



Everyone  
right

# UNIVERSITY OF PUNE

## HUMAN RIGHTS OF VULNERABLE & DISADVANTAGED GROUPS

### COURSE BOOK - II





## विद्यापीठ गीत

ज्ञान बनो कर्मशील, कर्म ज्ञानवान

पुण्यमयी हे आम्हा अक्षर वरदान  
ज्ञान बनो कर्मशील, कर्म ज्ञानवान

जातिभेद, धर्मभेद, वंशभेद क्षे  
लाख लाख कंठातुनि हाच एक सूर  
करणेचया चरणांशी नत हो निज्ञान

माणुसकी धर्माचा अर्थ जाणतो  
श्रमनिष्ठा हे पवित्रतीर्थ मानतो  
हृदयातुनि समटेचा निर्भय अभिमान

सेवेतच मुक्ती ही मंगल दीक्षा  
न यायास्तव जागृति ही सत्वपरीक्षा  
हे विश्वचिं घर अमुचे मंत्रहा महान

मंगोश पाडगांवकर



**UNIVERSITY OF PUNE**

**HUMAN RIGHTS OF VULNERABLE &  
DISADVANTAGED GROUPS**

**COURSE BOOK - II**

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Co-ordinator, HRE Programme  
University of Pune

**INTRODUCTION**

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University of Pune

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August 2012

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# HUMAN RIGHTS OF VULNERABLE AND DISADVANTAGED GROUPS

## SYLLABI

### **HUMAN RIGHTS OF VULNERABLE AND DISADVANTAGED GROUPS**

#### **I GENERAL INTRODUCTION**

Meaning and Concept of Vulnerable and Disadvantaged Groups, Customary, Socio-Economic and Cultural Problems of Vulnerable and Disadvantaged Groups

#### **II SOCIAL STATUS OF WOMEN AND CHILDREN IN INTERNATIONAL AND NATIONAL PERSPECTIVE**

Human Rights and Women's Rights –International and National Standards  
Human Rights of Children-International and National Standards

#### **III STATUS OF SOCIAL AND ECONOMICALLY DISADVANTAGED PEOPLE**

Status of Indigenous People and the Role of the UN  
Status of SC/ST and Other Indigenous People in the Indian Scenario  
Human Rights of Aged and Disabled  
The Minorities and Human Rights

#### **IV HUMAN RIGHTS OF VULNERABLE GROUPS**

Stateless Persons  
Sex Workers  
Migrant Workers  
HIV/AIDS Victims

# PREFACE



Human Rights have never shown any kind of discrimination towards any individual or group of people. They apply equally to any country or culture without any bias on grounds of sex, race, religion, caste or community and language. They only advocate the welfare and well-being of all persons with equal treatment everywhere at all times. However, the socio-economic, political and cultural diversities, prevailing in each state across the world, and politics of the nation states, deprive the free exercise of human rights to a certain number of people. Any type of deprivation, which has a direct bearing on the right to life and dignity of people, certainly deprives them of the enjoyment of their guaranteed human rights. Such deprived people are normally referred to as vulnerable groups and disadvantaged communities or groups.

In the realm of International Law of Human Rights, these groups are broadly classified as women, refugees, disabled, internally displaced persons, HIV/AIDS victims, Migrant workers, minorities, mentally ill persons, trafficked persons, and sexual minorities' et.al. In order to assist them to augment the rights guaranteed to everyone, the United Nations had adopted a number of specific international conventions and declarations with an aim to fix responsibility on the nation-states to take care of their rights. Based on the mandate, the regional organizations, such as European Union, the Organisation of American States, African Union, and national governments have initiated a number of welfare schemes. However, due to poverty and other cross-cultural social problems many a times, a majority of vulnerable people are not able to access their basic needs, in spite of the efforts both at the international and national plane.

To wipe out the miseries of these people, and to help them to achieve the equal status with that of the developed sections of a society, it is the responsibility of both nation-states and individuals to extend a helping hand to the extent possible to uplift them in realizing their rights. With this aim, this second book in the series of the

human rights education programme will deal with the issues of some of the vulnerable groups in general and specific to that of Indian context by taking into consideration of the heterogeneous group of students of the University.

The objective of the Project of Human Rights Education for all initiated by the University, is only for promotion and propagation of Human Rights. There is no profit making aspect involved. The pictures presented are used from the various web resources of the UN and its organs, International, National, Non-Governmental Organisations, search engines and other websites sites to convey the message of Human Rights in an easy and understandable manner. In this regard the author expresses his gratitude to all the authors whose materials have consulted and whose websites we have browsed.

In this regard, I am grateful to the authorities of European Parliament and European Commission for providing the fellowship of the Erasmus Mundus Lot 13 of India to visit and access the materials and other research facilities of the University of Lund, Sweden, during my stay in 2010 and 2011, at the Centre for East and South Asian studies. I am also highly grateful to Prof Roger Greatrex, Director of the Centre for East and South Asian Studies and Dr Sidsel Hansson, Coordinator of the Erasmus Mundus Programme and Lecturer at the Centre for East and South Asian studies of the Lund University for their cooperation and encouragement .

I express my sincere thanks to all the authorities of the University of Pune and the Hon'ble Vice Chancellor Dr. W.S. Gade for reposing the trust and permitting me to continue my work as a coordinator of the HRE programme of the University. I am indebted to the former Vice Chancellors of the University, Dr R. K. Shevagonkar and Dr Sanjay Chhande for their constant encouragement and vision in the promotion of the Programme. I also sincerely express my thanks to all the members of the HRE programme of the University, and to all my colleagues of the University for seriously implementing the programme and making it a grand success.

I express my sincere thanks to the Dr. Sharmila Rege, Director of the Krantijyoti Savitribai Phule Women's Studies Centre and her colleagues for offering

their revered comments and suggestions on the rough draft of this work. I take this opportunity to thank many of our well wishers and friends, especially Dr. Sadiq Jiliani Ahmad Syed, Senior Diplomat of the UN for patiently going through the script and for offering his valuable suggestions and corrections. I also express my thanks to Prof. Y.S.R. Murty, Registrar, Jindal Global Law University, Haryana for offering the necessary feedback during the preparation of the work. I express my Sincere thanks to Miss. Priyanka Jawale, Teaching Associate and to my students Mr. Dormaan Jamshid Dalal and Mr. Meghanad Karle for their constant support in many ways and means during the preparation of the book. I extend my thanks to the Director and Staff of the EMRC for recording the lectures of the first book and looking forward for the same cooperation for the remaining volumes. I am also thankful to the faculty and non-teaching staff of the Department of Law of the University of Pune, who have extended their support in authoring the book. I express my sincere thanks to Dr. S. R. Bhosale, Chairman, Board of Studies, Faculty of Law and Dr. Rasheed Shaikh, Dean Faculty of Law, University of Pune, the administrative authorities of Pune University for their overall support and to Mr. Dattatraya Kute, Manager and staff of the University of Pune Press for publishing this book with utmost sincerity.

The cover page photograph is adopted from the United Nations Website, for which we express our sincere gratitude.

Last but not the least if any, unintentional errors are crept in I am alone responsible. Your valuable comments and suggestions if any with respect to the improvement of content and quality of work will be highly appreciated.

Date : 30/08/2012

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# INTRODUCTION



This book on ‘Human Rights of Vulnerable and Disadvantaged Groups’ is the second in the Series of the Human Rights Education Programme. The objective of the United Nations, and International Law of Human Rights, is to provide a stable and peaceful life to every individual, without any kind of discrimination, wherein, the rights guaranteed legally need to be adhered for their realization and to establish a borderless world. To achieve these objectives, nation-states have adopted a number of legal texts and evolved specific policies to help vulnerable groups to realize and enjoy legally guaranteed basic minimum rights at the international and national realm.

However, the political, social, economic and cultural inequalities present in each society many a times, hamper the rights of the weaker sections of a society, thereby obstructing them from fully realizing their rights. In spite of clearly articulating the parameters of equality and non-discrimination on any count, discrimination based on gender, race, language, and on other counts still prevail in various societies around the World. Taking into consideration various prevailing circumstances, the international community extended concessions to the vulnerable groups or disadvantaged people across the world, not only to remove the apparent deficiencies in the realisation of their legally guaranteed human rights, but also to make them self- sufficient in exercise of their rights on an equal footing.

In the Indian context, the Constitution of India guaranteed to all the people of India, civil, political, economic, social, and cultural rights for their realization by all sections of the polity without any kind of discrimination. However, due to poverty, customary and cultural practices prevalent in the country, equal opportunity has been denied to various categories of people that have prevented them from enjoying their rights equally on par with other developed sections of the society. There are various disadvantaged groups of people such as women, children, Scheduled Castes, Scheduled Tribes, Linguistic Minorities, Religious Minorities, Sexual Minorities etc. In order to augment their rights, the Constitution of India has provided a number of concessions to protect them from exploitation by other groups. However, from a variety of discriminatory practices that are prevalent against the above groups, it has been apparent that the existing environment for the free exercise of rights is in some way deficient. In order to bridge the gaps in the social system, the Legislature has adopted a number of progressive legislation extending concessions to augment the rights of these people. The Judiciary too in a number of cases has liberally interpreted

the provisions of the Constitution and various legislation to uplift the rights of the vulnerable groups. The vivid expansion of Public Interest Litigation or Social Action Litigation by the Supreme Court of India is a welcoming feature, compared to its counterparts across the world, to augment the rights of vulnerable groups.

Education is a vital tool to address many problems in any society. India is on the threshold of establishing itself as an economic power in the years to come. Therefore, the aim of the University is to equip its students to understand and spread the message of human rights. These rights will in turn certainly, help to evolve effective solutions to wipe out the tears from every eye of the millions of people whose rights are adversely affected, and who do not have at their disposal adequate knowledge and tools for the realization of their legally guaranteed rights. Apart from the above, equipping the younger generations would indeed, strengthen the justice delivery system in a more coherent manner. Taking into consideration the above-mentioned objectives, and the interdisciplinary nature of the pupil, this book addresses the various issues affecting the vulnerable and disadvantaged people in a concise, easy and understandable mode on the lines of the first book, Introduction to Human Rights and Duties.

In this regard, I thank His Excellency, Hon'ble Governor of Maharashtra, Shri. K. Sankaranarayanan for his vision and commitment in the promotion of Human Rights Education to the younger generations of the nation. I am also thankful to the Government of Maharashtra for evincing its interest in the promotion of Human Rights Education for all. I extend my thanks to all the authorities of the University for granting permission to launch the programme across the Departments. I also extend my thanks to the members of the Human Rights Education Committee for their rich contribution in making the programme a success. Last but not the least, I appreciate the untiring efforts of the coordinator of the programme, Dr. T.S.N. Sastry, Prof. & Head, Department of Law, and its faculty, staff and students for their continuous sustained support.

The University being the first in the country to offer this type of programme with the blessings of the Government of Maharashtra, I sincerely hope that other Universities and Institutions in the country and in the State of Maharashtra will follow suit in order to inculcate the values of philosophy of Human Rights amongst the youth.

Date : 4/09/2012

**Dr W. N. Gade**  
Vice Chancellor  
University of Pune



## Meaning and Concept of Vulnerable Groups

*This Unit will introduce to the students the meaning and idea of vulnerable and disadvantaged groups. It will focus on the Social, Economical and Cultural problems generally faced by these groups. Human rights universally recognise the realisation of rights by all sections of people without any discrimination. However, many a times, due to a number of adverse social, economic, cultural aspects, which play a vital role in the realisation of the rights, the vulnerable and disadvantaged groups are often not in a position to exercise their rights freely. Accordingly, this unit will introduce to the student vulnerable and disadvantaged groups, classification and the problems affecting these groups in a subtle perspective.*

### 1. Meaning of Vulnerable groups

The meaning of vulnerable is highly evasive. However, in common understanding, people who are easily susceptible to physical or emotional injury, or subject to unnecessary criticism, or in a less advantageous position in any society may be defined as vulnerable people. Accordingly, vulnerable groups are those groups of people who may find it difficult to lead a comfortable life, and lack developmental opportunities due to their disadvantageous positions. Further, due to adverse socio-economical, cultural, and other practices present in each society, they find it difficult many a times to exercise their human rights fully.

In the language of human rights vulnerable groups may be defined as, certain groups of population who often encounter discriminatory treatment, or need some kind of special attention for protection of the State to avoid exploitation or from a harmful environment.

People who are discriminated based on sex, race, by birth in a particular community, religious or disability or any other criteria that is specific to each society may generally described as disadvantaged people.

According to European Foundation for the improvement of living Working Conditions, vulnerable people means :

“Groups that experience a higher risk of poverty and social exclusion than the general population, ethnic minorities, migrants, disabled people, the homeless, those

struggling with substance abuse, isolated elderly people and children all often face difficulties that can lead to further social exclusion, such as low levels of education and unemployment or underemployment, refugees, stateless persons, victims of war are described as vulnerable groups".

### **MEANING OF DISADVANTAGED GROUPS**

According to the general perspective of International Law of Human Rights, disadvantaged groups are the people who are denied free access to the guaranteed rights in their free exercise.

Based on the socio, economic, cultural perspectives, the classification of these groups vary from country to country. In general, women, children, socially, economically, culturally deprived sections, disabled, minorities etc. form part of disadvantaged groups. Poverty is the main contributing factor towards degradation of the status of these people that are classified as disadvantaged groups.

The above definitions are only illustrative in nature. Despite the commitment of International Law of Human Rights towards the promotion and protection of rights of these groups, there is no agreed standard definition, concept, or standard classification of list of people who are to be classified as vulnerable and disadvantaged groups.

## 2. Concept of vulnerable and Disadvantaged Groups

The concept of vulnerable and disadvantaged groups is as old as human history. From ancient to modern times in every society, number of instances could be found where in a section of people in each society are given a different kind of treatment. In general, the discrimination often based on humiliation, harassment, intimidation, through social, political, economical, customary, and cultural factors. The idea behind such practices is to keep away such people from the forefront of the social activities and deprive them of their life and liberty. Further, keeping them aloof, depriving their economic, intellectual capacities to sub serve the needs of the rich and dominant people of a society.

Discrimination normally constitutes two types. One is direct discrimination, and the other is indirect discrimination.

### **Direct Discrimination :**

It means any person or groups of people treated less favorably, and easily exposed to societal risk. In this process, many a times, these people encounter difficulties in exercising their legal rights freely as guaranteed by both International Law of Human Rights and by the Constitution of a country.

### **Indirect Discrimination :**

Any practice employed intentionally or unintentionally which exposes people of a particular category to specific disadvantageous situation compared with others, unless it is objectively justified by a legitimate aim and the means of achieving that aim are appropriate.

In both the aspects, harassment is the common factor. This is because of segregation of specific group of people with an aim to deprive their dignity in order to create an intimidating, hostile, degrading, humiliating, or offensive environment in every moment of their life.

The economic factor contributes for the cause of vulnerability of people. However it cannot include other aspects of discrimination based on gender, disability, social, cultural, customary, caste and other types of discriminatory practices that are prevalent in each society. Apparently, an economic criterion alone

projects a narrow outlook in the determination of vulnerable and disadvantaged groups. In order to measure the vulanerability in a holistic perspective, it has to be evaluated from social availability of resources along with consumption, health, conventional traditions, practices that are followed in each society. This type of criteria adopted in each society could alone provide a viable classification of vulnerable and disadvantaged groups.

In order to halt such practices and to wipe out the miseries of groups of such unfavorable alienated people around the World, the international community of nation-states adopted a number of documents in tune with International Law of Human Rights to extend protection to everyone without any kind of discrimination whatsoever.

Human Rights place duties on the individuals, and states to eradicate all types of discriminatory practices that are adopted towards those people who are weak, oppressed on any count. However, due to poverty and other social, cultural barricades that exist in each society, there are millions of people not able to enjoy their basic rights, equally with that of progressive sections. Apart from the individual, social, and customary practices followed in each society, the politics and policies of nation-states also contribute largely, for the vulanerability and disadvantaged of large number of people around the World.

In view of the existence of large number of vulnerable and disadvantaged people, International Law of Human Rights extends special considerations for the promotion and protection of their rights and works towards eradication of discriminations. Accordingly, the United Nations has adopted a number of Declarations, Conventions, and Covenants to uplift the rights of these people. It also established special commissions and organisations to deal with the rights of such people whose rights are at jeopardy.

Due to lack of an acceptable definition, many a times, the UN bodies work on ad-hoc basis to augment the rights of disadvantaged people. The United Nations and its other bodies including the Human Rights Council regularly adopt a number of guidelines for implementation by the states in their efforts to curb the threats against the disadvantaged people.

## Women and Girls :

Women and girls are normally in a disadvantageous position all over the World. However, compared to developed countries, they are in a more disadvantageous position in developing countries due to abject poverty, other social, cultural, and derogatory customary practices adopted in each country.

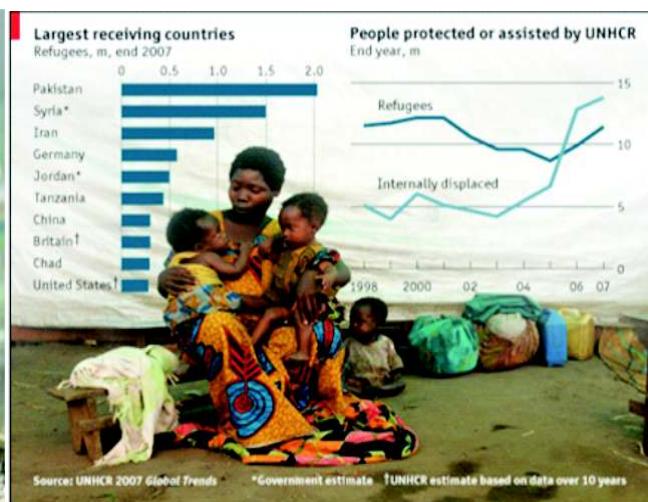


## Children :

Children again are the most disadvantaged people in the World. Children of developing countries, compared to developed countries face a number of problems, such as poverty, malnutrition, and other socio, economic, cultural abuses.

## Refugees :

Refugees means, persons who migrate from their country to another country to seek temporary shelter; due to adverse events such as famine, persecution, religious intolerance, racial discrimination or any other reason. Such people are unable to exercise freely all the human rights guaranteed in their own country or in a



foreign territory wherein they reside temporarily.

According to the **United Nations Convention on the Refugees 1951**, as defined (in Article 1A) a refugee means:

*“Any person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.”*

### **Internally Displaced Persons:**

People who are forced to leave their home and place of residence due to adverse affects or events that take place in their habitual dwelling are described as Internally Displaced Persons. These people normally take shelter in their own country away from their habitual place of residence. They do not fall under the category of refugees.



There is no exact definition defining Internally Displaced Persons. However, according to UN Principles of Internal Displacement, an IDP means: ‘internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.’

### **Statelessness :**

Statelessness is a major problem. It arises due to a number of reasons

including discrimination against minority groups in a nation, failure to include all residents in the body of citizens when a state becomes independent, or takes birth as a new state according to law of state succession in International Law and or due to conflict between states.

Statelessness means any person or group of persons who do not possess the nationality of any state. These people are highly vulnerable in the free exercise of their human rights, since they do not possess nationality of any country.



### National Minorities:

All those people who do not form part of majority population of a country could be classified as national minorities. The classification may be based on religion, ethnicity, language or any other factors.

The United Nations adopted a number of declarations to protect rights and appointed several commissions to augment the rights of these people. It adopted a specific declaration on 18th December in 1992. According to the declaration, it is the duty of every state to protect the Ethnic, Cultural, Religious, and Linguistic minority



rights without any deviance at all times. Until date there is no specific convention adopted dealing with the rights of these people.

### Migrant Workers:

The term migrant worker has different meaning and connotations in various parts of the world. It refers to both international

and national migrants. This is because, in view of economic globalization, unemployment, poverty in many developing countries people moves in search of a job from one country to another country. In view of migration, these workers enjoy little or no social protection in a country where they reside. Many a time women, children and other vulnerable and disadvantaged groups of people are trafficked for purposes of various unlawful activities.

In the international scenario, if any person moves from one country to another country in search work or any other avocation, can be described as migrant worker. Such migrant workers shall not be nationals of the country wherein they work. Many a times, due to lack of nationality these migrant workers rights are affected compare to that of the nationals of the country wherein they reside. In order to protect the rights of such workers and their families to eliminate any discrimination, the United Nations adopted an international convention in 1990 referred to as ‘International Convention on the Protection of the Rights of All Migrant Workers and Members of Their families.’ This Convention came into effect in 2003.

According to the Convention, a migrant worker means “a person who is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.”

Apart from the UN, the International Labour Organisation adopted a Migration for Employment Convention in 1949, Migrant workers (Supplementary Provisions) Convention in 1975. According to the UN estimates, the population of migrant workers in the world constitutes about 3% of the world population. Migrant workers constitute of two types.

### **National Migrant Workers :**

Due to abject poverty, famines, floods, natural disasters, urbanization, lack of sustainable irrigational facilities, etc., people who move in search of better living from their place of origin to another place or city in the same country are generally referred to as National Migrant workers. These people being citizens may have all the fundamental rights guaranteed by the constitution. However, due to certain legal technicalities, they may face certain adverse effects in the free exercise of their rights legally guaranteed. Taking the barricades that are faced by these workers into

consideration, the National and State Human Rights Commissions, and the governments of the Union and the State adopt a number of policy measures to protect the rights of these migrant workers.

### **Disabled Persons :**

Disability assumes different meaning in different contexts. However, according to **UN Declaration on the Rights of Disabled Persons (1975)** “any person unable to ensure by himself or herself, wholly or partly the necessities of a normal individual and or social life as a result of a deficiency either congenital or not in his /her physical or mental abilities” could be described as disabled.



Accordingly, any individual may also qualify as disabled if he/she has had impairment in the past or is seen as disabled based on a personal or group standard, or norm. Such impairments may include physical, sensory, and cognitive or developmental disabilities. People who suffer from mental disorders such as, psychiatric or psychological infirmities are also described as disabled persons. The United Nations considering the increasing number of disabled people, and to augment their rights adopted a convention in 2006. It has also established an organ called as UN Enable, which takes care of the interests of these people.

In the Millennium goals, the UN adopted a specific goal to protect the rights of the Disabled.



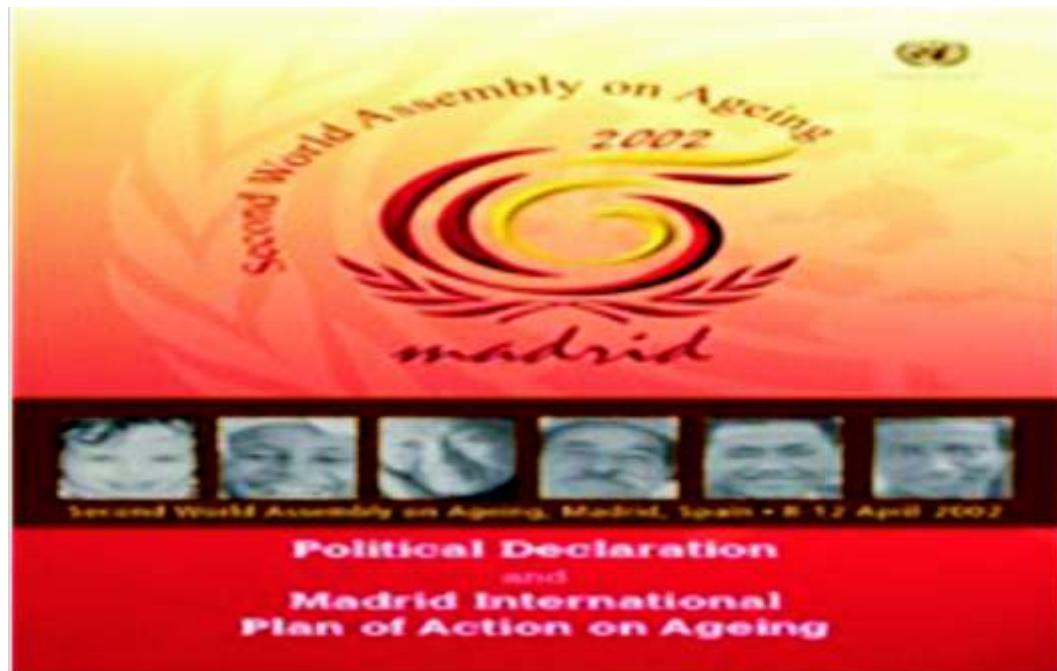
In the National sphere to uphold the dignity and freedom of the disabled the Union and the States adopted a

number of legislative and policy formulations. To protect their dignity and to remove the stigma of disabled from the minds of these people, the Union and State Governments took a number of steps including extending 3% reservation in education and jobs. Further, the Government provided a social status to these people named them as differently abled people.

### **Elderly Persons :**

People those who are of 60 years and above in age are normally described as old age people or elderly persons. Very often, the rights of these people are violated by family members, society and in other fronts. Being elders, their rights need to be protected. In order to protect their rights, the UN adopted a number of resolutions and declared every **October 1** to be celebrated as the **International aged people's day**.

It conducted a world congress in 2002 at Madrid and plan to adopt a convention to protect the rights of the aged people. As per the official agency of social policy and development division of the UN there are 737 million aged people living in the world today.



By 2050, it may cross 2 billion, which may outnumber the children of the world aged below 14 years. It is important to protect their rights considering their contributions to each society during their young and Middle Ages.

In the national scenario, the Government of India adopted a national policy of older persons in 1998. In view of the increasing number of older persons and to protect their rights, the Government of India enacted the **Maintenance and Welfare of Parents and Senior Citizens Act 2007**, in order to extend legal protection to the rights of the elderly persons in the country. It has also constituted a National Council for elderly persons to address various aspects concerning the rights of elderly persons.

### **HIV Positive Persons/AIDS patients :**

The people those who are afflicted by this most dreaded disease are another kind of persons who are discriminated on many counts in enjoying their basic rights around the World. According to UN official agency UNAIDS there are about 34 million people living in the World affected by HIV/AIDS. The UN works and adopts different strategies through its various organs and with the nation-states to augment

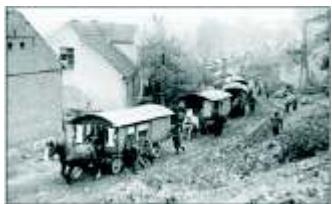


the rights of these people who are many times, denied human treatment by fellow citizens, family members and even at hospitals.

### **Roma/Gypsies/Sinti :**

The term Gypsy is commonly used who are connected with the ethnic name of Roma. They are also called as Sinti in some parts. There are number of people residing in various parts of the world. The people belonging to these tribes move frequently from one place to other either within the same country or region or in the other parts of the world. They live mostly in the Western and Latin American

countries. The UN, to augment the human rights of these people, initiated a number of efforts.



### **Sexual Minorities: Lesbian / Gay and Trans - gender :**

Due to the sexual orientation and other habits of these people, they are ill-treated in many parts of the world. Even the UN could not take a rigid stand in the protection of human rights of these people due to opposition of majority of its members. These people are often targeted by society for their sexual preference. However, some of the countries including UK have recently enacted legislations to protect the rights of these people. Among the various groups of sexual minorities, trans-gender face many problems in the society including their basic right to life and liberty. In India, these people are gradually acquiring few rights and receiving judicial recognition.

All the groups stated above are of a general classification. However, it may vary from country to country and different classification is evolved many a times, which may not have a standard international criterion to define vulnerable group. In the Indian context, the following may be broadly classified as vulnerable groups of people based on socio-economic, cultural and other criteria. They are as follows: (1) women; (2) Scheduled Castes and Scheduled Tribes; (3) Children; (4) Aged People; (5) Migrant workers; (6) Sex Workers (7) HIV / AIDS people; (8) Sexual minorities.



Nature of Sexual Minorities



Equal Rights for Sexual Minorities

### **3. Customary, Social, Economic & Cultural Problems of the Vulnerable and Disadvantaged Groups**

Since the practices on the above counts vary from society to society, the common issues concerning these groups of people and efforts of the international community are briefly discussed. The individual aspects relating to India are discussed in each sub-head independently.

From ancient to modern time's vulnerable group of people are the main targets of the advantaged sections of the society. They are often harassed on grounds of customary, social practices and cultural factors. In a number of circumstances, they are denied life and liberty, to enjoy their human rights guaranteed by the international community. Among the various problems that afflict them is denial of land, property rights which deprives their social and cultural status in the society. Apart from the basic economic aspect of poverty, customs and traditions practices in each society also keep them away from the main stream activities of the society.

Accordingly, to the philosophy of human rights, it is incorrect to deny the rights of any person or sections of society. Since every individual possess human rights to exercise the rights on an equal basis, abrogation of their rights on customary, social, economic, and cultural perspective only negates the development of a society. Thus for example, debts incurred by poor people, depriving their economic earning capacity, or caught up in customary, social perspectives such as untouchability, sex trade, slavery, deprivation of food, lack of access to education, basic medical and health facilities all constitute as denial of rights. Hence, human rights, being inseparable rights, they could not be sold, pledged, forfeited, or denied for any reason.

All the documents of human rights are committed for the promotion of human rights of all, including the vulnerable groups. In order to promote and protect the rights of these people, the international community has adopted a number of special documents. Many of the problems are mostly common to vulnerable groups. They are poverty, lack of access to nutritional food, sufficient clothing, adequate shelter, education, health facilities, social security, access to law and justice system, participation in the governance, et.al. In spite of adoption of legal instruments and policy formulations both at the international and national sphere, specific to promote the rights of these groups, the socio-economic, cultural aspects prevailing in each

society, hamper the rights of these people to a great extent.

In order to enable the disadvantaged sections of people, the United Nations appointed a number of committees and commissions to deal with the issues specific to each vulnerable group. Based on the reports of the various committees, the UN has adopted a general framework to eradicate and to address the adverse situations faced by these groups. The suggestions include:

- Equal pay for equal work;
- Independent mechanism or commission to establish and to deal with each category of people;
- Basic compulsory education;
- Special concessions to these people;
- Provisions to enable them to take part in the governance;
- Independent forums to express their grievances;
- Easy accessibility to medical and health care; and,
- Efforts to raise the standard of living, subsidized food supply, eradicate malnutrition, abolish any customary practices that threaten their survival, over all social security etc.

In 2008 the Committee on Economic, Social and Cultural Rights in order to cover more groups of people and to extend the purview of the problems afflicted to them has introduced the terminology marginalized and disadvantaged groups instead of Vulnerable groups. Nevertheless, the term 'vulnerable' also employed, as it is an established concept of international law, and many a times preferred by the nation-states for obvious reasons. The 2008 guidelines appealed to the states to provide specific data on the efforts of the states in raising the standards of these groups to enhance their rights. The guidelines include the training programmes, specific data on housing, right to food, education, scientific progression, malnutrition, health, and other social welfare schemes evolved from time to time by the states.

Based on the guidelines, each state was asked to submit independent reports for the scrutiny of the United Nations. In this regard, the Government of India, submitted its report in 2008 and 2012, which clearly stated in detail the constitutional policy, the schemes adopted by the Union and states with respect to each group of the people of vulnerable or disadvantaged sections. The detailed programme list submitted by India was commended by many states for the steps taken by the country especially to uplift the rights of women, children, SC/ST's, backward class people, older persons, and disabled. A number of suggestions were rendered at the same time, to overcome the age-old practices that are still adopted against these people especially, women, SC/STs, minorities, and other backward classes in various parts of the country.

Though the UN is making the best efforts to eradicate the problems encountered by many of the disadvantaged people in the world, still resistance by many advanced countries to provide data and to initiate steps to eliminate the woes of disadvantaged people is far from satisfactory. The dissemination of the objectives of human rights through education in large scale is the only way out, as highlighted by the UN, in its various policy formulations and legal documents, to promote and protect the rights of these groups. In February 2012, the General Assembly of the United Nations through Resolution 66/137 reaffirmed that it is the duty of every individual and organ of the society to strive to teach and promote education to foster respect for Human Rights. It has adopted a Plan of Action for the impartation of human rights education entitled as World Programme For Human Rights Education. It is the hope of the World body that such dissemination in turn will certainly equip the people, especially the marginalized groups, to know their rights, in order to attain just and favourable conditions for the augmentation of their rights as enshrined by the documents of international law of human rights.

**UNIT-I MULTIPLE CHOICE QUESTIONS**

**Answers**

1. On which of the grounds / aspects discrimination is based on? (A)  
A. Gender, disability, social, cultural, customary type, etc.  
B. Race, sex, caste, colour of skin, etc.  
C. Both'A'and'B'  
D. None of the above.
2. Which international convention under Article 1 A gives definition of Refugees? (D)  
A. Universal Declaration of Human Rights  
B. International covenant on civil and political rights.  
C. Convention on rights of Refugees  
D. United Nations Convention on the Refugees-1951.
3. Stateless means: (B)  
A. Group of persons in a state who are less in numbers.  
B. Any person or group of persons who do not possess the nationality of any state.  
C. Persons who have less number of nationalities.  
D. Group of persons who live in less part of the territory of any state.
4. Which of the following convention speaks about the rights and provisions relating to Migrant workers? (D)  
A. International convention on the protection of the rights of all migrant workers and members of their families.  
B. Migration for Employment convention-1949 (ILO)  
C. Migrant workers (supplementary provisions) convention in 1975.  
D. All of the above.
5. What is the age normally considered as an 'Elderly person'? (D)  
A. 40 years and above  
B. 25 years and above  
C. 18 years and above  
D. 60 years and above.
6. United Nations adopted many resolutions and declared every year.....to be celebrated as the International Aged People's Day. (C)  
A. 1st September:  
B. 1st November  
C. 1st October  
D. 5th September.
7. To protect the rights of the elderly people Government of India enacted .....act. (A)  
A. The Maintenance and Welfare of Parents and Senior Citizens Act 2007.  
B. Indian governments Senior Citizens Act.  
C. Welfare of elderly people's Act.  
D. Welfare of Senior Citizens Act.
8. To eradicate and address the adverse situations faced by disadvantaged groups of people, United Nations adopted a general framework and given suggestions, these suggestions include..... (D)  
A. Equal pay for equal work  
B. Independent mechanism or commission to establish and to deal with each category of people;  
C. Basic compulsory education.  
D. All of the above

*This Unit will introduce the two categories of disadvantaged groups of People, viz., women, and children. In this Unit the general issues and problems relating to Women and Children will be discussed. This unit will also introduce in brief the international scenario of the development of rights of women and children and discuss the national perspectives.*

### A) Human Rights of Women

#### 1. HUMAN RIGHTS AND WOMEN'S RIGHTS

Women constitute almost half of the world population. However, their enjoyment of rights equally with that of men is far from satisfactory. In every society from ancient to modern times, women are considered as the property of men to serve their interests in both society and domestic front. In order to halt such practices, the UN and the international community have evolved a number of methods to augment the rights of women on par with men without any kind of discrimination. The efforts of the international community and the government of India are discussed in two separate heads in brief.

#### 2. INTERNATIONAL SCENARIO

In the beginning, international politics and law discriminated women and avoided equal status to women on par with men. However, after the Second World War with the raising voice of women the situation changed considerably. During the drafting stages of the Charter of the United Nations, the protest voices of women were answered. Accordingly, the preamble of the Charter of the United Nations unequivocally declared that the human rights of the people of the world be enjoyed by all without any kind of discrimination towards women.

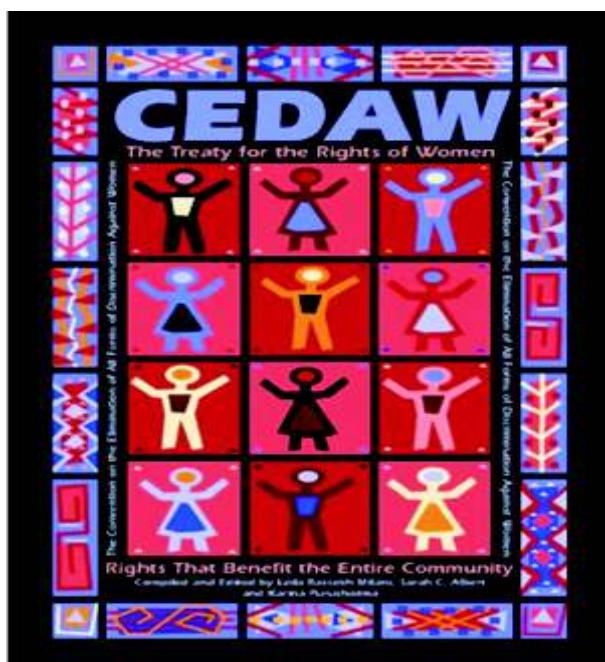
The international community reiterating its commitment to promote the human rights of women



appointed **Mrs. Eleanor Roosevelt**, the former first lady of America as the chairperson of the drafting committee of the Universal Declaration of Human Rights. The former President of USA, Henry Truman appreciating her efforts termed her as the First Lady of the World who championed noble cause of promoting human rights of the people of the World. The efforts of Mrs. Roosevelt considerably changed the face of international politics and opened the gates for the adoption of a number of legal documents avoiding discrimination against women. A series of special instruments have been adopted for the protection of women's rights to eliminate gender-based discrimination in the world.

It clearly advocated that all the rights enshrined in the declaration are to be enjoyed by all without any discrimination towards sex. The same was reiterated in the Covenants on Civil and Political Rights, and Economic, Social and Cultural rights adopted in 1966.

Apart from the general provisions to guarantee the human rights of women, the UN from 1952, adopted a number of conventions and declarations to promote status of women in all respects. In the series of documents that were adopted specially dealing with women, the important ones are-



- The Convention on the Political Rights of Women, 1952
- The Declaration on the Protection of Women and Children in Emergency and Armed Conflict 1974

In spite of the efforts of the world community to promote the human rights of women, the traditional aspects that are adopted in various parts of the world could not bloom the rights of women as advocated by International Law of Human Rights. The ideological

conflicts in the promotion of human rights between the east, west, and socialist blocks further relegated the position of women to a secondary level. Apart from the above, the domination of western concept of promoting civil and political rights with a market-oriented economy in the public field has completely sidelined the rights of women.

The UN considering the situation determined to speed up its efforts to make the private and public aspects of women across the world, started conducting special conferences to deal exclusively with the women's issues opening with the first world women's conference in 1975 at Mexico. Based on the representation and voices raised by women from various geographical, cultural, racial, religious backgrounds, the UN declared the period 1976-85, as the decade of women. During this period, a number of conferences were conducted to assess the status of women and to evolve specific strategies in order to wipe out the discriminatory practices followed around the world.

During this period, a number of committees were constituted to evolve specific strategies. Based on the feedback, the UN in 1979 adopted **The Convention on the Elimination of All Forms of Discrimination against Women** (popularly referred to as **CEDAW Convention**). This convention became a milestone in the development of women's rights and addressed to eliminate all kinds of discrimination. The convention has come into force in 1981 and 187 states have ratified the convention and became parties. Among the few who have not become parties to it are Iran, Palau, Somalia, Sudan, South Sudan, Tonga, and United States of America. USA and Palau have signed but not ratified the convention.

The convention has a preamble and 30 articles. It defines acts that constitute as discrimination and specifies the strategies to the national governments to adopt policies to eliminate such discrimination against women.

According to the Convention, discrimination against women as "*...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.*" (Article 1)

By accepting the Convention, States commit themselves to undertake a series of measures to end discrimination against women in all forms, including: (Article 2)

*to incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;*

*to establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and*

*to ensure elimination of all acts of discrimination against women by persons, organizations or enterprise*

It sets out equal rights for women, regardless of their marital status, in all fields - political, economic, social, cultural and civil - and calls for national legislation banning discrimination. (Article 3)

These principles have been further enunciated in detail in the Convention. The convention for the first time guaranteed the health rights of women, including that of reproductive health and choice.

As per the provisions of the Convention, each country need to submit independent reports to the committees appointed by the UN at periodical intervals on the steps taken by them in the promotion of women's rights. In this context, it is to be noted that the effectiveness of the Convention in promoting the rights of women is significantly undermined by the states by making reservations to several provisions of the convention.

### 3. SUPERVISION

The UN, in order to monitor the situation in the promotion of women's rights adopted **an optional Protocol to the CEDAW Convention in 1999**, which came into force in 2000. According to the protocol, the UN established a Committee to receive complaints from women for any alleged violation of their rights in the national scenario. However, only women belonging to states, which are parties to the protocol, could make complaints to UN monitoring committee. The Protocol also establishes a distinctive feature: an inquiry procedure that allows the Committee to

initiate investigations into suspected grave or systematic violations by a state party against women. In this regard the Committee can carry out visits to the country in question.

The Committee has contributed significantly to the interpretation of the obligations imposed by the Convention through its General Recommendations. They have dealt with several issues of utmost importance for women, such as violence against women; equal remuneration for work of equal value; female circumcision; abuses against HIV/AIDS patients ; violence against women; equality in marriage and family relations; women's political rights, women and health; temporary special measures; and women migrant workers .

Apart from the above legal instruments, the UN had conducted the following Conferences to make further recommendations to nation-states to address the significant issues relating to women.

#### **4. WORLD CONFERENCES ON WOMEN**

**The First World Conference was conducted during 19 June- 2 July ,1975 at Mexico.** In this conference it set three objectives ;

- Full gender equality and the elimination of gender discrimination;
- The integration and full participation of women in development;
- An increased contribution by women towards strengthening world peace.



#### **Second World Conference on Women at Copenhagen, 14-30 July 1980**

This Conference recognized that there was a disparity between women's guaranteed rights and their capacity to exercise them. Participants identified three spheres in which measures for equality,



development and peace were needed:

- Equal access to education;
- Equal access to employment opportunities;
- Equal access to adequate health care services

### **Third World Conference on Women Nairobi, 15-26 June 1985**

The data presented by the United Nations to the delegations of Member States revealed that the improvements observed had benefited only a limited number of women. Thus, the Nairobi Conference was mandated to seek new ways of overcoming obstacles for achieving the objectives of the Decade i.e., equality, development, and peace. The Nairobi Conference recognized that gender equality was not an isolated issue, but encompassed all areas of human activity.



### **Fourth World Conference on Women Beijing, 4-15 September 1995**



The Beijing World Conference was conducted to oversee the implementation of the agenda adopted in the third conference. About 189 countries took part in this conference. This was the biggest ever conference in the history of women's congress. The significant factor is that this conference mainly discussed the various forms of violence that are

taking place in the world against women, including domestic violence. After extensive deliberations, twelve critical areas were identified with a Plan of Action to be implemented by states parties both internationally and nationally. The identified areas are:

### **Women And Poverty :**



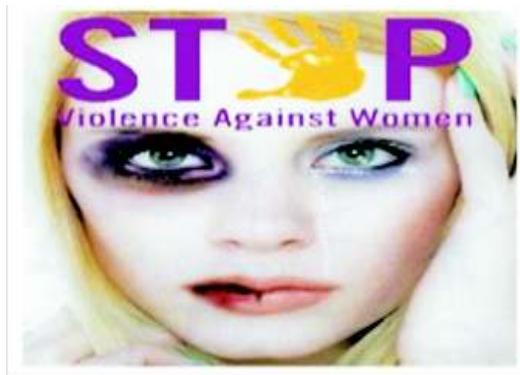
### **Education And Training Of Women :**



### **Women And Health :**



## **Violence Against Women :**



## **Women And Armed Conflict :**



## **Women And The Economy :**



## Women In Power And Decision-Making :



## Institutional Mechanism For The Advancement Of Women :



## Human Rights of Women :



## Women And The Environment :



## Women And The Media :



## The Girl Child :



The conference also identified and recognized the significance of Non-Governmental organizations role in promoting the rights of women.

Apart from these World Conferences, the UN in order to monitor the situation based on the reports submitted by the Women's Commission in 2010, It established UN WOMEN; a separate organisation to work and monitor the women's issues on a continuous basis.



**United Nations Entity for Gender Equality and the Empowerment of Women**

The main functions of the UN WOMEN are:

- To support inter-governmental bodies, such as the Commission on the Status of Women, in their formulation of policies, global standards and norms.
- To help Member States, to implement these standards, to provide suitable technical, financial support to those countries that request it, and to forge effective partnerships with civil society.
- To hold the UN system accountable for its own commitments on gender equality, including regular monitoring of states.

Apart from these activities, the Security Council for the first time adopted a resolution in 2000.

The resolution reaffirms the important role of women in the prevention and resolution of conflicts, peace negotiations, peace-building, peacekeeping, humanitarian response and in post-conflict reconstruction and stresses the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security.

The **UN Millennium development goals** also highlight the significance of the promotion of women's rights. Accordingly, the promotion of Gender Equality; as one of its main goals apart from the others which also deal with the issues of women indirectly such as maternal health; combat HIV/AIDS and also global partnerships to develop strategies to eradicate discrimination against women. The Rome Statute of International Criminal Court also has provisions for the protection of crimes committed against women. There are efforts taking place to request the General Assembly to conduct a fifth World Conference in 2015 to address and review the

efforts and action plans adopted on various issues of women.

## 5. INTERNATIONAL WOMEN'S DAY

For the first time in history, the Government of USA on February 28, 1909 after adoption of socialist declaration to highlight the issues of women, celebrated this day



as women's day. After the declaration of USA, a number of countries in the Western World declared different dates to celebrate the Women's day. Finally, in the year 1977, the General Assembly of the UN declared March 8 as International Women's and Peace Day. Following the Declaration today all most all the countries celebrate **March 8 as the Women's day** in recognition of their services and for the promotion

of their rights. In many countries, this day is declared as a holiday to celebrate the women's achievements in their country. In some countries it is declared as holiday for women employees and workers.

In 1999, the General Assembly designated **November 25 every year to be celebrated as the International Day for the elimination of Violence against Women**. The UN accordingly requested the member states and the Non-Governmental Organisations in the world to work on that day to raise awareness campaigns to end violence against women.

## 6. NATIONAL STANDARDS

The customary practices such as sati, purdah and devadasi system robbed the freedom of women to a great extent and deprived of their political, social and economic rights especially in inheritance of property. The Hindu law completely prohibited the property rights of inheritance until recent times. During the British Period, a number of reformers, Raja Ramohan Ray, Iswarchandra Vidayasar, Knadukuriveerasalingam, Jyothirao Phule, Balaganadara Tilak and many other reformers fought for the abolition of unequal treatment meted out to women in many fronts.

After independence, the Constitution of India adopted on January 26, 1950 abolished all kinds of discriminatory practices against women. The constitution on

the lines of the Universal Declaration of Human Rights 1948 recognizing the rights of women, has a number of provisions to protect and augment their rights. Some of the Salient Features are:

- ❖ The Constitution of India through Article 14 recognized equality and equal protection before law for both men and women.
- ❖ No discrimination against women is permissible. (Article 15 (1)).
- ❖ Equality of opportunity in matters of public appointments for all citizens is guaranteed and in particular gender-based discrimination in respect of employment or office under the state has been prohibited. (Art. 16).
- ❖ Through Article 15 clause (3) it permits the state to make any special law or provisions or concession to be extended for the promotion and welfare of Women.
- ❖ Article 21 guarantees the Life and Liberty to all the citizens without any sort of discrimination.
- ❖ The Directive Principles of State Policy (which in the language of human rights described as Economic, Social and Cultural Rights) directs the State to make provisions through Article 39 (a) the state to ensure both men and women have the right to an adequate means of livelihood.
- ❖ Article 39 (Clause D) Provide for equal pay for equal work without any kind of discrimination.
- ❖ Article 42 allows the state to make provisions for securing just and human conditions of work and maternity relief.
- ❖ According to Article 51(A) (e) it is the fundamental duty of every citizen to renounce practices derogatory to the dignity of women

To achieve the objectives of the constitution and to discharge its international obligations to uplift the rights of women, the Government of India enacted a number of special legislations and amended some of the existing civil, criminal, and family laws.

They are:

**The Dowry Prohibition Act, 1961** that prohibits demand of dowry by the in laws in any form linked with the marriage of women, and if proved it constitutes as a crime under the eye of law.

**Child Marriage Restraint Act 1929** as amended in 1956 prohibits any marriage of a girl below the age of 18 years. In case if marriage is performed below the age 18,

constitutes as a crime where in the elders and the husband together are punishable. This Act increased the age limit of a female from 15 to 18 years and that of a male from 18 to 21 years.

**The Hindu Marriage Act, 1955** as amended in 1976 provides equal right of inheritance of property for women as a coparcener in the joint property of a family. This Act further provides the rights to a girl to repudiate any child marriage performed before attaining majority.

**Immoral Traffic (Prevention) Act 1986** (which repealed the Suppression of Immoral Traffic Act of 1956), prohibits of selling, soliciting women or girls for any immoral purpose including keeping them as brothels. The aim of the Act is to prohibit sexual exploitation of person, which includes men and children. It decriminalizes prostitution.

**Indecent Representation of Women (Prohibition) Act 1986:** This act punishes the exploitation of women or depiction of women in any indecent manner that affects the dignity of women. It makes such acts as a criminal offence.

**Commission of Sati (prevention) Act 1987:** This act prohibits any kind of act forcing a woman to immolate along with the dead body of the husband. This is again a criminal offence where in the punishment may be awarded up to life imprisonment.

**National Commission of Women Act 1990:** This Act was enacted to establish a National Commission of women to monitor and to help women related issues, especially to review the Constitutional and Legal safeguards for women; to recommend remedial legislative measures ; to facilitate redressal of grievances and to advise the Government on all policy matters affecting women.

**Prenatal Diagnostic Technique ( Regulation and Prevention of Misuse ) Act 1994:** This Act prohibits scanning of a foetus and performing illegal abortions to kill a female foetus.

**Protection of Women from Domestic Violation Act 2005:** This Act was amended to discharge the international commitments of the Government of India to the CEDAW Convention. According to this Act, any type of intimidation of women or harassment by family or otherwise, which constitutes a violation to the dignity of women, is punishable and is a criminal offence.

**The Marriage Amendment Act 2001,** amended the Hindu Marriage Act, Special

Marriage Act, Parsi Marriage and Divorce Act, the Code of Criminal Procedure providing for speedy disposal of applications for maintenance. This Act further removed the ceiling of maintenance and gave an ample discretion to judiciary to decide the amount of maintenance in each case depending on the status of other spouse.

In spite of progressive legislations and judicial pronouncements, the misuse of technology, rapid urbanization, poverty, natural calamities such as famines, floods etc., many a times worsens the situation of women in exercising their rights to the fullest extent as guaranteed by law. Indian women suffer a number of inequalities especially in the domestic front on the name of customary and religious faiths. This is more evident especially in issues relating to marriage, customary ceremonial functions, choice of reproductive rights, payment of wages, especially in the agricultural and other sectors, inheritance of property, domestic violence, custodial rapes, sexual harassment at work place and in society.

Apart from the above legislations, the government of India established the National Commission of Women to cater to the needs of women in a number of areas. The Indian Judiciary in a number of judgments has greatly contributed for the augmentation of women's rights in a wide array of areas such as:

- Discretion shown in the area of employment;
- Unequal treatment to HIV Victims and AIDS patients;
- Inheritance in the property laws;
- Treatment of victims of rape, sexual harassment of women at work place, dowry related offences;
- Separate police cells to women prisoners; establishment of women police stations, Safety of women in the police lock-ups;
- Ban on use of the latest technology, which include Ericsson method, sonography an amniocentesis tests; Advertisements, Serials, in the print and electronic Media with respect to the pre-natal diagnostic techniques;
- Banning of discriminatory cosmetic advertisements, banning even indecent representation of women in films, upholding dignity of prostitutes in cases of rape; Reproductive rights, etc., certainly augmented the rights of women compared to yester years. Many of the judgments of the courts led the legislature to enact a number of progressive laws or to amend the existing ones.

## 7. National Policy of Women

The Government of India in the year 2001 adopted a National Policy of Women for advancement, development and empowerment of women. The Ministry of Women and child development takes care of various aspects of women's development and empowerment. The aims and objectives of the policy are looked after by the Ministry to achieve self sufficiency of Indian women. The aims and objectives of the policy are:

- (i) Creating an environment through positive economic and social policies for full development of women to enable them to realize their full potential.
- (ii) The de-jure and de-facto enjoyment of all human rights and fundamental freedom by women on equal basis with men in all spheres – political, economic, social, cultural and civil.
- (iii) Equal access to participation and decision making of women in social, political, and economic life of the nation.
- (iv) Equal access to women to healthcare, quality education at all levels, career and vocational guidance, employment, equal remuneration, occupational health and safety, social security and public office etc.
- (v) Strengthening legal systems aimed at elimination of all forms of discrimination against women.
- (vi) Changing societal attitudes and community practices by active participation and involvement of both men and women.
- (vii) Mainstreaming a gender perspective in the development process.
- (viii) Elimination of discrimination and all forms of violence against women and the girl child; and
- (ix) Building and strengthening partnerships with civil society, particularly women's organizations.

Apart from National Policies and other initiatives, the Government of India and the State Governments has evolved a number of policy formulations, schemes through annual budgets for the promotion of women's rights.

## 8. Sum up

The brief overview of the plight of women both internationally and nationally brings the scenario to the fore, which men need to consider women as partners in progress. In a traditional society like India, where many women goddess are worshipped with lot of devotion and respect, when it comes to equal treatment of

their biological partners, both men and society keep them in low profile. Many a times they are considered as servants of the home, and are looked at as sexual objects. Their economic capacity is deprived to make them dependent on the male dominated society. The traditional, economic, social and cultural disbelief and age old customary practices of intimidating cruel practices that are prevalent in many parts of the world has to be halted with welcome sign of considering them as partners in progress. Love, affection, care with utmost respect for the augmentation of their rights alone would result in uplifting their rights and strengthen the international and national efforts in realizing their rights as human beings.

## (B) Human Rights and Children

Among the various vulnerable groups, children are another major category, whose rights are affected by negligence and other conditions in every society. In many societies in the world, especially in the developing world from tender age, their rights are abused for a variety of reasons. A child has a number of basic rights, such as, protection and prevention of illegal abortion, right to nourishment, adequate nutritious food, basic health care, love and affection of family, society, not to abuse the tender age, recreation, right to basic education, right to development, right to identity, community and social life, etc.

Poverty is a negation to the rights of millions of children in many societies around the world. Most often, they are pushed to work from the tender age at the cost of their physical, intellectual, and psychological development. According to the **United Nations Children's Emergency Fund (UNICEF)** around ten million children every year below the age of five die due to lack of proper medical care. About 100 million children mostly girls are not in schools. In the developing world, about 150 million children are underweight due to lack of nutritious food. Therefore, it is the duty of family, society and the nation- states to render their assistance to augment the rights of children in every sphere

### 1. Child Rights : Efforts of the International community

Realizing the traumatic sufferance of children in the First World War, **Eglantyne Jebb** a British lady with the help of her sister Dorothy Boxtot in 1919 founded the save children organization in London.



Eglantyne Jebb, 1876-1928, Founder of Save the Children and champion of children's rights

Eglantyne Jebb, 1876-1928, Founder of Save the Children and champion of children's rights

In 1920 with the help of the International Committee of the Red Cross (ICRC), it became an international organization for save the children, which was later named as the International Union for Save the Children. In 1923, she drafted a first draft of children rights. In 1924, she sent the document to the League of Nations. Basing on this document on October 26, 1924 the League of Nations adopted a declaration popularly termed as the **Geneva Declaration on the Rights of Child**. The Declaration was again placed before the General Council of the League of Nations in 1934, which was accepted by majority of nations of the League. The Declaration has five articles, which speaks of the responsibility of men and women of the world to protect children than on conferring rights on the children.

After the adoption of the **Universal Declaration of Human Rights**, 1948, it has explicitly recognized the rights of every person including the children. The Declaration clearly described, “.... motherhood and childhood are entitled to special care and assistance” and describes the family as “the natural and fundamental group unit of society.”

In order to augment the rights of children as advocated in the Universal Declaration, the General Assembly in 1959 adopted the first declaration dealing with the rights of child. The Declaration lays down ten principles, which highlight the significance of children's rights for special care and protection before and after birth and appropriate legal enactments by the nation-states.

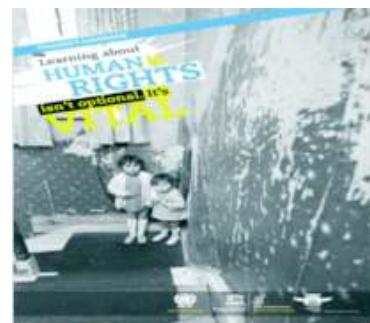
The ten principles are as follows:

1. The right to equality without any distinction on account of race, religion, or national origin.
2. The right to special protection for the child's physical, mental, and social development.
3. The right to a name and a nationality.
4. The right to adequate nutrition, housing and medical services.
5. The right to special education and treatment when a child is physically or

mentally handicapped.

6. The right to understanding and love by parents and society.
7. The right to recreational activities and free education.
8. The right to be among the first to receive relief in all circumstances.
9. The right to protection against all forms of neglect, cruelty and exploitation.
10. The right to be brought up in a spirit of understanding, tolerance, friendship among peoples, and universal brotherhood.

After the adoption of the Declaration, the United Nations in 1966 adopted two more important Covenants on Human Rights. They are International Covenant on Civil and Political Rights, ( ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR). Both the Covenants recognizes civil, political, economic, social, and cultural rights of every person in the world including the children.



In 1976 UN constituted the Human Rights Committee (which is now named as the Human Rights Council) has been entrusted to oversee the functioning and the implementation of the covenants along with the child rights.



In 1973, the International Labour organization (ILO) adopted **The Minimum Age Convention** (Convention No. 138). The Convention came into force in 1976. Parties to the convention have to obey and observe the conditions set in the convention in terms of employment of children. According to the Convention, no child below

the age of 15 years can be engaged in work. However, in exceptional circumstances, children below 15 and above 13 may be engaged in light work, which in no way is harmful to the child. States parties who have ratified the convention need to observe the conditions stated there in without any deviation. 153 member states have so far ratified the convention, and observe it with strict adherence. It is unfortunate, that India, which has a huge number of children, has not yet ratified the Convention.



## 2. Convention on the Rights of the Child (CRC) 1989

The United Nations considering the number of abuses that are alarmingly raising all over the world in the protection and promotion of children's rights adopted a legally binding convention directly addressing the children rights as human rights. 190 states become parties by ratifying the Convention. However, United States of America and Somalia have not yet ratified the convention.

The objective behind the Convention is, children being human; their rights too constitute as human rights. As human rights, children rights legally guarantee their rights internationally and to halt all kinds of discriminatory abusive practices that are adopted against their life and liberty. Apart from the civil, political, economic, social, cultural rights, they have independent rights to live with parents and to be taken care



Child Delegates at the adoption of Child Rights Convention with the Secretary General Javier Perez De Cullear

during their childhood. Further, they guarantee the group rights, such as rights of refugees, minority children, and as disabled.

The Convention is the first legally binding comprehensive document addressing all the rights of children, imposing binding obligations on the States to adopt and implement the Provisions of it. The fifty-four articles of the convention apart from guaranteeing all the rights of children also provided for the establishment of an International Commission on Child Rights to monitor and to seek reports from the states parties on the various aspects of the implementation of the provisions of it.

According to the article 1 of Convention, child means every human person below the age of 18 years is regarded as a child, unless otherwise by law a state reduces the age of a child from 18. Though this provision gave liberty to states to lower the age of majority, no state could reduce the age less than 16 years as a general norm. The liberty in the definition led many countries to describe the age of a child ranging between 16 to 18 years on different counts as the age of majority.

Apart from defining the concept of child, the Convention highlights four important major principles.

- **Non-discrimination :** This provision makes a binding obligation on the states not to discriminate a child under any circumstances.
- **Best Interests of the Child :** The Convention imposes an obligation on the States parties to take steps that any law that is in vogue or enacted in future, including societal conditions, practices in no way effect the best interests of children.
- **Right to life, survival, and development :** It is the duty of the states to take care of the development of child, which includes physical, mental, emotional, cognitive, social, and cultural developments in no way harmful to the life and survival of the child.
- **Respect to the Views of Child :** Children should be freely allowed to express their opinions. The views expressed by them considering their age, mental maturity need to be respected, encouraged, while giving due weight-age taking into consideration of interest and welfare of child.

The Rights stated in the Convention can be classified under eight major heads, which are as follows:

## Right to Life and Liberty



## Right to Education



## Right to Food



## Right to Health



## Right to Decent And Safe Environment Including Drinking Water



## Right to Identity



## Right to Fundamental Freedoms



## Right to Protection



The Protocols were adopted in the year 2000 and came into existence in 2002. India is a party to both the Protocols.

The **First Optional Protocol** is on the Involvement of Children in Armed Conflict, which prohibits the recruitment, or involvement of children below the age of eighteen years. The states parties to the Protocol have a responsibility to prevent such activities.

The **Second Optional Protocol** is on the Sale of Children, Child Prostitution, and Child Pornography.

This protocol imposes obligations on the States parties to take steps to prevent the following :

- It abolishes any act of Sale of Children, Child Prostitution, and Child Pornography.
- It has specified a number of uniform standards need to be adopted by the States in their national legislations with respect to offenders, protection of victims and remedial measures.
- It provides a framework for International cooperation in these areas, especially for the prosecution of offenders.

### **3. UN Organs concerned Directly with the Rights of Children**

Apart from the activities of the General Assembly, the Security Council, and other organs of the UN, the UNECSO, Human Rights Council, Office of the High Commissioner for Human Rights and UNICEF looks after the interest of children and their rights. Among all UNICEF is directly concerned with the rights of children, which reviews the situation in each region of the world, prepares the drafts, reports, and submit, to the General Assembly for adoption of legal texts and documents.

### **4. Brief overview of UNICEF (United Nations Children's Fund)**

The General Assembly of the United Nations created United Nations International Children's Emergency Fund in 1953 to take care of children in Asia and

Europe after the ravages of World War II. Initially it focused its attention with respect to food, shelter, and medical aid to children. With the increasing infant mortality, which is so high especially in Asia and Africa, it turned its attention towards health issues of children and mothers. Later, it started working with various other international organs like, World Health Organisation, Food and Agricultural Organisation (FAO), UNESCO and the Human Rights Commission. These activities resulted in to focus its activities from health to other areas of children rights,

especially education. The extraordinary work of the UNICEF was appreciated



everywhere in the world and it received the Noble Peace Prize in 1965.

With the award, it started focusing on peace keeping and making in various regions to create conducive environment for the development of children. After the adoption of the Child Rights Convention, and the optional protocols, in the contemporary era, it became a vital organ to look after every area of children's Rights. Today it has offices almost in every country in the World. At present its focus areas are; (1) Child survival and Development; (2) Basic Education and gender equality; (3) Children HIV and AIDS; (4) Child protection; and (5) Policy and Advocacy partnerships.

## 5. World Children's Day

In order to augment the rights of children throughout the World, **the General Assembly in 1954, declared November 20 every year to be celebrated as the Children's Day.** On this day along with all the organs of UN and the World bodies, the UNICEF especially organizes number activities and works with the states, which have different dates throughout the year for the celebration of Children's Day. India celebrates November 14 every year as National Children's day. Among all the countries in the world, the USA has not yet designated any day in the year as children's day.



## 6. National Scenario of Children and Legal Position

India being the second largest populated country in the world has a huge contingency of children. The population of children in India is approximately thirty five million of the total population.

Poverty often cited as the most common ground for the violation of the rights of children in India. Apart from this, lack of quality education and discrimination especially towards the socially backward people of the country constitutes as a major threat to the life of children. Further, lack of proper administrative implementation of the various schemes, legislative and constitutional dictums constitute as a major

threat for the augmentation of the life and liberty of children as subjects of the society.

## 7. Legal provisions governing the rights of Children

The constitution of India bans every kind of discrimination of individuals, including children.

The major provisions of rights that are relating to the rights of children are:

- Article 14 recognizes the equal rights.
- It empowers the State to make special provisions for the development of women and children (Article 15 (3))
- Article 15(4) authorizes the state to make special provisions for the advancement any social or backward people of India including the Scheduled Castes and Tribes
- Article 17 prohibits untouchability in any manner.
- Article 19 confers freedom of speech, expression, to reside any part of the country, and move freely.
- Article 21 guarantees free life and liberty, and make it obligatory that free and compulsory education be provided to every child in the age group of six to fourteen years.
- Article 23 prohibits traffic in human beings and abolishes bonded labour.
- Article 24 bans the employment or recruitment of children below 14 years in any factory or mine or heavy and harmful industries to the health and growth of children.
- Apart from these rights, it confers the remedial measures through judiciary for the violation of any of the rights conferred on its citizens through judicial intervention through Articles 32 and 226 of the constitution.

Furthermore, to augment rights of children, it directs the state to make necessary policy formulations and legal enactments, through the Directive Principles of State

Policy.

The relevant provisions of Directive Principles of State Policy, which deal with children, are:

- Article 39 clause (e) directs the state to evolve policy formulations not to abuse the tender age of children, and economic incapacity should not adversely result in their employment in any avocation, especially below the age of fourteen years in no circumstances.
- Clause (f) of the above article imposes an obligation on the state to provide opportunities and facilities for children to develop in a healthy environment. It further directs the state that life, liberty, and childhood be protected from any kind of exploitation, which includes moral or material negligence.
- Article 45 provides for care of early childhood, and compulsory education for all children until the child attains the age of six years.
- Article 46 further directs the state to take special efforts to promote the rights and interests of children belonging to social, educationally backward classes. In no way their economic and social status, adversely affect their rights.
- Article 47 imposes an obligation to raise the nutritional standards of living and provide easy public access to health facilities.
- Article 51 (c) imposes a duty on the state to promote and respect international commitments and obligations. As signatory to number of conventions, covenants and other documents on international human rights law, it is the duty of the state to discharge its obligations in the promotion of children's rights through national legal framework.
- According to Article 51 (A) sub clause (k) imposes the fundamental duty on the parents or wards to provide education to their children between the age group of six to fourteen years compulsorily.

In order to achieve the constitutional mandate and the international obligations, the government has from 1950 till now, through various five years plans, adopted a number of policy formulations for the promotion of rights of children keeping the best interest of children. However, the government gave more attention

to the rights of children in the third five-year plan during the period of 1961-1966. The third plan period for the first time recognized the international obligations. Accordingly, it recognized children's special needs. It established a Social Security Department to give special attention to the rights of children with respect to their health and education. In 1965, it established a food and nutrition board to enhance the status of children with respect to education and nutrition. It also set up an education committee to offer free education to every child below ten years to fulfill the constitutional mandate. It also established a department of social welfare, which later became an independent ministry of social welfare, which is re-designated as Ministry of Empowerment.

The fourth five-year plan focused on a development package of basic minimum services to children. This scheme was introduced mainly, to take care of the destitute and neglected children of the country. Accordingly, in 1974 a National Policy of children was framed with an aim to cater to the needs of children. The policy clearly addresses the following as the important duties of the Union and the states. They are as follows:

- Comprehensive health programmes
- Provisions for increasing the nutritional services;
- Free and compulsory education of children up to the age of fourteen years;
- Provisions for non-formal education;
- Promotion of Physical education and other recreational facilities;
- Cultural and scientific activities in schools and other social sectors;
- Special assistance to children belongs to socially weaker sections;
- Upliftment of children in distress;
- Protection against neglect ,cruelty and exploitation of children;
- Protection against Child Labour;
- Provisions for children ailing with disabilities ; and

- Encourage the services of society, and other voluntary organizations.

The fifth five-year plan constituted Children's Board in 1974 under the chairmanship of the Prime Minister of India, and launched a number of out reaching programmes to promote the best interest of children. The sixth five-year plan too adopted number schemes for the promotion of the interest of children. Among the various schemes, the notable one is the National Child Health policy, which aimed at providing health facilities to children with much care and precision. The seventh Five-year plan established a Ministry of Child and Women Welfare, and enacted a number of legislations.

Among the prominent legislations, the Juvenile Justice Act was amended in 1986, repealing the Children Act 1960 to protect child offenders from severe punishments and to reform their behavioural attitudes. It also declared a National Policy on Child Labour. In the eighth five-year plan, it adopted scheme for assistance to infants to promote in country adoptions for destitute children and created a special agency named as Central Adoption Resource Agency (CARA). The ninth and tenth five-year plans too adopted various schemes for the promotion and augmentation of the welfare of children and their rights.

The eleventh and twelfth plan reviewing the situation and plight of the children in the country, framed a number of policy formulations. During these periods, it also established a National Commission for Children, increasing the budgetary allocation for compulsory education, an extensive amendment to the Juvenile Justice Act, Adoption of Right to Education Act, concessions to girl children on various fronts, free mid day meal scheme to children of poor families etc.

In spite of the laudable efforts of both the Union and States, even today millions of the Indian children die due to lack of nutritious food, lack of health care, and many other social, customary, economic, and cultural factors that hamper their growth.

According to many reports of international agencies and non-governmental organizations, India is the major country compared to many of the under developed countries including the African region, where in the plight of children is worse in enjoying their rights as subjects of the State. The main reason is the inefficiency of the administrative wings of the state to properly implement and monitor the situation, apart from poverty, which is another significant factor that deprives the rights of

children.

In order to augment the rights of children, in a number of cases, the Indian Judiciary has expanded the rights of children by interpreting provisions of the Constitution, various statutes and International Human Rights instruments to which India is a party highlighting the increasing role of state in the protection and promotion of rights of children in the following areas.

- Prevention of mental and physical torture
- Prevention of Child Sexual Abuse and Trafficking
- Prevention of Illegal Adoptions by foster parents
- Prevention of Child Labour in hazardous industries
- Rehabilitation of girls found in prostitution and trafficking
- Right to Compulsory Education of Children
- Providing rehabilitation to children of prostitutes
- Providing facilities to children in Juvenile Homes and keeping of Child offenders in Juvenile Homes
- Stream lining of mid-day meal scheme with nutritious food to destitute and other poor children

## **8. National Commission for the protection Child Rights**

The National Commission for Protection of Child Rights (NCPCR) was set up in March 2007 under the Commission for Protection of Child Rights Act, 2005. According to the provisions of the Act, a child is defined as a person below the age of 18 years on the lines of the United Nations Child Rights Convention definition.

The Commission's Mandate is to ensure that all Laws, Policies, Programmes, and Administrative Mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India and the UN Convention on the Rights of the Child.

The Commission, while enquiring into any matter, has all powers of the Civil

Court trying a suit under the Code of Civil Procedures, 1908 and in particular, with respect to the following matters:

- Summoning and enforcing the attendance of any person from any part of India and examining them on oath
- Requiring the discovery and production of any documents
- Receiving evidence on Affidavits
- Requisitioning of any Public Record or copy thereof from any Court of Office
- Issuing commissions for the examination of witnesses or documents
- Forwarding cases to Magistrates who have jurisdiction to try the same
- On completion of inquiry, the Commission has the powers to take the following actions:
  - To recommend to concerned Government for initiation of proceedings for prosecution or other suitable action on finding any violation of child rights and provisions of law during the course of an inquiry
  - To approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary
  - To recommend to concerned Government or authority for grant of such interim relief to the victim or the members of his family as considered necessary



Apart from the above, as per the mandate of the commission, it monitors the implementation of various laws, conducts research, and submits periodical reports to the government for their implementation considering the best interest of children.

Before the commission was constituted, the National and State Human Rights Commissions constituted under the Human Rights Act 1993 used to take care of the children's aspects. Due to the constant and continues efforts of the National Human Rights Commission , a number of issues of children could be augmented in various

parts of the country, especially in the areas of bonded labour, child labour in hazardous industrial, destitute and street children, right to food, nutritional food, right to health etc. The efforts of the National Human Rights Commission resulted in amending the civil services rules of India that no civil servant or Government employee should appoint a child in their homes for work. If any such incident is found, such officer is liable to be severe punishment, which may result even in removal of service based on repeated such incidents.

## 9. Sum up

From independence until now, the government of India and the States adopted a number of schemes for the promotion and welfare of children. It has established a number of mile stones nationally and internationally to discharge its constitutional and international obligations in promoting the best interests of children . However, due to increasing population, poverty etc. millions of children are not in a position to have a square meal once in a day. Further, the adverse sex ratio of female population is a cause for concern. Apart from the state and a few non-governmental organizations, the people of the country also need to discharge their bit of services for the augmentation of the children's rights is necessary.

Children, the joy of humankind, the gifts of god, need to be treated with utmost care, love, affection to enjoy their rights as human beings. Whatever schemes are drafted or implemented by the state, without the aid, efforts of the society children rights cannot be augmented to achieve self-sufficiency. Let the people of the country take a pledge to strive hard to extend their helping hand to one of the vulnerable and most effected populous of the country, namely children, the future generations of the polity in order to wipe out every tear that comes out of the eyes children.

In spite of the best efforts undertaken by the United Nations in the promotion of the rights of children, a large number of violations are reported especially, during Armed Conflicts, and scrupulous activities of traffickers including forcibly selling children and violating their privacy through internet. These aspects led the United Nations to adopt two important Protocols (additional legal texts to the Convention to prevent such activities aimed at the deprivation of life and liberty of children).

**UNIT-II MULTIPLE CHOICE QUESTIONS**

**Answers**

1. Who acted as a chairperson of the drafting committee of the Universal Declaration of Human Rights? (A)  
A. Mrs. Eleanor Roosevelt, first lady of the America.  
B. Mr. Ban Ki-Moon  
C. DR. B.R. Ambedkar  
D. Mr. Kofi Annan.
  
2. The convention on the Elimination of All forms of Discrimination against Women (CEDAW) was adopted by UN in the year of..... (C)  
A. 1919 B. 2010 C. 1979 D. 1945
  
3. To monitor the situations in the promotion of women's rights UN adopted an Optional Protocol to the CEDAW Convention in (B)  
A. 1979 B. 1999 C. 2000 D. 2001
  
4. What was conducted during 19th June- 2nd July, 1975 at Mexico? (C)  
A. Women's conference.  
B. Gender equality conference  
C. The first world Conference on women  
D. The second world Conference on women
  
5. Every year which day is celebrated as women's day? (D)  
A. 10th March  
B. 20th March  
C. 14th February  
D. 8th March

6. Every year on November 25th we celebrate..... (D)
- A. International women's day.
  - B. International women's and child day.
  - C. International day for elimination of violence against women.
  - D. International day for elimination of poverty.
7. What were the reasons behind enactment of National Commission of Women's Act 1990? (D)
- A. To establish National Commission of Women's to monitor and to resolve women related issues.
  - B. To review constitutional and legal safeguards for women
  - C. To recommend remedial legislative measures.
  - D. All of the above
8. In 2001 Government of India adopted a National Policy of women. The aims and objectives of this policy are: (D)
- A. Creating an environment for development of women to enable them to realize their full potential.
  - B. Equal access to participation and decision making of women in the politics and economic life of a nation.
  - C. Eliminating violence against girl child.
  - D. All of the above
9. The Convention on the Rights of the Child 1989 was not ratified by (C)
- A. United States Of America
  - B. Somalia
  - C. Both 'A' and 'B'
  - D. None of the above

*Human Rights belong to everyone regardless of any distinction. However, due to socio-cultural and other perspectives, some sections of people face greater vulnerability. This unit looks at indigenous people, persons belonging to Scheduled Castes/Scheduled Tribes, older persons, persons with disabilities and minority rights.*



## 1. Status of Indigenous People and the role of UN

There are nearly 370 million indigenous people living in the world according to available estimates. They are affected by historical colonization and invasion of their territories, face discrimination because of their distinct cultures, identities, and ways of life. They face marginalization, gender discrimination, extreme poverty, and other human rights violations and often dragged into armed conflicts.



These groups are mostly found in USA, Latin America, Canada, Australia, New Zealand and many other countries around the world. In particular, the following issues are of particular concern to indigenous people:

- access to land and ancestral territories;
- access to justice and strengthening of indigenous customary law and justice systems;
- impact of mining and other extractive industries on indigenous peoples;
- Lack of right to education and health, and

- Discriminatory practices and denial of rights of indigenous women, children and youth;
- Review, reform of Legislations

For these reasons, the above-mentioned areas are also the priorities for the United Nations Indigenous Peoples' Partnership, which was launched in 2011. It is a collaborative framework established by the International Labour Organization (ILO), the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Children's Fund (UNICEF), and the United Nations Development Programme (UNDP). United Nations Population Fund (UNFPA) recently signed on to the partnership following its launch in New York.



### **2. Role of UN**

- Development of human rights standards on indigenous peoples like the Declaration on the Rights of Indigenous Peoples and UN Development Group Guidelines on Indigenous Peoples Issues
- To Train UN Country Teams and OHCHR field representatives on indigenous issues
- Build capacity amongst indigenous peoples, including through its fellowship programme for indigenous representatives.
- Constitution of Board of Trustees of the Voluntary Fund for Indigenous Populations comprised of five indigenous representatives.
- Constitute an Expert Mechanism on the Rights of Indigenous People. It has undertaken a study on the right of indigenous people to education, and in
- September 2009 , submitted to the Human Rights Council.
- To study on Issues relating to Indigenous People on a permanent basis.



- Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples
- Observance of the First United Nations International Decade of the World's Indigenous Peoples [1995 – 2004] which was followed by the Second International Decade
- The Office of the High Commissioner for Human Rights (OHCHR) carries out a range of country specific and regional activities to advance the rights of indigenous people. It provides support for legislative initiatives and pursues thematic work on issues such as extractive industries and on the rights of isolated indigenous peoples.

### **3. UN Declaration on the Rights of Indigenous Peoples 2007**

In 2007, the United Nations General Assembly adopted a landmark Declaration on the Rights of Indigenous Peoples.

The Declaration establishes a universal framework of minimum standards for the survival, dignity, well-being, and rights of the world's indigenous peoples. It addresses "both individual and collective rights; cultural rights and identity; rights to education, health, employment, language, and others. It outlaws discrimination against indigenous peoples and promotes their full and effective participation in all matters that concern them. It also ensures their right to remain distinct and to pursue their own priorities in economic, social, and cultural development.

The Declaration encourages harmonious and cooperative relations between States and indigenous peoples. It calls for the maintenance and strengthening of their cultural identities, and emphasizes their right to pursue development in keeping with their own needs and aspirations. The Declaration states that native peoples have the right "to the recognition, observance, and enforcement of treaties" concluded with States or their successors.

The Office of the UN High Commissioner for Human Rights developed a set of guidelines to be adopted by the UN and the member nations in the promotion and protection of the rights of Indigenous people. These guidelines mainly aim to guide the UN in implementing and monitoring its policy perspectives to adopt specific programmes to focus and in mainstreaming the issues of indigenous people.

#### **4. SC/ST and other indigenous peoples in the Indian Legal scenario**

The hierarchical caste system along with other socio-cultural practices prevailing in India for many centuries has resulted in discrimination and inequality. Despite the abolition of “Untouchability” by article 17 of the Indian Constitution, segregation of persons belonging to Scheduled Castes persists, particularly in some pockets of rural India, in access to places of worship, housing, hospitals, education, water sources, markets and other public places.

The framers of the Indian Constitution provided for many provisions to address historical injustices. The Fundamental Rights contained in Part III of the Constitution, consisting of Articles 12 to 35, is considered the ‘sole’ of the Constitution Accordingly, to augment the rights of these communities the Union and the States of the country enacted a number of legislative enactments. Some of these articles are stated here in for an understanding of the constitutional position.

- **Article 14**, stipulates that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. It also prohibits the practice of discrimination on grounds of religion, race, caste, sex or place of birth. The state adopted a number
- **Article 15**, the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. It specifically adds that no citizen shall be subjected to any kind of disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, and places of public entertainment; or to the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State Funds or dedicated to the use of general public.
- **Article 15(4)** permits the State to make special provision for the advancement of any socially and educationally backward class of citizens as well as Scheduled Castes and Scheduled Tribes. It is under this provision that the States and the Union are permitted to make reservations in educational institutions for these groups of citizens.
- **Article 16**, provides for equality of opportunity in matters of public employment. It also stipulates that no citizen shall on grounds only of religion

race, **caste**, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of employment or office under the State. This Article further provides for **affirmative action**, through the reservation of appointments or posts, in favour of any backward class of citizens, which, in the opinion of the State, not adequately represented in the services of the State. It also covers promotions and provides further for the carry-forward of unfilled vacancies of the quota for succeeding years. The Court reiterated that Article 14 guarantees the general right of equality; Articles 15 and 16 are instances of the same right in favour of citizens in some special circumstances.

- **Article 17**, abolishes “Untouchability”, and forbids its practice in any form.
- **Article 21**, which protects life and personal liberty, mandates that “No person shall be deprived of his life or personal liberty except according to procedure established by law”. The Supreme Court of India while interpreting the real meaning of this Article has stated that “Life”, in Article 21, does not mean only animal existence but also to live with dignity

In the words of Justice Krishna Iyer,

*‘... necessary conditions which must be fulfilled if everyone in the society is to be assured a life of basic human dignity and complete self-fulfillment which is the objective and goal of human rights. ... I do not want any people just to survive. I want them to live a life of human dignity and for that they must have the basic necessities of life including food and health. This right is not merely lexical and legal, but expands as we conceptualize the dignity and divinity of the human personality.’*

- **Article 23**, prohibits trafficking in human beings and forced labour. Clause (1) of this article further prohibits all forms of forced labour, including selling and buying human beings as slaves and also includes immoral traffic in women and children for immoral or other purposes.
- **Article 29(2)**, no person be denied of admission to any educational institution on grounds only of religion, race, caste, language or any of them.
- **Article 36 to 51** of the Constitution are termed as “The Directive Principles of State Policy”, which are fundamental in the governance of the country and the

State is mandated to apply these principles in making laws and to secure a social order in which social, economic and political justice shall in all the institutions of national life.

- **Article 39(a)**, the State has a duty to draft its policy formulations to ensure equal treatment to all its citizens in securing and to see that the right to an adequate means of livelihood be met. Under Article 39 (d), the State shall direct its policy towards securing equal pay for equal work for both men and women. Further Article 39 (e) is aimed at protecting the health and strength of workers, both men and women.
- **Article 42** of the Constitution imposes an obligation upon the State to make provisions for securing just and humane conditions of work and for maternity relief. The Supreme Court held that the benefits under the Maternity Benefits Act, 1961 extend to employees who are casual workers or workers employed on daily wage basis.
- **Article 44** provides that the State shall endeavour to secure for the citizens, a Uniform Civil Code, throughout the territory of India. However, for assorted reasons, the state could not achieve this objective of the constitution until date. Accordingly, even while ratifying the CEDAW Convention, the Government of India reserved the clause on Uniform Civil Code.
- **Article 46** enjoins the State to promote with special care towards the educational and economic interests of the weaker sections of the people, and in particular of the Scheduled Castes and the Scheduled Tribes, and to protect them from social injustice and all forms of exploitation. Based on this provision coupled with other provisions of the constitution, the state has introduced a number of steps in the form of concessions.
- **Article 51-A** of the Constitution of India lays down certain Fundamental Duties upon every citizen of India . Accordingly, the citizens are expected to respect the law of the land to denounce all kinds of discriminatory practices, to

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*Randhir Singh v. Union of India, AIR 1982 SC 879; see also, State of M.P. v. PramodBhartiya, AIR 1993 SC 286. To give effect to this Article, the Parliament has enacted the Equal Remuneration Act, 1976 which provides for payment of equal wages to both women and men workers and prevents discrimination on the ground of sex.*

*In pursuance of this Article, the State has enacted the Workmen's Compensation Act, 1923, the Employees State Insurance Act, 1948, the Minimum Wages Act, 1948, the Maternity Benefit Act 1961, the Payment of Bonus Act, 1965.*

*Municipal Corporation of Delhi v. Female Workers (Muster Roll), AIR 2000 SC 1274*

*The Fundamental duties were added under Part IV of the Constitution through the Forty-Second Amendment of the Constitution in 1976.*

extend their support to the socially, economically, and culturally weaker sections of the society to augment their rights on par with the other developed sections of the Polity.

- **Article 325** prohibits disenfranchisement on grounds of caste.
- **Articles 243 D and 243 T** of the Constitution of India provide for reservation of seats for women in election to the Panchayat and the Municipalities. This provision enabled the state to reserve seats in various parts of the country to reserve seats to women especially that of the reserved categories.
- **Articles 330 & 333** provide for the reservation of seats for members of the Scheduled Castes and Scheduled Tribes in Union and State Legislatures.
- **Article 335**, states that the claims of the members of the Scheduled Castes and Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in the affairs of the Union or of a State. In order to strengthen this provision, the Eighty Second Amendment Act 2000, provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts.
- **According to Article 341** of the Constitution, Scheduled Castes are such castes, races, tribes, or groups within such castes, races, or tribes, which have been declared as such by the President of India through a public notification for each state.
- **According to Article 342** of the Constitution, the Scheduled Tribes are such tribes or tribal communities, or groups within these tribes or tribal communities, which have been declared as such by the President through a public notification for each state.
- **Article 366 clause (24)** defines Scheduled Castes and to mean such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purposes of the

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*In furtherance to 73rd and 74th Amendments to the Constitution, the Constitution (81st Amendment) Bill was introduced in the Parliament in 1996 to reserve one-third of seats for women in the Lok Sabha and the State Assemblies, and is yet to receive the assent of the Parliament.*

Constitution.

- **Article 366 (25)** defines “Schedule Tribes” means such tribes or tribal communities or parties of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purpose of this Constitution.

In addition to Constitutional provisions, a number of legislations were enacted to end discrimination against Scheduled Castes and Scheduled Tribes. These include:

- The Protection of Civil Rights (Anti-Untouchability) Act, 1955.
- The Bonded Labour (Abolition) Act, 1976.
- The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
- The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993.
- As Per the Government of India 2011 Census, the SC's constitutes around 16.2% population of the country, 166,635,700.

## 5. Scheduled Tribes

As per the Government of India 2011, census, the Scheduled Tribes population comprise 84,326,240 (8.2%) of the total populations. The State with highest proportion of Scheduled Tribes is Mizoram (94.5%), while the lowest proportion being Goa (0.04%).

The following are some important characteristics of STs:-

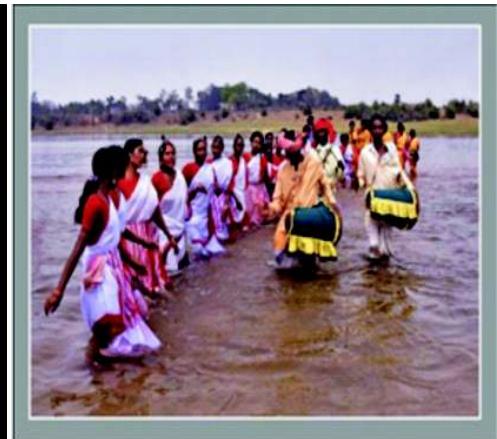


- Geographical isolation - They live in cloister, exclusive remote and inhospitable areas like hills and forests;
- Backwardness- Livelihood based on primitive agriculture, low cost closed economy based on low level of technology which leads to their poverty and have a low level of literacy, employment and health.

■ Distinctive culture, language and religion

These communities are generally associated with a territory or a habitat, mostly in hilly and forest regions. They are governed by their own customs and traditions. Many of them have their own distinct language or dialect.

**The Committee on the Elimination of Racial Discrimination** has noted the non-implementation of the right of ownership, collective or individual, of the members of tribal communities over the lands traditionally occupied by them in its practice concerning tribal peoples. It also expressed concern that large scale projects



such as the construction of several dams in Manipur and other north-eastern States on territories primarily inhabited by tribal communities, or of the Andaman Trunk Road, are carried out without seeking their prior informed consent. These projects result in the forced resettlement or endanger the traditional lifestyles of the communities concerned.

About 87 percent of the main workers from STs were engaged in agriculture. The proportion of Scheduled Tribes below the poverty line is substantially higher than the national average. The estimate of poverty made by Planning Commission for the year 1993-94 shows that 51.92 percent rural and 41.4 percent urban Scheduled Tribes were still living below the poverty line.

The Constitution of India incorporates several special provisions for the promotion of educational and economic interests of Scheduled Tribes and their

protection from social injustice and all forms of exploitation. "These objectives are sought to be achieved through a strategy known as the Tribal Sub-Plan strategy, which was adopted at the beginning of the Fifth Five Year Plan. The strategy seeks to ensure adequate flow of funds for tribal development from the State Plan allocations, schemes/programmes of Central Ministries/Departments, financial and Developmental Institutions.

The gap in the literacy front may be seen from the fact that as per 2001 census, literacy among ST population was only 47.10% as compared to 64.84% in the general population. It is much more problematic when it comes to tribal women. Only 34.76% of tribal women were literate while the corresponding figure for the general population is 53.67%.

By virtue of the Constitution (Sixty-fifth Amendment) Act, 1990, the Government of India Constituted a **National Commission for Scheduled Castes and Schedules Tribes** for the promotion and protection of their legal rights. However, in order to specifically cater to needs of schedule casts and scheduled tribes, the government in 2004 bifurcated the Commission and constituted two separate commissions viz., National Commission for Scheduled Castes and the National Commission for Scheduled Tribes respectively.

The judiciary has also in a number of cases upheld the validity of various acts of the government for the promotion and protection of the rights of these categories of people and has also directed the state many a times to evolve a number of policy formulations in order to promote, protect and preserve their interests.

## **6. Rights of the Elderly Persons**

Elderly persons face a number of problems. These include, among others, physical and financial security, abuse, neglect etc. Human rights belong to every person whether that person is old or young and regardless of other distinctions.



## **7. International Scenario**

The increased life expectancy has led to an increase in the number of persons who are in the age group of 60 and above. According to the UN, there are about 737

million older people are living in the world by the year 2009. By 2050 as per the projection the figure may touch around 2 billion. India is poised to have the second largest number of older persons in the world. The 60 plus population is projected to increase to 100 million in 2013 and to 198 million in 2030.

The question of ageing emerged as an important issue for discussion since the inception of United Nations. In 1971, the General Assembly asked the Secretary-General to prepare a comprehensive report on the elderly and to suggest guidelines for the national and international action. Following the decision of the General Assembly in 1978 for holding a World Conference on Ageing, the World Assembly on Ageing was held in Vienna from July 26 to August 6, 1982, wherein an International Plan of Action on Ageing was adopted. Besides, it also adapted the following:

- In 1992, the U.N. General Assembly adopted the proclamation to observe the year 1999 as the International Year of the Older Persons;
- The U.N. General Assembly has declared “1st October” as the International Day for the Elderly, later rechristened as the International Day of the Older Persons.
- The U.N. General Assembly on December 16, 1991 adopted 18 principles, which are organized into five clusters, namely-independence, participation, care, self-fulfillment, and dignity of the older persons.

In has conducted World Conference on aged people to address the rights of theirs. Among them Second Global Conference conducted in the year 2002 at Madrid adopted a Plan of Action with three important Priority areas to rights relating to Older people. These areas are :

- Older Persons and Development;
- Advancing health and well-being into old age; and
- Ensuring enabling and supportive environments.

Apart from conducting World conferences on Elderly people, it has entrusted the work to the Economic and Social Council to work in close association with other organs and the various States to adopt policies in the promotion and protection of the rights of elderly persons. A number of other working groups, special commissions also constituted, to monitor and to continuously evolve various issues relating to elderly people and to assist the nation-states in policymaking.

## 8. Indian Scenario

There are about 70 million elderly people, who are 60 years and above living in India. The number is expected to touch 177 million by 2025. The aged in India have a number of pressing concerns which include, amongst others, abuse of the elderly, safety of persons and property, medical facilities and medical insurance, old age homes, pensions, crime against older people, loneliness, shrinking finances and health and nutrition etc.

The special features of the elderly population in Indian context are as follows:

- Increased life expectancy increase in the number of the older persons up to the age of 80 years;
- Increased number of females of the elderly population
- 75% to 80% of elderly persons live in the rural areas, thus making service delivery a challenge and
- 30 % of the elderly are leading their life under the Below Poverty Line [BPL]
- Abuse of the rights of elderly at the domestic front.

In India, the Constitution under Article 41 directs the state, within the limits of economic capacity and development, to make effective provisions for securing the right to public assistance in cases of old age.

The Government of India adopted a National Policy for Older Persons on January 13, 1998 in order to accelerate welfare measures and empower the elderly in ways beneficial to them. The Policy, among others, provides that:

- a) Parents cannot be evicted from the house in contravention of the law.
- b) As per the Hindu Adoption and Maintenance Act, an aged parent is entitled to maintenance from their children.
- c) According to section 125 of CrPC (Criminal Procedure Code) a magistrate can order a person to maintain his old parents under the maintenance of Parents Act. But the parent has to prove that the son has neglected or refused to maintain the parent and that he or she is unable to maintain himself / herself.
- d) As per the provisions of the Domestic



Violence Act, the elderly parents have a right to seek relief from any kind of abuse.

## **9. MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT - 2007**

The Government enacted the Maintenance and Welfare of Parents and Senior Citizens Act 2007 as an answer to the insecurities faced by older persons of the country. This Act accords prime responsibility, on children, grand children or even relatives, who may possibly inherit the property of their parents/ grandparents to maintain and protect the rights of such elderly people. It also calls upon the State to provide facilities for poor and destitute older persons.

### **The Salient features of the Act are :**

- Parents who are unable to maintain themselves through their own earnings or out of their own property may apply for maintenance from their adult children. The maintenance includes the provision for proper food, shelter, clothing and medical treatment.
- Parents include biological, adoptive and stepmothers and fathers, whether senior citizens or not.
- A childless Senior Citizen who is sixty years and above, can also claim maintenance from relatives who are in possession of or are likely to inherit their property.
- The application for maintenance may be made by Senior Citizens themselves or they may authorize a person or voluntary organization to do so. The Tribunal may also take action on its own.
- Tribunals on receiving these applications may hold an enquiry or order the children/ relatives to pay an interim monthly allowance for the maintenance of their Parents or Senior Citizen.
- If the Tribunal is satisfied that children or relatives have neglected or refused to take care of their parents or Senior Citizen, it shall order them to provide a monthly maintenance amount, up to a maximum of Rs.10,000 per month.
- The State Government is required to set up one or more tribunals in every sub-division. It shall also set up Appellate Tribunals in every district to hear the

appeals of Senior Citizens against the decision of the Tribunals.

- No legal practitioner is required or permitted for this process.
- Erring persons are punishable with imprisonment up to three months or a fine of up to rupees five thousand or with both.
- State Governments should set up at least one Old Age Home for every 150 beneficiaries in a district. These homes are to provide Senior Citizens with minimum facilities such as food, clothing and recreational activities.
- All Government hospitals or those funded by the Government must provide beds for Senior Citizens as far as possible. Also, special queues to access medical facilities should be arranged for them.

## 10. Rights of Persons with Disability

Over 650 million persons around the world live with disabilities. Adding to that their extended families, and a staggering two billion people daily live with disabilities. In every region, and in every country in the world, persons with disabilities often live on the margins of society, deprived of some of life's fundamental experiences. They have little hope of going to school, securing a job, having their own home, creating a family and raising their children, enjoying a social life etc. For the vast majority of the world's persons with disabilities, shops, public facilities and transport, and even information are largely out of reach. Disability is associated with illiteracy, poor nutrition, lack of access to clean water, low rates of immunization against diseases, and unhealthy and dangerous working conditions.

Persons with disabilities make up the world's largest and most disadvantaged minority. The numbers are unfavorable:

- an estimated 20 per cent of the world's poorest persons are those with disabilities;
- 98 per cent of children with disabilities in developing



A class for Children with Hearing and Speech Impairment

- countries do not attend school;
- an estimated 30 per cent of the world's street children live with disabilities;
  - Literacy rate for adults with disabilities is as low as 3 per cent.
  - In some countries persons with disabilities often face discrimination and marginalization.

## 11. Definition of Disability

Disability is a broad term. It generally refers to any person suffering from physical, cognitive, mental, sensory, emotional, developmental problems, or some combination of any of these problems.

The term Disability includes within its meaning, impairments, activity limitations, and participatory restrictions. Impairment is a problem of body function or structure; an activity limitation is a difficulty encountered by an individual in executing a task or action; while a participatory restriction is a problem experienced by an individual in numerous life situations. Thus, disability is a complex phenomenon, reflecting an interaction between features of a person's body and features of the society in which he or she lives.

According to World Health Organization,

*An individual may also qualify as disabled if he/she has had an impairment in the past or is seen as disabled based on a personal or group standard or norm. Such impairments may include physical, sensory, and cognitive or developmental disabilities, Mental disorders (also known as psychiatric or psychosocial disability) and various types of chronic disease may also qualify as disabilities.*

Accordingly, disabilities may be of various types such as Physical Disability, Mental Disability, Sensory Disability, Visual Disability or hearing impairment etc.

## 12. UN and the Disabled

In order to augment the rights of disabled persons, the United Nations adopted a Convention and a Protocol in 2006 and established a special agency called as **UN Enable**, which works in close coordination with various organs of the UN. The Convention intends to be a human rights instrument with explicit, social development dimension. It adopts a broad categorization of persons with disabilities

and reaffirms that all persons with different types of disabilities must enjoy all human rights and fundamental freedoms.

According to the **UN Convention on the Rights of Persons with Disabilities (CRPD), 2006**, disability arises from an interaction between a non-inclusive society and individuals:

- Person using a wheelchair might have difficulties gaining employment, not because of the wheelchair, but because there are manmade environmental barriers; such as unfavourable transportation, or other such inhospitable facilities to exercise their rights freely.
- Persons with extreme near-sightedness who do not have access to corrective lenses may not be able to perform daily tasks. This same person with prescription eyeglasses would be able to perform all tasks without problems.



Access to Information Technology enables Person with Visually Impairment

The Preamble of CRPD states: 'Disability is an evolving concept, and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders full and effective participation in society on an equal basis with others'

Article 1 of the Convention states:

'Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others'.

Persons with disabilities need not be viewed as "objects" of charity. They need to be considered as "subjects" with rights. Further, they need to be provided with equal opportunities in order to enable them to take decisions on their own and to

exercise

their rights freely on par with the other members of society.

The UN adopted a set guiding principles that need to be followed and adopted by every state and society in order to foster respect for the human rights of the disabled. They are:

- Full and effective participation and inclusion of the Disable into the various activities of the society;
- To Foster Respect for their Dignity and autonomy;
- To provide equal opportunities on par with other sections of the society
- To extend Equality between men and Women of the disabled without any further discrimination on grounds of sex
- To provide Accessibility in all respects equally with other persons of the state
- Respect for difference of their human diversity
- Non-discrimination on any ground

### **13. Rights of Persons with Disability in India**

The principles of International Law of human rights of disabled persons are reflected in Indian Constitution by way of provisions dealing with Fundamental Rights as well as Articles on Directive Principles of State Policy. The Constitution does not provide for any specific provision dealing with the rights of disabled persons. However, Entry 9 of the State List in the Seventh Schedule of the Constitution refers to – Relief of the disabled and unemployable. Apart from the constitutional provisions, the Government of India enacted specific legislations for the protection and augmentation of the Rights of the Disabled.

### **14. Laws Relating to Disabled**

In order to discharge its international and constitutional obligations, the government of India has enacted a number of legislations concerning the rights of differently

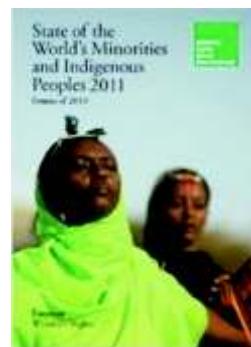
abled persons. Among the various legislations, the most important of them are:

- The Indian Lunacy Act 1912,
- The Lepers Act, 1899.

- Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995
- National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act 1999.
- Rehabilitation Council of India Act 1992
- The Mental Health Act 1987.

Under the Persons with Disabilities Act 1995, disability means, any person suffering not less than 40% of any disability as certified by a medical authority. The provisions of the Act further include disability as Blindness; Low Vision; Leprosy-Cured; Hearing Impairment; Loco-motor disability; Mental Retardation and Mental illness as part and partial of the concept of disability.

In order to ensure its commitment for the development of the rights of disabled, India has signed and ratified the **UN Convention and Protocol on the Rights of Persons with Disabilities, 2006**. It has assumed all legal obligations without making any reservations. The judiciary in India, has in a number of cases, also upheld the rights of disabled persons by liberally interpreting the provisions of the Constitution and the law. It has admonished the discriminatory practices adopted by any section of the society including the state in contravention of the provisions of the various acts.



## 15. The Minorities and Human Rights

Human rights being the inalienable rights of humanity, need protection at all times either by the state or by international comity. However, many a times, among the various vulnerable groups, minority's rights are not given due respect and relegated to secondary position. The International and national scenario is subtly examined.

## 16. The Efforts of the International Community

Legal protection for minorities began with the system of minority rights created under the League of Nations through special treaties with Central and Eastern European states. However, until the adoption of the Charter of UN, there was

no specific legal instrument in international law dealing with the rights of minorities. Though the Charter and some of the Conventions of human rights recognized the rights of the minorities, until the end of Cold War, the issue of minority's rights was not given due consideration and recognition by the comity of nations. It is after the Cold War, in the third phase of globalization and liberalization in late sixties and early seventies, the rights of minorities too gained currency internationally.

Even now, after the adoption of a number of instruments on human rights, there is no uniform standard definition of 'minority.' Lack of a uniform standard definition, led the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities to formulate an acceptable definition.

According to Mr. Francesco Capootori, Special Rapporteur of the Sub Commission, a minority is, "*a group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members-being nationals of the State-possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.*"

In spite of the efforts of the Special Rapporteur in carving out a definition of minorities, due to perceptual differences between states on minorities, often it is considered that the definition is not exhaustive enough to include all types of minorities under its fold. These perceptual differences amongst states led to non-recognition of the above definition. In the absence of a standard definition, each country adopts its own definition based on its own policy perspectives. Consequently, minorities encounter many problems in their day-to-day life across the World.

In spite of crystallization of number of legal regulations through various Covenants, Conventions by the principles of international law, the protection of minorities has been slow and fragmented due to definitional differences. Among the various instruments, the **Convention on the Prevention and Punishment of the Crime of Genocide 1948** is the first one to address the protection of minorities through genocide without using the term minorities.

Apart from the above convention, the following legal instruments have provisions addressing the various aspects relating to the rights of minorities. There

are as follows:

- Convention on the Elimination of All forms of Discrimination 1965;
- International Convention of Economic Social and Cultural Rights, 1966;
- International Convention on Civil and political Rights, 1966;
- The Child Rights Convention, 1989;
- The UNESCO Convention against Discrimination in Education 1960;
- The UNESCO Convention on Race and Racial Prejudice 1978;
- UN Declaration on the Rights of the Persons Belonging to National or Ethnic, Religious and Linguistic Minorities 1992

Among all the instruments, the ICCPR 1966 is the most directly binding instrument on the States parties that address the rights of minorities. Article 27 of ICCPR imposes an obligation on the states in recognizing the status of minorities. Accordingly, a state, which recognizes the status of minorities, is under an obligation not to deny the rights in community with other members of their groups, to enjoy their own culture, to profess and practice their own religion, or to use their own language. If a state has not categorized minorities from that of the majority of the populace of the state, the minorities have no claim.

According to the principles of international law of human rights any discrimination shown against the recognition of minority rights, constitutes a violation of the provisions of UN Charter and human rights instruments. Since there is no instrument directly dealing with the rights of minorities in the international sphere, in 1992, the General Assembly adopted a Declaration on the **Rights of Persons, Belonging to National or Ethnic, Religious and Linguistic Minorities**. The Declaration contains nine provisions. According to Article 2 of the Declaration, in general, minorities possess the following rights:

- To enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and public freely without any discrimination and interference by the state or any group;
- To participate effectively, cultural, religious, social, economic and public life;
- To Participate in the decision making process of the State effectively especially any act or acts which affect them either directly or indirectly;
- To establish and to maintain institutions of their own; and

- To establish contacts freely with in themselves and other groups of minorities within and outside the State.

Since the Declaration is not a binding legal instrument, the UN High Commission on Human Rights requested the UN High Commissioner on Human Rights to appoint an independent expert to submit frequent reports on the situation in extending protection to the rights of the minorities. The High Commissioner, taking into consideration of the request of the Commission on July 29, 2005 appointed Ms. Gay McDou Gall of USA as the first independent expert to submit reports on various aspects relating to the protection of rights of minorities across the globe. Individuals also can submit requests or reports and bring in any aspect relating to the rights of the minorities.

It is true that most countries in the world have minorities among their population. It is also true that the experience of the minorities varies depending on their socio, economic, political, legal, and cultural experiences. However, the problems faced by them are mostly common to all. For example, the Sexual Minorities rights of lesbians, gays, transgender (third sex) and homosexuals are yet to be recognised by majority of nations. In spite of the opposition from a number of countries, the UN has formally recognised the global organisations of these minorities and has appealed to all nations to recognise their human rights as part of humanity.

## **17. Minorities and India**

According to the Government of India Gazette notification issued on 23rd October 1993 by Ministry of Welfare, five religious communities viz; the Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis) were notified as minority communities. As per the 2001 Census, these five religious minority communities constitute 18.42% of the country's population.

To protect the rights of minorities, the Constitution of India made exclusive provisions for the protection and free exercise of their human rights. Articles 25 to 28 of the Constitution guarantee the right to freedom of religion, including freedom of conscience and free profession, practice and propagation of religion. Articles 29 and 30 of the Constitution, protects the cultural and educational rights of minorities. In

order to guarantee the rights of Minorities, the Union and the States adopted a number of policies and extended a large number of concessions on various fronts. In a number of cases, the Indian Judiciary has also upheld the provisions of the constitution and supplemented the policy perspectives of the Union and the States.

## **18. Constitutional rights and safeguards provided to the minorities in India**

### **1. Constitutional safeguards for religious and linguistic minorities of India**

Though the Constitution of India does not define the word ‘Minority’, it only refers to ‘Minorities’ and speaks of those minorities that are ‘based on religion or language through Article 30. Accordingly, Muslims, Christians, Parsis, Buddhists, Sikhs and Jains are normally considered as Minorities in India. In the State of Jammu and Kashmir, Mizoram, Meghalaya and Lakshadweep Hindus are considered as a religious minority . The other articles applicable to all the citizens are applicable to minorities too. In a number of judgments, the courts have liberally interpreted the provisions of the constitution in tune with the human rights philosophy and upheld the various concessions extended by the state to minorities.

### **2. ‘Common Domain’ and ‘Separate Domain’ of rights of minorities provided in the Constitution**

The Constitution provides two sets of rights of minorities that can be placed in ‘common domain’ and ‘separate domain’. The rights, which fall, in the ‘common domain’ are those, which are applicable to both minorities and non-minorities. The rights, which fall in the ‘separate domain’, are those exclusively applicable to minorities. The distinction between ‘common domain’ and ‘separate domain’ and their combination have been well balanced and protected by the Constitution. The Preamble to the Constitution declares the State to be ‘Secular’ and this is especially relevant for the Religious Minorities. Equally relevant for them, is the declaration of the Constitution in its Preamble that all citizens of India are to be secured ‘liberty of thought, expression, belief, faith and worship and ‘equality of status and of opportunity.’

### **3. ‘Common Domain’, the Directive Principles of State Policy – Part IV of the**

## Constitution

Part IV of the Constitution of India, containing non-justiciable Directive Principles of State Policy, includes the following provisions having significant implications for the Minorities :-

- obligation of the State ‘to endeavour to eliminate inequalities in status, facilities and opportunities’ amongst individuals and groups of people residing in different areas or engaged in different vocations;[Article 38 (2) ]
- obligation of State ‘to promote with special care’ the educational and economic interests of ‘the weaker sections of the people’ (besides Scheduled Castes and Scheduled Tribes); [Article 46]

## 4. ‘Common Domain’, the Fundamental Duties – Part IVA of the Constitution

Part IVA of the Constitution, relating to Fundamental Duties as provided in Article 51 A applies in full to all citizens, including those belonging to Minorities. Article 51 A which is of special relevance for the Minorities stipulates as under :-

- citizens’ duty to promote harmony and the spirit of common brotherhood amongst all the people of India ‘transcending religious, linguistic and regional or sectional diversities; and
- citizens’ duty to value and preserve the rich heritage of our composite culture.’

## 5. ‘Common Domain’, the Fundamental Rights – Part III of the Constitution

The Constitution has provided a definite space for both the ‘domains’ i.e. ‘common’ as well as ‘separate’. In Part III of the Constitution, which deals with the Fundamental Rights it is divided into two parts viz. (a) the rights that fall in the ‘common domain’ and (b) the rights which fall under ‘separate domain’. In the ‘common domain’, the following fundamental rights and freedoms are covered:

- people’s right to ‘equality before the law’ and ‘equal protection of the laws’[Article 14]
- prohibition of discrimination against citizens on grounds of religion, race, caste, sex or place of birth; [Article 15 (1) & (2)]
- authority of State to make ‘any special provision for the advancement of any

- socially and educationally backward classes of citizens' (besides the Scheduled Castes and Scheduled Tribes); [Article 15(4)]
- citizens' right to 'equality of opportunity' in matters relating to employment or appointment to any office under the State – and prohibition in this regard of discrimination on grounds of religion, race, caste, sex or place of birth; [Article 16(1)&(2)]
  - authority of State to make 'any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State; [Article 16(4)]
  - people's freedom of conscience and right to freely profess, practice and propagate religion – subject to public order, morality and other Fundamental Rights; [Article 25(1)]
  - right of 'every religious denomination or any section thereof – subject to public order, morality and health – to establish and maintain institutions for religious and charitable purposes, 'manage its own affairs in matters of religion', and own and acquire movable immovable property and administer it 'in accordance with law'; [Article 26]
  - prohibition against compelling any person to pay taxes for promotion of any particular religion'; [Article 27]
  - people's 'freedom as to attendance at religious instruction or religious worship in educational institutions' wholly maintained, recognized, or aided by the State.[Article 28]
  - 'Separate Domain' of Minority Rights
  - The Minority Rights provided in the Constitution that fall in the category of 'Separate Domain' are as under:-
  - right of 'any section of the citizens' to 'conserve' its 'distinct language, script or culture'; [Article 29(1)]
  - restriction on denial of admission to any citizen, to any educational institution maintained or aided by the State, 'on grounds only of religion, race, caste, language or any of them'; [Article 29(2)]
  - right of all Religious and Linguistic Minorities to establish and administer

educational institutions of their choice;[Article 30(1)]

- freedom of Minority-managed educational institutions from discrimination in the matter of receiving aid from the State;[Article 30(2)]
- special provision relating to the language spoken by a section of the population of any State;[Article 347]
- provision for facilities for instruction in mother-tongue at primary stage;[Article 350 A]
- provision for a Special Officer for Linguistic Minorities and his duties; and [Article 350 B]
- Sikh community's right of 'wearing and carrying of kirpans'; [Explanation 1 Article 25]



### **19. National Commission for Minorities :**

In spite of the constitutional guarantee, and legal enactments, there is a sense of insecurity, inequality and discrimination that persists among the minorities. In order to wipe out such feelings, and to augment their rights, the Government of India in the year 1992 enacted a National Commission for Minorities Act. Accordingly, in the year 1993, it established a Minority Commission. According to Section 9 of the Act, the commission exercises the following functions to augment the rights of the minorities.

- evaluation of the progress of the development of minorities under the Union and States;
- monitor the working of the safeguards for minorities provided in the Constitution and in laws enacted by Parliament and the State Legislatures;
- To make recommendations for the effective implementation of safeguards for the protection of the interests of minorities by the central or state governments;
- To look into specific complaints regarding deprivation of rights and safeguards

- of minorities and taking up such matters with the appropriate authorities;
- To undertake studies into the problems arising out of any discrimination against minorities and recommending measures for their removal;
  - To conduct studies, research and analysis on the issues relating to socio-economic and educational development of minorities;
  - To suggest appropriate measures in respect of any minority to be undertaken by the Central Government or the State Governments;
  - To make periodical or special reports to the Central Government or any matter pertaining to minorities and in particular the difficulties confronted by them; and
  - On any other matter, which may be referred to it by the Central Government

## 20. Minorities Ministry

In the year 2006, the Government of India established a separate Ministry to augment the rights of Minorities in the country. The aim and objectives of the Ministry are to ensure more focused approach towards issues relating to minorities. Its responsibility is to facilitate formulation of policy perspectives, planning, coordination, evaluation and review of the regulatory framework and developmental programmes for the benefit of the minority communities. It is also the vision of the Ministry to develop a healthy environment for the free exercise of rights by minorities and to halt all kinds of discriminatory practices.



## 21. Sum Up

The above brief discussion subtly brings out that both at international and national sphere there are a number of initiatives that have been adopted for the promotion of the rights of the socially and economically disadvantaged people. However, in spite of this, a number of discriminatory practices adopted towards these groups are witnesses in many societies across the world. It is the duty of the majority

### UNIT-III MULTIPLE CHOICE QUESTIONS

Answers

- 1) What is the contribution of UN Declaration on the Rights of Indigenous People-2007?  
A. It establishes a universal frame work of minimum standards for the survival, dignity, well-being, and the rights of the world's indigenous people.  
B. It addresses both individual and collective rights, cultural rights.  
C. Both 'A' and 'B'  
D. None of the above  
(C)
  
- 2) When United Nations first announced International decade of the world's indigenous peoples?  
A. 1995-2004  
B. 1990-2000  
C. 2000-2010  
D. 1940-1950  
(A)
  
- 3) Which articles under Indian constitution provide the reservation of seats for members of the Scheduled Casts and Scheduled Tribes in Union and State Legislatures?  
A. Article 21 and 19  
B. Article 330 and 333  
C. Article 17 and 325  
D. Article 51-Aand42  
(B)
  
- 4) Which Amendment Act in Indian constitution made Government of India to constitute National Commission for Scheduled Castes and Scheduled Tribes?  
A. The Constitution (sixty-fifth Amendment) Act, 1990.  
B. The Constitution (fifty -fifth Amendment) Act, 1975.  
C. The Constitution (fifty-sixth Amendment) Act, 1980.  
D. The Constitution (sixty-fourth Amendment) Act, 1990.  
(A)
  
- 5) In 1992, the United Nation General Assembly adopted the proclamation to observe the year..... ..As the International a Year of the Older Persons.  
A. 1992  
B. 1999  
C. 1993  
(B)

- 6) Which acts in India talks about laws relating to Disabled persons? (D)
- A. The Indian Lunacy Act, 1912
  - B. The Lepers Act, 1899
  - C. The mental health Act, 1987 :
  - D. All of the above
- 7) Which of the following legal instruments have provisions addressing the various aspects relating to the rights of minorities? (D)
- A. Convention on the Elimination of All forms of Discrimination, 1965
  - B. The UNESCO Convention against Discrimination in Education 1960
  - C. The UNESCO Convention on race and racial prejudice 1978.
  - D. All of the above
- 8) In the year ..... the Government of India established a separate Ministry to augment the rights of minorities in the country. (B)
- A. 2000
  - B. 2006
  - C. 2005
  - D. 2004

*In spite of the guarantee of human rights to mankind by the international community, at times, due to technical-legal aspects, socio, economic, cultural and other problems, a section of the humanity are at risk and are unable to enjoy the guaranteed human rights. This unit examines human rights issues relating to such special category of vulnerable groups, stateless persons, sex workers, migrants and persons affected or infected by HIV/AIDS will be subtly discussed.*

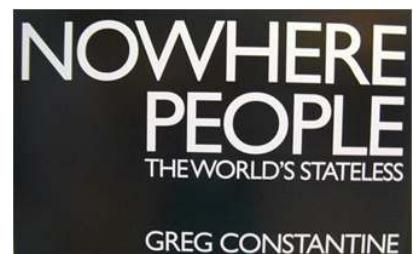
## A) STATELESS PERSONS

### 1. Stateless persons

*Citizenship is man's basic right for it is nothing less than the Right to have rights*

- Chief Justice Warren

In accordance with the established norms of international law, i.e., both customary and general principles, Nationality is an important aspect for an individual to secure the rights and privileges through the State of nationality that are guaranteed under both in international law and municipal law. Hence, States have an obligation under international law to confer nationality to all the subjects residing in its territory in general, or by any other means employed by it. This casts a responsibility on the States under international law to prevent statelessness. However, due to an array of reasons, millions of people across the globe are stateless.



### 2. Concept of Nationality and Citizenship

The term “nationality” in international law is often used as a synonym for “citizenship” in municipal law, though they are conceptually different. In general, nationality signifies a person’s membership to a State. Citizenship, on the other hand, denotes the municipal status of a person possessing the highest category of political rights and duties established by law of the land. In view of the difference that exists between the two, Goveny had observed that, all citizens are national of a particular State, but all nationals may not be the citizens of a State. However, both the

terms are used interchangeably many a times in several countries including India.

In general, a state may employ two principles to confer citizenship. They are; **Jus Soli** (territory of birth), which means, to regard all persons as its nationals who are born in its territory regardless of parentage, and the other is; **Jus Sanguinis** (parentage) which means, all children of its nationals, wherever born, as themselves nationals. However, it is the discretion of a State either to employ one of the principles or both, or to apply a very different test prescribing the conditions to grant Citizenship.

Apart from both the methods, nationality or citizenship of a country may be obtained either through naturalization, registration, or by application or by residence in the territory of that country for a particular length of period as per the law of each country.

Citizenship is the dominant factor to decide the concept of nationality. If a person lacks the dominant legal relationship with a state either internally or externally through the tag of citizenship, such a person is referred to as "Stateless Person". Stateless persons are potential target groups for the abuse of their human rights in any country, because they posses very few legal rights compared to that of citizens of a state.

### 3. Concept and Causes of Statelessness

According to the 1954 UN Convention on Status of Stateless Persons, stateless person means, "A person who is not considered as a national by any State under the Operation of its Law." (Article 1). However, the following do come within the purview of the above definition. They are;

- Refugees who are under the protection of United Nations High Commissioner for Refugees(UNHCR);
- Persons who have committed a crime against peace;
- War criminals,
- Persons who have committed a crime against humanity;
- Persons whose acts are contrary to the purposes and principles of the United

Nations and;

- Persons who commit a serious non-political crime outside the country of their residence

Statelessness normally arises in two ways. One is *defacto* (temporary) where in a person is unable to either establish citizenship, or to be considered a national by any state under operation of a state's law temporarily. *defacto* (Permanent) statelessness may arise when a person fails according to the law of a state to acquire nationality by birth. *defacto* statelessness encompasses what is known as ‘subsequent’ or “relative” statelessness, where by an individual loses their nationality without acquiring another.

Statelessness is a serious impediment for anybody. It normally denies various basic rights that a person cannot enjoy as compared to that of a citizen of a State. Such persons cannot move freely across borders of states because they cannot obtain passports or visas. They cannot participate in the political process of any country and usually lack the political, legal, physical, social, cultural, or diplomatic protection. Though their status may not be comparable to that of refugees, they are still prone to the legal and humanitarian problems similar to that of refugees.

A person may be stateless knowingly or unknowingly or without his or her fault. The most Common causes in which a person may become stateless are:

**Conflict of Laws between States :** A person may become stateless due to *Jus Sanguinis* i.e. Nationality granted by descent in a country in which an individual is born and *Jus Soli* i.e. When citizenship is granted based on the State in which the parents of the individual hold nationality.

**Legal Transfer of territory or Sovereignty :** Individuals may be stateless because of state succession. (State Succession means the birth or death of states, or creation of new states from the existing ones; for example, the creation of Pakistan from India during the time of Independence.) In such situations if a new state adopts a new set of laws or procedures contrary to customary or general principles of international law, the subjects residing in its territory at the date of succession may become stateless due to the legal technicalities adopted by the new state.

**Loss of Citizenship due to marriage Laws :** The Citizenship laws of some states

may provide for automatic loss of nationality for women marrying a foreign national. At times even men may be temporarily stateless, if they marry a foreign woman, and choose to acquire the nationality of that of the wife.

**Administrative Modulations :** Many a times the numerous administrative and procedural requirements of a State can create statelessness. For example in a state where lot of procedural aspects or high amount of fees or lack of compliance with laws governing with respect to information, on births and identity may result in statelessness.

**Application of *Jus Sanguinis* :** Although the nationality laws of many countries rest on *jus sanguinis* or *jus soli*, at times if a particular state is in strict adherence of *jus sanguinis*, it has the potential to produce statelessness.

**Renunciation :** If a person voluntarily or by compulsion of the law of a state renounces the citizenship of a state before acquiring the citizenship of another state, he/she become stateless persons.

**Automatic loss of citizenship by operation of Law:** Statelessness may result due to the practice of states which provides for the automatic loss of citizenship after a set period of absence from the state or residence abroad.

#### 4. Statelessness and International Legal Standards:

According to available estimates by the UNHCR there are an estimated 12 to 17 million stateless people that are residing in almost all regions in the world. Nationality has an important bearing on an individual's legal capacity in both domestic and international law as it effectively provides the link between an individual and a state. Hence, statelessness is a problem of identity under law, which ultimately deprives the enjoyment of legal rights conferred by law upon individuals. In order to protect the interests of the individuals and to eliminate statelessness, a number of legal standards and instruments have been adopted under international law.

Article 15 of the Universal Declaration of Human Rights provides that all persons have a right to nationality and



that no person shall be arbitrarily deprived of one's nationality or forced to change nationality. In order to discharge this commitment, in 1954, the UN adopted the **Convention relating to the Status of Stateless Persons, which came into force in 1969**. Parties to the Convention need to observe and respect the minimum standards in the protection and promotion of human rights of the stateless persons residing in its country without discrimination based on race, religion, sex, or country of origin. According to the Convention, a Stateless person is entitled to a number of rights and protection in the territory of residence. Accordingly the most important ones are:

- They have freedom to practice their religious ceremonies and religious education to their children.
- They should be accorded same treatment on par with their citizens in various matters.
- No adverse legal effect or treatment to them in various matters in the exercise of their fundamental human rights, especially with respect to acquisition of movable and immovable property including that of their Intellectual Property Rights.
- They need to be permitted to get access to the Law and Justice Machinery of the country.
- They need to be given equal treatment in matters of employment, wages, and social security on the same lines that are applicable to the citizens of a country.
- They need to be provided with travel documents to travel to foreign countries as per the provisions of law.
- They should not be expelled in a discriminatory fashion or to be sent to another country against their wish where in their security is in jeopardy their human rights.

Although, the Convention specifies a number of rights and benefits to stateless persons, it has not provided any mechanism to protect the expulsion or return to countries of expulsion of these people by the country in which they reside.

In order to strengthen the international commitment to eliminate the concept of statelessness in the year 1961, the UN adopted another convention on the

Reduction of Statelessness, which came into force in 1975. As its name suggests, the main aim of the Convention is to reduce statelessness. The convention presented more scope to the contracting states in order to facilitate the states to expand the methods of nationality, beyond the purview of *jus soli* and *jus sanguinis*. The Convention followed the path of the 1930 Convention on the Conflict of Nationality Laws of the League of Nations in order to avoid the conflict of laws with respect to marriage and birth of children. However, the Convention does not impose a blanket responsibility on a contracting state to extend its nationality to any stateless person. But, at the same time, it has extended the scope to confer nationality on ties held with the state on any genuine link that the national possess with that particular State.

#### **4. Consequences of Statelessness on Human Rights:**

In spite of adoption of the convention guaranteeing the rights of stateless persons, these persons often face a number of difficulties in the free exercise of their human rights in the country of residence. They are:

- The stateless persons are often unable to obtain identity documents; International travel becomes almost impossible if one cannot obtain a passport or other travel document. As a result, some stateless people are regarded as illegal immigrants wherever they reside and face legal action by the country of residence.
- Denial of Minority status even if stateless persons fall within the category of minorities according to the law of the country of their residence.
- Children born in the territory of residence may face adverse effects in obtaining Birth Registration Certificates.
- Discriminatory treatment in various free exercise of their rights especially with respect to matters of education, health, acquisition of property, and to receive social security benefits.
- There is every possibility for the abuse of their rights by the law enforcing agencies on flimsy grounds.
- There will be always tension and unrest in their lives with the fear of their displacement from the country of residence to another country, lack of stability etc.

The moment stateless persons secure the citizenship or nationality of a country; they cease to be stateless, and are regarded as nationals of that particular country. Once they obtain the nationality of a country, they are able to exercise their rights freely on par with other nationals of that country.

## 6. Some current challenges

The **UN High Commissioner for Refugees (UNHCR)** has identified the following challenges:

- Statelessness has still not been comprehensively mapped worldwide and many stateless populations lack the identification documents (or entitlements) that would allow this to be corrected.
- Many nationality laws fail to include safeguards against statelessness, or contain discriminatory provisions causing statelessness among particular groups
- Very few procedures are laid down for determining the stateless status of a person and where procedures are laid down, the safeguards to protect the rights of the individuals are inadequate.
- Low public awareness of statelessness has resulted in a low level of concrete responses to situations of statelessness and the concerns of stateless people

## 4. Sum UP

The UNHCR through its continuous efforts is working hard to convince the states to become parties to both the conventions in order to augment the rights of the stateless persons. The UNHCR calls upon States to adopt nationality legislation with a view to reduce statelessness, consistent with the fundamental principles of international law, in particular by preventing arbitrary deprivation of nationality and by eliminating provisions which permit the renunciation of nationality without the prior possession or acquisition of another nationality.

Apart from the efforts of the UN and its organs, it is the duty of the nation-states to prevent statelessness as per the general principles of international law and the numerous international treaties, conventions or covenants on human rights which impose a direct and indirect obligation not to deprive the free exercise of life and liberty of any individual.

## (B) SEX WORKERS

### 1. Definition of Sex Work

According to the Preamble of the **UN Convention for the Suppression of the Traffic in the persons and the Exploitation of the Prostitution of others, 1949;**

“Prostitution and the accompanying evils of trafficking of persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family, and the community.”

From ancient to modern times, Prostitution or Sex Work has been in existence in one form or the other. It has been prevalent in all societies and states across the World in almost all periods. It is one of the worst forms of violation of rights of women and girls. In spite of the evil affects that are associated with sex work, in the contemporary era of globalization it has assumed different dimension and included many types of activities that form part of sex work. Though there are instances of men performing sex work for a variety of reasons, the number is comparatively less to that of the women and girls.

The term sex worker is a broad term and covers a number of sexual services. Traditionally, the sex workers were referred to by a number of names in each society such as whore, prostitute, harlot etc. However, these terms are very derogatory in nature. Therefore, in 1978, an activist by the name of Carol Leigh coined the term ‘sex worker’. From then onwards, it became a popular term and gained currency in referring to various types of services that are in existence in the sex industry.

### 2. Sex Workers and International Efforts

Because of the social reform movement of the 19th century throughout the world, the international community adopted a number of international agreements in order to eradicate the illegal acts that were targeting women. They are :



- An International Agreement on Suppression of the White Slave Traffic came into

existence in 1904. The United Nations in 1948 amended this agreement in order to cover all types of traffic of human beings.

- International Agreement for the Suppression of the White Slave Traffic in 1910.
- The League of Nations adopted an International Convention in 1921 for the Suppression of the Traffic in Women and Children. This was approved by the United Nations in the year 1947 through a Protocol.
- International Convention in 1933 for the Suppression of the Traffic in Women of Full Age

The efforts of the international community and the League of Nations led the United Nations, to adopt a convention for the **Suppression of Traffic in Persons and of the Exploitation of Prostitution and Others 1949**. The Convention contains 28 articles. These articles empowers the national Governments to enact specific legislations to eradicate the evil of prostitution and other aspects relating to it and declare any activity that affects the modesty, dignity, life and liberty of a person especially that of women and children.

Apart from these Conventions, the **Convention on the Elimination of Discrimination Against Women, 1979**, the World Conference on Human Rights 1993 and a number of international forums condemned violence in any form against women and urged the nation-states to eradicate all the evils associated with prostitution and other related aspects. These efforts of the International Community, led many countries to enact specific legislations to prevent trafficking and even to ban sex work in some countries.



A number of International Organizations, such as the Economic and Social Council, International Labor Organization, United Nations Scientific, Education and Cultural Organization (UNESCO), the International Human Rights Council etc., are working closely with the nation-states and these organisations have adopted a number of resolutions to eradicate all types of evils that are associated with sex work and to uphold the rights of these people.

### **3. Indian Scenario**

In India, prostitution has been prevalent since ancient periods. Among the various works, the work of Arthashastra of Kautiyala comprehensively dealt with the position of prostitutes in the ancient periods. In ancient India, for the word prostitute, nearly 250 synonyms were employed. Among all the words, the word Ganika received a wide spread recognition. In the ancient India, Prostitution was recognised officially as an economic activity and these women were paid by the State. In their old age, they were taken care of by the State and pensions were also paid by the State.

In the middle ages, the profession was named after a traditional customary name called devadasi (Temple Servant) which was widely prevalent in many parts of the country. During the Muslim reign, prostitutes were recognized as dancing and singing girls. The initiation of legal measures to regulate sex work and its eradication, during the British period, could not bring about the desired results.

After independence, the Government of India and the State Governments have taken a number of steps to eradicate prostitution and the evils associated with it. In 1956, the Government of India enacted the Suppression of Immoral Traffic in Women and Girls Act. This Act was extensively amended in 1986 and renamed as the Immoral Traffic (Prevention) Act 1956 based on the Recommendations of the National Law Commission of India. Though the Act empowers the various organs of the state, especially the police to curb the menaces associated with the profession of prostitution in any form, nowhere the profession of sex work or prostitution is explicitly banned nor officially recognized.

Apart from the above, the Government constituted the National Commission of Women, 1990 to study the issue relating to women and to suggest the remedies to eradicate all the evils and inimical activities targeting the modesty of women. The National Human Rights Commission also undertook a number of studies and

suggested various measures to prevent prostitution.

The Government of India along with the State Governments constituted a number of committees based on the Judgment of the Supreme Court of India in 1997 in **Gaurav Jain V Union of India (AIR 1990 SC)** to protect the prostitutes and their children. In spite of the best efforts of the state, prostitution is rampant in India for a variety of reasons. Among the various reasons, poverty, social customs, blind beliefs existing in villages, bad company, massive urbanization, misuse of science and technology are some of the reasons for the widespread increase of the number of women and children entering into the flesh trade against their will. Considering the magnitude of the problem, a number of social activist organization and sex workers organisations are demanding that the state recognize and protect the rights of these people.

In a number of cases, the courts admonished the law enforcing authorities for excesses in dealing with sex workers. In Vishal Jeet V Union of India in 1990, the Supreme Court of India laid down a number of stiff norms and directed the Union and the States to submit detailed reports in protecting the rights and the rehabilitation activities employed by the state. In Budhadev Karmskar V State of West Bengal in 2011, it had passed a number of directions to protect the rights of sex workers, including their rehabilitation.

#### 4. Sum Up

In spite of the judicial proclamations, efforts of the state and its agencies to eradicate the evils associated with the profession could not yield the desired results. The strict vigil and participation of society alone could augment the rights of these destitute women and children to eradicate the evil and the stigma attached to them

### (C) MIGRANT WORKERS

Migrant workers means, people who move from one country to another in search of work. However, the term migrant worker has different meanings and is linked to different situations in various parts of the world. At the same time, people who are employed by official means by any government or international organization cannot be considered as migrant workers. Industrialization along the growing pace of economic globalization, poverty, and social conditions has led to the

increase of Migrant workers. According to available estimates, there are about 214 million migrant workers in the world. Out of these around 25% of them, do not possess any kind of status.

## 1. International Efforts

Whenever a person migrates, human rights of these persons could be affected in many ways. Among them, the irregular migrant's workers face severe adverse circumstances while exercising of their human rights. To augment their rights, the International Labour Organisation adopted a number of legal instruments to guarantee the rights of these persons. Among the various documents, **Migrant Workers (Supplementary Provisions) Convention, 1975**, is an important document.

According to the convention, it is the basic obligation of nation-states to provide opportunities to migrant workers and to protect their rights. The Convention imposes an obligation on the states parties to provide equal opportunity and treatment in matters relating to employment, social security and other cultural rights. This also ensures that state is under a legal obligation to protect and enhance the rights of the workers families and to provide all the individual freedoms that lawfully need to be exercised by its nationals.



The United Nations in 1990 adopted an **International Convention on the Protection of the Rights of All Migrant Workers and their Families**. The Convention came into existence in 2003. The Convention has 93 articles. The Convention has not advocated any special rights. It puts an obligation upon state parties to take care of all the human rights that are guaranteed in an array of international agreements, to which already states are parties. It urges the member states to protect and guarantee the rights of these people to treat these people on par with their own nationals.

## 2. Migrant Workers in India

In Indian context, the definition of migrant workers needs to be differently construed from that of the International definition. Accordingly, migrant workers, include non-nationals who move from other countries to India, or citizens who move from one state to another to seek work. In India, migration has taken place, especially after the rapid urbanization and economic liberalization. Many people move to cities and neighboring states wherever there are chances for work. In India after agriculture, migrants are predominantly found in the construction industry. Although these people possess all the rights as citizens, they may not have certain benefits such as residential benefits that are available to the people of the state or may not be able to procure ration cards under the Public Distribution system to purchase their food grains at a subsidized price supplied by the State in which they currently reside.

In order to improve the conditions of these workers, the Government of India passed the Inter-State Migrant Workers (Regulation of Employment and Condition of Service) Act in 1979. Based on the provisions of the Act a number of State Governments too enacted separate legislations to prevent discriminatory practices against these workers. However, due to a number of reasons, many a times these workers are denied a number of rights that are legally eligible to claim.

The Supreme Court of India in **Bachapan Bacho Andolan v Union India in 2011**, while addressing the rights of the children of various sections of people in the country, directed the executive to take necessary steps in order to protect the rights of children of migrant workers and their families. In **People's Union for Democratic Rights and others v. Union of India, in 1982**, emphasizing the role of the State in the protection of the rights of the workers under various laws of the country including the constitution, the court in no uncertain terms expressed its displeasure about the negligence of the state in preventing the violations with respect to the payment of wages to the workers and forceful employment of workers in the Asiad Project. It accordingly held that it is the duty of the state to prevent any such violations and to prevent any kind of forced migrations against the wishes of any person.

## 3. Sum up

Whatever the reason for which a person migrates from one place to another either

within the country or outside the country in search of work, they cannot be ill-treated on any count. According to human rights, every person has a right to live, reside and work in any avocation of his/her choice. Hence, the efforts of the international community and the states need to be supported by every individual of who has a duty to protect the rights of their fellow men irrespective of their working nature. Then only the efforts of law will yield the results in protecting the rights of these migrant workers.

## (D) HIV/AIDS VICTIMS

Human Immunodeficiency Virus/ Acquired Immune Deficiency Syndrome is a serious disease discovered in 1981. As of date, no definite cure has been found. However, efforts are on to invent a cure for this disease. According to UN the diseases affect more than 60 million people. In this around, and 50% of people affected by the disease have lost their lives, around 36 million people in the world are living suffering from HIV/AIDS. The disease normally contracted through unsafe sexual relations and other means such as unsafe blood transfusion etc. Taking into consideration of the magnitude of the disease and its effect on the human rights of these people, a number of human rights organisations started their work in this area since 1981.

### 1. International Efforts:

The United Nations in order to prevent discrimination shown towards the HIV/AIDS patients across the world, adopted a number of declarations and started working through a number of its specialized agencies. Among the various organs, the World Heal Organisation is the most important one that has undertaken a number of efforts to help these victims. Accordingly, in order to promote their rights and to create awareness among various sections of people across the world, it has declared December 1, 1988 as World AIDS Day.

The Economic and Social Council considering the work of various organisations to provide a unitary mechanism for better coordination between them, through a resolution in 1994 recommended to the General Assembly to establish a specialized agency to chalk out strategies to tackle the menace of AIDS in an effective manner. Based on this recommendation, the UN in 1996 adopted the UNAIDS, a Joint Programme to coordinate the activities of various organs working

in this area. Since then UN AIDS adopted a Number of Strategic plans to tackle the dreaded disease.

To extend support to the activities of the UNAIDS, in a special session in 2001 on HIV/AIDS was conducted by the General Assembly, in which Member States of the UN, agreed to submit periodic reports on the various activities undertaken by each country to tackle the disease and to improve the situation of the affected people in these countries. In the year 2000, the UN recognised the disease and placed it as one of the Millennium Goals of the UN to control the problem and to protect the rights of these people.

Taking into consideration of the magnitude of the problem, for the first time, the Security Council adopted a resolution in 2000 to limit the potentially damaging impact of HIV on the health of Uniformed Services Personnel in peacekeeping operations. In 2011, through another resolution, it reaffirmed its commitment to address the issue and requested the member states to increase their efforts in controlling the diseases in conflict and post conflict situations.

The UN AIDS in order to discharge its duties and to achieve the millennium goal to eradicate the disease has adopted a plan of Action in 2010. This popularly referred to as the UN AIDS Strategic goals plan for 2015. The goals are as follows:



- To reduce sexual transmission of HIV by half, including among young people, men who have sex with men and transmission in the context of sex work.
- To eliminate vertical transmission of HIV, and AIDS-related maternal mortality reduced by half.
- To prevent all new HIV infections among people who use drugs.
- Universal access to antiretroviral therapy for people living with HIV.

- To reduce TB deaths among people living with HIV by half.
- To oversee that people living with HIV and households affected by HIV are addressed in all national social protection strategies and to have access to essential care and support.
- Countries with punitive laws and practices around HIV transmission, sex work, drug use or homosexuality that block effective responses to be reduced by half.
- HIV-related restrictions on entry, stay and residence to be eliminated in half of the countries that have such restrictions.
- To see to it that HIV-specific needs of women and girls are addressed in at least half of all national HIV responses.
- Zero tolerance for gender-based violence.

## 2. Human Rights Violations Faced by HIV/AIDS People

People living with HIV/AIDS face a number of serious violations in the free exercise of their human rights. Among the various rights, a few are stated below.

- Denial of Health Care and Treatment
- Denial of and/or Removal from Employment
- Lack of Access to Information
- Lack of Access to Legal Remedies
- Lack of Strong Support System including family, spouses, friends and relatives.
- Discrimination against those children whose parents are suffering from the above disease in various matters including education
- Denial of number of services in the society etc.



### 3. National Scenario :

In India the first case of HIV/AIDS victim was found in 1986. According to Family Health Survey III, 2006, of the Government of India, around two to three million people are affected by the disease . In the national average, people living in the urban areas are more in number suffering with the disease compared to that of rural population. The Government of India even before the increase of the patients suffering from this chronic disease as a preventive care, in the year 1987 launched the National AIDS Control Programme. Accordingly the objectives of the programme are:

- Covered Surveillance
- Blood Screening
- Health Education

However, considering the increase in the rate of infection among the populace of the country, in 1992 National AIDS Control Organisation. The aims of the organisation are to oversee the formulation of policies by various states and the Government of India, Prevention work and control programme in combating the HIV/AIDS. Apart from the organisation, the National Institute of Health and Family Welfare has also been entrusted to evolve suitable policy formulations at regular intervals to tackle the dreaded disease.

### 4. Sum up

The subtle examination of the rights of HIV/AIDS affected persons brings the point to the fore that these people too possess human rights and their free exercise like any other normal individual. The society and the international community need to provide opportunities for these people to lead a life with dignity, instead of living at the mercy of others.

## Conclusion

The brief over view of the rights of various vulnerable groups or disadvantaged people, amply presents the special categories of problems that affect their free exercise of human rights guaranteed both by international and national laws. A cryptic examination provided in the various units, certainly imposes a responsibility on each one of us to protect the rights of everyone without any discrimination based on sex, race, language, religion, caste or any other type of discrimination.

Accordingly, we the people of the United Nations have a solemn responsibility to pledge ourselves to promote the ideal of Dr. B.R. Ambedkar that social democracy alone could distance all the evils that exist in the contemporary world, compared to that of political or legal democracy.

The Strict adherence to social democracy would certainly lead us to achieve the path shown by international law of human rights to establish a World free from discrimination of any kind towards the fellow men.

## UNIT-IV MULTIPLE CHOICE QUESTIONS

Answers

- 1) The term 'Nationality' in International Law is often used as a synonym for "....." in Municipal Law, though they conceptually different. (A)  
A. Citizenship  
B. Regionalist  
C. Ethnicity  
D. Statelessness
  
- 2) The most common causes in which a person may become stateless..... (D)  
A. Conflict of laws between states.  
B. Legal transfer of territory or sovereignty  
C. renunciation  
D. All of the above
  
- 3) UN adopted The Convention relating to the Status of Stateless Persons-1954, came in to force in..... , (B)  
A. 1955  
B. 1969  
C. 1989  
D. 1999
  
- 4) Which of the following is the international agreement in order to eradicate the illegal acts that were targeted to women? (D)  
A. International agreement for suppression of the White Slave Traffic in 1910.  
B. International convention for the suppression of the Traffic in Women and Children- 1921  
C. Suppression of traffic in persons and the exploitation of prostitution and other persons 1949  
D. All of the above

- 5) Which is the famous case under Indian Supreme Court, which directed the executives to take necessary steps in order to protect the rights of the children of migrant workers and their families? (B)
- A. Vishaka V. State of Rajasthan
  - B. Bachpan Bachao Andolan V. Union of India
  - C. Kesavananda Bharati V. State of Kerala
  - D. None of the above.

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## **About the Author**

Dr.T.S.N.Sastry is a senior teacher spanning over more- than two decades of teaching, and research experience , especially in the-fields of international law and human rights. He authored two books on International Law of State Succession, Introduction to Human Rights and Duties, edited three books on human rights and constitution. He Published a number of Research papers in journals of repute on International Law, Human Rights And Constitution of India. He was an academic fellow of the Erasmus Mundus External Window Lot 13. Dr. Sastry Delivered lectures on various areas of international law, human rights in a number of Indian and foreign Universities. He was the fellow under the cultural exchange programme of the Government of France. He received Vijaya Shree Award from the Indian International Friendship Society, New Delhi in 2005 for his efforts for the propagation of Human Rights Education.

Dr Sastry was responsible in establishing the UGC Centre for Human Rights and Duties Education in 1997 in the Pondicherry( Central) University. As a founder coordinator of the centre, he conducted a number of programmes, seminars, and conferences for the propagation of human rights, apart from the academic programmes leading to research and teaching in human rights. He served as Dean, Director, and Controller of Examinations at Tamil Nadu Dr. Ambedkar Law University, Chennai. He was a member of a number of academic bodies including the Management Council of University of Pune, and Governmental organisations. . Presently, he is the Academic Council Member and Visiting Professor of the Chanakya National Law University, Patna.

Dr Sastry Conducted a number of seminars, and the founder of the Late. Prof. S. K. Agarwal Post Graduate Moot Court Competition, and a Placement Cell in the traditional set up of Law Departments in University system.