supervision in relation to the observance by States Parties of their obligations under the Convention including the creation of an international supervising body – the Committee against Torture – that can consider complaints from a State Party or from or on behalf of individuals.

The prohibition against torture is absolute and, according to the Convention, no exceptional circumstances whatsoever, including state of emergency or war or an order from a public authority may be invoked as a justification of torture.

Torture is define as: ‘...’

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.’’

State Parties have the obligation to prevent and punish not only acts of torture as defined in the Convention, but also other acts of cruel, inhuman or degrading treatment or punishment, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. State Parties have an obligation to take effective legislative, administrative, judicial or other measures to prevent acts of torture from occurring on their territories.

In order to monitor and review actions taken by States Parties to fulfil their obligations, the Convention against Torture has certain procedures at its disposal. The first is the obligation for all State Parties to submit periodic reports to the Committee for examination, which results in the adoption of recommendations by the Committee to the State Party in question. The Committee can also consider complaints from individuals who claim to be victims of the violation by a State Party to the Convention.

The monitoring body is the Committee against Torture and the articles relevant to trafficking from the Convention are:

Article 1 ... Torture is an act where severe pain or suffering, physical or mental, is intentionally inflicted for purposes: intimidation or coercion; by person acting in official capacity

Article 3 ... No expulsion or return of a person to another state if substantial grounds exist for believing that person would be in danger of torture

Article 13 ... Alleged victims of torture have the right to complain to and their cases promptly and impartially examined by competent authorities. Complainants and witnesses shall be protected against any consequential ill treatment or intimidation

Article 14 ... Redress and Right to Compensation

Viii) Trafficking

Trafficking in persons especially women and children has become an important issue transcending borders, affecting countries all over the world. It is a growing phenomenon involving transnational organized crime syndicates. Women and children have been trafficked for prostitution, forced labour. In the last two decades the most important developments in the work address trafficking have been in obtaining clarity on these issues, and evolving a definition of ‘trafficking in persons’ which would be in accordance with rights principles and be globally acceptable. A dictionary definition of trafficking describes it as

“ an illegal trade in a commodity in the case of trafficking in persons, the commodity is human beings. The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949 defines trafficking within the context of prostitution as:

Article 1—The Parties to the presentation Convention agree to punish any person who, to gratify the passions of another:

Procures, entices or leads away, for the purposes of prostitution, another person, even with the consent of that person;

Exploits the prostitution of another person, even with the consent of that person.

As this definition was limited to exploitation for the purpose of prostitution it was expended by Article 6 of the Convention on the Elimination of All Forms of Discrimination Against Women 1979, to include other forms of exploitation of women such as deception of migrant women and mail-order brides or false marriages, and the new forms of sexual exploitation such as sex tourism and forced domestic labour recruited from developing countries to develop countries.



The U N Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, 2000, supplementing the U N Convention against Transnational Organized Crime defines Trafficking in Article 3 as:

‘Trafficking in Persons ‘shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments of benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Exploitation shall include; at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

The consent of a victim of trafficking in persons to the intended exploitation set forth in sub paragraph (a) of this article shall be irrelevant where any of the means set forth in sub paragraph (a) have been used.

The definition indicates three stages in the crime of trafficking:

An action consisting of recruitment, transportation, transfer, harbouring or receipt of persons. By means of threat or use of force or other forms of coercion, abduction, abuse of power, or position of vulnerability.

For the purpose of exploitation.

While the above three stages would be critical in case of trafficking in adult persons, only the first and the third stage would be crucial in case of trafficking in children.

This definition, though, contains all the human rights elements, is essentially a ‘crime prevention’ definition and its crime prevention focus detracts from the concern of the basic rights of the victims. Also it fails to distinguish clearly a trafficked person from a smuggled migrant or where migration ends smuggled and trafficking begins. Therefore in order to fill these gaps a comprehensive human rights definition is required. The Special Rapporteur on Violence against Women, RadhikaCoomaraswamy, has given one such definition. In her report she elaborated the need for new and unambiguous definition of trafficking that is based

on respect and defense of the human rights of all persons. She proposed a definition of trafficking, which should have following elements:

The lack of consent;

The brokering of human beings;

The transport; and

The exploitative or servile conditions of the work or relationship.

Thus, any definition of trafficking must capture these elements. The definition, which Coomaraswamy proposed and which was accepted by the Commission on Human Rights ,is:

“Trafficking in persons means the recruitment, transportation, purchase, sale, transfer, harbouring or receipt of persons:

By threat or use of violence, abduction, force, fraud, deception or coercion (including the use of authority), or debt bondage, for the purpose of:

Placing or holding such person, whether for pay or not, in forced labour or slavery-like practices, in a community other than the one in which such person lived at the time of the original act described in (i).”

The Global Alliance Against Trafficking in Women (GAATW),the International Human Rights Law Group and the Foundation Against Trafficking in Women, conjunction with other NGOs worldwide, developed a definition of trafficking based on their collective experience.

This definition is given in Human Rights Standards for Treatment of Trafficked Persons (HRS), is:

“All acts and attempted acts involved in the recruitment, transportation within or across borders, purchase, sale, transfer, receipt or harbouring of a person involving the use of deception, coercion (including the use or threat of force or the abuse of authority) or debt bondage for the purpose of placing or holding such person, whether for pay or not, in involuntary servitude (domestic, sexual or reproductive), in forced or bonded labour, or in slavery-like conditions, in a community other than the one in which such person lived at the time of the original deception, coercion or debt bondage.”

The HRS definition focuses on clearly identifiable elements of the crime, in order to distinguish cases of trafficking from other acts, such as undocumented migration. These elements are:

Acts or attempted acts;

Recruitment;

Transportation, which can be via legal or illegal channels of migration;

Purchase, sale, transfer, receipt or harbouring of a person;

v) Deception, i.e. being tricked into vulnerable situation;

vi) Coercion (including the use or threat or force or the abuse of authority;

vii) Debt bondage;

viii) Servitude (domestic, sexual or reproductive), in forced or bonded labour, or in slavery like conditions.

ix) Transportation to community other than the one in which such person lived at the time of the original deception, coercion or debt bondage.

The above definition clearly brings out various stages involved in trafficking and at the same times differentiates trafficking from migration. A comparison of this definition with the definition given in the U N Protocol on Trafficking brings to fore the fact that all these elements mentioned above are explicitly or conceptually included within the definition given in the Protocol. Hence, the Protocol definition can be taken as standard definition and human rights standards can be read into it. The definition used in the Protocol not only covers all sectors where trafficking labour is used, but also includes issues of consent and places greater responsibility on States to punish those responsible for trafficking, including consumers of trafficked labour.

ix) Children's Human Rights

Since human rights are inalienable rights, which start at the time of birth, children are equally entitled to human rights in the same way as adults do. Children are the future; therefore, their special needs must be accommodated within the human rights discourse. Keeping this in view, on 20th November, 1989, the International Community extended the mantle of human rights protection to the children, when it adopted the United Nations Convention on the Rights of

Child. This is the first international legal instrument, which guarantees human rights for children. The Convention makes states, which accept the Convention, legally accountable for their actions towards children. The guiding spirit of the Conventions is the ‘best interest of child.’

Positive and forward looking in its approach, the Convention calls on states, which ratify it to create the conditions in which children may take an active and creative part in the social and political life of their countries. A child is defined in the Convention as a person under the age of eighteen, unless the national laws fix an earlier age of majority.

The charge of cultural relativism has been levelled in an attempt to diminish state accountability. Theocratic states for example have challenged the universality of human rights asserting that rights must be seen as culturally relative and secondly to legal, customary or traditional standards. This challenge seeks to decrease the scope of normative standards generally, and it’s particularly undermining women’s rights which so often conflict with patriarchal religious structures as is reflected in many reservations to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979.

Therefore to ensure women enjoy all rights, these above-mentioned obstacles need to be overcome. Trafficking of women and girls is directly linked to the failure of governments to accord women the same basic rights as men. Women who have been denied the right to education and legal rights are consequently denied the right to education and legal rights are consequently also denied the right to control their lives. Unskilled are unable to be economically independent, such women are especially vulnerable to trafficking.

Encompassing the whole range of human rights – civil, political, economic, social and cultural – the Convention recognizes that the enjoyment of one right cannot be separated from the enjoyment of others. It demonstrates that the freedom of a child needs to develop his / her intellectual, moral and spiritual capacities calls for, among other things, a healthy and safe environment, and access to medical care, and minimum standards of food, clothing and shelter.

The Convention charts new territory. It establishes the right of a child to be an actor in his / her own development, to express opinions and to have them taken into account in the making

of decisions relating to his / her life. In a number of other areas, some of them sensitive, the Convention goes well beyond existing legal standards and practices. These include its provisions on the right to life, survival and development, the right to a name and nationality from birth, regarding adoption, the rights of disabled and refugee children as well those in conflict with the law. It also enlarges the legal coverage of human rights by protecting children from all forms of exploitation, by dealing with the question of children of minority and indigenous groups and by dealing with the problems of drug abuse and neglect.

The Convention acknowledges the primary role of the family and parents in the care and protection of children, and the obligation of the State to help them in carrying out these duties. Finally, it brings together in one up-to-date global perspective the rights of the child expressed in many international treaties and declarations over the past 45 years. The Convention sets up the committee of ten experts which will generate a permanent dialogue involving all parties concerned with the promotion of children's rights. States parties will submit reports to the committee on how they are carrying out the Convention and on difficulties they face in doing so.

#### x) Convention on the Rights of the Child (CRC), 1989

CRC deals with trafficking in children especially girl children, under the age of 18, unless, majority is attained at an earlier age under domestic laws. State Parties are to take all appropriate natural, bilateral and multilateral measures to prevent the abduction of the sale of or traffic in children for any purpose or in any form. Children are also protected from all forms of economic exploitation, sexual exploitation and sexual abuse. Enforcement of the obligation set out in the CRC is mainly conducted through a reporting mechanism, similar to the CEDAW. The State Parties report to the Monitoring Committee on the Rights of the child. The Children's Convention broadens the possible scope of international cooperation on this Convention. The relevant provisions of the Convention are:

Article 3 ... In all actions concerning children, the best interests of child shall be primary considerations

Article 6 ... Every child has a right to life

Article 7 ... Every child has a right to name and nationality

Article 9 ... Ensure that no child is separated from his or her parents against their will except in cases where it is determined that separation is necessary for the 'best interest' of the child

Article 11 ... Take measures to combat the illicit transfer and non-return of children abroad

Article 16 ... Legal protection from arbitrary or unlawful interference with privacy, family home or correspondence and unlawful attacks on honour or reputation

Article 19 ... Protection against physical or mental violence, injury, abuse, neglect or negligent maltreatment or exploitation, including sexual abuse

Article 24 ... No child is to be deprived of his or her right to health

Article 28 ... Every child has the right to education

Article 31 ... Every child has the right to rest and leisure, engage in play and recreational activities

Article 32 ... Children are to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development

Article 33 ... Protect children from the illicit use of narcotic drugs and psychotropic substances

Article 34 ... Protect children from all forms of sexual exploitation and sexual abuse

Article 35 ... Protect from abduction, sale or traffic in children for any purpose or any form

Article 36 ... Protect against all other forms of exploitation prejudicial to child's welfare

Article 37 ... Children are to be kept free from torture or other cruel, inhuman or degrading treatment or punishment. Further, no child is to be deprived of his or her liberty unlawful or arbitrarily

Article 39 ... Promote physical and psychological recovery and social reintegration of a child victim

xi) Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000

The Optional Protocol to the Convention on Rights of the Child purports to extend the reach of the Convention's provision in relation to sale of children, child prostitution and child pornography. The relevant provisions of the Convention are:

Article 1 ... Prohibits sale of children, child prostitution and pornography

Article 2(a)... Sale of children: any act or transaction whereby a child is transferred by any person to another for remuneration or other consideration

Article 2(b)... Child prostitution: use of a child in sexual activities for remuneration or other consideration

Article 2(c)... Child pornography: any representation of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primary sexual purposes

Article 3 ... Criminal or penal law to cover sale of children including offering, delivering or accepting a child for purposes of sexual exploitation, transfer of organs for profit, forced labour

Article 8(1)... Protect right of child victims in criminal justice process in recognizing their special needs, especially as witnesses; providing support services; protecting privacy and identity of child; providing for their safety and that of their family where necessary and avoiding unnecessary delay in granting compensation

Article 8(3) ... ' Best interest of the child' shall be a primary consideration

Article 8(4) Ensure appropriate training for persons working with child victims

xii) Convention on Protection of the Rights of All Migrant Workers and their Families, 1990

The Migrant Workers Convention sets out comprehensive protection standards. The Convention applies to both documented (legal) and undocumented (illegal or irregular) migrant workers. This Convention can only be helpful if the world's host countries ratify the Convention and promise to provide protection to the migrant workers. The relevant provisions of the Convention are:

Article 10 ... Prohibits torture or cruel, inhuman or degrading treatment or punishment

Article 11 ... Prohibits slavery, servitude, forced or compulsory labour

Article 16(1) ... Right to liberty and security of person

Article 16(2) ... Provides effective protection by the state against violence, physical injury, threat and intimidation, whether by public officials or by private individuals, groups or institutions

Article 16(3-9)... Minimum standards with regard to verification of identify, arrest, detention

Article 25-30... Minimum standards with regard to the labour conditions of migrant workers, remuneration, medical care and social security

Article 40... For documented migrants, the right to form associations and trade unions to protect their economic, social, cultural and other interests

### Xiii) Currently-Debated Rights

Events and new possibilities can affect existing rights or require new ones. Advances of technology, medicine, environmental needs, social demands, human necessities and philosophy contently challenge the status quo of human rights thinking.

#### Environmental Rights

There are two basic conceptions of environmental human rights in the current human rights system. The first is that the right to a healthy or adequate environment is itself a human right (As seen in the both Article 21 of the African Charter of Human and People's Rights, and Article 11 of the San Salvador Protocol to the American Charter of Human Rights). The second conception is the idea that environmental human rights can be derived from other human rights, usually-the right to life, the right to health, the right to private family life and the right to property (among many other). This second theory enjoys much more widespread use in human rights courts around the world, as those rights are contained in many human rights documents.

The onset of various environment issues, especially climate change, has created potential conflicts between different human rights. Human rights ultimately require a working ecosystem and healthy environment, but the granting of certain rights to individuals may damage these. Such as the conflict between right to decide number of offspring and the common need for a healthy environment, as noted in the tragedy of the commons. In the area of environmental rights, the responsibilities of multinational corporations, so far relatively unaddressed by human rights legislation, is of paramount consideration. Environmental Rights



revolve largely around the idea of a right to a liveable environment both for the present and the future generations.

#### Future Generations

In 1997, UNESCO adopted the Declaration on the Responsibilities of the Present Generation towards the Future Generation. The Declaration opens with the words “mindful of the will of the peoples, set out solemnly in the charter of the United Nations, to ‘save succeeding generations from the scourge of war’ and to safeguard the values and principles enshrined in the Universal Declaration of Human Rights and all other relevant instruments of international law,”

----- Declaration on the Responsibilities of the Present Generation  
towards the Future Generation.

Article 1 of the declaration states the present generations have the responsibility of ensuring that the needs and interests of present and future generations are fully safeguarded. The Preamble to the declaration states that “at this point in history, the very existence of humankind and its environment are threatened” and the declaration covers a variety of issues including protection of the environment, the human genome, biodiversity, cultural heritage, peace, development and education. The Preamble recalls that the responsibilities of the present generations towards future generations has been referred to in various international instruments, including the Convention for the Protection of the World Cultural and Natural Heritage (UNESCO-1972), the United Nations Framework Convention on Climate Change and the Convention on Biological Diversity (Rio de Janeiro-1992), the Rio Declaration on Environment and Development (U N Conference on Environment and Development-1992), the Vienna Declaration and Programme of Action (World Conference on Human Rights-1993), and a number of U N General Assembly resolutions relating to the Protection of Global Climate for Present and Future Generations, adopted since 1990.

#### Lesbian, Gay, Bisexual, Transgender (LGBT) Rights

Some organizations argue that LGBT issues, such as same-sex marriage, gay adoption rights, and protection from discrimination should be considered human rights. Canadian courts have

recognized certain rights under section fifteen of the Canadian Charter of Rights and Freedoms .Current campaigns, such as the Human Rights Campaign, specifically focus on the rights of the LGBT community.

Part of this debate includes a proposed U N Declaration on LGBT Rights, which would for the first time condemn discrimination based on sexual orientation and gender identity. While receiving widespread global support, including signatures from the member states of the European Union, opposition has come from several U N member nations, as well as the Vatican, where the Vatican's permanent observer at the U N indicated his belief that the declaration would discriminate against states which support 'traditional' marriage.

### Trade

Although both the Universal Declaration of Human Rights and International Covenant on Economic, Social and Cultural Rights emphasize the importance of a right to work, neither of these documents explicitly mention trade as a mechanism for ensuring these fundamental rights. And yet trade plays a key role in providing jobs. Some experts argue that trade is inherent to human nature and that when governments inhibit international trade they directly inhibit the right to work and other indirect benefits, like the right to education, that increased work and investment help accrue. Others have argued that the ability to trade doesn't affect everyone equality- often groups like the rural poor, indigenous groups and women are less likely to access the benefits of increased trade.

On the other hand, others think that it is no longer primarily individuals but companies that trade, and therefore it cannot be guaranteed as a human right.

Additionally, trying to fit too many concepts under the umbrella of what qualifies as a human right has the potential to dilute their importance. Finally, it is difficult to define a right to trade as either 'fair' or 'just' in that all trade regimes create winners and losers, and changing the rules only creates different losers, not necessarily fewer.

### Water

There is no current universal human right to water, binding or not, enshrined by the United Nations or any other multilateral body. But, in November 2002, the United Nations Committee on Economic, Social and Cultural Rights issued a non-binding comment affirming

that access to water was a matter of human right “The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights.”

----- United Nations Committee on Economic, Social and Cultural Rights.

This principle was reaffirmed at the 3rd and 4th World Water Councils in 2003 and 2006. This makes a departure from the conclusions of the 2nd World Water Forum in The Hague in 2000, which stated that water was a commodity to be bought and sold, not a right. There are calls from many NGOs and politicians to enshrine access to water as binding human rights, and not as a commodity.

### Reproductive Rights

Reproductive rights are rights relating to reproduction and reproductive health. The World Health Organization defines reproductive rights as follows:

“Reproductive rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. They also include the right of all to make decisions concerning reproduction free of discrimination, coercion and violence.”

----- World Health Organization.

Reproductive rights were first established as a subset of human rights at the United Nations’ 1968 International Conference on Human Rights. The sixteenth article of the resulting Proclamation of Teheran States, ‘Parents have a basic human right to determine freely and responsibly the number and the spacing of their children. Reproductive rights may include some or all of the following rights: the right to legal or safe abortion, the right to control one’s reproductive functions, the right to quality reproductive healthcare, and the right to education and access in order to make reproductive choices free from coercion, discrimination, and violence.

Reproductive rights may also be understood to include education about contraception and sexually transmitted infections and freedom from coerced sterilization and contraception,

protection from gender-based practices such as Female Genital Cutting (FGC) and Male Genital Mutilation (MGM)

### Humanitarian Law

The Geneva Conventions came into being between 1864 and 1949 as a result of efforts by Henry Dunant, the founder of the International Committee of the Red Cross. The conventions safeguard the human rights of individuals involved in armed conflict. The Geneva Conventions define what is today referred to as humanitarian law. Human rights law is a system of laws, both domestic and international, designed to promote human rights. In 1966, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were adopted by the United Nations, between them making the rights contained in the UDHR binding on all states that have signed this treaty, creating human rights law.

Since then numerous other treaties (Pieces of Legislation) have been offered at the international level. They are generally known as human rights instruments. Some of the most significant are :

Convention on the Elimination of All Forms of Racial Discrimination (CERD) (adopted 1966, entry into force 1969)

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), (entry into force 1981)

United Nations Convention Against Torture (CAT), ( adopted 1984, entry into force 1984)

Convention on the Rights of the Child (CRC),(adopted 1989, entry into force, 1989)

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW), (adopted 1990, entry into force, 2003)

### Enforcement of Law

The enforcement of law international human rights law is the responsibility of the Nation state, and it's the primary responsibility of the state to make human rights a reality. There is currently no international court that upholds human rights law (the International Criminal Court deals with crimes against humanity, war crimes and genocide),although the council of Europe is responsible for both the European Convention on Human Rights, and the European

Court of Human Rights that acts as a court of last appeal for human rights issues in member states. In practice, many human rights are very difficult to legally enforce due to the absence of consensus on the application of certain rights, the lack of relevant national legislation or of bodies empowered to take legal action to enforce them.

#### United Nations

The United Nations (UN) is the only multilateral governmental agency with universally accepted international jurisdiction for universal human rights legislation. Human rights are primarily governed by the United Nations Security Council, and the United Nations Human Rights Council, and there are numerous committees within the UN with responsibilities for safeguarding different human rights treaties. The most senior body of the UN with regard to human rights is the office of High Commission for Human Rights. The United Nations has an international mandate to:

“ .....achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex , language, or religion”.

----- Article 1 – 3 of the United Nations Charter.

United Nations Charter, which played a catalyst role in the human rights movement world over failed somehow to define the fundamental freedoms and human rights. This task was fulfilled by the UDHR, adopted by the General Assembly on December 10, 1948, which elucidated the charter provisions and defined expressly certain human rights and fundamental freedoms, which need to be protected. The Declaration is not a legally enforceable instrument, through some of the rights mentioned has become part of customary international law; others are merely general principles of law and represent elementary consideration of humanity.

The rights enshrined in the Declaration in its 30 Articles are broadly divided into civil and political rights, and economic, social and cultural rights. This Declaration along with two other human rights covenants that were adopted by the United Nations General Assembly in 1966, have today become the backbones of human rights jurisprudence the world – over. The rights enshrined in the Declaration are set as a common standard of achievement for all people

and all nations. It is expected that states shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, both at national and international levels, to secure their universal and effective recognition and observance.

#### Human Rights Council

The United Nations Human Rights Council, created at the 2005 World Summit to replace the United Nations Commission on Human Rights, has a mandate to investigate violations of human rights. The Human Rights Council is a subsidiary body of the General Assembly and reports directly to it. It ranks below the Security Council, which is the final authority for the interpretation of the United Nations Charter. The Human Rights Council may request that the Security Council take action when human rights violations occur. This action may be direct actions, may involve sanctions, and the Security Council may also refer cases to the International Criminal Court (ICC) even if the issue being referred is outside the normal jurisdiction of the ICC.

#### Security Council

The United Nations Security Council has the primary responsibility for maintaining international peace security and is the only body of the U N that can authorize the use of force ( including in the context of peace- keeping operations), or override member nations sovereignty by issuing binding Security Council resolutions, created as a Charter Body of the United Nations.

#### Other U N Treaty Bodies

A modern interpretation of the original Declaration of Human Rights was made in the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in 1993. The degree of unanimity over these Conventions, in terms of how many and which countries have ratified them varies, as does the degree to which they are respected by various states. The UN has set up a number of treaty-based bodies to monitor and study human rights, under the leadership of the UN High Commissioner for Human Rights (UNHCHR). The bodies are committee of independent experts that monitor implementation of the core international human rights treaties. They are created by the treaty that they monitor. Some of the most significant are:

The Human Rights Committee promotes participation with the standards of the ICCPR. The eighteen members of the committee express opinions on member countries and make judgements on individual complaints against countries which have ratified the treaty. The judgements are not legally binding.

The Committee on Economic, Social and Cultural Rights monitors the ICESCR and makes general comments on ratifying countries performance. It does not have the power to receive complaints.

The Committee on the Elimination of Racial Discrimination monitors the CERD and conducts regular reviews of countries performance. It can make judgements on complaints, but these are not legally binding. It issues warnings to attempt to prevent serious contraventions of the Convention.

The Committee on the Elimination of Discrimination against Women monitors the CEDAW. It receives states reports on their performance and comments on them, and can make judgements on complaints against countries which have opted into the 1999 optional protocol.

The Committee against Torture monitors the CAT and receives states report on their performance every four years and comments on them. It may visit and inspect individual countries with their consent.

The Committee on the Rights of the Child monitors the CRC and makes comments on reports submitted by states every five years. It does not have the power to receive complaints.

The Committee on Migrant Workers was established in 2004 and monitors the CMW and makes comments on reports submitted by states every five years. It will have the power to receive complaints of specific violations only once ten member states.

The Committee on the Rights of Persons with Disabilities (CRPD), was established in 2008 to monitor the Convention on the rights of persons with disabilities.

The above said each treaty body receives secretariat support from the treaties and commission branch of Office of the High Commissioner on Human Rights (OHCHR), Geneva except CEDAW, which is supported by the Division for the Advancement of Women (DAW).

CEDAW meets at United Nations headquarters in New York, the other treaty bodies generally meet at the United Nations office in Geneva.

## **Human Rights in the Indian Perspectives**

Human rights are international norms that help to protect all people everywhere from political, legal, and social abuses. Examples of human rights are the right to freedom of religion, the right to a fair trial when charged with a crime, the right not to be tortured, and the right to engage in political activity. These rights exist in morality and in law at the national and international levels. They are addressed primarily to governments, requiring compliance and enforcement. The main sources of the contemporary conception of human rights are the Universal Declaration of Human Rights and the many human rights documents and treaties that followed in international organizations such as the United Nations, the Council of Europe, the Organization of American States, and the African Union. The philosophy of human rights addresses questions about the existence, content, nature, universality, justification, and legal status of human rights. The strong claims made for human rights (example, that they are universal, or that they exist independently of legal enactment as justified moral norms) frequently provoke sceptical doubts and countering philosophical defences, Reflection of these doubts and the responses that can be made to them has become a sub-field of political and legal philosophy with a substantial literature.

Human rights are “commonly understood as inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being.” Human rights are thus conceived as universal (applicable everywhere) and egalitarian (the same for everyone). These rights may exist as natural rights or as legal rights, in both national and international law. The doctrine of human rights in international practice, within international law, global and regional institutions, in the policies of states and in the activities of non-governmental organizations, has been a cornerstone of public policy around the world. In the idea of human rights it is observed “If the public discourse of peacetime global society can be said to have a common moral language, it is that of human rights.” Despite this, the strong claims made by the doctrine of human rights continue to provoke considerable skepticism and abates about the content, nature and justifications of human rights to this day.



The situation of human rights in India is a complex one, as a result of the country's large size and tremendous diversity, its status as a developing country and a sovereign, secular, democratic republic and its history as a former colonial territory. The Constitution of India provides Fundamental rights, which include freedom of religion. The Clauses also provide freedom of Speech, as well as separation of executive and judiciary and freedom of movement within the country and abroad.

Recent reports from the Working Group of Human Rights (WGHR) in India indicate human rights in the country are dismal. According to the United States Library of Congress, although human rights problems do exist in India, the country is generally not regarded as a human rights concern, unlike other countries in South Asia. Based on these considerations, the 2010 report of Freedom in the World by Freedom House gave India a political rights rating of 2, and a civil liberties rating of 3, earning it the highest possible rating of free.

In its report on human rights in India during 2010, Human Rights Watch stated India had “significant human rights problems”. They identified lack of accountability for security forces and impunity for abusive policing including “police brutality, extrajudicial killings, and torture” as major problems. An independent United Nations expert in 2011 expressed concern that she found human rights workers and their families who “have been killed, tortured, ill-treated, disappeared, threatened, arbitrarily arrested and detained, falsely charged and under surveillance because of their legitimate work in upholding human rights and fundamental freedoms.

Constitutional provisions and privileges -An Indian Outlook

The Indian Constitution no doubt provides for equality of men and women in Articles 14, 15 and 16. But what do we see in actual practice? In practice there is often denial of equality for women in large parts of the country, particularly in rural areas, which is due to the survival of remnants of feudalism and medievalism in our society.

The Constitution not only grants equality to women but also empowers the state to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socio economic, education and political disadvantages faced by them. Fundamental Rights, among others, ensure equality before the law and equal protection of law; prohibits discrimination

against any citizen on grounds of religion, race, caste, sex or place of birth, and guarantee equality of opportunity to all citizens in matters relating to employment. Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c) and 42 of the Constitution are of specific importance in this regard.

(i) Equality before law for women (Article 14)

The state not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them (Article 15 (i))

(iii) The State to make any special provision in favour of women and children (Article 15 (3))

Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State (Article 16)

The state to direct its policy towards securing for men and women equally the right to an adequate means of livelihood (Article 39(a)); and equal pay for equal work for both men and women (Article 39(d))

To promote justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities (Article 39 A)

The state to make provision for securing just and humane conditions of work and for maternity relief (Article 42)

The state to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation (Article 46)

The state to raise the level of nutrition and the standard of living of its people (Article 47)

(x) To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women (Article 51(A) (e))

(xi) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by

direct election in every Panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat (Article 243 D(3))

(xii) Not less than one- third of the total number of offices of Chairpersons in the Panchayats at each level to be reserved for women (Article 243 D (4))

Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality to be reserved for women and such seats to be allotted by rotation to different constituencies in a Municipality (Article 243 T (3))

Reservation of offices of Chairpersons in Municipalities for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may by law provide (Article 243 T (4))

Despite these multiple constitutional rights recognized by the states the basic human rights suffers servile fearfulness in all walks of life.

#### Human Trafficking in India

Human trafficking in India is a major issue of violation of human rights. It is a complex process, and often starts with family members handing over responsibility for the safety and well-being of the trafficked person to others known to them, but then ending up trafficked by a third set of persons and into the profession as a Commercial Sex Worker (CSW), commonly known as a prostitute. The term 'prostitute' has always aroused a range of hostile feeling and perceptions. However till date no society has been able to eradicate or abolish it.

Interestingly enough though it is difficult for a CSW to be accepted back into their communities, they visit their hometown at least twice a year by claiming to be working in Delhi in an export house or as a domestic worker. On being questioned most of the CSW said they go involved in the sex trade on their "OWN" Volition and by their "own consent" However, it is important to be careful while using the term "consent" since it assumes the ability of an individual to have choice and control over their lives. All those involved in trafficking gain pecuniary benefits; beginning from the family who sells the trafficked girl, from the point of recruitment/deception to the point of use of her labour. All are direct perpetrators of the crime of human trafficking. However, very little attention is paid to

prosecuting recruiters, those involved in supporting this process along the way such as transporters (rickshaw, bus and truck drivers), vendors (dhobis, pheriwalas etc.) and hotel and restaurant workers, who knowingly provide services to traffickers and their victims. The victim is mostly reluctant to make a complaint since the trafficker may be her own family or person known to her. It was not uncommon for families to sell their daughters in times of economic distress or order to avoid starvation.

### Concluding Observations

Human rights as we know them today, derive their justification from certain principles that mankind now considers as self-evident. These basic principles have gained universal acceptance against the historic background of millennia of strifes and wars mankind's experiences relating different systems of governance different kinds of social structures and differing legal system, the havoc wrought by wars, deprivation, of lawlessness and indignities of various kind. The first principle on which human rights are founded is the principle of inherent dignity and worth of every individual and the need to secure to each person and equal and inalienable right to live in freedom, to enjoy equality, to be treated justly and to live in peace. In other words human rights mean right to life, liberty, equality and the dignity of an individual irrespective of caste, creed or sex. These human rights are natural rights required to be protected for peaceful existence of a person.

Human right has greatly to do with women and children and their basic rights as a human, this recognition would lead to a heavy transformation of the trend that basically transpires in the society. The questions leading to why the fairer sex is the weaker sex overburdened with the norms of a still patriarchal society needs the answer of women empowerment .It is not easy to configurator or hypothetically postulate a set of mega trends leading towards the attainment of comprehensive empowerment of women. The core of women empowerment demands detailed scrutiny of the governmental policies and implementation or non-implementation of developmental plans.

The International norms and the Constitution of India provides for equal status to all in the eyes of the law, and prohibition of discrimination.<sup>1</sup> However, the ground reality is that constitutional guarantees have not made them equal. In spite of woman's valuable contribution to human civilization, she still suffers on account of numerous social, political, economic and psychological barriers. Condition of women and children in the Naxal affected areas is not up to the mark. Women constitute about fifty percent of the population of the country and since independence the central focus of development planning of the country has been towards the development of women and children. Our society is also known for its respect towards women. Special programmes in the sectors of health, education, rural and urban development have been designed to improve the socio – economic conditions of the women and children in Naxal affected areas. But, the real scenario is that the several forms of atrocities over women and children and violation of their rights have been increasing day by day even after a lot of efforts are made by the government and non-government organizations. It encompasses a wide range of human rights violations, including sexual abuse of children, rape, domestic violence, sexual assault and harassment at home and at work place, trafficking of women and children and several harmful traditional practices like genital mutilations.

A last thought

Human Rights, for me, springs from the spiritual nidus nourished, with a sense of balance, with contentment which is sustained by provision for all of basic material needs and other condition which make for joy in life. “Man's inhumanity to man” is escalating boundlessly before our eyes intra-nationality and internationally; and each passing day brings thoughts too deep to tears and wars to defiant of the United Nation. And “the still sad music of humanity” is unheard by those who wield power and command wealth.

Kofi Annan, Secretary General of UN in his message to the world on the 50th Anniversary of Universal Declaration told humanity what is the message for the generation ahead:

“It is the universality of human rights that gives them their strength. It endows them with the power to cross any border, climb any wall, defy any force. “The struggle for universal human

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rights has always and everywhere been the struggle against all forms of tyranny and injustice – against slavery, against colonization, against apartheid. It is nothing less and nothing different today.”

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2. American Charter on Human Rights and People's Rights, 1981.

3. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.

4. Convention on Rights of Child, UN. Doc. A / Res / 44 / 25 entered into force September 2, 1990.

5. Convention on the Elimination of all forms of Discrimination Against Women, 1979.

6. European Convention on Human Rights.

7. Vienna Declaration and Programme of Action, World Conference on Human Rights. UN. Doc. A / CONF / 157 / 23 (1993)

8. International Covenant on Civil and Political Rights, 1966.

9. International Covenant on Economic, social and Cultural Rights, 1966.

10. SAARC Charter, 1985.

11. SAARC Convention on Preventing Combating Trafficking in Women and Children for Prostitution signed on 5<sup>th</sup> Jan 2012 at Kathmandu.

12. The United Nations Convention Against Transnational Organized Crime, 2000, UN. GAOR. 55<sup>th</sup> Session Annex 1, Agenda Item 105 at 25 UN Doc A / 55 / 383 (2000).

13. CEDAW Committee General Recommendations, UN Document A/47/38.

14. Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949, 96 UNTS, 271, G.A. Res 317 (IV) of 2 Dec. 1949.

15. Convention (No. 182) Concerning Worst Form of Child Labour, adopted on June 17, 1999 by General Conference of ILO.

16. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

17. European Social Charter

18. International Convention for the Suppression of Traffic in Women and Children, Geneva, September 30, 1921.

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24. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, UN Doc

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