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The state practice of India and the development of international law : selected areas

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CHAPTER V

EVOLVING LAWS AND PRACTICES OF INDIA ON HUMAN RIGHTS

5.0. Introduction

This chapter examines the evolution and implementation of various human rights principles and practice in the context of India.⁴³⁸ This chapter will address the following issues: how laws and practices of India recognize, regulate and provide for the enforcement of human rights? How deep is the influence of the civilization in today's context and contemporary circumstances? What are the prominent provisions in the Constitution of India and how do these provisions guide the three organs to legislate, execute, implement and enforce human rights? The universality, indivisibility and interdependence of human rights and development of human being are well known and well established.⁴³⁹ The holistic aim of the Indian human rights practice is to ensure a dignified place of each and every human being in the society. Which laws, practices and means and mechanisms has India implemented to achieve this holistic aim, since its independence? What shortcomings can be noted? This chapter will focus on major human rights issues and analyse these from practical and policy perspective.⁴⁴⁰

India's approach to international human rights law needs to be appreciated on the basis of its ancient civilization. The Indian approach neither emphasizes too much on civil and political participation in the process of government,⁴⁴¹ as seen in West Europe nor is it obsessed with the approach where state plays the most

⁴³⁸ Sabira Khan, *Human Rights in India: Protection and Violation* (Delhi: Devika Publications: 2004); Indu Singh, *Human rights in India and Pakistan*, (New Delhi: Deep and Deep publications: 2004); B. P. Singh, *Human Rights in India* (New Delhi: Deep and Deep publications: 2004); K. P. Saksena, *Human Rights: Fifty years of India's independence* (New Delhi: Gyan Publishing House: 1999); Chiranjivi Nirmal, *Human Rights in India* (Oxford : Oxford University Press: 2012).

⁴³⁹ Arambulo demonstrates the indivisibility and interdependence of human rights and shows the justiciability of economic and social rights. Her emphasis on core obligations by using the right to food and right to education are excellent examples, even in the context of India. She extensively refers the Vienna Declaration and Program of Action which was one of the key results of the World Conference on Human Rights held in Vienna 1993. The Conference established the interdependence of democracy, economic development and human rights. Kitty Arambulo, *Strengthening the Supervision of the International Covenant on Economic, Social and Cultural Rights, Theoretical and Procedural Aspects*, (Oxford: Intersentia, Hart Publishers, 1999). The work of Toebes Birgit also establishes the principle of interdependence and indivisibility of economic, social and cultural rights and justiciability of the same. C. A. Toebes Birgit, *The Right to Health as a Human Right in International Law*, (Oxford: Intersentia, Hart Publishers, 1999). Tomas Amparo, "A Human Rights Approach to Development", Primer for Development practitioners, April 2005, Website referred: <http://www.unifem.org.in/PDF/RBA%20Primer%20.pdf> accessed on 28 September 2009.

⁴⁴⁰ It shall be kept in mind that although the Indian human rights laws, practice and jurisprudence do not expressly refer the *Magna Carta* (1215), *Petition of Rights* (1627), and the *Bill of Rights* (1688) in England, and the *Declaration of the Rights of Man and Citizens* (1791) in France, *Philadelphia Constitutional Convention* (1787) of the USA, *Soviet Bill of Rights* of "bread, land and all power to the Soviets", these landmark documents have enormous value underpinning in the evolution of the civil and political rights system in modern (to be specific post 1947) India. The Indian human rights system in the post 1947 era has been impacted by thus, a Western as well as Soviet human rights system. As Chaubey mentions, "...The Philadelphia constitutional convention (1787), and the French national assembly (1789-91) were convened at the height of two major national revolutions, the constituent assembly of India, on the other hand, came through a deal that was backed by the strength of a mass movement, but was not exactly a product of it", quoted in Aswini Ray, *Ibid*, p. 3412. Shibani Kinkar Chaubey, *Constituent Assembly of India*, New Delhi (1973). The Philadelphia Convention is known to have identified social justice as vehicle for ensuring peace and prosperity in the world.

⁴⁴¹ R. Hauser, 'A First World View', in D. P. Kommers and G. Loescher (eds.), *Human Rights and American Foreign Policy*, (Notre Dame, 1979).

important role in basic rights and freedoms for international peace and security, as observed in the former Soviet bloc countries.⁴⁴² Unlike the Soviet theory, which emphasized that rights and obligations are defined solely by the state, the Indian system is based on the sources of human rights as derived from the functioning of the communities. As communities vary from region to region, the nature and context of Indian human rights also vary and needs to be appreciated in the social system of communities of the particular region.

The Constitution of India is widely considered a Rights-based Constitution.⁴⁴³ The Preamble, the Fundamental Rights and State Directive Policy provisions direct the state to protect and promote human rights, including women and children rights.⁴⁴⁴ Part III and Part IV of the Constitution of India stipulate the law of land in the realm of human rights, specifically, fundamental rights and directive principles of the state policy.⁴⁴⁵ The Indian constitution has made a unique division between civil and political rights on the one hand and economic, cultural and social rights on the other hand.⁴⁴⁶ While the first set of rights find expression in what is called fundamental rights under Part III and which is enforceable, the second set of rights are incorporated in Part IV which is called Directive Principles of State and is a non-justiciable part of the Constitution. With the proactive role of the Indian judiciary,⁴⁴⁷ one can observe that the division has blurred and the judiciary has made significant contribution to the process of enforcing the economic, cultural and social rights in India. The third generation of rights, such as the rights relating to development, environment,⁴⁴⁸ gender-justice, minority rights,⁴⁴⁹ education,⁴⁵⁰ child and bonded labour, refugees and displaced persons have become more pronounced since the 1970s and acquired significant momentum since 1991, i.e. since the liberalization of the Indian

⁴⁴² G. Tunkin, *Theory of International Law*, (London, 1974).

⁴⁴³ Granville Austin, *The Indian Constitution Cornerstone of a Nation* (New Delhi: Oxford University Press, 1972); B. Shiva Rao, *The Framing of India's Constitution*, Vol. 1 (New Delhi: Indian Institute of Public Administration, 1968); Arthur Berriedale Keith: *A Constitutional History of India 1600-1935* (New Delhi: DK Publishers, 1996).

⁴⁴⁴ The Indian human rights model, especially immediately after the independence is largely inspired by the Irish model.

⁴⁴⁵ Although for a populist, the fundamental rights in the Indian constitution are unique model, the provisions on Fundamental Rights have been subjected to severe criticisms. See A. R. Desai, *Violation of Democratic Rights in India*, (Bombay: Popular Prakashan, 1986); Gobind Mukhoty "The Indian Constitution and Civil Liberties" in A. R. Desai, *Violation of Democratic Rights in India* (1986); P. Padmanabham, "Undemocratic Heart of Indian Constitution" in A. R. Desai, *Violation of Democratic Rights in India* (1986).

⁴⁴⁶ The first ever resolution on civil rights was passed by the Congress Party at its Karachi Session in 1931 which demanded civil liberties and equal rights for citizens. It appears that the rights of individuals had been of a less concern in the pre-independence era. For example, Gandhiji's efforts were focussed on the rights of communities, such as village community. Aswini Ray, *Ibid*. p. 3411.

⁴⁴⁷ P. Hemlataha Devi, *Impact of Judicial Pronouncements on the Status of Women in India and USA a Comparative Study* (Hyderabad: Indian Institute of Public Administration, 2003).

⁴⁴⁸ M. C. Mehta, *In the Public Interest: Landmark Judgments and Orders of the Supreme Court of India on Environment and Human Rights, Vol. I* (New Delhi: Prakriti Publications, 2009); _____ *In the Public Interest: Landmark Judgments and Orders of the Supreme Court of India on Environment and Human Rights, vol. II* (New Delhi: Prakriti Publications, 2009); SAHRDC, *Handbook of Human Rights and Criminal Justice in India* (Oxford: OUP, 2010).

⁴⁴⁹ UN established the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities in 1947. M. Weller, *Universal Minority Rights: A Commentary on the Jurisprudence of International Courts and Treaty Bodies*, (Oxford: 2007); J. Rehman, *The Weaknesses in the International Protection of Minority Rights*, (the Hague: 2000).

⁴⁵⁰ While these rights are called third generation human rights, it may be noted that Annie Besant's draft on Commonwealth India Bill, 1925 envisaged right to education and equal access to roads, courts and other public places.

economy.⁴⁵¹ This does not in any way mean that the Indian system has minimized the importance of civil and political rights, as perceived mainly by the Western countries and their authors. Their perception that developing countries including India have tended to lose the priority of civil and political rights due to general developmental issues is equally questionable.⁴⁵² India and countries in similar situations face a challenge of striking a balance between universalism of human rights and the relativism of socio-cultural-religious traditions.

Protection and promotion of human rights is an integral element of India's foreign policy. Intervention and efforts of India in Bangladesh in the early 1970s, Sri Lanka in the late 1980s and Nepal in late 2010, Myanmar,⁴⁵³ and Pakistan, all can be seen in the larger perspective of India's support for the assertion of peoples' right.⁴⁵⁴ India is also actively pursuing her efforts to respect the rights of aboriginal populations and minorities in its immediate neighbourhood. India's support for the establishment of democratic rights and preservation of human rights is likely to become and remain a very important element of its foreign policy.⁴⁵⁵

For the promotion of human rights, India has enacted the Right to Information Act, 2005 (No. 22 of 2005), the Protection of Human Rights (Amendment), Act (No. 49 of 2000) and the National Human Rights Commission (Procedure) Regulations, 1994. For terrorism menace, it has enacted the Armed Forces Special Powers Act (AFSPA) and the Disturbed Areas Act, the National Security Act, the Public Safety Act, the Unlawful Activities (Prevention) Act and the Religious Institutions (Prevention of Misuse) Act. For women, a

⁴⁵¹ Following the emergency in India, the NGO movements grew and demanded for the civil and political democratic rights whereas since 1991, the NGO movements have focussed more on third generations of human rights. This is in consonance with the process of the stabilisation and consolidation of the democratic institutions of governance in India and outcomes of the liberalisation process, respectively. This, however, not to suggest that the civil and political democratic rights movements are becoming less important. The four events since 1970s have had singularly unique contribution to the growth and development of the human rights laws, practice and jurisprudence in India. The Emergency period 1975-77, the appeasement policy in form of implementation of the Mandal Commission report concerning the quota system by the Minority Government in late 1980s, first wave of liberalisation of Indian economy in early 1990s and the assertion of Indian supremacy in the wake of Nuclear explosion in late 1990s, have made singular impacts and any historian of human rights in India can observe that the current human right systems in India have found significant inspirations from these political, social, economic and military watershed events of India.

⁴⁵² M. Nawaz, "The Concept of Human Rights in Islamic Law" Symposium on International Law of Human Rights, 11 *Howard Law Journal*, 1965, p. 257; T. van Boven, "Some Remarks on Special Problems Relating to Human Rights in Developing Countries", 3 *Revue des Droits de l'Homme*, 1970, p. 383; V. Vereshchetin and R. Müllerson, "International Law in an Interdependent World", 28 *Columbia Journal of Transnational Law* 1990, pp. 291, 300; R. Emerson, "The Fate of Human Rights in the Third World", 27 *World Politics*, 1975, p. 201; G. Mower, "Human Rights in Black Africa", 9 *Human Rights Journal* 1976, p.33; M. Nawaz, 'The Concept of Human Rights in Islamic Law' Symposium on International Law of Human Rights, 11 *Howard Law Journal*, 1965, p. 257.

⁴⁵³ India took the lead in supporting democracy and the elected leaders in Myanmar. The Indian Embassy often provided shelter to students escaping the military regime and provided food and shelter. India, at times, stopped its technical assistance, used the Reserve Bank of India to stall trade and economic contacts with Myanmar. I. P. Khosla, "India and Myanmar", *Indian Foreign Policy: Challenges and Opportunities* (New Delhi: Foreign Service Institute, 2007), p. 604.

⁴⁵⁴ Madhup Mohta, "An Inquiry into India's International Identity", in *Indian Foreign Policy: Challenges and Opportunities*, (New Delhi: Foreign Service Institute, 2007), p. 42. It can be seen that India has been influential in restoring democracy in the distant countries like Fiji, Trinidad and Tobago, former Yugoslavia and Cambodia, Middle East and Africa.

⁴⁵⁵ Ross N Berkes, and Mohinder S Bedi, *The Diplomacy of India: India's Foreign Policy in the United Nations* (Stanford: Stanford University Press, 1958); B. V. Govinda Raj, *India and Disputes in the United Nations 1946-54* (Bombay: Vora & Co, 1958); Ernst Haas, *Beyond the Nation State: Functionalism and International Organisation* (Stanford: Stanford University Press, 1964).

range of enactments are existing, such as the Dowry Prohibition Act, the Domestic Violence Act,⁴⁵⁶ the Equal Remuneration Act, 1976; the Prevention of Immoral Traffic Act, 1956; the *Sati* (self-immolation upon death of husband) Prevention Act of 1987; Maternity Benefit Act 1961 (No. 53 of 1961); the Employees' State Insurance (Central) Rules, 1950, among other acts. Thus, the overview aims to analyse how many international instruments India has ratified, how India has fulfilled its obligations under these conventions and what are the main difficulties or challenges before India in implementing some of these instruments.

The role of the judiciary in protecting and promoting as well as clarifying provisions on human rights is significant. Justices V. Krishna Iyer and P. N. Bhagwati, notably, have played an important role in expanding the scope of human rights and gave much-needed legitimacy. Their judgments on prisoner's rights,⁴⁵⁷ rights of landless labours, release of bonded labours,⁴⁵⁸ are some of the most cited case-laws in the analysis of the role of the Indian judiciary in the promotion of human rights. The Indian judiciary has directed the State to protect rights and equally, the participation of people in securing rights and giving them meaning.

5.1. Rights of the Marginalised

While the human rights activism for the rights of marginalised acquired a speedy momentum simultaneously with the first round of economic reforms and liberalization in the early 1990s, the 1970s already marked a slow but steady emergence of demands for the rights of the marginalized. This was partly due to the government policies and partly due to the Stockholm conference in 1972. The Groups' rights, collective rights and people's right were largely based on the Stockholm Conference on the Human Environment. Along with these rights, the rights of women movement also gained a significant momentum in the 1970s,⁴⁵⁹ and this may be connected to the rise of power by the late Prime Minister Mrs Indira Gandhi. However, the major boost to the movement came with the initiation of several NGOs working for women's rights, namely, the Self Employed Women's Association (SEWA), Manushi and Joint Women's Forum. These movements or organisations focused on women's status, domestic violence,⁴⁶⁰ dowry, rape, custodial violence, trafficking and labour of women⁴⁶¹ in

⁴⁵⁶ F. Agnes, 'Violence against Women: Review of Recent Enactments' in S Mukhopadhyay (ed.), *In the Name of Justice: Women and Law in Society*, Manohar Publishers and Distributors, (New Delhi: 1998).

⁴⁵⁷ S. P. Pandey, *Women prisoners and their dependent children* (New Delhi: Serials Publications, 2006); Walikhanna Charu, *Supreme Court & High Court Judgments relating to women & children* (New Delhi: Serials publications, 2005).

⁴⁵⁸ Kamala Sankaran: "Human Rights and the World of Work", 40 *Journal of the Indian Law Institute*, 1-4, (2009): *Freedom of Association in India and International Labour Standards* (Nagpur: LexisNexis ButterworthsWadhwa).

⁴⁵⁹ Flavia Agnes, *Law and Gender Inequality: the Politics of women's Rights in India*, (New Delhi: Oxford University press, 2001).

⁴⁶⁰ The 2005 Act on Domestic Violence brings to fore a new civil law on domestic violence, which provides immediate emergency remedies for women facing violence such as protection orders, non-molestation orders, the right to reside in the shared household, etc. It may be noted that domestic violence has been recognised as a crime as back as in 1983, however, the specific remedies and measures applicable for women were codified through 2005 Act – a long duration of 22 years. The 2005 Act contains remedies such as ex parte injunctions without the need for filing for divorce or maintenance, protection orders, non-molestation orders and non-contact orders, which would help the woman while criminal action is being taken against the abuser to prevent him from making contact with her and inflicting more violence. Jayana Kothari, "Criminal Law on Domestic Violence: Promises and Limits" in *The Economic and Political Weekly*, 12 November 2005, p. 4848; Savitri Goonesekere, *Violence, law and women's rights in south Asia* (Delhi: Sage Publications, 2004); Sheela Varghese, *Employment of women in the unorganized manufacturing sector* (Jaipur: University Book house (P) Ltd., 2003); V. R. Choudhari, *Commentary on Protection of Women from Domestic Violence act, 2005 and Rules with Allied Laws* (Allahabad: Premier Publishing co., 2009); Surinder Mediratta, *Crimes*

household works. What began with the domestic issues of women's rights acquired a significant political momentum when India enacted the 73rd and 74th Amendment to its Constitution introducing the reservation of 33% of the seats for women in local self-government institutions. With these amendments, women's participation in the governance and electoral process began actively.⁴⁶² Along with the women's rights movements, the mobilization efforts to bring marginalized communities in the mainstream such as Dalits (the so-called outcasts), Adviasis (tribal people – constitute approximately 8.3% of population of India), nomadic tribes and landless labours also saw major activism. One of the direct effects of these movements was their rights to land cultivated by them. As the successive governments of India began to adopt the development agenda more vigorously, several issues concerning the economic, social and cultural rights of these communities came to be more pronounced. The large scale displacements due to construction of large dams, development projects, forestry projects and, mining projects, while indirectly contributed to the economic development of these communities, these projects also impacted upon their rights. Thus, one could see that since the 1970s, the human rights movements got more integrated, acquired vision and also enabled the consolidation of various groups and movements across the country seeking comprehensively all rights – civil, political, economic, cultural and social rights. These movements also had found support in their Western counterparts.

5.2. Economic, Social and Cultural Rights (ESCR)

ESC rights became more pronounced since the early 1970s. Unlike civil and political rights,⁴⁶³ the Indian judiciary has been the most instrumental in realizing the ESC rights. Justices Krishna Iyer and P. N. Bhagwati have been largely credited for expanding the scope of Article 21 of the Indian Constitution which guarantees the Right to Life. Drawing from the Western jurisprudence and practices and deploring the state of affairs in India, the Indian judiciary contributed to the realization that the concept of the Right to Life means also the right to live with dignity including the right to livelihood, the right to education and the right to health. The active judiciary combined with human rights activists and groups contributed to the creation of institutions and mechanisms to protect human rights. Human rights studies and research also required successive governments in India to be more sensitive to the concept of integrated human rights. Participation of the Indian NGOs and the role of judiciary got even further consolidated with the Rio Conference on Environment and Development in 1992 and the Vienna Summit on Human Rights in 1993, as these conferences brought the agenda of ESC rights into nation states' daily agenda. These conferences expanded the scope and reach of human rights which found resonance also in India. The fundamental right to education, rights of self-employed women in the unorganised sectors,

against Women and the Law (Delhi: Delhi Law House, 2010); Suman Nalwa, *Law relating to Dowry, Dowry Death, Cruelty to Women & Domestic Violence* (New Delhi: Universal Law Publishing, 2011); Subhash Chandra Singh, *Recent issues concerning Violence against Women* (New Delhi: Serials Publications, 2011).

⁴⁶¹ Sunanda Goenka, *Immoral trafficking of women and children* (New Delhi: Deep and Deep publications, 2011).

⁴⁶² P. Gurjeet and M K Shah, (ed.) *The Myth of Community: Gender Issues in Participatory Development* (London: Intermediate Technology Publications, 1998); Naila Kabeer, "Resources, Agency, Achievements: Measurement of Women's Empowerment", *Development and Change*, 30, 435-63 (1999).

⁴⁶³ It is important to note that India signed the UN Covenant on the Civil and Political Rights (1966) in 1976 after the lifting of the emergency in India, which is considered as the darkest period of the Indian democracy and human rights in India. During the emergency period, practice of these rights was effectively suspended. India's signature of this Covenant is perceived to be "softening" the harsh critics of the Western democracies to the Indian emergency situation. Aswini K Ray, *Ibid*, p. 3411.

health care related rights,⁴⁶⁴ got wider and intense attention and efforts in India subsequent to these global conferences.

5.2.1. Right to Food,⁴⁶⁵ if read into the larger ambit of the Right to Life⁴⁶⁶ under Article 21 of the Constitution, is being enforced. However, the food distribution governance system remains inefficient. Hence, despite the well-intentions of the drafters of the Food Security Act and the executive authorities, the Right to Food is yet to be materialised in any meaningful sense.⁴⁶⁷ One of the issues concerning the Right to Food is who shall have the entitlement to heavily subsidized food items distributed by the government at its stores. The debate concerning the eligibility criteria for the entitled people, namely below poverty line, is unsettled. Therefore, it is difficult to implement the provisions of the Act in full spirit with intended benefits.⁴⁶⁸ Under the Right to Food, three questions are most noteworthy, which were being posed by the People's Union of Civil Liberties (PUCL). First, starvation deaths occur while there is a surplus stock of food grains in government storage houses. Does the Right to Life mean that people who are starving and who are too poor to buy food grains free of cost by the State from the surplus stock lying with the State can claim this food, particularly when it is lying unused and rotting? Secondly, does not the Right to Life under Article 21 of the Constitution of India include the Right to Food? And third, does not the Right to Food which has been upheld by the Supreme Court imply that the State has a duty to provide food especially in situations of drought to people who are drought affected and are not in a position to purchase food? To ensure the most effective implementation of the Food Security Act, India needs to employ various measures, ranging from provision of quality seeds to farmers to

⁴⁶⁴ Veena Shatrugna, *Taking charge of our bodies: a health handbook for women* (New Delhi: Penguin books India Pvt Ltd., 2004).

⁴⁶⁵ Various meaning are applied to the Right to Food, one of them is the right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.

⁴⁶⁶ Food and nutrition is a human right and this is being accepted across the world. States have obligation to ensure that all people are adequately nourished. As early as in 1948, the *Universal Declaration of Human Rights* of 1948 asserted in article 25(1) that "everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food . . .". In addition, ICESR also reaffirms these rights. As per article 11 of the ICESR "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing . . ." and also recognizes "the fundamental right of everyone to be free from hunger . . .". Furthermore, Convention on Rights of Child also affirms the right to food and nutrition. As long back as in 1999, the UN Committee on Economic, Social and Cultural Rights commented that "Fundamentally, the roots of the problem of hunger and malnutrition are not lack of food but lack of *access to* available food, inter alia because of poverty, by large segments of the world's population." George Kent poses a question in this regard, whether the reference here is to the fundamental distinction between *availability* (is there food around?) and *access* (can you make a claim on that food?). Paragraph 6 presents the core definition: The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement. See Paragraph 5 of the General Comment 12 (UN Committee on Economic, Social and Cultural Rights) 12th Session, The Right to Adequate Food (Art. 11). <http://www.earthwindow.com/grc2/foodrights/HumanRightToFoodinIndia.pdf> accessed on 27 June 2012.

⁴⁶⁷ Sampurna Gramin Yojana, Mid-day Meal Scheme, Integrated Child Development Scheme, National Benefit Maternity Scheme for BPL pregnant women, National Old Age Pension Scheme for destitute persons of over 65 years, Annapurna Scheme, Antyodaya Anna Yojana, National Family Benefit Scheme and Public Distribution Scheme for BPL & APL families directly or indirectly contribute to the realisation of the Right to Food, however, the implementation of these schemes are unable to bring desired results always and secondly, the scheme themselves are subject to misuse and implemented in far from effective manner.

⁴⁶⁸ As per the Global Hunger Index of the FAO, India ranked 66 in of 88 countries considered under this index in 2010.

long-term sustainable government storage system and revamping the public food distribution system, putting in place community and social audit systems to monitor the progress on the implementation. Issues like control food prices, clean drinking water, preservation of bio-diversity, farmers rights over land and productive resources, promotion of organic farming, public distribution system, transportation network, economic reforms, condition of landlessness, social disadvantages and political powerlessness among the most affected vulnerable groups are some of the key challenges that need to be overcome to fully realise the Right to Food.

5.2.2. Social security for employees in the unorganised sector informal economy is one of the most important economic rights related issues because a large percentage of work forces are employed in the unorganised sector.⁴⁶⁹ According to one estimate, there are around 430 million workers contributing to as much as 60% to India's GDP, in the unorganised sectors of Indian economy.⁴⁷⁰ The landless labours constitute however, the majority of this work force and do not have social security benefits to them.⁴⁷¹ The Government of India has enacted various schemes, among others the Rashtriya Bima Yojna (National Insurance Scheme) and Aam Admi Bima Yojna (Common Man Insurance Scheme) which aim to provide life insurance and health insurance coverage to the landless labours and their families.⁴⁷² The extension of these benefits can be considered as contributing to the overall realisation of the Right to Life, in its full and complete form, as interpreted by the Supreme Court of India.⁴⁷³ Furthermore, the government is planning to introduce a Comprehensive Social Security Package which will add more benefits such as maternity care, disability and pensions.⁴⁷⁴ These workforces need protection from the detrimental conditions of old age, poverty and unemployment and attendant problems of full and complete access to food, cloth, shelter, education, medical facilities. People in unorganised sectors, like any other areas of law suffer from lack of effective enforcement of provisions of laws.⁴⁷⁵

5.2.3. Public health is one of the important cornerstones for the meaningful realization of the Right to Life. The UDHR and the ICESCR stipulate that everyone has the right to a standard of living adequate for the health

⁴⁶⁹ V. Nirmala, "Indian Informal Sector Labour Market: The Formalising Problems", Paper presented for the Special IARIW-SAIM Conference on *Measuring the Informal Economy in Developing Countries*, Kathmandu, 23-26 September 2009.

⁴⁷⁰ NCEUS, *Contribution of the Unorganised Sector to GDP: Report of the Sub-Committee of a NCEUS Task Force*, Working Paper No. 2, New Delhi (2008); C. P. Chandrashekhara and Jayati Ghosh, "Recent Employment Trends in India and China: An Unfortunate Convergence", 50 *Indian Journal of Labour Economics* 3, 383-406 (2007); G. S. Bhalla, "Globalisation and Employment Trends in India", 51 *Indian Journal of Labour Economics* 1, 1-24 (2008); Himanshu, "Employment Trends in India: A Fresh Look at Past and Recent Evidence", Paper Presented at Conference on *Sustainable Developments and Livelihoods*, Delhi School Economics, New Delhi, 6 February (2007).

⁴⁷¹ Rama Martin, "The Gender Implications of Public Sector Downsizing: The Reform Program of Viet Nam", 17 *World Bank Research Observer* 2, 167-189 (2002); _____ "Globalization and Labour Market", 18 *World Bank Research Observer* 2, 159-186 (2003).

⁴⁷² Jeemol Unni and G. Raveendran, "Growth of Employment (1993-94 and 2004-2005): Illusion of Inclusiveness?" 42 *Economic and Political Weekly* 3, 196-199 (2007).

⁴⁷³ K. P. Kanan, *Informal Economy and Social Security: Two Major Initiatives in India*, 13 October 2007, National Commission for Enterprises in the Unorganised Sector, Government of India, http://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_policy/documents/accessed on 3 August 2013. NCEUS, *Social Security for Unorganised Workers*, New Delhi (2007).

⁴⁷⁴ Shruti Pandey, *Disability and the law: human rights law network in India* (New Delhi: Human Rights Law Network, 2005).

⁴⁷⁵ S. Sakthivel and Pinaki Joddar, "Unorganised Sector Workforce in India: Trends, Patterns and Social Security Coverage", 41 *Economic and Political Weekly* 27, 2107-2114 (2006).

and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood,⁴⁷⁶ old age or other lack of livelihood in circumstances beyond his control and motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection. Thus, adopting the analogy of the Supreme Court's judgment and clarification on Right to Life, this includes health as well as access to medical care. This right is an economic, social and cultural right to attain meaningful standards of health.⁴⁷⁷ However, public spending on health is substantially low in India.

5.2.4. Education rights are important mechanisms to realise the Right to Life with dignity.⁴⁷⁸ However, the fact remains that the primary and secondary education sectors in India have been constantly facing the problems of lack of proper infrastructure, literature resources and human resources.⁴⁷⁹ It is not surprising that even after 65 years of independence, the literacy rate in India is one of the poorest in the world. As per UNESCO statistics, 61% of children who enroll in primary education survive through to grade 5 and 85% transit of these children from primary to secondary education.⁴⁸⁰

⁴⁷⁶ Anil Bhuimali, *Rights of disabled women and children in India*, (New Delhi: Serials Publications, 2009); Rameshwari Pandya, *Women in the unorganized sector of India*, (New Delhi: New Century Publications, 2010); Ravi Prakash Yadav, *Women workers in India*, (New Delhi: New Century Publications, 2012); Abdul A Raheem, *Women empowerment through self-help groups (SHGs)*, (New Delhi: New Century Publications, 2011); D. Nagaya, *Women entrepreneurship and small enterprises in India*, (New Delhi: New Century Publications, 2012).

⁴⁷⁷ Augustine Veliath provides 10 public health suggestions on human rights; namely, (1) Implement equity-based social protection systems and maintain and develop effective publicly provided and publicly financed health systems that address the social, economic, environmental and behavioral determinants of health with a particular focus on reducing health inequities, (2) Use progressive taxation, wealth taxes and the elimination of tax evasion to finance action on the social determinants of health, (3) Recognise explicitly the clout of finance capital, its dominance of the global economy, and the origins and consequences of its periodic collapses, (4) Implement appropriate international tax mechanisms to control global speculation and eliminate tax havens, (5) Use health impact assessments to document the ways in which unregulated and unaccountable transnational corporations and financial institutions constitute barriers to Health for All, (6) Recognise explicitly the ways in which the current structures of global trade regulation shape health inequalities and deny the right to health, (7) Reconceptualise aid for health from high income countries as an international obligation and reparation legitimately owed to developing countries under basic human rights principles, (8) Enhance democratic and transparent decision-making and accountability at all levels of governance, (9) Develop and adopt a code of conduct in relation to the management of institutional conflicts of interest in global health decision making, and (10) Establish, promote and resource participatory and action oriented monitoring systems that provide disaggregated data on a range of social stratifiers as they relate to health outcomes. http://publichealthglobal.org/index.php?option=com_myblog&show=10-public-health-suggestions-on-the-human-rights-day.html&Itemid=92 accessed on 22 May 2012

⁴⁷⁸ Philip Alston and Nehal Bhuta, "Human Rights and Public Goods: Education as a Fundamental Right in India", in Philip Alston and Mary Robinson, *Human Rights and Development: Towards Mutual Reinforcement*, 242-265 (Oxford: Oxford Uni Press, 2005); M. Afzal Wani, "Education as a Human Right: Policy and Action in India", 40 *Journal of the Indian Law Institute* 1-4, 243-262 (1998); Yoginder Sikand, "Bridging Deen and Duniya: the "Modernisation" of Islamic Education in India", 29 *Journal of Muslim Minority Affairs* 2, 237-247 (2009); Kishore Singh, "Non-Discrimination and Equality of Opportunity in Education and UNESCO's Convention Against Discrimination in Education: Recent Developments in International Law, with Reference to India", 49 *Indian Journal of International Law* 2, 213-237 (2009); Bimal N. Patel (ed.), *Explaining and Understanding Research Methodologies in Legal and Interdisciplinary Education Fields in India*, Gujarat National Law University (2012).

⁴⁷⁹ T. S. N. Sastry, *Introduction to Human Rights and Duties*, 2011.

⁴⁸⁰ UNESCO Institute for Statistics, Education (all levels) Profile India. <http://stats.uis.unesco.org/unesco/TableViewer/document.aspx?ReportId=121&IF> accessed on 20 July 2013.

5.2.5. Right to Habitat, although often not considered as such, is an integral element to realise the full and dignified living of a life. To realise this, successive governments of India have been implementing various schemes with mixed success. Displacement of population, especially native or tribal population, in the areas witnessing massive industrialisation and mining, are common and the rights and responsibilities of the government and the displaced communities generate interesting questions of India's compliance with their human rights.⁴⁸¹ One suggestion would be to set up individual Human Rights Court in each of the Indian states and a central Human Rights Court at the national level. This is one of the most desperately needed measures to uphold the letter and spirit of the entire legal framework on human rights.

5.3. Right to transparent and accountable governance

The right to transparent and accountable governance is the latest entry in the evolution of human rights law and jurisprudence in India. While ancient India and the history of the Indus civilization illustrates the regime of transparent and an accountable governance system, the tenor and elements of the current regime reflects right-based and people-centric approaches. The evolution of this regime can be attributed to the era since the first round of economic reforms and liberalization began in early 1990s which were also decisively influenced by the Bretton Woods institutions. Hence, the early 1990s became the amalgamation period of convergence and integration of various rights and it can be said that the law, policy and jurisprudence on human rights in India came to be more reflective of the Western human rights values, approaches and the systems. The right to accountable and good governance emerged in the backdrop of the economic failures, including corruption,⁴⁸² misappropriation and mismanagement international borrowings and political instability in late 1980s. The NGOs working in the other fields of human development like social, cultural, environmental, economic fields expanded their scope of their activities and activism. The Right to Information (also known as RTI)⁴⁸³ and the right to participate in governance are clearly attributed to the significant works and campaigns carried out by various NGOs in India, such as the Mazdoor Kisaan Shakti Sangathan (MKSS) in Rajasthan, Kerala Shastra Sahitya Parishad (KSSP), Jan Sunwais (public hearings) and social audits initiated by MKSS in Rajasthan, the Community Learning Movement for accountable governance, promoted by the National Centre for Advocacy Studies (NCAS). These NGOs through advocacy and programs have been working for ensuring government accountability as part of the citizen's right to know and the right to participate in governance. With the activism of NGOs and governmental policies, such as Right to Information Act, the human rights regime in India focuses on peoples' right to participate in the governance and development to ensure people-centered governance and development. The legislations in post-1991 era, the policies and the jurisprudence all have strengthened the

⁴⁸¹ Although India has a robust system of environmental clearance and National Rehabilitation and Resettlement Policy to address the problems of displaced people, an impact analysis of working of these policies can only provide correct picture of effectiveness of the policy measures. Such analysis shall include efforts of policy-makers, judiciary and civil society institutions to retain desirable credibility among national and international stakeholders, including agencies which fund developmental programs.

⁴⁸² C. Raj kumar, *Corruption and Human rights in India* (Oxford: OUP, 2011).

⁴⁸³ Raja Muzaffar, *Concern of Human Rights and RTI: Can the RTI provisions be used with regard to human rights in J & K*. <https://mail-attachment.googleusercontent.com/attachment>, accessed on 20 August 2012; V. Naik & S. Paul, *RTI: Restore Full Rights*, Deccan Herald, 6 May 2008; Human Rights Commission of Pakistan, *Global Trends on the Right to Information: A Survey of South Asia*, Article 19, Centre for Policy Alternatives, Commonwealth Human Rights Initiative, July 2001; M. Daruwala and V. Nayak, *Our Rights, Our Information: Empowering People to Demand Rights through Knowledge*, Commonwealth Human Rights Initiative, 2007.

current people-centered governance and development human rights policy and practices in India. It can be said that the current human rights regime is based on legal entitlements and constitutional guarantees supported by the ever-active Indian judiciary. With the introduction of the Right to Information (RTI) and Public Interest Litigation (PIL),⁴⁸⁴ a true process of civil and political empowerment among all sections of citizens has begun.⁴⁸⁵ It is observed that NGOs in all fields of human rights have claimed and promoted the realization of these rights for ordinary citizens. The NGOs active in social, cultural, health, development, education fields have challenged and changed the power structures that have been largely responsible for perpetuating patriarchy, casteism and poverty. In this way, these organisations together with the judiciary have contributed to a political transformation in which true empowerment of people through right-based, people-centric approaches have taken deep roots and justice system is responding accordingly.

The emergence of the environmental and consumer movements in the 1980s paved the way for a series of new legislations and policy interventions to protect the rights of consumers and people. The resurgence of the Adivasi (tribal) movement and the marginalisation of the minority communities have brought cultural rights into public debate and policy discourse.

While the 1970s can be termed as the decade of the emergence of the civil liberties movement, the 1980s witnessed the emergence of group rights and people's rights over resources and livelihoods. It is in the 1990s that ESC rights came at the centre stage. Various factors including rights-based reorientation by international development agencies and organisations, political compulsions on the ground and the increased visibility of the rights discourse provided the right conditions for advocating ESC rights. However, it is ESC rights that are most elusive. This is because the rhetoric of economic and social rights is not necessarily reflected in policies, programmes and budgetary allocations. As a result, the State can pretend to promote economic and social rights, while systematically undermining these rights under the pressures of the global institutions, IMF, World Bank and WTO, among others. This situation leads to a growing sense of disillusionment and cynicism about the so-called rights-based approach. As a result, the political content and policy feasibility of the rights-based approach is increasingly questioned, particularly because it is more often used as a development strategy than as a means for political empowerment of the people and policy transformation.

Till 1993, India did not have a comprehensive legislation on human rights. With the enactment of the Protection of Human Rights Act, 1993, India set up a comprehensive machinery to ensure monitoring of the

⁴⁸⁴ The Public Interests Litigation has virtually covered all aspects of social, economic, politics and cultural life of the Indian citizens and has opened new ways of enforcing the fundamental rights and securing the protection and promotion of directive principles of state police, i.e. economic, social and cultural rights. The PIL movements have contributed to the consolidation of social and political transformation process and have been employed to secure third and fourth generation of human rights. Some groups rights such as prisoners' rights, rights of electorates, etc. have found new meaning in the wake of these movements. The efforts of the NHRC are now supplemented by the spontaneous activists and civil groups which promote PILs.

⁴⁸⁵ Although civil and political rights are pronounced by India in its constitution and the Indian state has been influenced by the signing of the UN Covenant on Civil and Political Rights (1966), it is important to recognise that the vast majority of illiterate population of India remain quite unaware of these rights. Without their democratic consciousness of these rights, the programmes and practices of the Indian state are bound to remain ineffective. Similarly, the majority and minority-oriented social and religious institutions and movements, under the pretext of protecting and promoting the civil and political rights of the respective communities, can continue to exploit their democratic unconsciousness. Unlike social and economic rights movements, the civil and political rights movements are often divided along the religious feelings, which in turn, fail to make necessary impacts on the promotion of the social and economic rights of various religious communities and groups. These movements succeed in creating social violence and state coercion in tune with the divisive agenda of the specific religious communities and fundamental forces.

implementation of human rights through the National Human Rights Commission (NHRC).⁴⁸⁶ Various states of India have been also required to establish state human rights commissions to achieve the same purpose at state level.⁴⁸⁷

5.4. Specific Human Rights Issues

The following section provides a broad analysis of India's stated position and practice in selected areas of human rights, namely children, disabilities, education, freedom of association, labour, marriage, minorities, nationality, health, race, refugees, slavery, terrorism, torture and women.

5.4.1. General Human Rights, Under this section, five major international instruments are selected, namely, the Universal Declaration of Human Rights,⁴⁸⁸ International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESR), the Optional Protocol to the ICCPR and the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty. UDHR – India has been the proponent of the UDHR and participated in the drafting of the UDHR. India initiated and implemented various programs under the UDHR. With regards to the ICCPR and ICESR, India ratified the ICCPR on 10 April 1979, i.e. 13 years after it was adopted and three years after it came into force. It enacted the Protection of Human Rights Act, 1993 (No. 10 of 1994) which is an overarching human rights legislation of India. India

⁴⁸⁶ NHRC has been playing a crucial role in the protection and promotion of human rights despite the inherent structural weaknesses and political limitations which often hinder the creation of correct perception about its effective and efficient handling of various major human rights violations episodes in the country. NHRC order to pay 2.8 crore rupees of interim relief to 89 men and women affected by acts of torture, rape, encountered death and illegal detention in the wake of death of one of the most wanted persons in the history of India, namely Veerapan and its brigade is widely considered as a landmark event in the history of universalization of human rights in India in the recent years. Jordan Fletcher and Subhradipta Sarkar, "The Limits of Justice: An Indian Human Rights Story", *Economic and Political Weekly*, November 17, 2007, at p. 35. In this article, the authors shed "...light on a tale of suffering and struggle largely ignored by the Indian media during the decade-long hunt for Veerapan." One of the criticisms of the Indian government with regards to the establishment of the NHRC is that India enacted the Act and established the NHRC under the Western governments' pressure, in the backdrop of economic crisis of early 1990s. For a critical summary of weaknesses of the NHRC, see, Sumanta Banerjee, "Human Rights in India in the Global Context" in *The Economic and Political Weekly*, 1 February 2003, pp. 424-25; Ray, Arun, National human rights commission of India, Vol. 1: formation, functioning and future prospects, (Delhi: Khama Publishers, 2003).

⁴⁸⁷ While 21 states (Assam, Andhra Pradesh, Bihar, Chattisgarh, Gujarat, Goa, Himachal Pradesh, Jammu and Kashmir, Kerala, Karnataka, Madhya Pradesh, Maharashtra, Manipur, Odisha, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, West Bengal, Jharkhand and Sikkim) have established State Human Rights Commission, 8 states (Arunachal Pradesh, Haryana, Manipur, Meghalaya, Mizoram, Nagaland, Tripura, Uttarakhand) are yet to create the machinery.

⁴⁸⁸ The UDHR has seen human rights as an indivisible whole. The 1966 Covenants does largely reflect what the Indian Constitution reflects – enforceable civil and political rights and economic, social and cultural rights to be realised gradually. The negotiation of UDHR shows that India advocated for the bifurcation of two sets of rights. Kamala Sankaran, "Fundamental Principles and Rights at Work: India and the ILO" in the *Economic and Political Weekly*, 5 March 2011, p. 71. India, owing to financial and economic weak position, opposed the inclusion of the economic, social and cultural rights in 1951. In the words of Father Jerome D'Souza, member of the Indian delegation, "...In putting the political and civil rights first, we imply not only that those civil and political rights are of their nature capable of receiving an exact expression which will facilitate enforcement by law; not only do we imply that it is not possible to give to the more difficult and less tangible elements of the social and economic rights a similar expression to facilitate enforcement. We go further...and say that according to our way of looking at life, liberty and society, it is by the exercise of these civil, political and individual fundamental rights that the improvement of social, cultural and economic standards can take place (Berkes and Bedi 1958: 148)." Quoted in Sankaran *Ibid* at p. 71.

signed the ICESCR signed on 3 January 1976 and acceded to on 10 April 1979, simultaneously with the ICCPR.

5.4.2. For Freedom of Associations,⁴⁸⁹ India has enacted several legislations, namely, the Trade Unions (Amendment) Act (No. 31 of 2001), the Industrial Dispute (Banking Companies) Decision (Repeal) Act (No. 19 of 2011), the Essential Services Maintenance Act, 1981 (No. 40 of 1981), the Industrial Disputes (Amendment) Act, 1968 (No. 32 of 1976), the Essential Services Maintenance Act 1968 (No. 59 of 1968), the Central Trade Union Regulations and the Trade Unions Act, 1926, among others. Under category of human rights for labour, India has enacted the the Bonded Labour System (Abolition) Act, the Minimum Wages Act, the Trade Unions Act, the Essential Services Maintenance Act, the Industrial Disputes Act, and the Factories Act. For human rights of minorities, India has enacted the Scheduled Castes and Schedules Tribes (Prevention of Atrocities) Act and, the Protection of Civil Rights Act.

To place the entire analysis in a proper perspective, the report prepared by the National Human Rights Council of India for the Second Universal Periodic Review 2012 (2 UPR) provides a good starting point.⁴⁹⁰ This report starts with an important observation that, “any assessment of India’s human rights record must begin with the acknowledgment that no other country as large and populous or as diverse, ethnically and economically, has had to tackle the challenges of development using only democratic methods”.⁴⁹¹ In other words, one is required to understand and appreciate the historical, political, economic and cultural situation of India first, before tackling the subject. But doing so may itself jeopardise the critical evaluation from an international legal perspective because the international legal perspective is understood to have catered to the needs, interests and positions of individual nations. The role and views of the Indian judiciary and the media is also very important to understand India’s position in this respect.

5.4.3. Civil and political rights. One finds a major weaknesses of the Indian system in the area of civil and political rights. India has signed and ratified the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment on 14 October 1997. It took India 12 years to sign the Convention. The

⁴⁸⁹ Although freedom of association is a fundamental right, as Sankaran explains it is a limited one for government employees in that they can only form autonomous organisations (not trade unions) that are separate for each grade of employees and these cannot be affiliated to other trade unions. In this regard, it may be useful to note that the Indian Government in 1978, reported to the Parliament that “...Government of India has not so far been able to ratify Convention No 87 concerning Freedom of Association and the Protection of the Right to Organise, and Convention No 98 concerning the Right to Organise and Collective Bargaining, mainly because the existing law and practice pertaining to the public servants do not fully meet the requirements of these two Conventions. Article 6 of Convention No 98 states that the Convention does not deal with the position of public servants engaged in the administration of the State. The supervisory bodies of the ILO have observed on a number of occasions that some Governments have applied these provisions in a manner which excludes large groups of public employees from coverage by Convention No 98. Quoted in Sankaran at p. 72.

⁴⁹⁰ While appreciating the Universal Periodic Review Process undertaken by the Council, India has shown some apprehension, based on its colonial past that the Council “continues to function in a non-selective, non-politicized and transparent manner”. . Statement by Member of Parliament and Member of the Indian Delegation to the UN Dushyant Singh on Agenda Item 69 – Promotion and Protection of Human Rights [A] Implementation of Human Rights Instruments, [D] Comprehensive Implementation of and Follow up to the Vienna Declaration and Programme of Action at the Third Committee of the 66th Session of the UN General Assembly. New York, October 18, 2011.

⁴⁹¹ <http://www.mea.gov.in>, accessed several times since June 2012.

Cabinet of India in 2010 approved the Bill which ratified the Torture Convention.⁴⁹² However, India is yet to enact a law which gives powers to the authorities to enforce the provisions of the Convention at the domestic level. However, this task is very difficult because enacting any anti-torture laws would embrace the Indian authorities with plethora of complaints incessantly. The reasons could be backlash of public, as Indian public want tough stance against the rising internal insurgency, such as the Naxalism in the Eastern states of India. Similarly, the Indian police forces will come under detailed scrutiny of the provisions, especially in those areas where there are widespread issues of insurgency. The torture by security and police forces, especially, are subject to deeper cynicism and critics from media and NGOs. While India could ill-afford to let insurgents get away with their mercies, Indian security forces working under difficulty terrains and situations may invariably come under public wrath for their alleged conduct amounting to torture. By resisting insurgent forces, India places itself in a difficult situation. At domestic level, it is required to do so for ensuring social and political stability and national integration while at the international level, its reputation gets under scrutiny if it involves heavily with violence into such resistance. To prevent unnecessary political criticisms, especially inter-linking terrorism and human rights, India has adopted a consistent position to ensure that the human rights debate is not “misused for the pursuit of political agendas, or to fulfill territorial ambitions as part of States with destructive foreign policy objectives”.⁴⁹³ The Prevention of Torture Bill has detailed mechanisms to investigate facts of torture and protection of witnesses. Unlike, earlier period, where police forces of individual states were employed, now such incidents will be investigated by the independent agency. The Bill has one important weakness, namely, the reporting of the torture cases have to be within 6 months which in Indian society and culture may become a stumbling block. For example, a rape victim from a village or particular section of society may remain silent even for a longer duration due to the society’s stigma. The bill fails to get notice of sexual offences by women in prison which shows further weakness of the bill. The Armed Forces Special Powers Act (AFSPA) is applied in Jammu & Kashmir and the North-Eastern States, which confer special impunity but also alleged to be the cause of violation of human rights.

⁴⁹² UN General Assembly adopted the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment on 9th December, 1975. UN General Assembly Resolution No. 3452 (XXX). India signed the Convention on 14th October, 1997. As per Article 2, state parties are required to enact a legislation to give effect to the Convention at the domestic level and fulfil the obligations under the Convention. This was especially important in context of India as the Indian Penal Code has not defined the meaning of “torture” nor the torture was considered a criminal offence as understood per Article 4 of the Convention. To meet this important legal gap, India was required to provide necessary definitions as well make the Indian legislations consistent with the said Convention. India, instead of amending the existing legislations, preferred to enact a new legislation consisting of precise definitions of various terms, punishment provisions and time limit for taking cognizance of the offences - The Prevention of Torture Bill, 2010, Bill No. 58 of 2010. The delay by India to ratify the Torture Convention is largely due to India’s internal political compulsions. In the process, Indian government has met with serious criticisms from international and NGOs, especially the complaints against Indian forces in disturbed areas on systematic torture, enforced disappearances, arbitrary arrests and detention, extrajudicial killings and sexual violence. This was very evident on the eve of India’s participation in the 2nd Universal Periodic Review in May 2012. Article 21 of the Indian Constitution and the Indian Penal Code aim to provide adequate safeguards, however, as the Indian jurisprudence suggest, the weaknesses in the implementation of these laws remain a continuous challenge contributing to valid criticisms.

⁴⁹³ Statement by Member of Parliament and Member of the Indian Delegation to the UN Mrs. Viplove Thakur on Agenda item 69 (b) Human rights questions, including alternative approaches for improving the effective enjoyment of Human Rights and Fundamental Freedoms and (c) Human Rights situations and reports of Special Rapporteurs and Representatives. New York, 26 October 2011.

5.4.4. Torture in prison: Torture in prison by police authorities, is one of the most alleged grievances. The records maintained by the NHRC are one of the best evidences in this regard. Custodial deaths, illegal detention, under trial prisoners, inordinate delays are some of the strongest concerns which the Torture Bill, once it becomes the law, will be able to address this challenge. Here it would be important to note that India shall soon ratify the Convention on Enforced Disappearance, especially now that the enforced disappearance is not codified as a criminal offence in the Indian penal code. The state practice in this regard, too, is abysmal. In the area of minority rights, despite availability of strong legal framework, complains regarding the abuse of human rights of vulnerable communities are not receding significantly.⁴⁹⁴

5.4.5. With regards to **labour rights**, India has an impressive record of ratifying the ILO Conventions and also enacting necessary legislations at the domestic level. However, the implementation of these acts fails to bring the desired results expected under these acts. In this regard, it is important to note that India is yet to ratify ILO Convention 138 concerning the minimum age for admission to employment and work and ILO Convention 182 vocational guidance and vocational training in the development of human rights.⁴⁹⁵ The reasons for the inability of India to ratify these Conventions are difficulties and challenges posed by the varying level of socio-economic situations across various regions of the nation. Subsequent to the passage of the Right to Education Act 2009, the future of implementation of bonded child labour appears to be bright. It may be noted that education is the primary responsibility of States in India, as such, Indian states are responsible to materialise the Right to Education for their concerned populations. Together with the Right to Education for children till the age of 14, these two acts are important milestones in realising the fundamental rights of children in India.

5.5. Rights of Indigenous People

India is a country of multi-ethnic and multi-religion communities.⁴⁹⁶ One of the important communities is the Indigenous groups which comprise 8% of the overall population of India and are called Adivasi (tribal people).⁴⁹⁷ The most important right of these communities is the right to belong to their place of origin or habitat. However, the unique heritage right, as claimed by Rohit Priyadarshi and others is at risk: “(I)ndigenous communities, peoples and nations are those which having a historical continuity with pre-invasion and pre-colonial societies that have developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories and

⁴⁹⁴ One of the important reasons for tension between developing and Western European nations, especially is, the emphasis by later to consider that article 27 of the ICCPR apply to all members of minorities within a state party's territory and not just nationals. The UN Human Rights Committee used to express concern with regard to the treatment of minorities within particular states based on this position. This position is reflected in the Committee's analysis of *Lovelace* case and *Kitok* case. See *Selected Decisions of the Human Rights Committee*, 1985.

⁴⁹⁵ ILO Convention 138 concerns the minimum age for admission to employment and work, while ILO Convention 142 concerns vocational guidance and vocational training in the development of human rights.

⁴⁹⁶ P. K. Mohanty, *Encyclopedia of scheduled tribes in India*. (New Delhi: Isha Book, 2006); A. B. Chaudhuri, *State Formation Among Tribal : A Quest for Santal Identity* (Gyan Publishing House, 1993); W. Crooke, *Tribes and Castes of the North Western India*, (London, 1974); J. K. Das, *Human Rights and Indigenous people* (New Delhi: A. P. H. Publishers, 2001); P. S. Narayana, *Commentaries on the Scheduled Castes and the Scheduled Tribes*. (Hyderabad: Asia law House, 1991).

⁴⁹⁷ About 8% of the Indian population belongs to a ST community, roughly 80 million people from some 450 communities.

their ethnic identity, as the basis of their continued existence as peoples in accordance with their own cultural patterns, social institutions and legal systems”.⁴⁹⁸

It is interesting to note that India has adopted somehow ambivalent positions concerning the international instruments which have codified or promulgated the rights of these people.⁴⁹⁹ The most important among these are:

- Convention concerning Indigenous and Tribal Peoples in Independent Countries, 1989 (No. 169)⁵⁰⁰
- UN Declaration on the Rights of Indigenous Peoples⁵⁰¹
- Indigenous/ Tribal people’s recommendations at the UNESCO workshop – cultural challenges of the International decade of the world’s indigenous people, 1999, France
- Beijing declaration of Indigenous Women, 1995, Beijing, China.

Mr Justice Y.K. Sabharwal, former Chief Justice of India, while addressing the International Law Association Biennial Conference in Toronto provided excellent discourse on India’s position with regards to the indigenous people. It is useful to reproduce the core of what he had to say. To begin with, he explains that, “it is not easy to identify indigenous peoples in India. For there have been continuous waves of movement of populations with different languages, race, culture, religion going back centuries and millennia. Tribal communities have been a part of this historical process. In the circumstances the question arises as to how far back in history should one go to determine the identity of ‘indigenous peoples’? Whatever the nature of determination it is likely to be extremely arbitrary and controversial.”⁵⁰² Secondly, tribal and non-tribal peoples have lived in India in close proximity for over centuries leading to, as one author puts it “much acculturation and even assimilation into the larger Hindu Society”. Thirdly, in the case of India some tribes are no longer tribes but have become, as the

⁴⁹⁸ Rohit Priyadarshi, Suman Sahai and Raghu Velankar, “*Understanding Declarations of Indigenous Peoples*”, UN ECOSOC 1986, http://www.genecampaign.org/Focus%20Area/PROJECT/GC_IK_BP3%20.pdf, accessed on 11 July 2012.

⁴⁹⁹ H. C. Upreti, *Indian Tribes: Then and Now* (Jaipur: Pointer Publishers, 2007); G. C. Rath, *Tribal Development in India: Contemporary Debate*. (SAGE, 2006); The International Labour Organization: *A Handbook for Minorities and Indigenous People*. (London: Minority Rights Group International, 2002);

⁵⁰⁰ The Indigenous and Tribal Peoples Convention, 1989 could not agree upon the definition of indigenous and tribal people. It is more based on practical approach and provides criteria for describing the peoples which it aims to protect. India’s objection to the self-identification as a fundamental criterion for the identification of indigenous and tribal peoples is based on the fact that it has well codified means to recognise the tribal people. The Constitution of India, the national legislations and jurisprudence stipulate mechanisms to ensure full and proper integration and development of the indigenous and tribal peoples. E. Thurstone, *Commentaries on the Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act 1989*, Edn 2. (Allahabad: Law Publishers India, 1989).

⁵⁰¹ A/RES/61/295 of 13 September 2007. India is one of 144 members which voted in favour of the Declaration. India supported the Resolution on the basis that the Declaration does not define indigenous peoples. India views that “the issue of indigenous rights pertains to peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions. This is precisely the definition used in ILO Convention 169. Consistent with this definition, we regard the entire population of India at the time of our independence, and their successors, to be indigenous”. Furthermore, India has insisted upon the differentiation between indigenous and tribal peoples. See Statement by Arindam Bagchi, Counsellor, Permanent Mission of India to the United Nations, New York, in Explanation of Position of India on the report of the 8th Session of the Permanent Forum of Indigenous Issues to the ECOSOC at the 2009 Substantive Session of ECOSOC, at Geneva, on 30 July 2009.

⁵⁰² Virginius Xaxa, “Tribes as Indigenous People of India”, XXXIV *Economic & Political Weekly*” 51, December 1999, p. 3591.

eminent sociologist. Fourthly, tribal peoples in many cases may have settled in India long after some non-tribal peoples in other parts of India. Finally, attention has been drawn to the serious national sovereignty issues involved revolving around question of “self-determination” and ownership of lands.” The Indian position and practice is unique due to its long rich civilization and may be not acceptable to the non-Indian culture. He argues therefore that the Indian experience is an experience of assimilation of the tribal people rather than to make them separate identity which ensures their cultural identity. In India, the practice shows that treatment to tribal people as separate identities is not necessary.⁵⁰³ The Constitution of India provides a comprehensive framework for the protection of rights and promotion of well-being of scheduled tribes. Read together with Articles 15, 16, 17 and 23 and Article 46, the Law of the Land is clear and affirms guarantee for their overall promotion through special care and protection of injustice. Article 330 of the Indian Constitution provides for the reservation of the scheduled tribes in the House of Peoples, Article 335 provides for reservation in union government employments. There are provisions for reservation in educational institutions for the tribes. In this regard, Betteile concludes that India has one of the oldest and most extensive programmes of positive discrimination or affirmative action.⁵⁰⁴ The role of the Indian judiciary is equally affirmative. In *Samantha v. State of Andhra Pradesh*, the Supreme Court of India observed that, “[A]griculture is the only source of livelihood for scheduled tribes, apart from collection and sale of minor forest produce to supplement their income. Land is their most important natural and valuable asset and imperishable endowment from which the tribals derive their sustenance social status, economic and social equality and permanent place of abode and work and living. It is a security and source of economic empowerment. Therefore, the tribes too have great emotional attachment of their lands. The land, on which they live and till, assures them equality of status and dignity of person and means to economic and social justice and is a potent weapon of economic empowerment in a social democracy.”⁵⁰⁵ Justice Sabharwal in his concluding remark mentions that “it seems that the Indian experiment is another model, which can be tried in other parts the world to protect the rights of indigenous peoples.”⁵⁰⁶

Although the de-notified and nomadic tribes (DNTs) are an integral part of the Indian society, the fact remains that there is dearth of literature analyzing the human rights situation of these communities.⁵⁰⁷ Unlike several other casts, the DNTs are not categorized as a class under the constitutional schedules like the Scheduled Castes (SCs) and Scheduled Tribes (STs). However, some of these communities have been enlisted by the individual states of the Union of India. It is important to note that they are not covered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, under which the SCs and STs are protected. This is one of the reasons why it is difficult to trace the protection and promotion of human rights of these

⁵⁰³ Robert S Anderson and Walter Huber, *The Hour of the Fox: Tropical forests, the World Bank and indigenous people in Central India* (New Delhi: Vistar, 1988); C. R. Bijoy, *India and the rights of indigenous people: Constitutional, legislative and administrative provisions concerning indigenous and tribal people*. (Chiang Mai: Asia Indigenous People Pact, 2010); Bhupinder Singh, *Democratic decentralization in tribal areas: Approach and paradigms in the context of the constitution seventy-third and seventy-fourth amendments* (New Delhi: Rajiv Gandhi Institute for Contemporary Studies, 1995); Kumar Sarit Chaudhuri, *Constraints of tribal development* (New Delhi: Mittal Publications, 2004).

⁵⁰⁴ See Betteile, 1998, above at p. 187.

⁵⁰⁵ *Samantha v. State of A.P* (1997) 8 SCC 191.

⁵⁰⁶ Address by Mr Justice Y. K. Sabharwal, Chief Justice of India, ILA Biennial Conference, Toronto, p. 12.

⁵⁰⁷ Arup Maharatna, *Demographic perspectives on India's tribes* (Oxford University Press, 2005); James Massey (ed.), *Indigenous people: Dalits issues in today's theological debate* (New Delhi: ISPCCK, 1994); Radhakrishna Meena, *Dishonoured by history: Criminal tribes & British colonial policy* (New Delhi: Orient Longman, 2001).

communities. It is equally, if perhaps not more, difficult to find that these communities are not having uniform reservations for concessions across the nation. Similarly, a violation of human right of these communities is tried under the Criminal Procedure Code, as no separate code exists to punish or take remedial measures for those who violate the rights of DNTs. It may be noted that this problem is not an isolated problem, as similar problem arose in the working of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 in the beginning,⁵⁰⁸ *Ujjagarsingh & Ors v. State of Haryana & Anr.*,⁵⁰⁹ and *Moly & Anr V. State of Kerala.*⁵¹⁰ The Indian Constitution prescribes protection and promotion of customary laws of tribal communities and their rights, the effectiveness of the protection and promotion of these rights depend on the execution of the same and there are wide ranging perceptions on the effectiveness of the enforcement.⁵¹¹

5.6. Issues concerning women

The rights of women and family law reforms are the most closely connected subjects which need detailed analysis to see how the economic reforms have been and will be able to materialize the rights of women. First of all, there is a need to disconnect the discourse of women's rights from minority rights. Secondly, the rights of women across all the communities must be objectively seen without confining a conservative look from any religion. Thirdly, social customs and practices are the major source as well as means which protect and promote or prejudice women's rights. The Indian polity has made continuous efforts to empower the downtrodden, deprived and backward classes of women. One of the most important such measures is the 73rd and 74th amendment to the Constitution of India which provides for the reservation of 1/3 seats in all election bodies for women. At national level, a bill envisaging 1/3 seats reservation for women in the Indian parliament is pending. Health, gender inequality, lack of education, economic freedom and political freedom are some of the most important human rights issues concerning women of India.⁵¹²

How the Fourth World Women Conference has contributed directly or indirectly to women's rights in India? There had been four world conferences on women, however, the Fourth World Conference, held in Beijing has been considered by far the most effective as far as women's rights in India are concerned. The Platform for Action which was declared and accepted by participating governments highlighted the most important areas of concerns.⁵¹³ The Convention for Eradication of all forms of Discrimination against Women (CEDAW) has also contributed significantly to protection and promotion of women's rights in India. The

⁵⁰⁸ 2002(1) Criminal Court cases 150.

⁵⁰⁹ 2003(1) Criminal Court Cases 406.

⁵¹⁰ 2004(2) Criminal Court Cases 514. the trial of all the cases under the Prevention of Atrocities Act were stopped and all the cases were sent to the Courts of jurisdictional Magistrates. Thereafter the respective Magistrates took cognizance of the cases and committed them to the Special Courts. The Special Courts started trying the cases after they were committed to them. The Act was later amended giving the Special Courts the power to take cognizance of the offences under The Protection of Human Rights Act, 1993.

⁵¹¹ Christoph von Furer-Haimendorf, *Tribes of India: The Struggle for Survival* (New Delhi: Oxford University, 1982); Bimala Charan, Law, *Ancient Indian Tribes* (London: Luzac, 1934).

⁵¹² It is important warning that mere equal right to vote and be elected in various legislative bodies cannot bring panacea to problems related to women rights. Equality with equity in true sense can bring women empowerment.

⁵¹³ These concerns though of general nature are applicable to condition of women in India: (a) the persistent and increasing burden of poverty on women; (b) Inequalities and inadequacies in and unequal access to education and training; (c) Inequalities and inadequacies in and unequal access to health care and related services; (d) Violence against women; (e) The effects of armed or other kinds of conflict on women, including those living under foreign occupation; (f) Inequality in economic structures and policies, in all forms of productive activities and in access to resources.

Convention codified and set out international legal principles on the women's rights which are applicable to women in all fields. The Committee established to monitor the implementation of the Convention, under Article 17 of the Convention, reviews obligations of nation states under the Convention. Despite international political tensions, especially the North-South Division, this Committee has been able to set up various policies for the implementation by the nation states, among other concerning;

- The need to make legal and policy changes would have to be undertaken to ensure elimination of all forms of gender discrimination by 2005.
- Developing the country budgets to include provisions for achieving the commitments made at the international level.
- Ratification of CEDAW and the optional protocol to CEDAW.
- Implementation of "Equal Pay for Equal Work".
- Promotion of a nationwide campaign for elimination of violence against women.

The above high-sounding assurances mandatory under the Policy Framework and Plan of Action (PFPA) have not achieved any significant results. The fact that the 5th World Conference on Women Rights is yet to take place shows that the women's right movement not only in India but across the world has slowed down which may have detrimental impacts on the continuous evolution of women's rights. Empowerment of women has remained a major objective for the successive Five Year Plans of India. Since the 9th Five Year Plan, women organization and activists have been involved in the consultative process to formulate the recommendations for implementation. For the first time, the Indian government, through the 9th Plan, adopted the 'National Policy for Empowering Women' along with a well-defined 'Gender Development Index' to monitor progress made towards improving women's status in the society.⁵¹⁴

Women's empowerment is one of the avowed goals of the women's rights, so it is important to analyse the major issues facing the journey of women empowerment in India. As mentioned in the introduction, women rights in India have distinctive features resulting through the confluence and divergence of historical, social, economic, cultural and religious norms and practices.

5.6.1. The growing feminization of poverty: Women are the immediate and continuous victim of poverty.⁵¹⁵ Compared to men, women in India are poorer and found living below the poverty line. However, the abject poverty of women is more noticeable among indigenous communities and other marginalized sections of the society. The most important reasons are; need for them to earn livelihood as well carry out household functions, patriarchal system and unfair practices towards women in ancestral wealth. According to one estimate, around the world and more so in India, while women work nearly 67 % of working hours they earn only 10 % of the income and own less than 1 % of it and poverty often leads to economic exploitation and sexual abuse of

⁵¹⁴ G. Palanithurai, *Dynamics of new panchayati raj system in India: Empowering women, Vol. 4*, (New Delhi: Concept Publishing company, 2004).

⁵¹⁵ Kumkum Bhavnani, *Feminist futures: re-imaging women, culture and development* (London: Zed Books, 2003).

women.⁵¹⁶ The most debilitating effect it has is in the fact that if the woman is unable to come out of poverty the cycle is perpetuated through her children, especially the girl child.⁵¹⁷

5.6.2. Lack of full participation in decision making processes and institutions: While the 73rd and 74th Amendment to the Constitution of India which have reserved 33% of the seats in local units of governance (called Panchayats) and municipalities, the meaningful access in form of reservation for women at the state and national level decision making bodies and processes are absent in India. This can deprive women from fully and meaningfully participating in national development in an integral way.

5.6.3. Violation of basic rights of women remains unabated: Physical, sexual and psychological assaults, female foeticide, infanticide, trafficking,⁵¹⁸ dowry death, rape, depending upon as well as notwithstanding the socio-economic-cultural background of families are subjected to violation.

5.6.4. Inadequate access and participation in education and literacy: Due to alarmingly low levels of education,⁵¹⁹ and the inability of the governmental institutions and socio-cultural background across various communities, women often remain unable to find gainful and equal pay for equal work, compared to men, in the Indian society. It is important to note that a girl child between the age of VI to XII is eligible for free education. Similarly, the University Grants Commission of India has introduced post-graduate scholarship scheme for girl students to empower them to pursue higher studies.

5.6.6. The Role of Indian Judiciary and Women's' Rights: Like in the environment and development field, the Indian judiciary has been playing the most instrumental and decisive role in codifying, according and enforcing the rights and execution of women's rights in India. The Indian judiciary has read into the hard and soft-international law instruments prevalent in human rights in favour of women while pronouncing the judgments.

⁵¹⁶ Not only economic growth per se, but the re-engineering of social and cultural institutions is essential to contribute to the economic empowerment of women and thus to improve their lives in general. Women participation and decisive influence into economic productive assets, is one of the essential means to achieve this objective. In a country like India, these three institutions need to work or progress in tandem, otherwise, the socio-economic growth of women will tend to be low. Despite existence of legal instruments (despite amendment to the Hindu Succession Amendment Act, 2005) and mechanisms, the reality remains that women does not enjoy equal status in property inheritance, control of residential and agricultural assets and other means of her livelihood. Kelkar analyses a "notable missing link, between women's right to productive assets and HIV/AIDS." Kelkar *ibid.* p. 61. Kelkar argues that instead of women's right to productive assets, organisational arrangements at the local level are needed to strengthen women's economic rights and address the lack of implementation. Kelkar at p. 67.

⁵¹⁷ Working out of Poverty, Report of the Director General, International Labour conference, 91st session, Website referred:<http://www.ilo.org/public/english/standards/relm/> accessed on 20 August 2012.

⁵¹⁸ S. P. Pandey, *Rehabilitation of disadvantaged children and women sex workers* (New Delhi: Serials Publications, 2008).

⁵¹⁹ Female literacy rate in India is much lower compared to the male literacy rate. As per one estimate, male Literacy rate is 82.14% while female literacy rate is 65.46%. <http://www.indiaonlinepages.com/population/literacy-rate-in-india.html> accessed on 20 August 2012.

The Supreme Court in *Githa Hariharan v. Reserve Bank of India*,⁵²⁰ concerning the elimination of discrimination against women, reading the provisions of the CEDAW and the Beijing Declaration, directed the domestic courts in India to give due regard to international conventions and norms for construing domestic laws when there is no inconsistency between them. In *Madhu Kishwar and Ors. v. State of Bihar and Ors.*, the Supreme Court upheld the fundamental right of the tribal women to the right to livelihood and also that the State is under an obligation to enforce the provisions of the CEDAW which provided that discrimination against women violated the principles of equality of rights and respects for human dignity.⁵²¹

The most important and landmark judgment concerning women's rights was the *Vishaka and Ors. V. State of Rajasthan and Others*⁵²² in which the Supreme Court of India elaborated the international perspective or global scenario and applied international law. The case dealt with the issue concerning the enforcement of the fundamental rights of working women under Articles 14, 19 and 21 of the Constitution of India with the aim of finding suitable methods for realization of the true concept of gender equality and preventing sexual harassment of working women⁵²³ in all work places through judicial process to fill the vacuum in existing legislation.⁵²⁴ The Court directed the employers to frame the guidelines and norms that not only ensure the prevention of sexual harassment but also uplifts the dignity of women overall in consonance with the CEDAW and gender equality as provided in the Constitution of India. The Court upheld that the judiciary shall construe the norm with regard to the international conventions and norms when the domestic law is absent. Furthermore, the Court held that if there is no remedy under the Indian law then the international law shall be looked upon for such measures. While giving the guidelines, the Court directed the states authorities to comply with its guidelines till the time the legislations are passed. It is pertinent to note some of the CEDAW recommendations which the Court upheld through this case:

- “1. Equality in employment can be seriously impaired when women are subjected to gender specific violence, such as sexual harassment in the work place.⁵²⁵
2. Sexual harassment includes such unwelcome sexually determined behavior as physical contacts and advances, sexually colored remarks, showing pornography and sexual demands, whether by words or actions.
3. States should include in their reports information about sexual harassment, and on measures to protect women from sexual harassment and other forms of violence of coercion in the work place.”

Pronouncing through the *Municipal Corporation of Delhi v. Female Workers (Muster Roll) & Anr.*,⁵²⁶ the Supreme Court used the doctrine of social justice as codified through the practice of the UDHR and Article 11 of the CEDAW and held the Right to Maternity Leave for working women and also directed the Municipal

⁵²⁰ 99(2) SCC, p. 228.

⁵²¹ AIR 1996 5 SCC 125.

⁵²² JT 1997 (7) SC 384.

⁵²³ Tom Dannenbaum, *Combating sexual harassment at the workplace: a handbook for women, employers and NGOs* (Maharashtra: India Centre for Human Rights and Law, 2005).

⁵²⁴ Monmayee Basu, *Legalizing gender inequality: courts, markets and unequal pay for women in America*, (New York: Cambridge University Press, 1999); Marjorie Agosin, *Women, gender and human rights: a global perspective* (Jaipur: Rawat Publications, 2003); A. S. Anand, *Justice for women: concerns and expressions* (New Delhi: Universal Publishing House, 2002).

⁵²⁵ Surinder Mediratta, *Handbook of Law, Women and Employment* (New Delhi: Oxford University Press, 2009).

⁵²⁶ (2000) 3 SCC 224

Corporation to read the provisions into the service contracts. The Supreme Court clarified in the case *Randhir Singh v. Union of India & Ors*,⁵²⁷ that non-observance of the principle of 'equal pay for equal work' for both men and women under Article 39(d) of the Constitution is a violation of Article 14 and 16 of the Constitution and a violation of the principle that has been by all various systems of law including the Preamble to the Constitution of the International Labour Organization. In *Anuj Garg & Ors v. Hotel Association of India & Ors*, the Supreme Court gave a broad overview of the international perspective of Human Rights of Women. Highlighting that “a statute could be a valid piece of legislation keeping in view the societal condition of those times, but with the changes occurring therein both in the domestic as also the international arena, such a law can also be declared invalid.”⁵²⁸ The Court made it clear that the Right to Development of Women as adopted by the World Conference on Women’s Right shall be read into all provisions and subsidiary legislations.

5.6.7. Economic Rights – a way forward for women empowerment in India

Women’s participation in economic productive activities⁵²⁹ is one of the surest ways to their empowerment. However, the country is beset with the large population of illiterate women, especially in the rural areas and who are dependent on the farming for their livelihoods. Unless, the efforts to eradicate the economic deprivation are taken on in coordinated ways from grass root or bottom levels, the true economic empowerment of large population of Indian women will remain a distant hope. Whether the economic reforms in India have contributed to mitigate gender and social inequalities remains a source of inspiration for innumerable scholarly and practical papers and reports. The focus needs to be on their empowerment leading to their ownership and control of productive assets, i.e. in the Indian context, even today, it means, their control over farming sources, namely the land. According to Articles 15 and 16 of CEDAW, India is required to “[R]ecognise women’s rights to own, inherit and administer property in their own names; and provide equal rights for both spouses in respect to ownership, acquisition, management, administration”. India, pursuant to the CEDAW, has passed legislation protecting women’s rights, including in agricultural land, however, as Govind Kelkar mentions, “...social practices based on traditions and customs work to women’s disadvantage and further act to influence women’s ideology of economic dependence on men and a general reluctance to use the courts for legally provided asset rights...”⁵³⁰

5.7. Rights of Children

With the coming into force of the UN Convention on Rights of Child, there has been significant progress and debates in India concerning their rights. All three organs of the state at the union and state level have been sensitized and appear to be ever more aware to protect and promote their rights. Indeed, a cursory look at the

⁵²⁷ 1983 – I L.L.J. 344

⁵²⁸ 2007 INSC 1226.

⁵²⁹ Dev Nathan and Ahmed Niazappu, “Women’s Independent Access to Productive Resources: Fish Ponds in Oxbow Lakes Project, Bangladesh” in 2 *Gender Technology and Development* 3, 397-413 (1998); SAARC Regional Poverty People 2005: *Poverty Reduction in South Asia through Productive Employment*, SAARC Secretariat, Kathmandu; C. P. Sujaya, *Climbing a Long Road: Women in Agriculture in India – Ten Years after Beijing* (Chennai: M S Swaminathan Research Foundation, 2006).

⁵³⁰ Govind Kelkar, “Gender and Productive Assets: Implications for Women’s Economic Security and Productivity” in *Economic and Political Weekly*, 4 June 2011, pp. 59-69; Standing Hilary, *Dependence and autonomy: women’s employment and the family in Calcutta* (London: Routledge, 1991); Bina Agarwal, *A Field of One’s Own: Gender and Land Rights in South Asia* (Cambridge: Cambridge University Press, 1994).

primary and secondary legislations together with the ever active Judiciary, India has come a long way in creating the necessary legal and regulatory framework and, in many instances, it has been able to place an executive and monitoring mechanism to ensure the compliance with the laws and norms by the stakeholders. In the area of legislation, India enacted the Juvenile Justice (Care and Protection of Children) Act 2000 (JJ Act), amended in 2002 and 2006. Despite a range of legal measures, the protection and promotion of rights of child story of India may remain incomplete without analysing the concrete problems.

Areas of concerns

5.7.1. Child marriages –Child marriage, despite the 1929 Act, remains sporadically present in certain parts of India. However, it is noted that there is a significant decrease in the instances of child marriages. Not only the government and the judiciary, but the role of NGOs and individuals are becoming ever more important in this crucial area.

5.7.2. Child Labour-Child labour is one of the most politically sensitive human rights issues⁵³¹ which confront the Indian state internally and externally with grave ramifications. The child labour issue cannot be simply seen from current economic and political realities.⁵³² The practice prevalent in Indian state over the rich civilization of thousands of years must be appropriately studied and the criticisms and suggestions must be made on the basis of a thorough review. The prevalent norms of criticizing the state of India either by internal or external stakeholders must be assessed and answered in a historical perspective instead of just post-Independent developments. At the time of the adoption of the Indian Constitution, the Subcommittee on Fundamental Rights decided to draft a provision prohibiting the employment of children below 14 years of age in mines, and factories and in other hazardous occupations. This draft was adopted after a very brief discussion and with no modification by the Constituent Assembly. There is thus a constitutional embargo on the employment of children below 14 in factories, in mines and in work that is considered hazardous. This constitutional position is at variance with the ILO Conventions requiring prohibition of child labour below the age of 14 years and prohibition of all hazardous work for children until the age of 18.⁵³³

⁵³¹ India ratified the UN Convention on the Rights of the Child on 11 December 1992. India is yet to ratify the ILO Convention on Worst Forms of Child Labour (No. 182). Addressing a conference on child labour in August 2010, Minister of State for Labour and Employment Harish Rawat announced that the Government is making a roadmap towards ratification of ILO convention 182 on worst forms of child labour that bars employment of children under the age of 18. "Even if there is a single child engaged in child labour, it is a challenge for us as government and to all of you as citizens and civil society partners," Rawat told the South Asian Regional Consultation on Child Labour on Agriculture held here last week. However, this momentum gained has been lost. India is one of the few countries that is yet to ratify this Convention. This state of affairs, despite being adequate preparation on part of India at national level to implement the provisions of the Convention remains inexplicable. India has in place Child Labour (Prohibition and Regulation) Act 1986 prohibits the employment of children under the age of 14 in 18 occupations and regulates the working conditions for children in the occupations and processes. It stipulates provisions for regulated working hours, hours of rest, weekly holidays, provision for furnishing of information regarding employment of a child labour to Inspector etc.

⁵³² The most common types of child labour are rag-picking, collecting firewood, tending to animals, street vending, dyeing cloth, begging, prostitution and domestic labour.

⁵³³ K. Sankaran notes that it took until 2002 for the Constitution to be amended to provide the right to education as a fundamental right, and until 2009 for the Right of Children to Free and Compulsory Education Act to be passed, which operationalised this right. These two measures are seen to provide an impetus to doing away

5.7.3. Street Children: The issue of Street children is one of the important issues concerning child rights. According to one estimate, India has 11 million street children.⁵³⁴ Child beating and sexual abuse are prevalent in urban and rural India. In the recent years, several institutions at national level (with majority of them in metro cities such as Mumbai, Kolkatta, Delhi, Chennai, Bangaluru) have come up which give shelter, counseling, basic education as well as vocational training to street children with a view to integrate them into mainstream children. Women in prostitution have faced the possibility of their children being forcibly separated from them, following an order of the Supreme Court in *Gaurav Jain v. Union of India*.⁵³⁵

5.7.4. Child Abuse-There has been increasing evidence of child abuse and more particularly child sexual abuse, being pervasive. The perpetrator is a near relative or someone close to the family.⁵³⁶ This adds to the vulnerability of the abused child and apart from the confusion and sense of shame which the child experiences, it is also that there is a problem with a refuge which the child can access. Following the intervention of the Supreme Court in the *Vishaka Guidelines* regarding sexual harassment in the workplace, the matter of child abuse has also been taken to the court and the Law Commission of India has been inducted into setting the parameters for care and action in cases of child sexual abuse.

5.8. Legislations for Child Rights

5.8.1. Minimum Wages Act, 1948: It provides for the fixation of minimum time rate of wages by state government. It also includes the fixation of minimum piece rate of wages, guaranteed time rates for wages for different occupations and localities or class of work and adult, adolescence, children and apprentices. The Act is aimed at occupations which are less well-organised and more difficult to regulate where there is much scope for exploitation of labour. The Plantation Labour Act - the employment of children between the ages of 12 years is prohibited under the Act. However, the Act permits the employment of children above 12 years only on a fitness certificate from the appointed doctor. The Mines Act, 1952, states that no child shall be employed in any mines nor shall any child be allowed to be present in any part of mine, which is below ground, or in any open cast

with child labour since “no-where” children who are not at school could be deemed to be part of the huge child labour force in the country. Sankaran *Ibid* at p. 73.

⁵³⁴ UNICEF’s estimate of 11 million street children in India is considered to be a conservative figure. The Indian Embassy has estimated that there are 314,700 street children in metros such as Bombay, Calcutta, Madras, Kanpur, Bangalore and Hyderabad and around 100,000 in Delhi alone. Railway Children, ‘Our work in India’, [online]. Available at www.railwaychildren.org.uk/asia.asp. Accessed 20 August 2012. A study in 2007 in India found the following: (a) 65.9% of the street children lived with their families on the streets. Out of these children, 51.84% slept on the footpaths, 17.48% slept in night shelters and 30.67% slept in other places including under flyovers and bridges, railway platforms, bus stops, parks, market places. (b) The overall incidence of physical abuse among street children, either by family members or by others or both, was 66.8% across the states. Out of this, 54.62% were boys and 45.38% were girls. (c) On a study in India, out of the total number of child respondents reporting being forced to touch private parts of the body, 17.73% were street children. 22.77% reported having been sexually assaulted. Kacker, L, et al (2007), Study on Child Abuse: India 2007, p 38-39. Ministry of Women and Child Development, Government of India, [Online] Available at: <http://wcd.nic.in/childabuse.pdf>. Accessed on 20 August 2012.

⁵³⁵ 1990 Supp SCC 709

⁵³⁶ Pinki Virani, *Bitter Chocolate: Child Sexual Abuse in India* (New Delhi: Penguin Books, 2000); Indu Bansal and Monika Chaudhary, *Patterns of Child Sexual Abuse and Relationship among Secondary School Students in Rajasthan*, http://www.booksie.com/young_adult/book_review/monika_chaudhary/child-sexual-abuse-in-india accessed on 5 August 2013; Child Abuse in India Increased According to the Report of NCPCR - See more at: <http://www.jagranjosh.com/current-affairs/Child-Abuse-in-India/> accessed on 5 August 2013.

working in which any mining operations being carried on. The Merchant Shipping Act, 1958 prohibits employment of children below the age of 14 in a ship except a training ship, home ship or a ship where other family members work. It also prohibits employment of young persons, below the age of 18, as trimmers and stokers except under certain specific conditions.

5.8.2. The Apprentices Act, 1961: It states that no person shall be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade unless he is 14 years of age and satisfied such standards of education and physical fitness as may be prescribed. However, across India, millions of children do extremely hazardous work in harmful conditions, putting their health, education, personal and social development, and even their lives at risk resulting in facing circumstances as full-time work at a very early age, work in dangerous workplaces, excessive working hours, subjection to psychological, verbal, physical and sexual abuse, obliged to work by circumstances or individuals, limited or no pay, work and life on the streets in bad conditions, inability to escape from the poverty cycle, no access to education etc. In this regard, it is pertinent to observe that in case of *Ajay Goswami vs. Union of India & Ors.*,⁵³⁷ the petitioner requested the Court to direct the authorities to strike a reasonable balance between the fundamental right of freedom of speech and expression enjoyed by the press and the duty of the Government, being signatory of United Nations Convention on the Rights of the Child, 1989 and Universal Declaration of Human Rights to protect the vulnerable minors from abuse, exploitation and harmful effects of such expression.

5.9. Concluding remarks

It has been ages that the governmental and civil society institutions are looking for solutions to tackle the problems concerning human rights.⁵³⁸ Reviewing India's practice at national and international level in the context of the developing jurisprudence, it can be concluded that even though there are municipal laws for protection of human rights yet the plight of the vulnerable groups remains a matter of serious concern. The concern of the international community to deal with the obstacles to access to justice in matters of human rights violation, especially for vulnerable groups, can be appreciated because the oppressed and the wronged that are denied justice may resort to revolt and violence or helplessly face extinction, especially in countries like India where the situation is far more serious. In this regard, India's position vis-à-vis violation of human rights in other countries is an important pointer for current and future direction of its overall position. India does not regard "spotlighting and finger-pointing at a country for human right violations as helpful".⁵³⁹ India's bilateral position is well reflected in its multilateral position too, as it considers that "targeting countries for intrusive monitoring is only indicative of a bias and does not further the cause of human rights. There is no doubt that human rights abuses must be addressed but it should be done in a comprehensive manner through cooperation, dialogue and

⁵³⁷ (2006) RD-SC 947

⁵³⁸ The rise and role of Western NGOs in perceiving, appreciating, reporting and holding accountable various countries for shaping and implementing has had an immense effect through their public debates, comments, reports, inter-state or petition procedures, etc. C. Chinkin, 'The Role of Non-Governmental Organisations in Standard Setting, Monitoring and Implementation of Human Rights', in J. J. Norton, M. Andenas and M. Footer (eds.), *The Changing World of International Law in the 21st Century*, (The Hague, 1998).

⁵³⁹ Explanation of Vote by India in the Human Rights Council on the Resolution on Syria. Geneva, 24 August 2011. Although India abstained on HRC resolution, it hoped that its position on the vote would not be misconstrued as condoning violations of human rights in any country, including Syria.

consultation”.⁵⁴⁰ The primary concern of policy-makers should be to remove the internal obstacles to access to justice which lie under the cover of power in the hidden forms of lack of understanding the law, inability to deal with cases, prejudices, amenability to political and other influences, and insensitivity to human sufferings.⁵⁴¹ The other obstructions hampering access to justice in the delicate areas of human relationship and peaceful co-existence which disturb the very fabric of a multicultural society are racial and religious intolerance, mob violence, extreme poverty, flaws in the legal system, propaganda of hatred and they call for a concerted effort of an enlightened judicial system and the governance that interest of all the citizens to its heart without searching for cleavages providing ropeways for journey to power. The neglect in removing obstacles to access to justice is fraught with grave dangers that may perpetuate strife and miseries thwart all progress and encourage mercenary activities giving rise to criminal acts of a terrorist nature.

One of the major criticisms of human rights protection and promotion is that protection of rights of victims and witnesses have been very poor compared to the rights of the accused in India. While the Judiciary has become relatively sensitive in recent years, the credit to campaign for right of victims and witnesses goes essentially to the thousands of NGOs.⁵⁴² As Fletcher and Sarkar conclude, “...without the NGOs, the victims [during the investigation and process leading to the death of most wanted bandit Veerapan] never could have presented their claims before an NHRC panel...”⁵⁴³ Based on their experience of analyzing the reports of the Sadashiva Panel constituted by the NHRC in the *Veerapan* case,⁵⁴⁴ the authors makes an important suggestion that “... particularly where victims are the poorest and most marginalised sections of society, state actors need to recognise NGOs as viable partners and intermediaries rather than adversaries.”⁵⁴⁵ One of the major weaknesses of the Indian Human Rights System is the often perceived imbalance between the rights of the accused versus rights of victims and witnesses. In this regard, it is important to conclude that the Indian judiciary needs to

⁵⁴⁰ Statement by Member of Parliament and Member of the Indian Delegation to the UN Dushyant Singh on Agenda Item 69 – Promotion and Protection of Human Rights [A] Implementation of Human Rights Instruments, [D] Comprehensive Implementation of and Follow up to the Vienna Declaration and Programme of Action at the Third Committee of the 66th Session of the UN General Assembly. New York, October 18, 2011.

⁵⁴¹ Although states have no right to encroach upon internal affairs of other states and remains one of the fundamental principles of international law as enshrined in the UN Charter through article 2(7), the subject of human rights needs a systematic reinterpretation because state machinery shall not plead this principle as giving them blanket prohibition from barring international community to remain moot spectators when gross and systematic violation of human rights become a norm in their territories.

⁵⁴² Sadashiva Panel which was established by the NHRC to undertake fact-finding mission concerning the commitment of atrocities and compensation to the victims in the wake of death of most wanted criminal in India, namely Veerapan, paid least attention to the rights of victims and witnesses in its inquiry. In the words of Fletcher and Sarkar, the Commission discredited “...the testimony of scores of victims. And as is so often the case in India, the authorities responsible for abuses have demonstrated complete impunity...”, Fletcher and Sarkar, *Ibid* at p. 35.

⁵⁴³ Fletcher and Sarkar *Ibid* at 41.

⁵⁴⁴ The Veerapan and other similar cases also bring to fore the oppressive practices and tactics, subjugating and destroying essential human fundamental rights, that can be employed by governmental and military forces under various legal instruments such as Maintenance of Internal Security Act, 1971; Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974; OFEPOSA, Essential Services Maintenance Act, 1968; Terrorists and Disruptive Activities (Prevention) Act, 1985 (amended in 1987); and Prevention of Terrorism Act, 2002. Similarly, provisions of legal instruments such as the Border Security Force, 1965; Indo-Tibetan Police Force, 1962; Rapid Action Force, 1991; Central Reserve Police Force, 1949; Central Industrial Securities Force, 1969; and agencies like Central Bureau of Investigation (CBI) and Research and Analysis Wing (RAW), are subject to misuse by the executing authorities and can be detrimental to the human rights system of innocent civilians.

⁵⁴⁵ *Ibid*.

become more sensitive towards the rights of victims and witnesses and read the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power⁵⁴⁶ into its jurisprudence.

The contribution of the human rights movements in India has been enormous especially after the emergency period of the 1970s.⁵⁴⁷ As Aswini Ray concludes, "...the civil and democratic rights movement in India, with its very obvious influences drawn from Western democracies, had rather fortuitous beginnings in India. From a largely limited activist base from the emergency period of the 1970s, it has since moved into newer areas, with newer sources of support especially among more marginalised sections. But the movement, unlike its counterpart in the West, remains constantly challenged by prevailing complexities of the political process. The emergence of newer identities and shifting quality of these identities shaped by the very nature of politics and electoral processes in India coupled with the paucity of similar experiences in western liberal democracies ensures that civil and democratic rights movement has to often formulate its own responses, make its own theoretical and conceptual innovations to meet such challenges."⁵⁴⁸

As mentioned in the introduction, the Indian civil and politics rights law and practice has been impacted by the Western as well as the Soviet system and as such a unique Indian model of human rights has started to emerge only after 1970s.⁵⁴⁹ Since the beginning of the globalisation, privatisation and liberalisation of the Indian economy, the Indian human right system is more and more tilted towards the Western system and still lacks a unique indigenous response.⁵⁵⁰ Along with the Indian judiciary, various international organisations, especially the United Nations and its Specialised Agencies and Committees, have played an important role in promoting normative concerns on various rights within the Indian state.

Although India continues to play an active and constructive role in all Human Rights related bodies and issues in the UN, there are certain tension areas which need analysis. The analysis is important because the expectations of the international community expressed through the UN system and responses or actions taken by India vis-à-vis the same can only validate India's stand with meaningful acceptance at global level. It may be noted that India extended a standing invitation to Special Procedures Mandate Holders in September 2011. India has been regularly receiving UN Special Rapporteurs. India's cooperation with the UN bodies can be seen through the Action Taken Report, integral part of India's report to the 2nd UPR.⁵⁵¹

While efforts of India on several issues of human rights have been appreciated, there are various areas where the UN bodies have expressed deep concerns. For example, with regards to the CEDAW, the Committee regretted long overdue report of India which contained limited and vague information and did not address all

⁵⁴⁶ GA 40/34, annex, 40 UN GAOR Supp (No 53) at 214, UN Doc A/40/53 (1985).

⁵⁴⁷ During the emergency period 1975-77, four amendments were incorporated into the Indian Constitution, 1st, 4th, 16th and 42nd which aimed to constrict the fundamental rights.

⁵⁴⁸ Aswini K Ray, "Human Rights Movements in India: A Historical Perspective", *Economic and Political Weekly*, 9 August 2003, pp. 3409-3415.

⁵⁴⁹ Human Rights laws and practices of India have been also influenced by the international politics of the Cold War. The Soviet support effectively provided immunity or shielded Indian position in international forums from attacks by the Western democracies and the NGO movements.

⁵⁵⁰ It is important to note, in this context that, despite frequent criticisms by select Western nations on human rights laws and implementation by India, these criticisms do not get in the way of cooperation on financial and security cooperation between India and these nations, as these countries find a common ground to see how India could become an important factor in maintaining an overall political and strategic balance in the Asian region vis-a-vis China.

⁵⁵¹ Second Universal Periodic Review of India, 2012.

questions raised by the Committee earlier and the report reached just two days before the dialogue.⁵⁵² Although this could be considered an administrative weakness, it is important to note that unless and until a timely submission enabling a thorough review of the report is made, India would continue to face such criticisms.

With regards to the Economic, Social and Cultural Rights implementation, the Committee regretted the absence of necessary domestic legislations and non-implementation of decisions of the Supreme Court, which the Committee appreciated. Another major failure of India is reported to be its inability to “coordinate and ensure, at both the federal and state levels, administrative and policy measures relating to economic, social and cultural rights, which constitutes a major impediment to the equal and effective implementation” of the ICESCR. Absence of district courts to enforce Human Rights at district level and alleged harsh actions against individuals and institutions working for the human rights by the officials and enforcement agencies, lack of adequate justice to victims of HIV/AIDS, lack of inability to combat the persistent *de facto* caste-based discrimination, persistent inequality among men and women, disproportionate representation of women in the informal labour market and significant wider disparities in wages, insufficient enforcement of existing labour legislations, inadequate translation of economic growth into the generation of employment opportunities, among others, constitute major criticisms against India in its ability to meet with obligations flowing from the ICESCR.⁵⁵³

As Aswini Ray concludes, “...since the inception of the Constitution, no new right has been added to Part III, while most of the seven components in the part have been constricted by periodic amendments; and citizens’ duties included in it through the 42nd Amendment of the emergency era.”⁵⁵⁴

The analysis also shows that India, despite having freedom of association, equality and non-discrimination, freedom for forced labour and child labour which are guaranteed as fundamental rights under the Constitution, has very poor records in ratifying international instruments pertaining to these subjects. Social, economic and political factors are also important reasons for India’s non-ratification of several conventions of the ILO, as shown above. It is therefore not surprising that “the granting of rights subject to caveats is a feature of the Indian Constitution, where rights are often granted or recognised only to be subject to myriad restrictions and exceptions that take away their universality.”⁵⁵⁵ India’s position to link human rights with development issues in developing countries has remained consistent. In view of the Millennium Development Goals, India has viewed and will continue to link the synergy between the protection and promotion of human rights and the rule of law with human welfare and socio-economic development, including the achievement of the MDGs.⁵⁵⁶

⁵⁵² CEDAW/C/IND/CO/SP.1, 47th Session, 4-22 October 2010.

⁵⁵³ Economic and Social Council, E/C.12/IND/CO/5, May 2008, 40th Session, May 2008.

⁵⁵⁴ Aswini Ray, *Ibid*, p. 3414.

⁵⁵⁵ Sankaran *ibid*. at p. 73.

⁵⁵⁶ Statement by Deputy Chairman of the Rajya Sabha and Member of the Indian Delegation to the UN K. R. Rahman Khan on Agenda Item 110 – Report of the Secretary General on the Work of the Organization at the 66th Session of the UN General Assembly. New York, October 4, 2011.

Status of Participation of India
Multilateral Treaties on Human Rights Deposited with the UN Secretary-General
Status as of 1 November 2014

General	EIF	Signature/Ratification/ Accession
Universal Declaration of Human Rights		
International Covenant on Civil and Political Rights	23 March 1976	10 April 1979(a)
International Covenant on Economic, Social and Cultural Rights	3 January 1976	10 April 1979(a)
Optional Protocol to the International Covenant on Civil and Political Rights	23 March 1976	-
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights	5 May 2013	-
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the Abolition of the Death Penalty	11 July 1991	-
Children		
Convention concerning Minimum Wage for Admission to Employment (Minimum Age Convention, 1973)	19 June 1976	-
Convention on the Rights of the Child	2 September 1990	11 December 1992
Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour	19 November 2000	-
Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts	12 February 2002	15 November 2004 (S) 30 November 2005 (R)
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography	18 January 2002	15 November 2004 (S) 16 August 2005 (R)
Disabilities		
Convention Concerning Vocational Rehabilitation and Employment (Disabled Persons)	20 June 1985	-
Optional Protocol to the Convention on the Rights of Persons with Disabilities	3 May 2008	-
Education		
Convention Against Discrimination in Education	22 May 1962	-
Protocol instituting a Conciliation and Good Offices Commission to be Responsible for Seeking a Settlement of any Disputes which may arise between State Parties to the Convention against Discrimination in Education	24 October 1968	-
Convention on Technical and Vocational Education	29 August 1991	-
Freedom of Association and Protection of the Right to Organise Convention	4 July 1950	-
Convention on the International Right of Correction	24 August 1962	-
Labour (ILO Conventions)		
<i>Convention concerning the Protection of Wages, 1949, No. 95</i>	24 September 1952	-
Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951, No. 100	23 May 1953	25 September 1958
Convention Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, 1949, No. 98	18 July 1951	-
Convention Concerning the Abolition of Forced	17 January 1959	18 May 2000

Labour, 1957, No. 105		
Convention Concerning Forced or Compulsory Labour, 1930, No. 29	1 May 1932	30 November 1954
Convention Concerning Discrimination in Respect of Employment and Occupation, 1958, No. 111	15 June 1960	3 June 1960
Convention Concerning Basic Aims and Standards of Social Policy, 1962, No. 117	23 April 1964	
Convention Concerning Employment Policy, 1964, No. 122	9 July 1965	17 November 1998
Convention Concerning Minimum Wage Fixing, with special reference to Developing Countries, 1970, No. 131	29 April 1972	-
Convention Concerning Protection and Facilities to be afforded to Workers' Representatives in the Undertaking, 1971, No. 135	30 June 1973	-
Convention Concerning Protection of the Right to Organise and Procedures for Determining Conditions of Employment in the Public Service, 1978, No. 151	25 February 1981	-
Convention Concerning the Promotion of Collective Bargaining, 1981, No. 154	11 August 1983	-
Convention Concerning Occupational Safety and Health and the Working Environment, 1981, No. 155	11 August 1983	-
Convention Concerning Employment Promotion and Protection Against Unemployment, 1988, No. 168	17 October 1991	-
Marriage		
Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages	9 December 1964	-
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	1 July 2003	-
Minorities		
Convention Concerning Indigenous and Tribal Peoples in Independent Countries, 1989, No. 169	5 September 1991	-
Nationality		
Convention Relating to the Status of Stateless Persons	6 June 1960	-
Convention on the Reduction of Statelessness	13 December 1975	-
Vienna Convention on Consular Relations	19 March 1967	28 November 1977 (a)
Optional Protocol to the Vienna Convention on Consular Relations concerning Acquisition of Nationality	19 March 1967	28 November 1977 (a)
Optional Protocol to the Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes	19 March 1967	28 November 1977 (a)
Race		
International Convention of the Elimination of All Forms of Racial Discrimination	4 January 1969	2 March 1967 (s) 3 December 1968 (R)
Refugees		
Convention Relating to the Status of Refugees	22 April 1954	-
Protocol Relating to the Status of Refugees	4 October 1967	-
Slavery		
International Agreement for the Suppression of the "White Slave Traffic"	18 July 1905	9 May 1950 9 January 1953 (R)
Slavery, Servitude, Force Labour and Similar Institutions and Practices Convention of 1926	9 March 1927	18 June 1927
Protocol amending the International Agreement for the Suppression of the "White Slave Traffic" signed at Paris on 18 May 1904 and the International Convention for the Suppression of the "White Slave Traffic" signed at Paris on 4 May 1910	4 May 1949	12 May 1949 28 December 1949 (a)

Protocol Amending the Slavery Convention	7 December 1953	12 March 1954 (s)
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery	30 April 1957	7 September 1956 23 June 1960
Protocol against the Smuggling of Migrants by Land, Sea and Air Supplementing the UN Convention Against Transnational Crime	28 January 2004	12 December 2002
Torture		
Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment	26 June 1987	14 October 1997 (Signature)
Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment	22 June 2006	-
International Convention for the Protection of All Persons from Enforced Disappearance	28 March 1996	-
Women		
Convention for the Suppression of the Traffic I Persons and of the Exploitation of the Prostitution of Others	25 July 1951	9 May 1950 9 January 1953
Convention on the Political Rights of Women	7 July 1954	29 April 1953 1 November 1961 (r)
Convention on the Nationality of Married Women	11 August 1958	15 May 1957
Convention on the Elimination of All Forms of Discrimination Against Women	3 September 1981	30 July 1980 9 July 1993
Optional Protocol against the Convention on the Elimination of All Forms of Discrimination Against Women	22 December 2000	-
Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, supplementing the UN Convention Against Trans-National Organized Crime	25 December 2003	12 December 2002