



A Lecture on
**IMPORTANCE AND EFFICACY OF HUMAN
RIGHTS WITH SPECIAL REFERENCE
TO HUMAN RIGHTS IN
CONSTITUTION OF INDIA**

By

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Maharashtra Branch

Vidhan Bhavan, Mumbai / Nagpur

*Venue : The Post Graduate Teaching Department of Law,
Sant Gadge Baba Amravati University, Amravati.*

Date: 18th February, 2017

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MAHARASHTRA LEGISLATURE SECRETARIAT

VIDHAN BHAVAN, MUMBAI / NAGPUR

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FOREWORD

An attempt is being made by this broad overview to provide a glimpse of a brief lecture on Importance and efficacy of Human Rights with special reference to Human Rights in Constitution of India. I hope this will help to understand the niceties of the above subject in a better way. I am also very much indebted to Hon. Shri Ramraje Naik-Nimbalkar, Chairman, Maharashtra Legislative Council and Hon. Shri Haribhau Bagade, Speaker, Maharashtra Legislative Assembly and Hon. Shri Manikrao Thakre, Deputy Chairman, Maharashtra Legislative Council for their continuous support and motivation in accomplishing this task.

I am thankful to Shri N. G. Kale, Deputy Secretary (Law), Shri Sunil Zore, Under Secretary (Committee) and Public Relations Officer and Shri Nilesh Wadnerkar, Assistant Librarian for rendering their valuable assistance for publication of this book.

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dated 18th February 2017.

DR. ANANT KALSE,
Principal Secretary,
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At the outset, I wish you all a Happy New Year 2017.

I am very much grateful to Hon. Dr. Vijaykumar S. Chowbe, Convener and Head, Department of Law, Dean, Faculty of Law, Sant Gadge Baba Amravati University, Amravati for inviting me as “*Chief Guest*” for the valedictory session of one week short term programme on Human Rights Education funded by University Grants Commission.

I am very much happy to note that, the theme of the session is to spread the awareness of human rights and trained the participants about the importance and efficacy so that the participants would be able to inculcate it through their curriculum amongst the students.

What are Human Rights ?

Human Rights are those minimal rights which every individual must have against the State or other public authority by virtue of his being a ‘member of the human family’, irrespective of any other consideration.

The concept of human rights is as old as the ancient doctrine of ‘natural rights’ founded on natural law, the expression ‘human rights’ is of recent origin, emerging from (post-Second World War) international Charters and Conventions.

It would, therefore, be logical to start with the concept of natural rights, which eventually led to the formulation of ‘human rights’.

1. In the beginning, the right of man as a legal or moral concept appeared in the form of natural rights. The natural rights were derived from the nature of man for these are inherent in the nature of man and form part of his intrinsic nature. It means there exist in the nature of universe certain objective moral principles which can be perceived by the man by the application of his reason and self determination. There are so many theories

round the corner about the nature, meaning and concept of natural rights, which ultimately culminated into the idea that an individual has right upon society or against society which the society must recognize as human rights. This concept of human rights can be termed as updated version of the traditional 18th Century concept of the right of man.

2. The expression human right is of recent origin emerging after the end of the Second World War. The outcome of the Second World War had given rise to the serious concern towards humanity because humanity suffered lot in this era, and as a consequence tremendous developments have been made in the field of human rights. Universal Declaration of Human Rights (UDHR) was adopted by the United Nations General Assembly in 1948 and subsequently large number of international human right instruments and covenants came into existence.

- (1) The U. N. Charter, 1945.
- (2) Universal Declaration of Human Rights, 1948.
- (3) International Covenants of 1966 i.e. Civil and Political Rights and Economic, Social and Cultural Rights.
- (4) European convention for protection of Human Rights, 1953.

EVOLUTION OF HUMAN RIGHTS

The preamble of the Universal Declaration of Human Rights States:-

“...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.”

The primitive societies had probably no conception of human rights even after inception of human civilization the idea of human rights in the form of some basic natural rights, goes to the founder of the natural law theory. The natural law theory promoted the idea that man is endowed by birth with certain inalienable rights of which right to life, liberty and property are paramount. As Dr. Paras Diwan has pointed out however, soon it was realised

that human rights were practically privileges of the rich and the powerful and that the poor mans human rights remained only ornamental pieces in the form of a few articles in some written constitution. When poverty deprives a person of a decent human existence all the human rights are rendered meaningless and insignificant.

The movement for securing human rights, however, continued and gained strength after the Second World War. The General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights soon after the formation of the United Nations in December, 1948.

There after two international covenants, one on Economic, Social and Cultural Rights and the other on Civil and Political Rights were adopted by the Central Assembly on December 16, 1976.

Historical Background.

The origins of the contemporary conception of human rights can be traced to the period of the Renaissance and later of the Enlightenment of which humanism may be said to be the heart and soul. The issue of fundamental or (also called) human rights became an issue of prominence and fundamental significance since the last two hundred years only.

- First of all Magna Carta (Charter of Liberty) was promulgated on June 15, 1215.
- In 1225 King Andrew II of Hungary issued the Golden Bill in the words of Magna Carta.
- In 1283 King Peter III of Aragon bestowed upon his subjects the Law of Privileges
- In 1355 British Parliament re-affirmed the declaration of Magna Carta and introduced the words due process of law. It stated, No man of what state or condition so ever he be, shall be put out of his lands or tenements nor taken nor imprisoned nor put to death, without he be brought in to answer by due process of law.

- In 1689 the British Parliament passed the Bill of Rights which Lord Acton described as the greatest thing done by the English nation.
- In 1690 John Locke propagated theory of social contract attempting to reconcile sovereignty and democracy.
- There were two great revolutions at the end of 18th century, in America and in France inspired by philosophers like Samuel Adams, Jefferson, Rousseau and Kant who emphasized on the Law of Nature and the natural rights of man.
- Similarly in Virginia in 1776, Declaration of Rights was promulgated which guaranteed freedom of press and religion, rights to jury trial and other safeguards of a criminal trial. It made the military authorities to civil power and provided for free elections.
- In 1776 there was also the declaration of American independence drafted by John Locke. The preamble read: All men are created equal that they are endowed by their Creator with certain inalienable rights that among these are life, liberty and the pursuit of happiness.
- In 1789 the American Congress passed the Bill of Rights in the shape of ten amendments of the Constitution.
- While in France the French Assembly adopted the Declaration of the Rights of Man and the Citizen. It recited: Men are born free and equal in rights, aim of every political association is the preservation of the practical and imperceptible right of man. The rights are liberty, property, security and resistance to oppression.
- The fourth Amendment of the American constitution in 1868 stipulated: No state shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction, the equal protection of law.
- In the 18th and 19th centuries the basic human rights were included in the constitutions of various nations, Sweeden, Spain, Norway, Belgium, Sardinia, Denmark and Switzerland, Russia, Turkey, China, etc.

- In 1917 the Declaration of the Rights of the working and Exploited People was issued by the All-Russian Congress of Soviets.
- In 1930 on January, 26th people of all over India taken the Pledge of Independence at thousands of meeting held all over the country.
- In 1931 March, the Indian National Congress in its session at Karachi adopted the resolution of Fundamental Rights and Economic Programme.
- In 1941 President Roosevelt stressed on four freedoms, Freedom of speech, Freedom of Religion, Freedom from Want and Freedom from Fear.
- The same year Winston Churchill wanted to ensure that the war ended, with the enthronement of human rights.
- France in the preamble of its Constitution of 1946 reaffirmed: Every human being without distinction of race, religion or belief possesses inalienable and sacred rights.
- The 1946 Constitution of Japan provided: The people shall not be prevented from enjoying any of the fundamental rights.
- On 22nd January 1947, the Constituent Assembly of India adopted the resolution of India' Charter of Freedom.

During the last decades the emphasis on fundamental rights reached its climax with the formation of the UNO after the Second World War and the subsequent drafting of the Universal Declaration of Human Rights.

- The United Nations Charter which came in to effect on 24th October 1945, reflected the aspirations of the peoples who affirmed faith in 'fundamental human rights' and 'in the dignity and worth of the human person'.
- The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. Drafted by representatives

with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10th December 1948 General Assembly resolution 217 A (III) (French) (Spanish) as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected.

International treaties

- 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, referred to (with ICCPR and ICESCR) as “the seven core treaties”, 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) (adopted 1979, entry into force: 1981)
- United Nations Convention against Torture (CAT) (adopted 1984, entry into force: 1984)
- United Nations Declaration on the Right to Development adopted 1986
- Convention on the Rights of the Child (CRC) (adopted 1989, entry into force: 1989)
- The Vienna Declaration and Programme of Action 1993 (Endorsed by the General Assembly of the United Nations)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW or more often MWC) (adopted 1990, entry into force: 2003)
- Convention on the Rights of Persons with Disabilities (CRPD) (adopted 2006, entry into force: 2008)

HUMAN RIGHTS IN INDIA

Our country was one of the original signatories to the International Covenant on Civil and Political Rights and therefore the framers of Indian Constitution were influenced by the concept of human right and recognised as well as guaranteed most of the human rights which were subsequently embodied in the International Covenant 1966. The Preamble of the Indian Constitution reflects the inspiring ideals with the specific mention of “dignity of the individual”.

HUMAN RIGHTS UNDER THE CONSTITUTION OF INDIA

The Constitution of independent India came into force on 26th January. The impact of the Universal Declaration of Human Rights on drafting part III of the Constitution is apparent. India has acceded to the Universal Declaration of Human Rights as well as to the subsequent International Covenants of Economic, Social and Cultural rights and Civil & Political Rights adopted by the Central Assembly of the United Nations.

Fundamental Rights enshrined in Part III of the Constitution have emerged from the doctrine of natural rights. Fundamental Rights are the modern name for what have been traditionally known as Natural Rights. The Natural Rights transformed into fundamental rights operate as a constitutional limitation or a restriction on the powers of the organs set up by the Constitution or the State action. Judicial Review, Justiciability or Enforcement became an inseparable concomitant of fundamental rights. As no right of freedom can be absolute, limitations have been imposed to each fundamental right in the interest of securing social justice. Enforcement of fundamental rights can even be suspended or prevented in emergency.

Directive Principles enshrined in Part IV of the Constitution epitomise the ideals, aspirations the sentiments, the precepts and the goals of our entire freedom movement. The wisdom of the forefathers of the Constitution was justified in incorporating non-justiciable human rights in the concrete shape of the directive principles.

Preamble of the Constitution is worth studying in this regard.

THE CONSTITUTION OF INDIA

PREAMBLE

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a ¹[SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC] and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the ²[unity and integrity of the Nation];

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

CONSTITUTIONAL PROVISIONS ON HUMAN RIGHTS

In India, human rights simply did not come to force with the adoption of the Constitution and required a concrete plan and system to enforce as well as bring this Constitution in real practice. The fight for human rights was an integral part of our freedom struggle. It was not simply a fight for national or political independence, but also one, which envisaged a just, and pluralistic society based on respect and tolerance for the different sections of our diverse society.

The provisions of the fundamental rights laid down in the Indian constitution have a similarity with the rights given in the United Nations

¹ Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 2, for "SOVEREIGN DEMOCRATIC REPUBLIC" (w.e.f. 3rd January 1977.)

² Subs. by s. 2, *ibid*, for "unity of the nation" (w.e.f. 3rd January 1977).

Declaration of Human Rights (UNDHR) both in form and context. These include Articles 14, 15, 16, 19, 20, 21, 23, 25, 29, and 31. The first of these Articles i.e., Article 14 is concerned with equality before law. Article 15 relates to the prohibition of discrimination on grounds of opportunity in matters of public employment. Article 16 is about equality of opportunity in matters of public employment. Article 19 deals with freedom of speech and expression; freedom of assembly; freedom of association; freedom of movement; freedom of residence and settlement; freedom of profession, occupation, trade or business.

Clause (1) of Article 20 is about prohibition against *ex-post facto* legislation; clause (2) deals with immunity from double prosecution and punishment while clause (3) relates to the accuser's immunity from being compelled to give evidences against himself.

Article 21 of the Indian Constitution provides that, no person shall be deprived of his life or liberty except according to the procedure established by law. Article 22 relates to preventive detention, while Article 23 guarantees the right against exploitation Articles 25-28 deal with freedom of conscience and free profession, practice and propagation of religion. Cultural and Educational rights are provided in Article 29 and 30.

Article 32 deals with right to constitutional remedies for enforcement of fundamental rights. Through Article 32, the Supreme Court acts as the guardian of the Fundamental Rights enshrined in our Constitution. "The original jurisdiction of the Supreme Court (under Article 32) extends to cases of violation of the Fundamental Rights of individuals and the Court can issue several writs for the enforcement of these rights. It is a unique feature of our Constitution that in principle, any individual can straightaway approach the highest court in case of violation of his Fundamental Rights" (Kashyap, 2005: 238).

Besides the Directive Principles of States Policy enshrines the economic rights which are not enforceable. As Leela Simon states, "The Directive Principles of State Policy under Part IV of the constitution incorporate the right to work and fair wages; to equal pay for equal work; to improved living

conditions; to education; to participate in cultural life; and to the highest attainable standard of physical and mental health. All these rights are not enforceable by a court, though judicial activism has made them more real for the people. (Nirmal, Chiranjivi J. and Leela Simon, 2000:44).

SIMILARITIES BETWEEN THE CONSTITUTIONAL PROVISIONS AND THE INTERNATIONAL NORMS

There are many similarities between the provisions laid down in the Indian Constitution and those in the UHDR and the Covenant on Civil and Political Rights (1966) etc. For example, the provision of equality before law and equal protection of laws are provided in both the Indian constitution and the Covenant on Civil and Political Rights. Article 14(1) of the constitution says, “The State shall not deny any person equality before law or equal protection of the laws within the territory of India”. There is a lot in common with regard to provisions on forced or bonded labor in these documents. Article 23(1) of our constitution and article 8(3) agree over the issue of bonded labor. (*See table 2*)

TABLE - 2
SIMILARITIES BETWEEN UNIVERSAL DECLARATIONS OF HUMAN RIGHTS AND INDIAN CONSTITUTIONS

Rights (1)	Universal Declaration of Human Rights (2)	Indian Constitutions (3)
Equality before law	Article 07	Articles 14
Equality of opportunity in matters of public employment.	Article 21(2)	Article 16(1)
Protection of certain rights regarding freedoms of speech, etc.	Article 19	Article 19(1) A
Protection in respect of conviction for offences.	Article 11(2)	Article 20 (1)

(1)	(2)	(3)
Protection of life and personal liberty.	Article 9	Article 21
Prohibition of trafficking in human beings and forced labor.	Article 14	Article 23
Freedom of conscience and free Profession practice and propagation of religion.	Article 18	Article 25 (1)
Protection of Interests of minorities.	Article 22	Article 29 (1)
Right of minorities to establish and administer Educational Institutions.	Article 20(3)	Article 30(1)
Right to property	Article 17 (2)	Not a fundamental rights after amendment 44, but now in Article 300A.
Remedies for enforcement of rights conferred by this part.	Article 8	Article 32

TABLE - 3
SIMILARITIES BETWEEN COVENANT ON CIVIL AND POLITICAL RIGHTS AND INDIAN CONSTITUTION

Rights (1)	Convention on Civil and Political Rights (2)	Indian Constitution (3)
Prohibition of trafficking in human beings and forced labor.	Article 8(3)	Article 23
Equality before law	Article 14(1)	Article 14

(1)	(2)	(3)
Prohibition of discrimination on ground of religion, race, caste, sex or place of birth.	Article 26	Article 15
Equality of opportunity in matters of public employment.	Article 25(c)	Article 16 (1)
Protection of certain rights regarding freedom of speech.	Article 19(1, 2)	Article 19
To assemble peaceably and without arms.	Article 21	Article 19 (1b)
To form association or unions	Article 22 (1)	Article 19 (1c)
To move freely throughout the territory of India.	Article 12 (1)	Article 19 (1d,e,g)
Protection in respect of conviction for offences.	Article 15 (1), Article 14 (7)	Article 20 (1)(2)
No person accused of any offence shall be compelled to be a witness against himself.	Article 14 (3g)	Article 20(3)
Protection of life and personal liberty.	Article 6 (1), Article 9 (1)	Article 21
Protection against arrest and detention in certain cases.	Article 9 (2,3,4)	Article 22
Freedom of conscience And free profession, practice and propagation of religion.	Article 18 (1)	Article 25

TABLE – 4
SIMILARITIES BETWEEN COVENANT ON ECONOMICS,
SOCIAL AND CULTURAL RIGHTS AND INDIAN
CONSTITUTION

Rights Indian Constitution (1)	Convention on Economics, Social and Cultural Rights (2)	Indian Constitution (3)
Equal pay for equal work	Article 7a (1)	Article 39d
Provision for just and humane conditions of work and maternity relief.	Article 7b	Article 42
Right to work, to education and public assistance in certain cases.	Article 6(1)	Article 41
Opportunity for children	Article 10 (3)	Article 41f
Compulsory education for children	Article 13 (2a)	Article 45
Living wage, etc. for workers	Article 7(a)(11)	Article 43
Nutrition and standard of living	Article 7 (d) Article 11	Article 47

Although, not all countries of the world operationalize the principles and goals enshrined in the UDHR in totality. Hence, in practice, achieving human rights for every human being is very difficult and depends on different values and cultural contexts. The term has come to acquire different meaning in different local jurisdictions resulting in differential application. It cannot be denied that Asian societies put more emphasis on a group-political or social, rather than the individual rights. However, at the same time, it cannot be argued that human values and rights are not important in Asian societies and political system. As Amartya Sen has pointed out the concerns for the rights of the individual are not entirely a gift of western societies.

Many scholars have discussed the impact of regime on state behaviour and outcomes. “However, there is no general agreement on this point and three basic orientations can be distinguished. The conventional structural (G.C.P.) Hb 2798–5 (500-2-2017)

views the regime concept as useless if not, misleading. Modified structural suggests that regime may matter, but only under fairly restrictive conditions, and Grotian see regimes as much more pervasive, as inherent attributes of any complex persistence pattern of human behaviour” (Krasner 1982:190)

In the case of India, as discussed at length, a great degree of synergy exists between the constitutional provisions on fundamental rights, directive principles of State policy and the UDHR and many other human rights treaties. India is also a party to a number of UN treaties and declarations on human rights, including ICCPR, ICESCR (accession), and CRC, CERD and CEDAW (Ratified) and on CAT (signature).

The constitutional provisions on Fundamental Rights (under Part III) and the Directive Principles of State Policy (part IV; though not enforceable) provide a formidable set of rights to its citizens. Many of them reflect the principles enshrined in the Universal Declaration of Human Rights, such as right to life, liberty, equality before law, freedom of speech, equality of opportunities, religious rights and remedies for enforcement of rights, etc.

However, in practice, violations of human rights are not much uncommon. Constitutionally, the fundamental rights of people remained suspended in the case of proclamation of emergency. In addition, a number of draconian laws (mostly extraordinary laws for “tackling” counter insurgency and terrorist activities) including the AFSPA, NSA, POTA, TADA, COFEPOSA are invoked and/or in operation, which violate the rights of people. Hence, in practice several cases of violations of human rights are reported, especially fake encounter, preventive detention, police torture, enforced disappearances, etc. In addition, instances of discrimination on ground of caste and religion are not too infrequent, not to mention the denial of social and economic rights because of high incidences of poverty, illiteracy and malnutrition. According to P. N. Bhagwati (1980) it is only through achievement of social and economic rights that civil and political rights can become a practical reality for the entire people of country. Otherwise, civil and political rights will remain a mere illusion.

The Supreme Court has always taken a serious view of the prevalence of torture and other forms of degrading methods in police practices and other spheres of our social and political life. An important device which could help

check such menaces is the “public interest litigation”. By this way, it could entertain press reports, letters and petitions from persons lacking a formal *locus standi*, as writs in public interest.

To restore the faith in the Indian political system, one needs to ensure that all allegations of enforced disappearances and extra-judicial killings are independently and impartially investigated; anyone suspected of such crimes should be prosecuted in a fair manner. It is equally important that the victims are adequately compensated and rehabilitated in order to provide a healing touch and instil faith in Indian democracy.

In this context, a constructive and positive role of NGOs is very important. It is important for NGOs to portray such problems and campaign for realizing the human rights of everyone and everywhere. Human rights NGOs such as Amnesty International play an important role in shaping human rights norms and standards. They also play an important role in upholding human rights as envisaged under the United Nations Declaration of Human Rights and other human rights instruments by pressurizing governments to sign and ratify the treaties that embody human rights norms and have worked to increase the use of the complaint mechanisms under these treaties. They also perform the task of creating awareness about human rights. Investigation and documentation by NGOs has been vitally important in bringing human rights abuses to the attention of the United Nations, the international community and the public at large. They are often useful owing to the fact that they can resort to the use of informal channels to disseminate information about human rights even in countries where the government regime is repressive.

The role of media as a watchdog is equally important in the protection and promotion of human rights. It is however, witnessed that the media fails either to highlight the instances of human rights violations, or willfully collaborates with the state agencies to cover-up the incidents. At times, the media also plays a negative role by sensationalizing an incident (sometimes referred to as trial by media), which can have grave repercussions for both the society and the individual. Hence media must be sensitized to play an important role in securing rights of the people.

Another effective tool to fight police excesses, torture and custodial deaths is the Right to Information (RTI) Act, if it is applied diligently. It is seen in most cases, the security forces and the police tend to hide the evidence under different pretends. The official secrets Act of 1923 is an instrument in their hands. It could be countered by the RTI Act. If the information about a particular instance of extra-judicial killing becomes known, it could be pursued by civil society and the judiciary can provide justice to the aggrieved parties.

It would not be wrong to say that the violation of human rights can be controlled only when there is a firm determination for the human dignity and values. It is crucially important that the Indian society at large, including the political elite, both civil and police administration, the media, civil society and intellectuals who yield influence in molding the opinion in the society, reject and renounce their ambivalent and opportunistic attitude towards the violation of human rights.

RIGHT TO LIFE AND PERSONAL LIBERTY

Art. 21 of our Constitution guarantees right to life and personal liberty.

The Article runs as follows :—

“No person shall be deprived of his life or personal liberty except according to procedure established by law.”

The first draft to the Constituent Assembly of this Article appeared in the following shape:—

“No person shall be deprived of his life or personal liberty without due process of law, nor shall any person be denied equality before law within the territories of the federation.”

The Drafting Committee headed by Dr. B. R. Ambedkar, however, substituted the words “except according to procedure established by law” since the former is more specific.

WIDER IMPLICATIONS OF RIGHT TO LIFE

Our Apex Court has been expanding over the decades, the dimensions of Art 21 *i.e.* Right to Life and personal Liberty. In **F. C. Mullin vs. The**

Administrator, Union Territory of Delhi and others (1981 2 SCR 516) Justice Bhagwati observed :—

“We think that the right to life includes the right to live with human dignity and all that goes with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms freely moving about and mixing and mingling with fellow human beings.....Every act which offends against or impairs human dignity would constitute deprivation protanto of this right to life and it would have to be in accordance with reasonable, fair and just procedures established by law which stands the test of other fundamental rights.”

The expression ‘life’ does not mean animal existence. Right to life guaranteed under Art. 21 of the Constitution have certain positive aspects and as such subject to well-organised limitation apart from obligation of the State not to deprive a person of his life except in accordance with a valid law.

It is heartening to note that the Supreme Court has now been widening the scope of Art. 21, though earlier in **A. K. Gopalan vs. State of Madras** (AIR 1950 SC 27), the Court had taken very narrow view of Art. 21.

Life in its expanded horizons today includes all that give meaning to a man’s life, including his tradition, culture and heritage, and protection of that heritage in its full measure would certainly come within the encompass of an expanded concept of Article 21 of the Constitution.

RIGHT TO PRIVACY AS A PART OF ART. 21

Initially the Supreme Court refused to allow the right to privacy as a part of Art. 21 in **Kharak Singh v. State of U.P.** (AIR 1963 SC 1295). In this case the petitioner’s name was recorded in a History sheet maintained by the police on the basis of accusations and the movement of the petitioner was under surveillance. Ayyangar J. speaking for the majority struck down clause (b) of regulation 236 of the U. P. Police Regulations authorising “domiciliary visits” as violative of Article 21 of the Constitution as the said administrative regulations were not backed by authority of any legislation

and rejected rest of the challenge to the above referred regulations. In the majority judgement, Ayyangar J. held as under :—

“As already pointed out, the right of privacy is not a right guaranteed under our Constitution and therefore the attempt to ascertain the movements of an individual which is not merely a manner in which privacy is invaded is not an infringement of a fundamental right guaranteed by part III.”

The Supreme Court has, however, subsequently modified its views and has now recognised ‘right to privacy’ as a part of Art. 21. In **State of Maharashtra and another v. Madhukar Narayan Mardikar** (AIR 1991 Supreme Court, 207) the delinquent police officer was dismissed on the ground that he had visited the hutment of one Banubi on the night of 13th November 1965 all alone in police uniform and had tried to ravish her. There was some evidence on record that Banubi was unchaste woman. In the above referred judgement, Ahmadi J. speaking for the Bench of the Hon’ble Supreme Court observed as under :—

“She was honest enough to admit that dark side of her life. Even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. So also it is not open to any and every person as and when he wishes.... She is equally entitled to the protection of law. Therefore, merely because she is a woman of easy virtue, her evidence cannot be thrown overboard.”

In **Smt. Saroj Rani v. Sudarshan Kumar Chadha** (AIR 1984, SC 1962) the Supreme Court over ruled the Judgement of High Court of Andhra Pradesh in the case of **T. Sareetha v. Venkata Suppiah** (AIR 1983 Andhra Pradesh, 356) and upheld constitutional validity of Section 9 of Hindu Marriage Act, 1955 providing for remedy of restitution of conjugal rights. The Andhra Pradesh High Court had declared that the said section was a savage and barbarous remedy violating the right to privacy and human dignity guaranteed by Art. 21 of Constitution. The learned Judge of High Court of Andhra Pradesh referred to the Scarman Commissions report in England recommending abolition of the remedy.

The Supreme Court of India upheld Constitutional validity of section 9 of the Act on the ground that the object of Section 9 of the Act was to preserve the institution of marriage.

The Hon'ble Mr. Justice Sabyasachi Mukarji speaking for the bench observed that Section 9 of the Act served a social purpose as an aid to the prevention of break up of marriage and must be viewed in its proper perspective.

COMPENSATORY JUSTICE FOR VIOLATION OF ART. 21.

As Justice D. R. Dhanuka has rightly observed -

“The Indian Judiciary has totally revolutionized this branch of the subject by laying down that the State or the Central Government shall be liable to pay compensation to the victims of violation of fundamental rights and such compensation could be awarded by the writ court while disposing of writ petitions without directing the party aggrieved to file a separable suit.”

Article 39-A of the Constitution reads as under:-

“39-A. Equal justice and free legal aid -

The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes 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.”

The said directive principle is read by the Apex Court in Article 21 of the Constitution as an integral part thereof.”

RIGHT TO A CLEAN ENVIRONMENT AS A RIGHT TO LIFE

In the **Doon Valley Case** (AIR 1985 SC 652) Art. 21 was invoked to prevent the degradation of the Mussoorie Hills due to the mining operations there. The court held that Art. 21 included in its sweep a right to clean environment and that the permanent assets of the mankind cannot be allowed to be exhausted in our generation.

In **M. C. Mehta v. Union of India** (AIR 1988 SC 1037) the Supreme Court reiterated the fundamental right to a clean environment and held that pollution treatment plant is a pre-condition of the existence and continuation of an industry.

It observed;

“Just like an industry which cannot pay minimum wages to its workers, cannot be allowed to exist, a tannery which can not set up a primary treatment plant cannot be permitted to continue.”

In the **Oleum Gas Leak Case** (AIR 1986 SC) the rule of strict liability was applied without exception to a polluting undertaking employing hazardous process of manufacture. This was again a writ under Art. 21 of the Constitution.

Bhagwati C. J. Observed in this case:

“An enterprise engaged in hazardous or inherently dangerous industrial activity posing a potential threat to the health and safety of persons working in the factory and residing in the surrounding area was under an obligation to pay compensation for the injury caused.”

“It is of considerable public interest to point out that in English law the Courts recognize certain limitations and exceptions to the doctrine of absolute liability as propounded in the case of **Rylands v/s Fletcher**.”

“We, in India, cannot hold our hands back and I venture to evolve a new principle of liability which English Courts have not done. We have to develop our own law and if we feel that it is necessary to consider a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concomitant to an industrial economy, there is no reason why we should hesitate to evolve such principles of liability merely because it has not been so done in England.”

ENUMERATION OF POLITICAL AND CIVIL FUNDAMENTAL RIGHTS UNDER THE CONSTITUTION OF INDIA

The political and civil rights are termed as ‘Fundamental Rights’ and enshrined in Part III of the Indian Constitution which includes the following rights :—

- (1) Right to equality - Articles 14, 15 and 16.
- (2) Right to six freedoms - Article 19.

- (a) Freedom of speech and expression.
 - (b) Freedom to assemble peacefully and without arms.
 - (c) Freedom to form associations or unions.
 - (d) Freedom to move freely throughout the Territory of India.
 - (e) Freedom to reside and settle in any part of the territory of India.
 - (f) Freedom to practice any profession or carry on any occupation, trade or business.
- (3) Right to life and personal liberty - Articles 20, 21 and 22.
 - (4) Right to freedom of religion - Articles 25, 26, 27 and 28.
 - (5) Cultural and educational rights - Articles 29 and 30.
 - (6) Right to property - Article 31.
(The 44th amendment has deleted this right and re-enacted it in Article 300 A, as constitutional right).
 - (7) Right against exploitation - Articles 23 and 24.
 - (8) Right to Constitutional remedies - Article 32

ENUMERATION OF CULTURAL, SOCIAL AND ECONOMIC RIGHTS UNDER THE DIRECTIVE PRINCIPLES OF THE CONSTITUTION OF INDIA

Part IV of the Indian Constitution detailing ' Directive Principles of State Policy ' lays down the following rights. The socialist and welfare precepts have particularly been incorporated in Article 39 of the Constitution.

- (1) Right to adequate means of livelihood - Article 39 (a).
- (2) Right against economic exploitation - Article 39(e). The health and strength of both sexes and tender age of children are not abused and are not forced by economic necessity to enter avocations unsuited to their age or strength.
- (3) Right to both sexes to equal pay for equal work - Article 39(d).

(4) Right to work - Article 41.

(5) Right to leisure and rest - Article 41.

(6) Right to public assistance in case of unemployment, old age sickness (Social Security) - Article 41.

Part IV of the Constitution also incorporates the Directive Principles of economic and social justice and certain ideals which the State should strive to achieve. Article 38 directs the State to bring about the welfare of the people by securing and protecting effectively a social order where justice, social, political and economic shall inform all the institutions of national life.

(7) It directs the State to create conditions where there will be no concentration of wealth and means of production to the common detriment and where the ownership and control of the material resources, of the community are so distributed as best to sub-serve the common good. [Article 39 (b) and (c)].

Further, the Directive Principles are provided in the Articles of the Constitution mentioned herein below:

(8) Article 42 - Just and human conditions of work and maternity leave.

(9) Article 43 - Mandatory Payment of living wages etc. to workers.

(10) Article 44 - Uniform Civil Code.

(11) Article 45 - Free and Compulsory Education.

(12) Article 46 - Promotion of educational and economic interests of scheduled castes, scheduled tribes and other weaker sections.

(13) Article 47 - Duty of the State to raise the level of nutrition and the Standard of living and to improve public health.

(14) Article 48 - Organisation of agriculture and animal husbandry.

(15) Article 49 - Protection of monuments and places and objects of national importance.

(16) Article 50 - Separation of Judiciary from Executive.

(17) Article 51 - Promotion of international peace and security.

By 42nd Amendment of the Constitution, three more Articles were added therein:

(18) Article 43A - Participation of workers in management of industries.

(19) Article 39A - Equitable justice and free legal aid.

(20) Article 48A - Protection and improvement of environment and safeguarding of forests and wild life.

These additions by amendments are unexceptional.

Thus, a broad statement of the eminent scholar, K. Subba Rao, may be aptly acceded to: "What American and other highly developed democratic countries have achieved through judicial decision and pragmatism has been crystallized, embodied and improved upon by the Indian Constitution. (K. Subba Rao, Enforcement of Basic Human Rights in Law and the Commonwealth, 73).

UNENUMERATED INDIVIDUAL RIGHTS OR 'NATURAL RIGHTS' UNDER WRITTEN CONSTITUTION

The general rules of interpretation in this context may be borne in mind :—

(a) Generally a statutory enumeration excludes every thing other than what is enumerated. (Crawford, Statutory Constitution; P. 333).

(b) Nonetheless, a liberal or progressive interpretation is not debarred from being given to the express provisions of the Constitution, to meet the growing needs of civilization or the changes in the social background; for, a Constitution is an organic instrument for the governance of the country.

In India, the Supreme Court has propounded the theory of 'emanation' has departed from the traditional view that Part III of the Constitution provides an exhaustive list of Fundamental Rights. The theory, basically means that even though right is not specifically mentioned in Part III, it may still be regarded as a fundamental right if it can be regarded as an integral part of a named fundamental right; in other words, "it 'emanates' from a named fundamental right or its existence is 'necessary' in order to make the exercise of a named fundamental right meaningful and effective'. (**Maneka vs. Union of India**, A.I.R. 1978 S.C. 597, Para 77).

Applying the 'emanation' theory, the Supreme Court has evolved the following unenumerated rights as, Fundamental Rights :

- (1) The right to privacy (as an emanation from Arts 19(1) (d) and 21).
- (2) The right to human dignity (as an emanation from Arts 14, 19, 21).
- (3) The right to travel abroad (as an emanation from Art. 21)
- (4) The right against torture, cruel or unusual punishment or degrading treatment, (as an emanation from Art. 21); such as solitary confinement.
- (5) The right to speedy trial (emanating from Art. 21).
- (6) The right to free legal aid in criminal trial (from Art. 21).
- (7) The right against delayed execution.
- (8) The right against custodian violence.
- (9) The rights to shelter, to doctor's assistance, the right to health.
- (10) The right to pollution free environment.
- (11) The right to education of a child until he attains the age of 14.
- (12) The freedom of Press, and right to listen, and right to know.
[From Art. 19(1) (a)].

The role of media as a watchdog is equally important in the protection and promotion of human rights. It is however, witnessed that the media fails either to highlight the instances of human rights violations, or willfully collaborates with the state agencies to cover-up the incidents. At times, the media also plays a negative role by sensationalizing an incident (sometimes referred to as trial by media), which can have grave repercussions for both the society and the individual. Hence media must be sensitized to play an important role in securing rights of the people.

It would not be wrong to say that the violation of human rights can be controlled only when there is a firm determination for the human dignity and values. It is equally important that the Indian society at large, including the political elite, both civil and police administration, the media, civil society

and intellectuals who yield influence in moulding the opinion in the society should have proper approach and attitude towards the protection of human rights.

I have certain suggestions for protection of human rights.

- Education related to Human Rights be included as a part of the general curriculum.
- Research in the field of human rights to be encouraged with financial assistance which will help to develop a modern theory for human rights useful in modern times.
- The Law Enforcement Agencies be sensitized and trained to ensure the observation of human rights standards.
- A Special Law giving statutory recognition to human rights be enacted.
- Policies and programs be implemented to ensure that people have access to their rights.
- Special care be taken for protection of rights of Women and Children.

While concluding, I would say that, these rights belong to you, they are your rights, and therefore you must be familiar with them. You must help to promote and defend them for yourself as well as for your fellow human beings.”

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BIO-DATA

Full Name	DR. ANANT NAMDEORAO KALSE	
Office held and assumption of office	Principal Secretary, Maharashtra Legislature Secretariat and Secretary, Commonwealth Parliamentary Association (CPA), Maharashtra Branch.	
	B.Sc., LL.M., Ph.D. (Law), Mumbai	
Education Career (in outline only)	1979-1981 - Advocate, District and Sessions Court, Aurangabad. 1981-2003 - Joined Maharashtra Legislature Secretariat ; served in various capacities. 15th July 2003 - Secretary 2nd March 2007 - Principal Secretary	
Conferences, Seminars attended / visits abroad	2000, Hyderabad 2001, Chandigarh 2004, Kolkata 2005, Raipur	Conferences of Presiding Officers and Secretaries of Legislative Bodies in India.

	<p>2007, Thiruvananthapuram February, 2010, Bhopal June, 2010, Srinagar September, 2011, Jaipur February 2015, Lucknow January 2016, Gujarat</p>
	<p>2001, New Delhi All India Conference of Presiding Officers, Chief Ministers, Ministers of Parliamentary Affairs, Leaders and Whips of Parties on 'Discipline and Decorum in Parliament and State Legislatures'.</p>
	<p>Australia, New Zealand, Singapore, U.K., France, Italy, Belgium, Holland, Switzerland, Geneva (United Nations Office) Parliamentary Study Tour.</p>
	<p>2006, Nigeria • 52nd CPA Conference. 2015, Goa • 5th India Region CPA Conference. 2016, New Delhi • National Women Legislators Conference.</p>

<p>Academic Information</p>	<p>Delivered lectures on Parliamentary Practice and Procedure, Constitution of India, Administrative Law and Human Rights, International Law, Law of Torts, Interpretation of Statutes, Feministic Jurisprudence.</p> <p>Visiting Faculty :—</p> <ol style="list-style-type: none"> (1) Mumbai University Post Graduate Law Department. (2) SNDT University Post Graduate Law Department. (3) Government Law College, Mumbai. (4) K. C. Law College, Mumbai. (5) Yashwantrao Chavan Academy of Development Administration Institute (YASHADA), Pune. (6) Indian Institute of Public Administration Mantralaya, Mumbai. (7) Returning Officer for the Biennial Elections to the Council of States (Rajya Sabha) and Maharashtra Legislative Council since 1992. (8) Maharashtra Judicial Academy and Indian Mediation Centre and Training Institute, Uttan, Bhayander (W.), Dist. Thane. (9) Various Law Colleges and Universities in the State of Maharashtra.
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<p>Edited Books / Articles Published</p>	<ol style="list-style-type: none"> (1) Parliamentary Practice and Procedure with special reference to Maharashtra Legislature. (2) Law Making Process-An Introduction. (3) Legislative Procedure and Parliamentary Privileges-A Brief Overview. (4) An outline of Comparative Analysis of the Leading Constitutions of the world with special reference to Indian Constitution. (5) Nagpur Session - Myth and Reality - An overview. (6) Dr. Babasaheb Ambedkar Speech before the Constituent Assembly of India Thursday, dated 4th November 1948-Compilation. (7) संत साहित्य व कायदा सुव्यवस्था. (8) Salient Features of Constitution of India and Financial Business - An Overview. (9) Parliamentary Proceeding - A Brief Overview. (10) संसदीय कामकाज पद्धती व भारतीय लोकशाहीचे महत्त्व. (11) Salient features of Constitution of India and Contribution of State Legislature in the development of State and its achievements. (12) संसदीय लोकशाहीची वैशिष्ट्ये व विधिमंडळाचे कामकाज. (13) समिती पद्धती, संसदीय कामकाजाचा आत्मा. (14) संसदीय विशेषाधिकार : एक दृष्टीक्षेप. (15) Law of Parliamentary Privileges (With Special reference to Maharashtra Legislature).
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- (28) The Constitutional System of the United States of America – A Bird eye view.
- (29) Principles of Indian Constitutional Law and Legislative Functioning.
- (30) Nature, Scope, Definition of Administrative Law, Rule of Law and Doctrine of Separation of Powers – A Brief Compilation.

	<p>(31) Delegated Legislation and Control over Delegated Legislation – A Brief Overview.</p> <p>(32) Principles of Natural Justice – A Brief Overview.</p> <p>(33) Salient Features of the Constitution of India (Including Historical Genesis and Making of the Constitution) – A Broad Overview.</p> <p>(34) Delegated Legislation and Civil Service – A Brief Overview.</p> <p>(35) Federalism (With reference to Indian Federal System).</p> <p>(36) The Constitution of the United States of America 1787.</p> <p>(37) Public Interest Litigation (PIL) – A Brief Overview.</p> <p>(38) Liability of the Administration in Tort and Contract – An Overview.</p> <p>(39) Administrative Tribunal and Classification of Administrative Action – A Brief Overview.</p> <p>(40) Human Rights in Constitution of India – A Brief Lecture.</p> <p>(41) Directive Principles of State Policy.</p>
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To,
Hon'ble Dr. Anant Kalse
Principal Secretary,
 Maharashtra Legislature Secretariat
 Vidhan Bhavan, Mumbai 400 032,
 INDIA.

Sub .— Invitation for 'Chief Guest' for the Valedictory Session.

Respected Sir,

The Post Graduate Teaching Department of Law, Sant Gadge Baba Amravati University, Amravati is going to organise of One Week Short Term Programme on Human Right Education Funded by University Grants Commission. The underlying theme is to spread the awareness of Human Rights and train the participants about the importance and efficacy so that the participants would be able to inculcate it through their curriculum amongst the students.

The participants are around 25 in number and senior teacher who had already completed more than 10 years of their service as full time teacher. The programme will commence from 13th of February, and concluded on 18th February, 2017.

Sir, you being the expertise, and well aware about the subject theme, the Department of Law is willing to invite you as Chief Guest for the valedictory session scheduled on 18th February, 2017. The programme will last for an hour and approximately end by 2-00 p.m.

If your goodself extend a kind consent for the same, the detail programme, Invitation letter and dais arrangement will be sent for your further consultation.

Thanking you.

Yours faithfully,

sd/-

DR. V. S. CHOWBE,
 Convener and Head,
 Department of Law,
 Dean, Faculty of Law,

Sant Gadge Baba Amravati University.