

Unit-III

Unit III: Rights of Marginalized and other Disadvantaged People: Rights of Women – Rights of Children – Rights of Differently Abled – Rights of Elderly - Rights of Scheduled Castes – Rights of Scheduled Tribes – Rights of Minorities – – Rights of Prisoners – Rights of Persons Living with HIVAIDS – Rights of LGBT.

X - X

RIGHTS OF MARGINALIZED AND OTHER DISADVANTAGED PEOPLE

Introduction

Human Rights are the basic right which is being provided by every constitution of every State and every individual in this globe born with the inherent right of Human Right. They are most basic right which an individual can ask to have from its nation. They have never given away any kind of unfairness towards any individual or group of people or they haven't been any discrimination made on the basis of caste, sex, religion etc. with any individual under any nation. . They only sponsor the welfare and well-being of all persons with equal behaviour. However, the socio-economic, political and cultural diversities, prevailing in each state across the world, and politics of the nation states, take away the free effect of human rights to a certain number of people.

The major problem faced by every developing nation is that the large number of human sector falls under the poverty line. They are deprived of adequate access in the basic needs of life such as health, education, housing, food, security, employment, justice and equity which also include issues related to sustainable livelihood, social and political participation of the vulnerable groups exists as the major problem in the developing nations.

All social groups should have equal access to the services provided by the State and equal opportunity should be provided for their upward economic and social mobility. The government of every nation should also ensure that should not be any sort of discrimination against any section of our society. In India, certain social groups such as the SCs, STs, OBCs and Minorities have in the past been deprived and vulnerable for human rights. There are certain other groups which may be discriminated against and which suffer from handicaps and the groups include persons with disabilities, older persons, street children, beggars and victims of substance abuse. Our Constitution contains various provisions for the enlargement of such marginalized groups, for instance, Article 341 for SCs, Article 342 for STs, Article 340 for OBCs, Article 30 which provides the right to minorities to establish and administer educational institutions, and various other statutes. Their individual and collective growth, however, cannot be ensured without improving their surroundings and providing clean drinking water, toilets and educational opportunities.

The Constitution of India guaranteed to all the people of India the 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 prevailing in the country, there have not much opportunity offered to various groups and which lead to deprive them of being treated equally as the other 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 expand their rights, the Constitution of India has provided a number of concessions to protect them from exploitation by other groups.

CONSTITUTIONAL RIGHTS TO WOMEN

1. Article 14: This article ensures equality before the law or the equal protection of the laws within the territory of India. This very important provision provides equal legal protection to women against any women-based crime.

2. Article 15: In this article, no one should create any sort of discrimination within the territory of India and as per article 15(3) the state has the authority to make any special provision for women.

3. Article 16: This article ensures equal employment opportunity to every citizen of India. There should not be any discrimination in respect of employment opportunity under the State on the ground of sex.

4. Article 21: This article deals with right to life has been expanded to include the right to Life with Dignity. This provision has been invoked to safeguard the rights of women such as right to divorce, to live a life free from violence and the right to safe abortions.

5. Article 39: Article 39(a) of directive principles of state policy ensures and directs a state to secure for men and women equality right of adequate means of livelihood and article 39(d) ensures equal pay for equal work for both men and women.

6. Article 42: Article 42 of constitution of India casts a duty on every employer to ensure just and humane conditions of work and for maternity relief. In reality the position and treatment of women in corporate offices is really bad and in fact they are exploited by their seniors and bosses. In this scenario the provisions of article 42 are very important and now it is the duty of employer to provide good working conditions to all the employees.

7. Article 51A: Article 51A of the Constitution lays down fundamental duties of all citizens. It stipulates that all citizens have a duty to promote harmony and to renounce practices which are derogatory to the dignity of women.

8. Article 243: Article 243 D (3) provide for reservation of not less than one third of total number of seats in Panchayats for women to be allotted by rotation to different Constituencies and Article 243 T (3) provide for reservation of not less than one third of total number of seats in Municipalities for women to be allotted by rotation to different Constituencies. Article 243 D (4) and Article 243 T

(4) provide that not less than one third of the total number of officers of chairperson in the Panchayats and municipalities at each level to be reserved for women. This opportunity of being a part of the local level arbitration process has improved the social conditions of women in village areas.

Legal rights to women

Laws related to women are classified under two major categories

A. Indian Penal Code (i)

Rape (Sec. 376 IPC): A rapist, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.

(ii) Kidnapping & Abduction for different purposes (Sec. 363-373): any person who is abducting a minor for purpose of begging or kidnapping minor/women for prostitution or illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(iii) Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B IPC): Whoever commits dowry death shall be punished with imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life.

(iv) Torture, both mental and physical (Sec. 498-A IPC): Husband or relative of husband of a women subjecting her to cruelty, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

(v) Molestation (Sec. 354 IPC): Whoever assaults or uses criminal force to any women, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

(vi) Sexual Harassment (Sec. 509 IPC): Whoever, intending to insult the modesty of a woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such gestures or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

B) Special Laws

(i) The Protection of Women from Domestic Violence Act 2005: This act enacted to protect women from all forms of domestic violence. It provides protection to the wife or female live-in partner from domestic violence from the husband or male live-in partner or his relatives. This act includes to violence of any kind like physical, sexual, verbal, emotional.

(ii) Dowry Prohibition Act (1961): This act prohibits the giving or receiving of dowry at or before or any time after the marriage from women.

(iii) The family courts Act (1954): The family courts act provides for the establishment of family courts for speedy settlement of family disputes. This act concludes relating to family matters like matrimonial reliefs, custody of children, maintenance for wife and children.

(iv) The Sexual Harassment of Women at Workplace act (2013): This act seeks to protect women from sexual harassment at their place of work and contribute to realization of their rights to gender equality, life and liberty and equality in working conditions everywhere.

(v) The Medical Termination of Pregnancy Act (1971): Intention of this act is reducing the incidence of illegal abortion and maternal mortality and morbidity. This act provides for the termination of certain pregnancies by registered medical practitioners on humanitarian and medical grounds.

(vi) The Equal Remuneration Act (1976): This act provides for the payment of equal remuneration to both men and women workers for the same work. It prevents discrimination on the ground of sex. So, working women have the rights to draw an equal salary as compared to men.

(vii) Maternity Benefit Act (1961): This act regulates the employment of women in certain establishments for certain periods before and after child-birth and provides for maternity

benefit. (viii) **Legal Services Authorities Act (1987)**: It provides for free legal services to Indian women. (ix) **Hindu Marriage Act (1955)**: This act introduced monogamy and allowed divorce on certain specified grounds. It provided equal rights to Indian man and woman in respect of marriage and divorce.

(x) **Hindu Succession Act (1956)**: This act recognizes the right of women to inherit parental property equally with men. The other various laws which also contain certain rights and safeguards for women which includes Minimum Wages Act (1948), Employees State Insurance Act (1948), Employees' State Insurance Act (1948), Immoral Traffic (Prevention) Act (1956), Plantation Labour Act (1951), Bonded Labour System (Abolition) Act (1976), Muslim women (Protection of Rights on Divorce) Act (1986), Special Marriage Act (1954), Foreign Marriage Act (1969), Hindu Adoptions and Maintenance Act (1956).

Legal Status of a Woman in India

Women in India are being provided with the legal security to secure their economic, social and cultural lives. These are few acts which show the efforts made by Indian Government in interest of women's life safeguard. Dowry Prohibition Act 1961, Maternity Benefit Act 1861, Births, Deaths & Marriages Registration Act 1886, Medical Termination of Pregnancy Act 1971, National Commission for Women Act 1990, Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1999, Protection of Women from Domestic Violence Act 2005, Sexual Harassment of Women at Work Place (Prevention, Prohibition & Redressal) Act 2013, Hindu Widows Remarriage Act 1856, Muslim women (protection of rights on divorce) Act 1986, Guardians and Wards Act 1890, Indian Penal Code 1860, Christian Marriages Act 1872.

RIGHTS OF CHILDREN

Census 2011 counted more than 440 million children in India below 18 years of age constituting 37% of the total population of the country. Within the age group of 0-17 years, children between 0-6 years constituted about 14% of the total population of children in India followed by 17% between 7-14 years and the remaining 6% in the age group of 15-17 years. With an Infant Mortality Rate of 41 children dying before attaining one year of age per 1000 live births, the United Nation Population Division has ranked India as the 144th country out of a total of 188 listed countries as far as IMR is concerned. The World Bank report records 53 children dying before the age of five per 1000 live births for India. These are a few of the glimpses of the status of the children in India that needs close scrutiny. With poverty on one side and vulnerability on the other, the children needed an umbrella of protective cover from the world around them. In this context, issues revolving around the different facets of rights of the children gained momentum. As a result of such endeavor, The UN General Assembly adopted the Convention and opened it for signature on 20th November 1989 (the 30th anniversary of its Declaration of the Rights of the Child).

It came into force on 2nd September 1990 after the required number of nations ratified it. Currently, 194 countries are party to it, including every member of the United Nations. The strategy adopted by the world was to combat poverty on one hand and on the other, usher strict implementation of the different facets of child rights including right to survive, right to

protection, right to development and right to participation. It is almost two-and-a-half decades since the onset of UNCRC (1990) and hence it is time to prospectively assess the situation of the children and child rights in India.

The child rights in the Indian constitution as described in the Convention have been summarised into the following fundamentals with references to various articles.

Constitutional Provisions Regarding Rights of Children The Constitution of India guarantees certain rights to the children of India which are mentioned in its Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy). These are elaborated below,

Part III:

Article 14: Voters of India, as well as children, should be treated equally before law and should be equal protection by the law with no discrimination.

Article 15(3): Discrimination is prohibited by the constitution. However, it shall not hold a ground to forestall the state from creating special provisions for children for his or her advantage.

Article 21: Nobody shall be bereft of his life or personal liberty unless by a due process of law. An individual should have proper and adequate food, shelter, clothing, etc. Such life shall not mean mere animal existence.

Article 21A: The State shall offer free and required education to any or all the children falling within the age group of six to 14 years in such manner which the State could, by law, determine. **Article 23:** Prohibits trafficking in citizenry and beggar or the other sort of forced labour. **Article 24:** Prohibits employment of youngsters beneath the age of fourteen years in an exceedingly mill, mine or in the other dangerous employment.

Part IV:

Article 39 (e): The state shall thrive to make sure that the tender age of youngsters isn't abused, and that people aren't forced by financial necessity to enter into activities which are unsuited to their age or strength.

Article 39 (f): The state shall guarantee children opportunities and facilities to develop in an exceedingly healthy manner and in conditions of freedom and dignity. It should even be ensured that childhood and youth of the child is protected against exploitation and against unethical and material abandonment.

Article 41: The state is obligated to, among its economic capability and development, secure provisions for academic opportunities and facilities.

Article 44: The state shall create all potential efforts to secure an identical Civil Code for all the citizens, thereby implying an identical code for the adoption of youngsters.

Article 45: The state shall endeavor to produce free and required education to kids till they attain they age of fourteen years. **Article 46:** It's the duty of the state to push the economic interests of weaker sections of the society with special care and thus, the children in that.

Article 47: The state is obligated to boost the extent of nutrition and also the normal of living and to enhance public health, as well as that of youngsters.

Article 51(c): International laws and treaties shall be revered by the state to each potential extent, as well as the CRC and its optional protocols.

Article 51(k): It shall be the duty of each national of India who may be a parent or guardian to produce opportunities for education to his kid or, because the case could also be, ward between the age of six and fourteen years.

Article 243G: It provides for the institutionalization of child care by seeking to entrust programs of Woman and Child Development to Panchayat (Item twenty-five of Schedule 11).

Indian Penal Code 1860

The Indian Penal Code offers protection to children and their rights by its various sections. Some of these sections are:

- **S.83:** An offence which is done by a child above seven years of age and under twelve, and has thereby not attained sufficient maturity in order to understand the nature and consequences of his action shall not be liable for the same.
- **S.292 & 293:** Selling, distribution, publishing, public exhibition or circulation of obscene material such as books, magazines, drawings, paintings, etc. is prohibited under Section 292. Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in Section 292, or offers or attempts so to do, shall be punished more severely.
- **S.305:** Abetting the commission of suicide of a person who is below the age of 18 years is punishable under this law.
- **S.317:** Abandonment of a child or exposure for that purpose by any of the parents or any person having the care of such child is punishable.
- **S.361:** This section punishes offenders who kidnap a child.
- **S.363A:** Kidnapping or maiming children for the purpose of begging is made punishable under this provision.
- **S.366A:** Inducing any minor girl who is under the age of 18 years to do any act that may force or seduce her to illicit intercourse with another person is made punishable under this section.
- **S.366B:** It makes it a punishable offence to import a girl under 21 years of age into India from a country outside India with a intention that she may be forced or seduced to enter into illicit intercourse with another person.
- **S.369:** Kidnapping a child under the age of 10 years with the intention to steal from such child is an offence.
- **S.372 & 373:** Selling, buying or hiring a person under 18 years of age with the intention of indulging in prostitution or illicit intercourse with any person, or for any unlawful or immoral purpose is a punishable offence.
- **S.375:** This section defines rape as intercourse with a woman without her consent or with a woman below 16 years of age.
- **S.376:** The section provides for stringent punishments if: Volume 6 Issue 3 & 4 o rape is committed by m o rape is committed by management or staff of Remand Home or any other place of custody established by law or children's institution, o rape is committed upon a woman under 12 years of age, o gang rape is committed.
- **S.376C:** Inducing or seducing a woman into sexual intercourse by the Superintendent or manager of a remand home or a place of custody as 'children's institution' by taking advantage of his position, he is entitled to stringent punishment under this provision.

Guardians and Wards Act 1890 This Act is said to supersede all the laws relevant to the guardianship of a child. It is treated as a universal code specifically designed for Muslims, Parsis, Christians and Jews, since their personal laws do not permit full adoption but only guardianship. This Act deals only with the guardianship of the person and property of the minor. In appointing or declaring the guardian of the minor the court shall take into consideration the circumstances of the case for the welfare of the minor and consistent with the law to which the minor is subject. Among the entire factor considered by the court, the welfare of the child is the paramount consideration.

3 Immoral Traffic (Prevention) Act (Amended in 1986), 1956 This Act particularly deals with person or persons who procure or attempt to procure any child for the purpose of prostitution or person who is found with a child in a brothel (then it will be presumed that child has been detained for this purpose) and provides punishment for them. It also lays provisions for the care of rescued children.

The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act 2000 The primary objective of this Act is the regulation and prevention of the pre-natal sex determination in order to prevent female foeticide. The Act intends to address the issue of female foeticide and Sex-Selection by imposing a ban on pre-conception tests or other procedures for the purpose of ensuring or increasing the probability that the child will be of a particular sex. Medical advancement in the field of assisted reproduction necessitated such provisions. The Act also provides for strict regulation of genetic clinics, laboratories or centers with minimum standards prescribed in terms of space, equipment and qualification of staff. As per the provisions under the Act, before conducting any prenatal diagnostic procedure, the medical practitioner must obtain a written consent from the pregnant woman in a local language that she understands. Prenatal tests can only be performed in specific circumstances, such as risk of chromosomal abnormalities in the case of women over 35, and genetic diseases evident in the family history of the couple.⁴ In *Vinod Soni vs. Union of India*⁵, the constitutionality of Pre Conception and pre-Natal Diagnostic Techniques (Prohibition of Sex-Selection) Act, 2003, was challenged on the basis of right to privacy. Mumbai High Court upheld the Act as constitutional.

Protection of Children from Sexual Offences Act, 2012 This Act is aimed at punishing the offenders guilty of sexual offences against children (below the age of 18 years of age). It also prescribes procedures for trial, such as, the name of victim shall not be disclosed since he is a child, proceedings of the case will be conducted in the court with cameras recording the trial, and that the accused is not to be kept in-front of the child victim while the examination or cross-examination is being conducted.

The Act defines different forms of sexual abuse, such as penetrative and non-penetrative assault, including sexual harassment and pornography, and also deems a sexual assault to be “aggravated” under certain circumstances, such as when the child abused is mentally ill or when the abuse is committed by a person in a position of trust or authority vis-a-vis the child,

like a family member, police officer, teacher, or doctor. People who traffic in children for sexual purposes are also punishable under the provision relating to abetment in the said Act. The Act prescribes stringent punishment graded as per the gravity of the offence, with a maximum term of rigorous imprisonment for life, and fine. In keeping with the best international child protection standards, the said Act also provides for mandatory reporting of sexual offences. This casts a legal duty upon a person who has knowledge that a child has been sexually abused to report the offence, if he fails to do so, he may be punished with six months' imprisonment and/or a fine.

The Act also casts upon the police, the role of acting as a child protector during the investigative process. Thus, the police personnel receiving a report of sexual abuse of a child are given the responsibility of making urgent arrangements for the care and protection of the child, such as obtaining emergency medical treatment for the child and placing the child in a shelter home, should the need arise. The police are also required to bring the matter to the attention of the Child Welfare Committee (CWC) within 24 hours of receiving the report, so the CWC may then proceed where required to make further arrangements for the safety and security of the child. The said Act makes provisions for the medical examination of the child in a manner designed to cause as little distress as possible. The examination is to be carried out in the presence of the parent or other person whom the child trusts, and in the case of female child, by a female doctor.

The Right of Children to Free and Compulsory Education Act, 2009 The Right of Children to Free and Compulsory Education Act, 2009 defines 'child' as a male or female child of the age of six to fourteen years.⁶ Elementary education means the education from first class to eight classes.⁷ 'Capitation fee' means any kind of donation or contribution or payment other than the fee notified by the school.⁸ According to this law, a child belonging to disadvantaged group means a child belonging to the Scheduled Caste, the Scheduled Tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economic, geographical, linguistic, gender or such other factor, as may be specified by the appropriate Government, by notification.⁹ and child belonging to weaker section means a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate Government, by notification. The Act guarantees that no child shall be denied admission in a School for lack of age proof.¹¹ For the purposes of admission to elementary education, the age of a child shall be determined on the basis of the birth certificate issued in accordance with the provisions of the Births, Deaths and Marriages Registration Act, 1886 or on the basis of such other document, as may be prescribed.¹² The Right to Free and Compulsory Education Act prohibits a School from holding back a child in any class or expelling a child from School till the completion of elementary education. The Act also prohibits the School from giving any type of physical punishment or mental harassment to any child¹⁴ and whoever contravenes this provision shall be liable to disciplinary Action under the service rules applicable to such person.

The Juvenile Justice (Care and Protection of Children) Act, 2015 The Juvenile Justice (Care and Protection of Children) Act, 2015 has come into force from 15th January, 2016 and

repeals the Juvenile Justice (Care and Protection of Children) Act, 2000. It follows certain principles such as the Principle of presumption of innocence, Principle of dignity and worth, Principle of participation, Principle of best interest, Principle of family responsibility, Principle of safety, Positive measures, Principle of non-stigmatizing semantics, Principle of non-waiver of rights, Principle of equality and non-discrimination, Principle of right to privacy and confidentiality, Principle of institutionalization as a measure of last resort, Principle of repatriation and restoration and other principles like the Principle of fresh start, that is all past records of any child under the Juvenile Justice system should be erased except in special circumstances.

The Commissions for the Protection of Child Rights Act, 2005 In view of the National and International development and concern towards child rights violation the need for a National Commission for Protection of Child Rights has been articulated by many social scientists and non-governmental organizations. The Government accordingly decided to set up the National Commission for Protection of Child Rights and for better protection of their rights by providing speedy trial of offences against children or for violation of child rights. The States have also been authorized to set up State Level Commission for Protection of Child Rights in their respective states. India has also participated in the United Nations General Assembly Summit in 1990 which adopted a Declaration on Survival, Protection and Development of children.

The National Commission of the Protection of Child Rights consists of, one Chairperson and six members. The Chairperson shall be a person of eminence who has done outstanding work for promoting the welfare of the children.¹⁵ Out of six members, at least two should be women. The other members should be persons of eminence, ability, integrity, standing and experience in the field of education, child health care, and welfare and child development, juvenile justice care of neglected or marginalized children or children with disabilities, elimination of child labour or children in distress, child psychology or sociology or Laws relating to children.

The Prohibition of Child Marriage Act, 2006 It restrains child marriage until the minimum age, i.e. 21 for male and 18 for female, has been attained by them. It applies to the people of all the religions. The basic objective of the Prohibition of Child Marriage Act, 2006 is to provide for the prohibition of solemnization of child marriages and for matters connected therewith or incidental thereto.

Child Labour (Prohibition and Regulation) Act, 1986 This act regulates the working conditions for children in employment and prohibits working of children in certain kinds of employments.

The Act prohibits the employment of children in certain occupations and processes set forth in Part A58 and Part B59 of the Schedule. The Court also must strive to interpret the statute as to protect and achieve the objective and purpose of the enactment. Any narrow or technical interpretation of the provisions would defeat the legislative policy. The Court must, therefore,

keep the legislative policy in mind in applying the provisions of the Act to the facts of the case. The Act also provides that the Central Government may, by notification in the Official Gazette, constitute an Advisory Committee to be called the Child Labour Technical Advisory to advise the Central Government for the purpose of addition of occupations and processes to the Schedule.¹⁷ The Committee shall consist of a Chairman and such other members not exceeding ten, as may be appointed by the Central Government. The Act penalizes the person who employs any child or permits any child to work in contravention of the provisions of section 3, with imprisonment for a term which shall not be less than three months, but which may extend to one year or with fine which shall not be less than ten thousand rupees, but which may extend to twenty thousand rupees or with both. Upon repeating the act of employing the child in contravention of provisions of section 3, the employer shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years.

The Medical Termination of Pregnancy Act, 1971 In order to save the pregnant women's health, strength and sometimes, life, the Medical Termination of Pregnancy Act was passed in 1971. It legalized abortions under certain conditions. So, it is obvious that the Medical Termination of Pregnancy Act, 1971 is made in favour of mother and as well as in favour of unborn child. It put forth the principal that death is better than sufferings, as the Act allows killing of child in mother's womb, where there is substantial risk that the child, if born, would suffer from deformities and diseases. The provisions of this Act are however, sometimes misused. The right to abortion is essential for a woman to have control over her reproductive process. But in Indian society, the reason behind a large number of abortions is neither the health of the woman, nor reproductive right but the sex of the unborn child. Abortions are generally performed to get rid of the child who is female (sex-determination test), which is illegal and criminal both on the part of parenting as well as doctor who performs such abortion.

In spite of, both legislative and constitutional provisions for the protection, as well as prevention from the sexual abuse of children, there is no stoppage of such type of incidents of exploitation and abuse. On the other hand, number of such cases is alarmingly increasing day by day. As a result, judicial intervention has been felt necessary, but such intervention is not sufficient enough to meet the necessities of time to control the exploitation of children. It has been also observed from various judgments of decided cases that in many cases at the time of pronouncing punishment for committing offence against the children, mainly in case of sexual offence, judiciary often give the lesser punishment in comparison with the gravity of offences committed by the offender.

RIGHTS OF PERSON WITH DISABILITY

Disabilities can be physical in nature, cognitive, behavioral, or even emotional. This particular disabilities topic center contains mostly reference to physical and sensory forms of disability, as other forms are adequately covered in other topic centers. All human beings are born free and equal in dignity and rights. People with disabilities all over the world experience human rights violations, stigma and discrimination. To have a disability means

that one has fundamental difficulty accomplishing things that others take for granted. There are many social factors that can affect whether or not individuals with disabilities are included or excluded from participation on various activities, which in turn can affect development or esteem. Disability is thus just not a health problem. It is a complex phenomenon, reflecting the interaction between features of a person's body and features of the society in which he or she lives.

Meaning of Disability:

Disability is an impairment that may be cognitive, development, intellectual, activity, limitations, sensory or some combination of these. It substantially affects a person's life activities and may be present from birth or occur during a person's lifetime. Disability is a contested concept, with different meanings of different communities. It may be used to refer to physical or mental attributes that some institutions, particularly medicine, view as needing to be fixed. It may refer to limitations imposed on people by the constraints of an ablest society. People with disabilities have the same health needs as non disabled people for immunizations, cancer screening etc. They may also experience a narrow margin of health both because of poverty and social exclusion and also because they may be vulnerable to secondary conditions such as pressure sores or urinary tract infections.

International Human Rights: UN Charter:

The charter of the United Nations of 1945 is the foundational treaty of the United Nations, an intergovernmental organization. Article 55 says that With a view to the creation of conditions of stability and well being which are necessary for the peaceful and friendly relations among nations based on respect for the principle of equal rights and self determination of people's, the United Nations shall promote:

- a. Higher standard of living, full employment and conditions of economic and social progress and development;
- b. solutions of international economic, social, health, and related problems and international cultural and educational cooperation
- c. Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

Declaration on The Rights of Disabled Persons:

The Declaration of the Rights of Disabled persons was a declaration of the General Assembly of the United Nations made on 9 Dec 1975. It is the 3447th resolution made by the Assembly.

The disabled person shall enjoy all rights contained in this declaration without distinction or discrimination. The disabled persons have inherent rights to respect for their human dignity and irrespective of the origin, nature and seriousness of their handicaps and disabilities, have same Fundamental Rights. Disabled persons have the same civil and political rights as other human beings. Disabled persons are entitled to the measures designed to enable them to become as self-reliant as possible. Disabled persons have the right to economic and social security, including the right, according to their capabilities, to secure and retain employment or to engage in a useful, productive and remunerative occupation and to join trade unions.

Disabled persons have the right to live with their families or with foster parents and to participate in all social, creative or recreational activities. Disabled persons shall be protected against all exploitation and treatment of a discriminatory, abusive or degrading nature.

Provisions of the Declaration include:

- 1) The definition of "disabled person" as anyone who cannot ensure the necessities of a normal individual and or social life as a result of deficiency in physical or mental capabilities.
- 2) A non discrimination clause applying the Rights to all disabled persons regardless of " race , colour, sex, language, religion, political or other opinions , national or social origin , state of wealth, birth " or other situation
- 3) Anna statement regarding disabled persons right to respect for their human dignity.

The Convention on the Rights of Persons with Disabilities:

The Convention on the Rights of Disabilities is an international human rights treaty of the United Nations intended to protect the Rights and dignity of persons with disabilities. Parties to the convention are required to promote, protect and ensure the full enjoyment of human rights by persons with disabilities and ensure that they enjoy full equality under the law.

In the charter of the United Nations it is proclaimed that the inherent dignity and worth and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. It is supposed that the convention would make a significant contribution to redressing the profound social disadvantage of persons with disabilities and promote their participation in the civil, political, economic, and social and cultural spheres with equal opportunities, in both developing and developed countries. The convention on the Rights of Persons with disabilities deals with matters such as, general principles on the basis of which the rights of the disabled persons are to be promoted and protected, the obligations that have been undertaken by the State parties to adopt measures. The protocol has been added to the present convention authorizing the Committee on the Peron with Disabilities to receive and consider communications from or on behalf of individuals or groups of individuals, who claim to be victims of a violation by a State party of the provisions of the present convention.

Constitutional Rights of Disabled Persons:

1. Prohibition of Discrimination:

Article 15 is a manifestation of "Right to Equality" under article 14, as it enshrines a specific dimension of the principles of equality relating to discrimination by state or various grounds. Under article 15 the protection extends only to citizens, unlike article 14 which protects 'any person' . Thus in application article 15 protects from discriminatory state activities but the ambit of article 15 is narrower than that of article 14.

Article 15 of the Indian constitution deals with "prohibition of discrimination" on the grounds of religion, race, caste, sex or place of birth.

It runs as follows:

Article 15(2) says, no citizen shall on the grounds only of religion, race, caste, sex, place of birth or any of them, be subjected to any disabilities liability restriction or condition with regard to :

- (a) Access to shops, public restaurants, hotels and places of public entertainment; or
- (b) The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of the state funds dedicated to the use of the general public.

Equity in Social, Economic and Cultural Rights:

Article 25 of the CRDP recognizes the “right of a person with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity , state parties shall ensure an inclusive education system at all levels and lifelong learning.” They considered constitution to grant education to children with disabilities if they explicitly guarantee the right to education , the right to free education, or the right to compulsory education to children with disabilities or prohibit discrimination in education on the basis if disability. Globally only 28% of the countries provide some type of constitutional guarantee of educational rights or the children with disabilities.

3. Right to Work:

Article 27 of the CRDP instructs states to “recognizes the right of persons with disabilities to work, on an equal basis with others; this includes the rights to opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities.

Right to Liberty:

Article 14 of the CRPD instructs state parties to guarantee people with disabilities the right to liberty and security of person. We considered the right to liberty to be guaranteed to persons with disabilities if they were explicitly granted the right to freedom or liberty. Globally, only 9% of the constitution explicitly guarantees the right to liberty to persons with disabilities. However 19% of the constitution specifies that the right to liberty can be denied to persons with the mental health condition.

Right to Freedom of Expression:

In article 21, the CRPD states that to “take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion include the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communications of their choice.”

Rights of Disabled Persons in India:

Persons with disabilities are one of the most neglected sections of our nation. This is due to the sheer indifference of the society which subjects such people to disapproval and antipathy. Such people have several rights under various Indian laws as well as UN conventions that are followed in India. Under section 2(i) of Persons with Disabilities Act, 1995,"disability" includes blindness, low vision, leprosy cured, hearing impairment, locomotor disability, mental retardation and mental illness.

Disability Certificate: It is the most basic document that a disabled person should possess in order to avail certain benefits and concessions. The State Medical Boards established under the State governments can issue a disability certificate to any person with more than 40% disability.

Disability Pension: People who are above 18 years of age, suffering with more than 80% disability and are living below the poverty line are entitled to the disability pension under the Indira Gandhi National Disability Pension Scheme. Various NGOs are dedicated to this because i.e. they help such persons with disabilities to get their disability pension.

Employment: In government jobs, 3% of the seats are reserved for persons with disabilities.

Income Tax Concession: Under sections 80DD and 80U of Income Tax Act, 1961, persons with disabilities are also entitled to certain income tax concessions.

Person with Disabilities Act 1995

The Persons with Disabilities Act, 1995 had come into enforcement on Feb 7, 1996. It is a significant step which ensures equal opportunities for the people with disabilities and their full participation in the nation building. The Act provides for both the preventive and promotional aspects of rehabilitation like education, employment and vocational training, reservation, research and manpower development and rehabilitation of persons with disability, unemployment allowance for the disabled persons.

Main Provisions of the Act:

- 1) Prevention and Early Detection of Disabilities
 - 2) Education
 - 3) Employment
 - 4) Non discrimination
 - 5) Social Security
 - 6) Research and manpower development
 - 7) Grievance Redress In *Jared Abiding v. Union of India* the supreme Court bearing in mind the discomfort and harassment suffering by a person of locomotor so disability would face while travelling by train particularly to far off places issued directions to the Indian Airlines to grant persons suffering from locomotor so disability to the extent of 80%.
- In *National Federation of blind v. UPSC* The supreme Court held that, UPSC may be directed to allow blind persons for appearing the examinations for Indian administrative and allied Services.
- In *Government of NCT of Delhi v. Bharath Lalmeena*: The Delhi High court held that people with disabilities can be appointed as physical education teachers provided they have passed the qualifying examination undergone the requisite training.

Policies in India:

National policy for persons with disabilities, 2006. The Government of India formulated the national Policy for persons with disabilities in Feb 2006 which deals with the physical, educational and economic rehabilitation of persons with disabilities.

The National Policy recognise the Persons with Disabilities are valuable human resources for the country and seeks to create an environment that provides them equal opportunities, protection of their rights and full participation in society . Some of the aspects which the policy focuses on are:

- 1) Prevention of Disabilities 2) Rehabilitation Measures 3) Women with disabilities 4) Children with disabilities

The Rehabilitation Council of India Act, 1992

The Rehabilitation Council of India Act, 1992 ensures that persons living with disabilities are handled pretty by rehabilitation personnel. The next are among the requirements that should be maintained by rehabilitation officers:

Persons living with disabilities should be served by professionally trained rehabilitation officers. The title of pros should be on the register maintained by the Council.

The rehabilitation personnel must be qualified and should possess all the required {qualifications} to be appointed

The rehabilitation personnel should work with the best stage of professionalism, else the officer could also be sanctioned and his/her name removed from the Council's register.

The government should properly regulate the career of rehabilitation officers.

Income Tax Concession

Persons living with disabilities also have the right to enjoy earnings tax concession. This right is guaranteed under the Income Tax Act, 1961 sections 80DD & 80U.

Employment

The Indian government via the constitution ensures that 3% of the vacant positions in government jobs are reserved for the disabled.

The Mental Health Act, 1987

The Mental Health Act, 1987 guarantees the following rights to persons living with disabilities:

Persons living with mental disabilities should be admitted and treated in a government-owned hospital, convalescent house, and psychiatric hospital.

The right to admit and treat mentally retarded prisoners or minors in a government-owned nursing home or psychiatric hospital.

Minors below 16 years, alcohol addict, drug addict, and any person convicted of committing offence all have the right to be admitted and treated in a government-owned psychiatric hospital.

Mentally retarded persons are protected by the constitution with the right to receive directed, regulated, and coordinated medical services from government-owned hospitals. The Act established Regulatory agencies both at the state and centre level to license these hospitals.

The right to receive treatment and care on the above-mentioned hospitals each as a patient and as an out-patient.

Mentally disabled persons can seek voluntary medical admission in above-mentioned hospitals. Their guardian can also seek admission on their behalf if they are minors. A go well with can be filed in a Justice of the Peace courtroom to implement this order

Safety agencies ought to defend a wandering mentally disabled particular person by taking him/her to safe custody and then inform the relations or strategy a local magistrate with the disabled for the magistrate to pronounce a reception court order.

The right for mentally disabled persons to go away from the hospital after recovery.

The right to guard and handle the properties of mentally disabled individuals. If they can not handle it themselves, the courtroom would appoint a guardian to handle the properties.

The medical bill of mentally disabled persons shall be borne by the government, except in cases where the relatives agree to pay the medical bill.

Mentally disabled persons that are being treated have the right to not be subjected to any cruelty or indignity.

Mentally disabled persons have the right not to be used for research purposes without their consent.

Mentally disabled persons have the right to receive their pension, payment or gratuity from the government. A guardian certified by the magistrate can receive the payment on behalf of the disabled persons.

This Act provides the right to obtain free authorized illustration within the occasion that he/she can't interact with a lawyer.

Disability refers to the disadvantage or restrictions of activity caused by the way society is organised which takes little or no account if people who have physical , sensory or mental impairments . Disability is an unfortunate part of human life which can effect not only the natural way of a living but also despair component strength and power . The Government needs to launch more social security schemes for disabled sections and generate more employment opportunities for them. Several schemes and benefits conference on the disabled persons has come up as relief and has successfully served to provide equal opportunities to the disabled section.

RIGHTS OF ELDERLY

In Indian societies the family structure is more complex and the human relations are to be valued, its starts right from the socialization processes in human life. Recently those concepts are drastically changing due to the life style adopted by the people losing every kind of values, confining with selfish nature by suppressing the humanitarian views. These developments are affecting directly or indirectly towards in numerous social problems. Violence against elderly people is no exceptions. Such developments are presently breaking the family structure and humanity. Elderly crimes are most serious issues in Indian conditions. At presently there are 95 million population in India is above 60 years of age according to Help Age India Report predicted changing values in family system, economic compulsion of the children, Neglect and abuse are kind a serious problem in India makes flowing elder population towards Old Age Homes. The elders are most vulnerable to the crimes and easily become victims. Weak conditions may enhance the precipitation chances.

The constitutional Provisions for Elders

The constitution of India in the protection of elders dignity and safety in all sorts of conditions, has given the certain provisions mentioned in constitutional directive principles.. It's the direction to all the people shall respect the provisions. Article 41, states, to make

effective of right to work and assistance by public, Article 46 also states, the provision for the educational and economic interest of the weaker sections to be made by the state.

Legal Provisions

In the Indian Criminal Justice system, the local special laws are having important role. Especially the canonical laws relating to the religious are not uniform in nature, applicable conditions varies from religion to religion in India.

The criminal Procedure Code

The section 125 of Cr.p.c, states the Elder parents appeal to maintenance form their children, it is applicable to all the people in uniform. But the reality will be investigated if they are not provided truly the relevant maintenance. It is also humanitarian concept that every children should look after their parents. But the procedural law makes provisions. The rights of the elders recognized by the section 125(1)(d) of the Code of criminal Procedure 1973, and the section 20(1and3) of the Hindu Adoption and Maintenance Act, 1956.

Personal Laws: It is virtual and moral issue of the children to look after their parents; however the legal frame works also initiate the same.

A) Hindu Laws: This is an religious law for the Hindu's in India, the statutes provides the maintenance of parents under the law is stated in the section 20 of the Hindu adoption and maintenance act 1956, that shall impose an obligation on the children to look after their parents.

B) Muslim Law: The act states that the children have their duty to maintain their aged parents. Children should bind to look after, the role of the son to take care, son also shall help the parents in their earnings.

Human rights Perceptive

Human rights are derived through the roots of the fundamental rights of human beings to live, the Universal declaration of Human rights, section 25 states, that the every person has his right to live with standard, with health and wellbeing himself, in the basic needs like food, clothing, Housing, Medical service, and all sorts of social service and right to security in the employment. The elder's dignity and the abuse are to strictly taken enough care; every person is to be liable to the all rights.

The United Nations Principles on Rights of Elderly

The national policy of elders was declared by the Government of India in 1999, it is guideline through the United Nation General assembly made its decision to note the year 1999 as International year of older persons in keeping the assurance to older persons. Further developments in international context, UN general assembly made proclamation on ageing and the global targets in the year 2002. The United Nations organization assures the rights of elderly in order to protect them by discrimination and abuse. Today's condition of the elders is most perturbing due to negligence and abuse of their dignity. As human beings we should treat them with care. There are so many reasons to explain the pain of elders insecure from their own families. This is prime objective to ensure the dignity with the protected rights.

Hence the action with the guidelines of United Nations has been enacted. Some of the principles are followed,

- 1). Older persons should have their opportunity to work and determine themselves when to leave the job.
- 2). Elders should remain integrated with the society and they should actively participate in the formulation of Policies which affect their wellbeing.
- 3). Elder persons shall entitle in opportunities for the full development of their potential and have access to educational, cultural and spiritual also the recreational resources of society.
- 4). Elder persons should be able to live in dignified and safety also free from exploitation and mental as well as physical abuse.

The Maintenance and Welfare of Parents and Senior Citizen Act, India– 2007.

The act is enacted with the objectives of upholding the welfare of the elders. It is strictly initiated that the children shall maintain their elders, Grand Parents and other relative elders shall come under the maintenance. And also the act ensures protection to their lives and property. Further this act also suggests the creations of Old age homes for those elders in needy. State governments should establish Old age homes with the inmate's number 150 in every district level. This act also emphasizes to establish the tribunal in every district in order to facilitate every elder to claim their rights of the maintenances from their children. The monthly expenditure of rupees 10,000/- shall claimed by the elders from their children, if they do not pay, they may experience liable for punishment of 3 months of imprisonment or 5000 rupees fine or both.

The Concessions and Facilities Given to Senior Citizens in India.

There are several facilities available to the elders in India in order to empower them to lead dignified life with good health. The Union government of India has facilitated with minimum facilities and also it is same with the respected state governments. The following facilities are ensured by the various ministries are:

Ministry of Social Justice and Empowerment: This is the ministry where the prime responsible laid within its establishment for the welfare of the Senior citizen virtually. It has announced the National Policy on Older persons of 60 years of age and above. The implementation and Schemes are,

- 1). An Integrated program for Older People (Plan Scheme)- This is the scheme for formulating by revise of the earlier plan — Assistance to Voluntary Organization for programs relating to the welfare of the aged. In this the financial assistance is available of 90% of the project cost is provided to NGO's for establish and to the maintenance of Old age Homes, Day care Centers, Mobile medical care units and to provide non institutional service to older persons.
- 2). The Scheme of assistance to Local bodies or Panchayathi rai, Voluntary institution, Self help Group for Construction of old age Homes, Multi service centers for older person (non-plan scheme) under the scheme one time construction grant for old age homes, multi service centers are provided to non-governmental organizations on the recommendation of the state governments and union territories.

Ministry of Finance: The income tax rebates up to the income of rupees 3 lakh per year. And also the high rate interest on saving schemes to the senior citizen. The savings scheme offers an interest rate is 9% per year on the deposits made by the senior citizen in post offices has been introduced by the government through post offices in India.

Ministry of Road Transport and Highways: Two seats will be Reserved for the senior citizen in front seating's in the public transport of the respective state governments. Some states are providing concessions to the senior citizen in the state road transport.

Ministry of Health and Family Welfare: There is a facilitation of separate queues for the hospitals and the clinical examination and the preferences are given.

Ministry of Railways: Indian Railways are the best mode of transportation in India available to the senior citizen. There is a 30% of the fare reduction and concession facilities in all the train tickets for the senior citizens of the 60 years of the age and above. Also the ministry provides separate counters to get purchase the tickets. Some social and humanitarian value are protected, wheel chair in all the stations.

Ministry of Civil Aviation: India airlines provide 50% of the concession in normal economy class for the senior citizen. The age shall be 65 years and above. 63 years in case of female.

Ministry of Consumer affairs, Food and public Distribution: The various schemes are provided to the elders under the Anthyodaya scheme, the below poverty Line families provided food grains at the rate of 35 kg per family per month. Under the Annapoorna Scheme implemented by the state and the Union territories, for elders those who are not covered under the old age schemes. The scheme offers food grains. This is how the government at the central level and the respected state governments are providing the various facilities to the senior citizen.

Legal Services

The legal services are available through the Government of India. The Free legal services are mandatory in the entire district across the country through the Legal service Authority. Elder citizen also can be benefitted under this; some Lawyer's associations are providing free service to the elders voluntarily. Also NGO's helps in this regard, those who are needy can approach the concerned authorities.

Other Government Policies and the Schemes: Government motto is to protect the elders in promoting their health, Wellbeing and to make capable independently. Some of the available policies are,

A) National Policy for Older Persons: The Union Government of India enacted the National policy for older persons in 1999 to promote the Health, Safety, Social Security and Care. This policy considers the age of 60 and above is elders. The prime intention behind is to encourage the families to take care of their parents and grandparents, to support, also this policy provides the facilities to the Voluntary and NGO's to ensure the dignity of the elders who are so vulnerable in the society. This policy also ensures the financial security, Health care, Nutrition, Shelters, education, welfare, Protection of life and Property.

B) National Council for older persons: National council NCOP has been established by the ministry of Social Justice and Empowerment with basic objectives like, advising the government to enact the suitable policy, provides the feedback and implementations,

initiatives and special programs, redressing and grievance cells, concessions, rebates, discounts at government and corporate sectors, establish old age homes.

C) Integrated Program for Older Persons: Ministry of Social Justice and Empowerment provides the scheme of financial assistance about 90% of the project cost to NGO's, this is going to be used for old age homes, Centers, mobile Medicare units. These facilities are also extended to the Government Panchayathi raj, institutions, Local Bodies. These institutions shall serve by establish of Day Care centers, Alzheimer awareness, Dementia, Physiotherapy clinics, Helplines, Counseling centers, Sensitizing programs, awareness, Formation of senior citizen associations.

As society progresses, the living conditions and lifestyle are fluctuating due to various reasons. Stress full life leading people towards more complexes in living standards. These progressive changes are not towards humanitarian values, but towards the negligence in relations. Socialization helps human beings to get more advances in the morality. Somehow the values are declining 21st century globally considered as century of elders. It is shameful to abuse elders are showing negligence. However laws are there to protect, still the socialization starts through the families hence the responsibility on every people educate the future generation to be good human beings.

RIGHTS RELATED SCHEDULED CASTES /SCHEDULED TRIBES

India is a pluralistic society which has all the major religions of the world. The hierarchical social order in other words caste system was created over the centuries with a view to preserve the monopoly of social status, property and education by the high caste Hindus. Consequent upon the caste system, the property, education, freedom, social equality, economic opportunity and political power were denied to the weaker sections of Indian society. Hierarchical graded privileges on some sections of the population and inflicted a series of disabilities on others which continued from generation to generation. India is the second largest country of the world after and it has got roughly constitute 25 per cent of its total population scheduled castes and scheduled tribes. They are kept away from the mainstream of all social, cultural, religious, educational, economic etc. of existing practices of society for centuries together. They were denied the basic rights of human living. This was the vulnerable group who was living on the bottom line of society. India attained freedom in August, 1947 and adopted its own "Constitution of India" for its citizens. India was governed by this law of land. Constitution of India has protected the human rights of these sections of citizens by awarding certain privileges enshrined in the constitution. The various safeguards for scheduled castes and scheduled tribes in the constitution can be broadly classified under the four heads of

- (1) Social
- (2) Development and Economic
- (3) Political and
- (4) Other safeguards

CONSTITUTIONAL PROVISIONS FOR SCS/STS

The Constituent Assembly passed some of the provisions, like Article 46, which embodied the new policy, its messages of hope for millions of our citizens hitherto neglected. Out of

Article 46 flow all safeguards or weaker sections including Scheduled Castes and Scheduled Tribes”.

Article 46: Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and Other Weaker sections— The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. The Constitution came into effect from the 26th January, 1950. The Constitution of India is the basic and supreme law of our country. It, however, governs almost all the aspects of our social life. It constitutes India into a sovereign socialist secular Democratic Republic and pledges to secure for the entire citizens, including Scheduled Castes and Scheduled Tribes, justice, liberty and equality. It is, therefore, certain measures in the form of Constitutional safeguards are enshrined in the Constitution of India for those who were deliberately deprived of justice, liberty and equality since time immemorial. The main objective of these safeguards was to level up, socially and economically backward classes, particularly the Scheduled Castes and Scheduled Tribes in as short time as possible. The policy of reservation to improve the socio-economic conditions of SCs and STs over a period of five decades has been a failure. But we have to admit that the reservation has come to stay in our society. It was in the past, it is, and it will remain. But the question is how to make it effective in order to bring the SC and ST to the level of other sections of society. The Preamble to the Constitution of India reveals the philosophy of the Constitution. It is as under: “We, the people of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens— Justice: social, economic and political; Liberty of thoughts, expression, belief, faith and worship; Equality of status and of opportunity and to promote among them all fraternity, assuring the dignity of the individual and integrity of the nation. In our Constituent Assembly this twenty sixth day of November, 1949, do adopt, enact and give to ourselves this Constitution.” Several safeguards have been provided for the Scheduled Castes and Scheduled Tribes in India Constitution.

Article 340: Appointment of a Commission to investigate the conditions of Backward Classes—

(1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labor and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State and the conditions subject to which such grants should be made, and the order appointing such Commission shall define the procedure to be followed by the Commission.

(2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper. (3) The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament.

Article 341: Scheduled Castes— (1) The President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor. Thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

Article 342: Scheduled Tribes

(1) The President may with respect to any State or Union territory and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

Article 366: In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say Schedule means a Schedule to this Constitution. Scheduled Castes means 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 this Constitution; Scheduled Tribes means such tribes or tribal communities or parts or groups within such tribes or tribal communities as are deemed **under Article 342** to be Scheduled Tribes for the purposes of this Constitution. All these safeguards have, apparently, been provided to facilitate the implementation of the Directive Principle contained in Article 46 of the Constitution, which reads as follows: The State shall promote with special care the educational and economic interest of the weaker sections of the people, and, in particular of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

SOCIAL SAFEGUARDS Equality before Law: The State shall not deny to any person equality before law or the equal protection of the laws within the territory of India. Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth—

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them,

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to— (a) Access to shops, public restaurants, hotels and places of public entertainment; or

(b) 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.

(3) Nothing in this Article shall prevent the State from making any special provision for women and children.

(4) Nothing in this Article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes].

Article 16: Equality of opportunity in matters of public employment—

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) 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, any employment or office under the State.

(3) Nothing in this Article shall prevent Parliament from making any law prescribing, in regard to class or classes of employment or appointment to an office [under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.

(4) Nothing in this Article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State 4(A) Nothing in this Article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favor of the Scheduled Castes and the Scheduled Tribes which in the opinion of the States, are not adequately represented in the services under the State.

(2) Nothing in this Article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

Article 17: Abolition of Untouchability — Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law

23(1) Traffic in human beings and beggary and other similar forms of forced labor are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

25(2) (b) Providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Untouchability and Atrocities There was no uniform Central Act for this purpose for the country as a whole. In pursuance of Article 17 of the Constitution, the Untouchability (Offences) Act, was passed by the Parliament in 1955 which came into force with effect from 1st June, 1955 repealing all the State enactments. The Central Act prescribed punishment for the practice of 'Untouchability', for the enforcement of any disability arising there from and the matters connected therewith. Ever since it came into force, it was felt that the Act was not serving its purpose and the punishment provided in it was few and inadequate. Therefore, the Protection of Civil Rights Act, 1955 was enacted in 1976 to re-name and amend the Untouchability (Offences) Act, 1955 with comprehensive amendments by making the punishments under this Act more stringent and offences non-compoundable. The machinery for the enforcement of this Act has been suitably strengthened by the setting up of special cells, special courts, mobile squads, provision of legal aid etc. The law to punish the untouchability offences as proclaimed under Article 17 of the Constitution took more than five years to arrive showing disregard to the urgency attached to it by the founding fathers of

the Constitution. Even the amendments of the Act after a period of 17 years, are not exhaustive. It is not possible to exhaustively catalogue all instances, of behavior which come within the ambit of 'untouchability'. One of the innovations of the Act is that every year the Central Government is required to place on the table of each house of the Parliament, a report on the measures taken by itself and by the State Governments in pursuance of the mandate contained in section 15(A)2 and (3) The enforcement of PCR Act in terms of cases registered, disposed of at different stages and levels from the police to the courts and convictions, is not adequate. Very few States have taken seriously the establishment of special courts as per clause (iii) of Section 15(A)(2), preferably mobile special courts. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 which was brought into force from 30.1.1990, is not very effective in spite of implementation machinery and special courts etc. This Act requires serious implementation including establishment of exclusive special courts with exclusive special judicial and investigative and prosecuting officers, all carefully selected for proven sensitivity to social justice and liberation from caste based.

Bonded Labour Article 23, prohibits traffic in human beings and beggar and other similar forms of forced labour. In pursuance of this provision the Bonded Labour System (Abolition) Act, 1976 was enacted after a lapse of 26 years in 1976, with a view to abolishing this evil practice and making the offences under this Act punishable. Majority of the bonded labour belong to scheduled caste and scheduled tribe communities. Under Centrally Sponsored Programme launched in 1978-79 grants aid is provided to the State Governments/U.T. Administration on matching basis, for identification, liberation and rehabilitation of the bonded laborers. The scheme envisages provision of rehabilitation grant up to ceiling limit of Rs. 10,000 per freed bonded laborer, half of which is given as Central share. The State Governments have been advised to suitably dovetail, the Centrally Sponsored Scheme with other anti-poverty and employment generation programmes so as to pool the resources available under different schemes in order to ensure effective rehabilitation of released bonded laborers. This Act is not adequate enough to identify and liberate all bonded laborers in the country particularly in the tribal areas. The Act requires amendments so as to provide more stringent punishment for the offences. Educational and.

Economic Safeguards For SCs/STs The various safeguards under this head as contained in, Article 15(4), 16(1)(4)(4A), 29(2), 46 and 335 are discussed below: 15(4) Nothing in this Article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and the scheduled tribes. 16(4) Nothing in this Article shall prevent the State from making 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. 29(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Special Grants under Article 275: Article 275(1) provides that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of State such capital and

recurring sum as may be necessary to enable that state to meet the cost of such schemes of development as may be undertaken by the state with the approval of the Government of India for the purpose of promoting the welfare of scheduled tribes in that State or raising the level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of that state. During the Eighth Five Year Plan Rs.54,000 lakh was released to the State Governments under this provision. The amount released during 1997-98, 1998-99 and 1999-2000 (upto Jan., 2000) was Rs. 25,000 lakh. A similar provision exists in the Article for paying such special grants to the States covered under the Sixth Schedule of the Consolidated Fund of India' Other Safeguards Article 330 Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People— (1) Seats will be reserved in the House of the People for—

- (a) the Scheduled Castes;
 - (b) The Scheduled Tribes except the Scheduled Tribes in the autonomous districts of Assam; and
 - (c) The Scheduled Tribes in the autonomous districts of Assam.
- (2) The number of seats reserved in any State 6, or Union territory for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to the States 6 or by the Constitution (Eighty-first Amendment) Act, 2000 Subs. by the Constitution (Fifty-first Amendment) Act, 1984, s. 2, for sub-clause (b) (w. e. f. 16-6-1986.
- (3) Notwithstanding anything contained in clause (2), the number of seats reserved in the House of the People for the Scheduled Tribes in the autonomous districts of Assam shall bear to the total number of seats allotted to that State a proportion not less than the population of Scheduled Tribes in the said autonomous districts bears to the total population of the State].

Article 332: Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States—

(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes, [except the Scheduled Tribes in the autonomous districts of Assam], in the Legislative Assembly of every State 10 (2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam.

(3) The number of seats reserved for the Scheduled Castes or the Scheduled Tribes in the Legislative Assembly of any State under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved, bears to the total population of the State. The number of seats reserved for an autonomous district in the Legislative Assembly of the State of Assam shall bear to the total number of seats in that Assembly a proportion not less than the population of the district bears to the total population of the State. The constituencies for the seats reserved for any autonomous district of Assam shall not comprise any area outside that district¹³. No person who is not a member of a Scheduled Tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district.

Article 334:

Reservation of seats and special representation to cease after 14[sixty years]— Notwithstanding anything in the foregoing provisions of this Part, the provisions of this Constitution relating to—

(a) the reservation of seats for the Scheduled Castes and the Scheduled Tribes in the House of the People and in the Legislative Assemblies of the States; and

(b) the representation of the Anglo-Indian community in the House of the People and in the Legislative Assemblies of the States by nomination, shall cease to have effect on the expiration of a period of 14[sixty years] from the commencement of this Constitution: Provided that nothing in this Article shall affect any representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the then existing House or Assembly, as the case may be.

Article 335: Claims of Scheduled Castes and Scheduled Tribes to services and posts— The claims of the members of the Scheduled Castes and the 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 connection with the affairs of the Union or of a State. Provided that nothing in this Article shall prevent in making of any provision in favour of the members of the Scheduled Castes and Scheduled Tribes for relaxation in qualifying Special Officer/Commission.

Article 338: National Commission for Scheduled Castes and Schedule Tribes— See the Constitution (Sixty-fifth Amendment) Act, 1990 under the heading Central Acts constituting National Commissions for Welfare of Scheduled Castes and Scheduled Tribes and Other Backward Classes. Originally Article 338 of the Constitution (amended in 1990) provided for a Special Officer known as the Commissioner for the Scheduled Castes and Scheduled Tribes to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under the Constitution and to report to the President on their working. It was felt that a high level five-member Commission under Article 338 will be a more effective arrangement in respect of the Constitutional safeguards for Scheduled Castes and Scheduled Tribes than a single Special Officer. It was also felt that it was necessary to elaborate the functions of the said commission so as to cover measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socioeconomic development of the Scheduled Castes and Scheduled Tribes and to entrust to the Commission such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes and Scheduled Tribes as the President may decide, subject to any law made by Parliament and the Legislature of the States.

The builders of Indian Republic and founding fathers of our Constitutions had considered it necessary to provide specific safeguards and rights in the constitution for the uplift of Scheduled Castes (SC) and Scheduled Tribes (ST) communities in India. The Constitution of India provides for a number of safeguards for the Scheduled Castes and Scheduled Tribes which are of its unique features. Reservation is indeed the process of setting aside a certain

percentage of seats vacancies in educational institutions, government institutions and legislative institutions for the members of weaker sections in modern times.

RIGHTS OF PRISONERS

The law on the rights of prisoners has been an evolving one. It is a matter of utmost shame that a country like India doesn't have codified law on the rights of prisoners. There is also no comprehensive legislation to deal with prisoners rights and regulate their conduct while in jail. However, the judiciary of the country has given due recognition to the convicts and held their fundamental rights time and time again. In the absence of thorough legislation, it has managed to set precedents and principles upholding the various rights of prisoners that not only guide but also bind all the courts in India.

As emphasized earlier, the conviction of a human does not render him non-human. He still remains a human who should be treated like one. He should be given the basic human rights available to every man walking on the earth. But at the same time, he should not be treated as a free man with all absolute rights and luxuries. His freedom should be subject to certain limitations and legal restrictions. These restrictions, in addition, should be reasonable.

The apex court of the USA in the case of *Charles Wolff v. McDonnell* and the Supreme Court of India in its famous cases like *DBM Patnaik v. State of Andhra Pradesh* and, *Sunil Batra v. Delhi Administration* has emphatically stated that it must be realised that a prisoner is a human being as well as a natural person or a legal person. If a person gets convicted for a crime, it does not reduce him to the status of a non-person whose rights could be snatched away at the whims of the prison administration. Therefore, imposing any major punishment within the system of prison is conditional upon the absence of procedural safeguards.

The Supreme Court of India has been deliberating with the central and state governments since a long time to improve the deteriorating condition of the prisoners which is fundamental because of the overcrowding of prisons, lack of training facilities, personnel and poor infrastructure, etc. Therefore, it is mandatory to invoke the rights and constitutional safeguards of the prisoners. Such rights of, unless they are propagated and implemented in each corner and the entire perimeter of the prism, are a nullity and betrayal of human faith on the criminal justice delivery system.

Fundamental Rights

Fundamental rights form the core of human rights in India. They are the basic rights of the citizens which cannot be taken away under any circumstances. The law of the country also guarantees some of these rights to the prisoners too like Article 14, 19, 21. However, it cannot impose the fundamental rights in its full panoply to the advantage of the prisoners. Giving prisoners Right to Fair procedure forms the soul of Article 21. Levying reasonableness in any restriction is the essence of Article 19(5) and sweeping discretion degenerating into arbitrary discrimination is anathema for Article 14.

Right to Privacy

The Right to Privacy is one of the very significant rights available to the citizens of India. They form an intrinsic part of Right to Life and Personal Liberty under Article 21 of the Indian Constitution. They have also been made applicable to the prisoners and convicts through various judgements passed by courts over the years.

In India, however, this right is perhaps the most violated. The right to privacy in respect to search and seizure was first raised in the 1950s, where the apex court ruled that search and seizure cannot be seen as violate of Article 19 (1)(f) of the Indian constitution and a mere search by itself does not nullify or harm an individual's right to property. Even if search or seizure affected such right then its effect is temporary and is to be construed as a reasonable restriction on the rights of individuals.

Right to Privacy in recent times

The concept of right to privacy has evolved over the years. In recent time, its scope has been widened to benefit people in the most possible way. A distinction between physical privacy and mental privacy is also being drawn.

Right to Privacy of prisoners and their spouses

In *Rahmath Nisha v. Additional Director General of Prisoner and Others*, the accused was given 10 days leave to visit his wife. But, due to serious illness, his wife was transferred to the hospital in ICU by the time he reached home. However, the police escort that accompanied the accused refused to let him visit the hospital citing that permission has been granted to visit home only. The Madras Court held that the prisoner should be allowed to visit his wife in hospital and that the meeting between him and his wife should not be monitored. The court stated that when a prisoner is united with his wife, he might like to hold her the hands of his partner. It's natural that his emotions would find physical expression. Therefore, the right to privacy and dignity of the prisoners should be scrupulously safeguarded. It is also important that the conversation between the prisoner and his partner or spouse should go unmonitored.

Right against solitary confinement and bar fetters

Solitary confinement is a kind of imprisonment in which the convict or prisoner is kept in a different cell with little or no contact from other inmates. In addition to that strict monitoring is done on the habits and behaviour of the person. The idea behind solitary confinement is to teach notorious convicts discipline and provide safety to other inmates from them.

The validity of solitary confinement was considered by the Supreme Court in the famous case of *Sunil Batra v. Delhi Administration* wherein the honourable court highlighted that imposition of solitary confinement is only to be made in exceptional cases where the prisoner is of such violent or dangerous nature that his segregation becomes an utmost necessity. The court also observed that keeping prisoners in bar fetters day and night reduces them to the level of an animal and deteriorates their mental health. The courts, therefore, have presented strong resentment against solitary and stated its confinement as highly dehumanizing and

derogatory in nature. They have also held such confinements to be against the spirit of the Constitution of India.

Right to Life and personal liberty

The Hon'ble Supreme Court has repeatedly applied the rule of Article 21 in numerous cases and asserted its significance in several other. It has expanded the connotation of the word "life" given by Field J. in the much-known case of *Kharak Singh v. State of UP*. In the said case, the court ruled that the term "life" connotes more than mere existence like that of an animal. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye or the destruction of any other organ of the body through which the soul communicates with the other world. It can be said that right to live is not restricted to a mere animal existence. It connotes something more than just the physical survival of a being.

Right to live with human dignity

The right of a human being to live with dignity is protected by the constitution. This right is also given to the prisoners as their mere conviction does not render them inhuman. This right forms a significant part of right to life guaranteed under the constitution of India. The idea behind is that every person's life is precious and irrespective of the circumstances, he should be given a sense of dignity to help him continue living. The courts have enlarged the scope of Article 21 to include this right.

Right to health and medical treatment

Right to health is an important right. The Constitution of India incorporates provisions guaranteeing every individual the right to the highest attainable standard of physical and mental health. In a series of judgements, the highest court of the land has held that the right to health care is a crucial element of Article 21. Article 21 of the Constitution imposes an obligation on the State to safeguard an individual's life.

In the case of *Parmannd Katara v. Union of India*, the court held that a doctor working at a Government hospital is bound by duty to extend any type of medical assistance for preserving life. In fact, every doctor has a professional obligation of extending his services to the patients (be it anyone) with due diligence and expertise in order to protect his life. Therefore, any legal body cannot intervene to cause a delay in the discharge of obligations and duties cast upon the members of the medical profession. The court also reiterated in *Paschim Bengal Khet Mazdoor Samiti v. State of West Bengal*, that a government hospital cannot deny any patient the right to treatment on the grounds of non-availability of beds. Doing so would amount to a breach of Article 21 that highlights the 'right to life'. This article imposes strict obligations on the State to make available the necessary medical assistance to an aggrieved person as protection of human life is of utmost significance.

Right to a speedy trial

It is very well said that justice delayed is justice denied. Every prisoner has a right to a speedy trial irrespective of the crime he is convicted of. Speedy trial is considered as an integral part of the criminal justice delivery system. Once a person is accused, he must be subject to speedy trials so as to punish him from the crime he committed or absolve him from it, if not proven guilty. No one should be subject to long, pending and tiresome trials as it not only violates the rights of an individual but is considered to be the denial of justice altogether. The right to a speedy trial, therefore, has become a universally recognized human right. Moreover, the right to a speedy trial is also contained under Section 309 of the Code of Criminal Procedure.

Right to legal aid

Legal assistance plays a significant part in the life of an accused awaiting trial or any prisoner or convicts, for that matter. The 42nd Amendment to the Constitution (1976) of India incorporated services of free legal aid as Article 39A under the head Directive Principles of State Policy. Though this article is part of the directive principles of state policy and hence, not enforceable, the principles underlined therein are of utmost importance. It is incumbent upon the State to keep this article in mind while framing rules and regulations for prisoners, criminals or convicts.

The parliament has enacted the Legal Services Authorities Act in 1987 wherein it guaranteed legal Aid. It also directed various state governments to set up Legal Aid and Advice Boards, and frame schemes aiming to provide Free Legal Aid. This was done so that the Constitutional mandate of Article 39-A could be given an effect. If we look into the jurisprudence of Indian Human Rights, it can be said that legal aid is of wider dimension and it is available in civil, administrative or revenue cases other than just criminal cases.

In the case of *Madhav Hayawadanrao Hoskot v. the State Of Maharashtra*, the three-judge bench of the Supreme Court of India read Articles 21 and Articles 39-A along with Article 142 and Section 304 of CrPC together emphasized that the government of the country is under a duty to aid and provide legal services to the convicted or accused individual.

Right against Inhuman treatment

It is the right of every prisoner to be protected against any type of cruel or inhuman treatment. The Supreme Court of India in several cases has highlighted the harsh treatments faced by prisoners and directed state and prison authorities to check and regulate the same. The court also prohibited the use of instruments such as handcuffs, chains, irons and straitjackets in punishing the prisoners. Some other instruments of restraint are permissible but only under certain circumstances. These circumstances are mentioned hereunder:

- (1) Using instruments of restraint for precaution during the transfer of prisoners against escape, conditional upon the fact that it shall be removed while producing the prisoner before an administrative or judicial body.
- (2) If the medical officer permits the same on certain medical grounds;
- (3) In cases wherein it is difficult to prevent a prisoner from self-harm or damaging the property around, the director in consultation with the medical officer and after

reporting the higher administrative authority may order the prisoner to be put in instruments of restraint.

The patterns and manner of use of instruments of restraint shall be decided by the central prison administration. Such instruments must not be applied for any longer time than is strictly necessary.

Right to Education

Right to education is a Fundamental Right and therefore it should be given to every citizen of the country. Along with education, it is compulsory that the right type of education should be imparted. In *Mohammad Giasuddin v. State of AP*, the court tried to regulate the manner of work and education provided to the inmates of the jail. It directed the state government to look into the nature of work and education given to the prisoners and check that the work provided is “not of a monotonous, mechanical, intellectual or like type mixed with a little manual labour...”. The court further stated the facilities of liaison through correspondence courses must also be given to the prisoners who are interested in doing higher or advanced studies. Moreover, basic learning such as tailoring, embroidery, doll-making should be extended to the women prisoners. In addition to that, the well-educated prisoners should be given the opportunities to engage in some sort of mental-cum-manual productive work.

Right to receive books/magazines

In *George Fernandes v. State*, the court took cognizance of the case wherein the Superintendent of the Nagpur Central Jail had fixed the number of books to be allowed to the inmates to be 12. However, the power to take such decisions was not vested in him, though being a superintendent he could disallow a book terming it as “unsuitable”. This was stated in consonance with the Bombay Conditions of Detention Order, 1951.

The court further added “all the restraints on liberty, that no knowledge, learning and pursuit of happiness is the most irksome and least justifiable. Improvement of mind cannot be thwarted but for exceptional and just circumstances. It is well known that books of education and universal praise have been written in prison cells.”

Right to publication

The Supreme Court held in a case wherein the prisoner was not allowed to read a scientific book that there was nothing in the Bombay Detention Order, 1951 that prohibits a prisoner from writing or publishing a book. It stated that the book prisoner wanted to read was merely a work of science, (“*Inside the Atom*”) and it could not be regarded as detrimental to public interest or safety as provided under the Defence of India Rules, 1962.

Prisoners do not cease to be human beings when put behind bars. The Supreme Court and many other courts of India have reiterated this position in several cases so that prisoners do not become a victim themselves. And are provided with a proper rehabilitative environment to help them improve and become better beings. It is incumbent upon the Central and State

governments to not only provide the prisoners with humane conditions for a living but also educate them about their rights so that it is not abused by the powerful inside the prison.

It could be said that the judiciary of the country has played a crucial role in safeguarding the rights of prisoners whenever the legislative and executive have erred. It has acted as the saviour of the convicts and upheld their fundamental rights time and time again. It has thoroughly exercised its powers through judicial activism and has repeatedly devised new remedies and tools to protect the human's right to life and personal liberty. However, much still needs to be done. In this regard, the wide circulation of human rights' available to prisoners, vast publicity of prisoners right in media and corner to corner surveillance in prisons could be some of the keys for upholding the rights of prisoners and ensuring their safe space in the prison.

MINORITY RIGHTS IN THE CONSTITUTION OF INDIA

People sharing culture, a language, a system of beliefs and traditions are called an ethnic group. In the 19th century, some of the ethnic groups came together and proclaimed their nation-states over the territories they live on. Some ethnic groups inhabiting the same territories are quite different and didn't want to change their language, religion or tradition or to unify the nation that had been formed and some groups were forced to change their nationalities due to shifting state borders. These groups may be culturally different for the mainstream society but they want to preserve their identity. They are a set of people who are less in number and evidently distinct and unique from the majority.

In India, we have multiple religions, cultures, traditions and heritage. There are 8 Major religious belief systems with their distinct heritage and culture. From Kashmir to Kanyakumari there are 22 official languages with more than 800 dialects available. In a tight-knit democratic society like India, minority groups are respected for being different and although they enjoy minority rights in community with others belonging to a minority group is an individual choice.

Minority word comes from the Latin word 'Minor' and joins with the 'ity' suffix to make meaning of 'small in number'. According to the United Nations, 'Any group or community which is socially, politically and economically non-dominant and inferior in the population are minorities.' The constitution of India has not defined the word 'minority' anywhere.

Historical background behind the protection of minority rights under the Constitution

In the past, the invasions in Ancient and Medieval India generated minority communities like Muslims, Anglo- Indians, Christians etc. India became a conglomeration of Minorities because of migration of communities fearing religious persecution like Parsis, Divide and rule policy of British colonial power etc. The objective resolution moved by Pandit Jawaharlal Nehru in the Constituent Assembly on 13th December 1946, unanimously adopted by Constituent Assembly on 22nd January 1947 where it was decided that a safeguard mechanism will be adopted for minority communities, depressed backward classes and tribal areas of the nation.

The Constitutional drafting committee had formulated various provisions and laws in 1948, under the name of “Special Provisions Relating to Minorities” in part XIV and numbered in 292-301 article. The provisions for special rights of minorities were modified substantially and finally, no special rights except cultural and educational were concerned to minorities. The constitution which was adopted by the Constituent Assembly of India in November 1949 and came into force on 26th January, 1950 with no reservation of seats in the Legislative bodies and public services for religious minorities as originally planned. The religious minorities from the purview of group-preference requirements were excluded because the Constituent Assembly held that control to such protections was reliable only for the development of backward and not to conserve the distinct cultural personalities.

Minorities faced various problems such as problems of getting protection, problems of communal tensions and riots, the problem of lack of representation in civil service and politics and the problem of separatism. Other problems are failure to stick to secularism, problems relating to the introduction of a common civil code.

Minority rights in India protect people from being discriminated against on grounds of their ethnic cultural, linguistic or religious identity. Individuals belonging to minorities must be able to learn and use their language, use their own names, preserve and freely express their identity. Minority rights, therefore, guarantee equality before the law, protection of basic freedom, non-discrimination and protection against violence on the grounds of identity, participation in political and public life, possibilities for cooperation with other communities and organisations within states and across borders. Rights of Minorities are the inherent part of human rights. They promote tolerance and respect for diversity. Their aim is to ensure that minorities and majorities live peacefully together and support each other in building a better future.

Articles under Constitution of India relating to the protection of minority rights

According to Article 14 of the Indian constitution, we need to prohibit unequal treatment and we should demand such laws which can afford equal treatment. Article 14(1) states Equality Before Law which states that if anyone irrespective of the Prime Minister or a common man does an act which is not legally justified then law treats everyone the same and gives the same responsibilities. The example of this is the Lady Justice who is blind-folded that means everyone is at the same pedestrian before the law.

There are 2 Articles under cultural and educational rights In the Indian Constitution – Article 29 and Article 30. Article 29 of the Constitution states the protection of interests for minorities. Its clause (1) states that any group living within the jurisdiction of India is entitled to preserve and promote its own language, script or literature and culture. Clause (2) of it prohibits denial of admission to educational institutions which are aided by the state on the ground of race, caste, religion or language protection.

This provision protects the rights of citizens irrespective of his/her belonging community. Article 30 is one of the very important to the minorities of India. Article 30(1) gives a provision to the minority communities to establish and administer an educational institute of their choice for protection of their culture and heritage. Sub clause 30(1A) of it has strengthened the minority educational institutions in case of compulsory acquisition. The state has to keep in mind that the amount which is needed for the acquisition of the property should not restrict the right guaranteed by the clause (1). According to Article 30(2), the government should not discriminate against any educational institution run by any minority group regardless of religion or the language, while giving aid.

Opposed to the traditional view Article 29's scope is wider than Article 30 because Article 30 deals with only 2 kinds of minority that are religious and linguistic and Article 29 deals with any citizen of Indian citizens including the majority. Article 29 can only be applied to the citizens of India while Article 30 can be applied for both citizens as well as non-citizens of India. The Supreme Court has ruled in *S.K. Patro v. State of Bihar*, that a minority community can only claim the privileges under Article 30 must be a minority person who is residing in India. Foreigners who are not resident or nor a citizen in Indian do not come within the scope of Article 30.

Reservation in favour of minority community

Guard of rights of the religious and ethnic minorities is the mainstay of India's secular values. Article 30 of the Indian constitution is one of the many provisions that promote reservation of minority rights. Article 30 promises the rights of minorities "to establish and administer educational institutions" which helps the Govt. to establish policies regarding the aid to minority educational institutions.

Important case laws related to this are-

In *St. Stephen's college v. University of Delhi*, the preference given to Christian students' college was challenged. Here, it is decided that in the selection procedure half of the seats will be reserved for the minority community and the rest half will be on merit.

But this judgement was overruled by *TMA Pai Foundation* case. The Supreme Court held that the unaided institutions since they do not receive any aid from the state out of the state fund are not subject to the admission procedure established by the state. It meant that they can follow their own admission procedure including their own admission test provided the admission is based on merit, an open and transparent system. Similarly, they are not bound by the fee structure provided by the state, provided do not collect any capitation fees. The court has granted the power to the state to fix quotas for minority students. This case drew distinction between aided and unaided governmental regulation on private institutions.

In *P.A. Inamdar v. State of Maharashtra*, the Supreme Court held that the policy of reservation to admit students is not applicable to minority institutions. The state has no power to reserve seats in educational institutions. The admission process can be based on an admission test or merit.

In *Azeez Basha v. Union of India* (Aligarh Muslim University Case), the Supreme Court held that an educational institution, not been formulated by the minority community then they have no right to direct it. AMU is not a minority institution as established by Act of Parliament. The term 'established' and 'administered' have to be read in consideration. Status of minority to AMU struck down in *Dr. Naresh Agarwal v. UOI* case.

Miscellaneous articles in Indian Constitution

Some articles in the Indian Constitution which openly or silently speak about the rights and privileges of minorities in India.

Article 38 ensures that the state to secure a social order for the promotion of welfare of people permeated by justice- social, economic and political and to minimise inequalities in income, status, facilities and opportunities.

Article 39 states free legal assistance and equal justice of various dimensions. It directs the state to secure livelihood for all the citizens, equitable distribution of material properties for the common good. It also gives provision for the prevention of concentration of wealth, equal pay for equal work and for giving opportunities, facilities to the children for the development.

Article 46 is about Gandhian principles. It provides that the state may take necessary action to promote educational and economic advancement of the weaker sections of the people and to protect them from social injustice and exploitation.

Article 347 provides power to the President to officially recognize a language, which is being spoken by the substantial population.

Articles 331, 333, 334, 336 and 337 have the special provisions of guaranteeing representation of Anglo Indians in Union and State legislatures.

Article 350(B) gives provision for appointing a Special Officer for linguistic minorities.

A history of clashes, an active fertile ground for communal violence and difference-making it vulnerable for minorities on different grounds and opportunities in India. Thus, there is a need to preserve their identity and safeguards to the minority rights on social, economic and political fronts. The Constitution of India provides many ways through which the minorities protect their rights. Also, it offers special rights and freedoms to the minority community to conserve its democratic character. But in reality, minorities give birth to various problems.

For instance, India has declared itself as a secular country. So, the spirit of our constitution is secular. All political parties in India claim to be secular but in practice, none follows it. In India, the political parties play a major role in politicising a religious issue for vote banks. Though there are many problems like this the solution has to be faced with understanding. Still, the court is not able to define minority and have been for interpretation of court according to the circumstances. Art. 30 & Art. 29 are pretty wide in scope and they need to

give complete choice to the minority section to establish and administer any institution as per their understanding.

RIGHTS OF PERSON LIVING WITH HIV/AIDS

Acquired Immune Deficiency Syndrome (AIDS) is a serious disease whose cure has not yet been discovered, however, it can be prevented. With the misconception of it being a communicable disease, society ostracizes AIDS patients with different kinds of stigmas. Sometimes, even family members and blood relatives corner the patients. Every human being has some unalienated rights and so do AIDS patients. Just because someone acquires a disease, it does not imply that he/she cannot enjoy that right. Even the Supreme Court justifies the rights of AIDS patients through landmark judgements.

In the case of Mr. 'X' v. Hospital 'Z', the Supreme Court talks about the various rights of AIDS patients from various perspectives. The main issues that were dealt by the court were whether (i) right to marry is an absolute right, (ii) AIDS patients have a right to marry and right to privacy, (iii) the right to health takes precedence over the right to privacy, (iv) Medical practitioners have an obligation not to disclose the AIDS disease and identity of the patient, etc. The issues on privacy were dealt with in detail in other landmark judgments like Justice K.S. Puttaswamy and Ors. Vs. Union of India (UOI) and Ors.

The Constitution of India

The Constitution of India, 1950, which is the law of the land guarantees every citizen equal and unbiased justice, liberty, and equality. The following rights are guaranteed to AIDS patients under various provisions of the Constitution.

Article 14 of the Constitution guarantees the right of equality to every person which includes treatment for HIV/AIDS patients.

Articles 15 and 16 protect patients against any forms of discrimination.

Article 21 of the Constitution protects their right to life and personal liberty which also includes their right to privacy.

The Directive Principles of State Policy lays down certain duties of the states towards AIDS patients. **Article 38 and 39** talks about the duty of the state to promote social welfare and secure them with social and economic resources respectively. However, these duties are not enforceable in the courts of law.

Article 39 of the Constitution asks the states to ensure all the citizens including the HIV/AIDS patients have an adequate means of livelihood.

Article 42 lays down a duty upon states to make provisions for securing just and humane conditions of work.

Indian Medical Council Act, 1956 (Professional Conduct, & Ethics) Regulations, 2002

The Medical Council of India entrusts upon certain duties that have to be observed by the doctors towards HIV/AIDS patients in Indian Medical Council Act, 1956 (Professional Conduct, & Ethics) Regulations, 2002. These are given as follows:

Duty to take care and informed consent from the patient before attending to any medical procedure.

Duty to disclose to the patient the risk associated with the treatment.

Duty to inform about options available and their benefits.

Duty to warn the patient of the harm and precautions.

Duty to admit a patient in an emergency without consent.

The duty of the physician to not abandon his patient for fear of contracting the disease himself.

Immoral Trafficking Prevention Act, 1986

Immoral Trafficking Prevention Act, 1986 deals with sex workers and work-related issues in India. The Act lays down the provision of conducting compulsory medical examinations for the detection of HIV/AIDS. It also states provisions for compulsory testing of the same.

HIV/AIDS Bill, 2007

This Bill is a joint initiative of the government and civil society. It mainly deals with the status and protection of HIV/AIDS patients in all spheres, be it in their domestic spaces or in society. It makes sure that equal rights and opportunities are provided to all of the patients. The Bill aims at providing equal and unbiased opportunities in the areas of education, employment, travel, insurance, healthcare, residence and property, and so on.

The Bill asks for voluntary, free, and informed consent from the patients before their medical history or information is collected and used for research purposes. On the counterpart, the AIDS patients are also imposed with the duty to not spread the disease further through potential means. Hence the Bill confirms the confidentiality clause, but in necessary circumstances, the information or medical history of the patients can be revealed. AIDS patients have access to robust and universal access therapies for prevention, care, and support. The Bill protects risk-reduction strategies from civil and criminal liabilities, as well as harassment by law enforcement. This Bill also provides provisions related to the right to information and education relating to health and the protection of health from the State. It lays special focus on women and children. The bill requires the state to implement IEC programs that are evidence-based, age-appropriate, gender-sensitive, non-stigmatizing, and non-discriminatory.

The Bill has provision for the appointment of a health ombudsman in every district so that easy and quick access to health services could be provided to all persons. Redressal of complaints and a platform to internal complaint mechanisms are also provided. There are fast-track courts that deal with the complaints at a much faster rate and provide creative redressals. The Bill also establishes a link between sexual violence and the victims being prone to the disease more than others, hence it provides for counseling and treatments for

sexual assault survivors and asks the states for the setting up of sexual assault crisis centers. It also recognizes certain rights for children and women who are in care homes, and dormitories, as due to their social, and economic conditions they find themselves more prone to AIDS.

Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Bill, 2010

Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Bill, 2010 contains stringent provisions to curb discrimination against HIV/AIDS patients. The Act penalizes the act of discriminating against any person infected with AIDS. It also punishes people who disseminate such information about the patient which would lead to propagating hatred against the infected person.

According to the proposed bill, the screening process or testing could not be an essential requirement for any kind of employment. Even the patients could not be denied access to public places, education, or any form of enjoyment due to the same reason. Even in the workplace, proper measures must be taken in order to make a healthy and non-discriminatory space for the patients to work.

The Bill also makes a safeguard provision against a minor who hasn't attained the age of 18 years and any women who are evicted, and they possess the right to live in a shared property. In the aim of deterring rampant victimization of HIV/AIDS patients, the medical costs would be taken into consideration when settlement for maintenance is calculated.

The Bill also says that no one can be forced to take an HIV test. Proper counseling must be accompanied by detailing out the pros and cons before that person goes into the stage of making the choice. The consent must be taken voluntarily, and it must be informed. Under no circumstance can a patient be asked to reveal his status, with an exception of the courts asking to do so.

National Policy on HIV/AIDS and the "World of Work" Policy

The Ministry of Labor & Employment has formulated the "World of Work" and the "National Policy on HIV/AIDS" at the 43rd Session of the Standing Labor Committee. This Policy was developed by the Ministry of Labor & Employment after consultations with ILO (International Labor Organization), NACO (National Aids Control Organization), and Social partners. The policy aims at creating awareness about AIDS alongside working on encouraging actions in order to prevent the spread of AIDS. It also aims to make the workplace supportive and encouraging of suffering patients. The objective of the policy is to curb the stigmas involved with this whole disease and bring in an atmosphere of equal treatment and opportunities at the workplace. It aims to create an open space for the victims of these social stigmas and discriminations and prevent the spread of HIV amongst co-workers and make people aware of the issues regarding the same.

Persons with HIV infection can work as long as they are fit. If there is a test conducted, the person can wish to remain anonymous throughout the process. A special, written and informed consent is required when the research centers come in to collect the medical reports of those patients. No other than professional nurses and qualified authorities can conduct the tests and perform research on them.

The other legislation, policies, and agencies that protect HIV/AIDS patients

Antiviral Therapy Guidelines for HIV-infected Adults and Adolescents including Post-exposure.

Condom Promotion by SACS – Operational Guidelines.

Data Sharing Guidelines for HIV Care and Treatment in Infants and Children, Nov 2006.

Drugs and Cosmetic Act, 1940.

Goa, Daman, Diu Public Health Act, 1985.

Guidelines for HIV Testing, March 2007.

Guidelines for Network of Indian Institutions for HIV/AIDS Research (NIHAR).

Guidelines for Prevention and Management of Common Opportunistic Infections.

Guidelines for Setting up Blood Storage Centres.

ILO Code of Practice on HIV/AIDS and the World of Work.

Indian Penal Code, 1860.

Joint Statement of Commitment on HIV/AIDS of the Central Trade Unions in India.

Juvenile Justice (Care and Protection of Children) Act, 2000 and 2006.

Link Worker Scheme(LWS) Operational Guidelines.

Maharashtra Protection of Commercial Sex Workers, Bill, 1994.

Medical Termination of Pregnancy Act, 1971.

NACO Ethical Guidelines for Operational Research.

NACO IEC Operational Guidelines.

NACO Research Fellowship-Scheme Under NACP-III.

Narcotic Drugs and Psychotropic Substances Act, 1985.

National AIDS Control and Prevention Policy (NACPC).

National AIDS Control Organization (NACO), Department of AIDS Control, Policies and Guidelines.

National AIDS Prevention and Control Policy.

National Blood Policy (NIHFW)National AIDS Control Programme (NIHFW).

National Guidelines on Prevention, Management & .Control of Reproductive Tract Infection

National Guidelines on Prevention, Management & Control of RTI including STI.

National Human Rights Commission.

National Policy on HIV/AIDS and the World of Work.

Procurement Manual for National AIDS Control Programme (NACP-III).

Standards for Blood Banks and Blood Transfusion Services.

State AIDS Control Societies.

Suppression of Immoral Traffic in Women and Girls Act, 1956.

Surveillance Operational Guidelines Targeted Intervention for Migrants – Operational Guidelines Targeted Interventions for High-Risk Groups (HRGs).

Targeted Interventions for Truckers – Operational Guidelines
Voluntary Blood Donation – An Operational Guidelines.

The Indian Employers' Statement of Commitment on HIV/AIDS.

Young Persons (Harmful Publications) Act, 1956.

Legal provisions in international conventions

The United Nations Declaration of Human Rights

The United Nations, with time, has come up with a lot of steps in order to provide equality and human rights to all individuals including AIDS patients. The United Nations Declaration of Human Rights provides the right to equality to all human beings including AIDS patients. It also lays down certain provisions dealing with equal opportunity of work, personal liberty, opportunity, and security. Various conventions aim at eliminating discrimination and stigmas related to patients' rights, especially AIDS. Everyone including HIV positive persons has the right to work and take part in the cultural and social life in the community, and be able to enjoy art and share scientific advancement. UN conventions time and again have objectively worked on all persons including the AIDS patients to be treated equally before the law and are entitled to equal protection by the law. The International Community is always searching for various measures in order to protect HIV/AIDS persons. This lays down the fact that not only in India but also in various other countries AIDS patients find it hard to avail themselves of the same rights and opportunities.

The Joint United Nations Programme on HIV/AIDS (UNAIDS)

The guidelines provided by The Joint United Nations Programme on HIV/AIDS (UNAIDS) have provided all the grounds on which rights of HIV-affected people are recognized. But certain factors must be considered after all these efforts like that of penalized people and sex workers who inject themselves with drugs, criminalizing acts like men having sexual intercourse with other men (MSM), or transgender people. It also drives them away from health and social services that could protect them because they fear criminal sanctions. It also lends legitimacy to discrimination and social stigmas that increase risk-taking behavior because they are usually more prone to be victims of sexual violence those tabooed populations will hesitate in accessing justice systems because of the fear of being prosecuted and being discriminated against while appointing them in jobs. Hence, it defeats the whole purpose of the policy as people are already stigmatized or hesitant to interact. or come under the umbrellas of policymakers to design workable HIV programs. Therefore, it could be established that marginalizing or criminalizing the conduct of the vulnerable stakeholders not only violates their human rights but also deteriorates their health but presses the bigger purpose of the conventions and enactments. An overview of all the Rights available to AIDS patients.

Legal provisions under Indian law- Human Immunodeficiency Virus and Acquired Immunodeficiency Syndrome (Prevention and Control) Act, 2017

The Indian Parliament has passed the Human Immunodeficiency Virus and Acquired Immunodeficiency Syndrome (Prevention and Control) Act, 2017 that recognizes and talks about the rights of HIV/AIDS persons. This Act establishes antiretroviral therapy as a legal

right of HIV/AIDS patients and states that “every person in the care and custody of the state shall have right to HIV prevention, testing, treatment, and counseling services.” This act also asks the states to provide treatment that shall be accessible and with management centers. It also talks about measures that could be taken by the states to curb the issue of stigmatization of the stakeholders as explained in the following points.

I) Right to Treatment

This Act provides a special right to HIV/AIDS persons regarding treatment. This Act, in addition to providing treatment, specifies the treatment of Antiretroviral Therapy (ART) and holds governments accountable for providing it. The following provisions are crucial in this regard.

Section 13 states that the Central Government and State Government, as the case may be, shall take all such measures as it deems necessary and crucial for the prevention of the spread of HIV infection or AIDS in accordance with the guidelines.

Section 14 states that the measures to be taken by the Central Government or the State Government under section 13 shall include the measures for providing, as far as possible, diagnostic facilities relating to HIV or AIDS, Antiretroviral Therapy, and Opportunistic Infection Management to patients living with HIV or AIDS. Further, the Central Government shall issue necessary guidelines in respect of protocols for HIV and AIDS relating to diagnostic facilities, Antiretroviral Therapy, and Opportunistic Infection Management which shall apply to all persons and shall ensure their wide dissemination.

2) Confidentiality

According to Section 8 of the Act, Notwithstanding anything contained in any other law for the time being in force:

(i) No person shall be compelled to disclose his HIV status except by an order of the court that the disclosure of such information is necessary for the interest of justice for the determination of issues in the matter before it;

(ii) No person shall disclose or be compelled to disclose the HIV status or any other private information of another person imparted in confidence or in a relationship of a fiduciary nature, except with the informed consent of that other person or a representative of such another person obtained in the manner as specified in Section 5, as the case may be, and the fact of such consent has been recorded in writing by the person making such disclosure:

Provided that, in case of a relationship of a fiduciary nature, informed consent shall be recorded in writing.

(2)The informed consent for disclosure of HIV-related information under clause (ii) of subsection (1) is not required where the disclosure is made:

(a) by a healthcare provider to another healthcare provider who is involved in the care, treatment, or counseling of such person, when such disclosure is necessary to provide care or treatment to that person;

- (b) by an order of a court that the disclosure of such information is necessary for the interest of justice for the determination of issues and in the matter before it;
- (c) in suits or legal proceedings between persons, where the disclosure of such information is necessary for filing suits or legal proceedings or for instructing their counsel;

3) Right against discrimination and Right to Employment

Section 3 of the Act provides that no person shall discriminate against the protected person on any ground including any of the following, namely:

- (a) the denial of, or termination from, employment or occupation, unless, in the case of termination, the person, who is otherwise qualified, is furnished with-
 - (i) a copy of the written assessment of a qualified and independent healthcare provider competent to do so that such protected person poses a significant risk of transmission of HIV to another person in the workplace, or is unfit to perform the duties of the job; and
 - (ii) a copy of a written statement by the employer stating the nature and extent of administrative or financial hardship for not providing him reasonable accommodation;
- (b) the unfair treatment in, or in relation to, employment or occupation;
- (c) the denial or discontinuation of, or, unfair treatment in, healthcare services;
- (d) the denial or discontinuation of, or unfair treatment in, educational, establishments and services thereof;
- e) the denial or discontinuation of, or unfair treatment with regard to, access to, or provision or enjoyment or use of any goods, accommodation, service, facility, benefit, privilege or opportunity dedicated to the use of the general public or customarily available to the public, whether or not for a fee, including shops, public restaurants, hotels and places of public entertainment or the use of wells, tanks, bathing ghats, roads, burial grounds or funeral ceremonies and places of public resort;
- (f) the denial, or, discontinuation of, or unfair treatment with regard to, the right of movement;
- (g) the denial or discontinuation of, or, unfair treatment with regard to, the right to reside, purchase, rent, or otherwise occupy, any property;
- (h) the denial or discontinuation of, or, unfair treatment in, the opportunity to stand for, or, hold public or private office;
- (i) the denial of access to, removal from, or unfair treatment in, Government or private establishment in whose care or custody a person may be;
- (j) the denial of, or unfair treatment in, the provision of insurance unless supported by actuarial studies;
- (k) the isolation or segregation of a protected person;
- (l) HIV testing as a prerequisite for obtaining employment, or accessing healthcare services or education or, for the continuation of the same or, for accessing or using any other service or facility;

Provided that, in case of failure to furnish the written assessment under subclause (i) of clause (a), it shall be presumed that there is no significant risk and that the person is fit to perform the duties of the job, as the case may be, and in case of the failure to furnish the written

statement under sub-clause (ii) of that clause, it shall be presumed that there is no such undue administrative or financial hardship.

Evolution of right to privacy in India

Regardless of the fact that India passed and implemented the Human Immunodeficiency Virus and Acquired Immunodeficiency Syndrome (Prevention and Control) Act, 2017 which makes provisions about keeping the patient's history confidential, however, it is through the landmark judgments that India recognized the right to privacy. Earlier in the cases of *Kharak Singh v. the State of U.P.*, *Gobind v. State of M. P.*, *Malak Singh v. State of Punjab & Haryana*, and the *Auto Shankar* the court did identify the right to privacy emanating from Article 21 of the Constitution of India, little was talked about the implementation and challenges. In this section, we further analyze the landmark cases that gave the right of privacy to AIDS patients.

Even though there are no comprehensive laws on the rights of AIDS patients in India, the judiciary over the years has done a magnificent job in interpreting their rights through landmark cases. The issues that took up a lot of time to decide on were whether AIDS patients have a right to privacy regarding their HIV positive status, whether they have a right to marry and whether that right is absolute or not, and whether doctors have a legal obligation to disclose the HIV positive status to the concerned person and so on. The Apex Court of India has timely dealt with such questions and came up with appropriate and creative solutions.

In April 2017, the government through Bills stressed equality among people and equal opportunity at work and other things. It aimed to cancel out discrimination at the workplace, and provide that even an AIDS patient has the right to employment. It tries to promote the right of the dignity of all human beings and asks to curb the stigmas already associated with it. Everyone including AIDS patients must be treated with equality, and the law tries to cast the same notion.

The judgments and laws also implicitly remind Indian legislators that laws dealing with divorce in India, such as the Hindu Marriage Act, 1955, the Indian Divorce Act, 1869, the Special Marriage Act, 1954, and the Parsi Marriage and Divorce Act 1936, need to be amended to explicitly include AIDS as one of the grounds for divorce. Such amendments are needed as it also provides rights to the innocent spouses who have a higher risk to get affected by the infection.

LGBT- RIGHTS

A section of society that is mostly sidelined and unheard is the LGBT section. LGBT people are a minority but have equal constitutional rights. However, their right to equality and equal treatment in society is violated on a regular basis. Not only does society as a whole treat them differently, but so does the state machinery. They are frequent victims of human rights violations. They have made serious strides for their acceptance. The previous decade was the decade of LGBT rights. Around the world, LGBT human rights are coming into mainstream

focus. Many were visible in public and in law courts demanding their rights. As a result, various advances are made in many countries regarding this. When it comes to India LGBT rights have been a contentious issue for many years. After the landmark judgment of 2018 by the Supreme Court, the sexual minorities are finally a step closer to living a dignified life in society. Even though the ruling has been in effect for three years, they continue to fight for their rights. Before proceeding with the rights and protections available for LGBT, let's define who they are and what are their problems in our society.

What is LGBT?

The initial for Lesbian, Gay, Bisexual, and Transgender is LGBT. Activists began to use this initial in the US from 1988. Sometimes it's also said to be LGBTQ for which Q stands for those who are identified as Queer or are questioning their identity. These initials are combined to form LGBTIQ (7) or LGBT+. The LGBTQ are distinct groups of gay culture. These people are usually underrepresented or are left out in various researches.

Homosexuality is the sexual or emotional attraction towards the same-sex person [15]. An ancient diplomatic material – Arthashastra – does not sanction homosexual intercourse. It was treated as an awful minor offense. Within Manusmriti lesbianism was a serious offence and had severe punishments. The Shariat law of Muslims also treats homosexuality as a serious offense. History says that it was the 18th century British rule that criminalized and prohibited homosexual relations in India under section 377 of IPC saying that it's against the order of nature.

There are several arguments raised against IPC Section 377. These arguments state that the section abridges human dignity. The constitution of India makes it mandatory to provide equality to all and so it is the right of everyone including the LGBT to express their views, wishes, and choices. The section fueled the issue of non-acceptance of the LGBT people which was prevalent since long. It creates a barrier to the community's development and country's economic growth.

Criminalization violates the basic fundamental rights of LGBT people as a citizen who is abiding by the Indian constitution.

Article 14 provides the right to equality. It states that no one should be denied equality before the law and equal protection of law/

Article 15(1) and 20 prohibits discrimination of a person on any grounds like sex, religion, race, caste, or place of birth. It is the discrimination on the basis of sex that the LGBT section lacks educational and job facilities and is denied equal pay for equal work. The Indian constitution states that although the term 'sex' refers to male and female, it is broad enough for sexual orientations to include in it.

Article 19 allows this freedom of speech and expression to all the citizens

Article 21 provides the right to life and private liberty which encompasses the right to privacy. The Indian Constitution does not expressly grant the right to privacy as a fundamental right, but it has been emphasized from time to time by the Supreme Court in some cases, so it is considered to be in the vicinity of fundamental rights. As a result, the state's right to privacy must not be infringed upon.

LGBTQIA+ community

Apart from facing regular discrimination and harassment at the workplace, there are some other reasons also to substantiate that the present employment laws are not inclusive of the LGBTQIA+ community.

As essentially employment and labour laws touch various aspects of employment such as employment benefits, terms and conditions, gratuity benefits, insurance, anti-discriminatory policies, maternity benefits etc, discussing each in detail is beyond the scope of the article. However, some of the points are discussed below:

i) Workmen's Compensations Act, 1923

Although Section 2 of this act provides a comprehensive list of dependants, but all these terms are defined only in the reference with the heterosexual families.

Further, it's very essential to define the "dependants" because dependants are entitled to the monetary benefit. Under the worker compensation insurance, it is mandatory for every employee to nominate at least one dependent. Therefore the term "dependants" must be redefined in the context of same-sex unions and LGBTQIA+ families to provide them equal incentives in employment as available to a heterosexual individual.

ii) Payment of Gratuity Act, 1972

The Payment of Gratuity Act, 1972 requires the employer to nominate people so that if in case the employer dies, then the gratuity benefits are conferred to the nominee. But for the purpose of this Section 2(h) of the act defines the term "family" which includes spouse, children, dependent parents and any adopted child. Therefore, the current definition of "family" eliminates the possibility of recognising LGBTQIA+ family from its ambit.

iii) Factories Act, 1968

The Factories Act of 1968 is structured on a protectionist approach and lays down various restrictions concerning the employment of women such as regulations of limiting their work hours from six to seven among many others. So, the current rules and regulations fail to recognize people not fitting in traditional notions of the gender binary.

The provisions which are confined to the gender binary exist not only in these discussed laws but extend across a range of other employment and Labour laws as well.

Maternity Benefits

At present Maternity Benefit Act of 1961 provides maternity leaves and benefits only to the cis-gendered women who give birth, adopt or rely on surrogacy to have a child. Essentially speaking there are two implications of this law.

Firstly, it reiterates the same archaic ideas and notions that it is the sole responsibility of the mother to take care of and nurture the child while the father can be waived off this duty. Secondly, it does not take into cognizance the fact that there can be a possibility of alternate families such as the LGBTQIA+ families.

Therefore it is essential that the language of this law must be gender-neutral so that even LGBT+ families can also have access to parental benefits and further it can also serve as a progressive step in the direction to eliminate sexual biases reinforced by the maternity benefit legislation.

It is submitted that although the landmark 2018 court ruling and 2014 NALSA judgment were a huge leap in the advancement of LGBT+ rights movements in India. But still, the LGBT people in India are not equal and don't have the same rights as those available to a heterosexual person. Further, they are still subjected to violence, discrimination in all spheres of life.

It is very important to educate people about LGBT rights. Human rights are natural rights which are inalienable, indestructible and are conferred upon everyone since birth. It is essential that people take note of the fact that homosexuals are not sick, they are not aliens, their sexual orientation is perfectly in tune with the dictate of nature.

LGBTQ rights should be recognised as part of human rights. Non Recognition of same-sex marriages, not allowing adoption, guardianship, surrogacy, IVF, not having access to safe and LGBT+ inclusive schools, colleges and workplaces are all violative of Article 14, 15, 19, 21, 29. Further, discrimination solely on the grounds of sexual orientation violates Article 14, 15, 21 in relation to Army, Navy, Air force Act.

The universal law of Human Rights states social norms, custom, culture or traditions can never be a valid justification to suppress another individual from asserting his/her fundamental and constitutional rights.

If we start justifying everything on the basis of cultural views, societal values and public policy then there would have been no progressive legislation enacted in our country and we would have never been able to eliminate the social evils of child marriage, Sati, dowry, and infanticide etc.

So, it is essential that the government must wipe away its conservative nature and should take concrete steps to eliminate the stigma, discrimination and abuse surrounding the LGBTQIA+ people. It is high time the government should formulate new laws or amend existing laws on marriage, adoption, guardianship, inheritance educational institutions, employment, healthcare services etc for education, social security and health of LGBT+ people with special focus to Transgender Persons.

It will lead to greater inclusiveness and will help in bringing the LGBTQIA+ into the mainstream of society and can go a long way in ‘transforming our nation sustainably into an equitable and vibrant knowledge society’

Lastly, I will conclude this article by saying that until and unless the government gives the LGBTQIA+ people in India an equal status, just and the fair struggle for social recognition by LGBT+ will go on.