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Human Rights and Duties in India [2016-2023]

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ABSTRACT: The notion of Human Rights and Fundamental Rights was known from past civilizations. These Rights have been the concern of all civilizations from the time immemorial. It is visible in Indian culture which has been the product of a synthesis of diverse culture and religions since beginning of the Indus Valley civilization in Indian context. The Babylonian Laws and the Assyrian laws in the Middle East, the “Dharma” of the Vedic period in India and the jurisprudence of Lao-Tze and Confucius in China, comprise championed human rights all through the history of human civilization. The Indian concept perceives the individual, the society and the universe as an organic whole. One and all are a child of God and all fellow beings are connected to one another and set out to a universal family. In this context, Mahatma Gandhi remarks, “I do not want to think in terms of the whole world. My patriotism includes the good of mankind in general. Therefore, my service to India includes the services of humanity.”

KEYWORDS-human, rights, duties, India, culture, constitution

I. INTRODUCTION

1.1. Human Rights in Ancient India

In ancient India, human life was clear in the expression of human dignity. And eventual individual development depended exclusively upon the uplift and improvement of humanity as a whole. The individual not only comprise the right to be treated with equality, but also a duty to strive for the happiness of every other individual. A distinctive feature of Indian culture is its thorough understanding of nature, human values and dignity of man. In ancient India the rule of law was a significant embracing institution to protect the innate of all. The existing rule of law protects the dignity of every individual and the king could not interfere by means of enacting or altering the law substantially at his will.

The individual soul has been the entity in the study of mankind since from pre-historic time. Indian servants and sages categorically uttered the entire mankind forms a single species. And in spite of outer diversities each and every one have the common self-respect which supplies the connection of unity in the minds of its diversity. No individual possibly will claim to be, or to be considered as superior to others. Individuals don't barely have the right to be treated with parity, but also a duty to attempt for the pleasure of every other individual. India had been the cradle of the various great religions. For at least a thousand years, a figure of religions has thrived in India. Each religion has its own philosophy, divinity, mythology, ceremonies and rituals. In spite of these outward diversities of religious faith and practice, the gigantic bulk of people in India had developed definite common fundamental standards of life based on the principle of human dignity which might sustain and build up into a great extensive society.[1,2,3]

1.2. Human Rights in British India

The contemporary account of human rights jurisprudence may be thought to have taken origin in India at the time of the British rule. When the British ruled India, confrontation to foreign rule manifested itself within the form of insisting for fundamental freedoms and the civil and political rights of the people; Indians were disgraced and discriminated against by the Britishers. The freedom movement and the unsympathetic oppressive actions of the British rulers encouraged the struggle for civil liberties and fundamental freedoms. Under the British rule, human rights and egalitarianism was suspect and socialism was an abhorrence. Lord Wellesley condemned the Indians as vulgar, ignorant, rude and stupid and Lord Cornwallis described as a maxim that all native of Hindustan is crooked. The English East India Company debarred Indians from high offices and depressed them of their political, social and economic rights.

Because of the rigid opposition from the people of India that the Charter Act of 1813 was enacted toward promoting the interest and pleasure of the native people of India. Correspondingly, the Government of India Act, 1833 was approved to allow the Indians to benefit from some political rights. The Declaration of Queen Victoria on 1st November 1858

contained some principles of state policy, which were similar to fundamental rights in scenery. The actual demand for fundamental rights came reasonably in the wake of the nationalist movement in Meerat, which coincide with the origin of the Indian National Congress in 1885. The Constitution of India Bill 1895 known as the “Home Rule document” set by the Indian National Congress lined the way for a constitution guaranteeing each and every citizen the basic human rights like freedom of expression, inviolability of one’s own house, right to property and equality before the law.

The Government of India Act, 1915, in pursuance of the demands for fundamental rights, guaranteed equality of opportunity in public services. A succession of resolutions adopted by the National Congress between 1917 and 1919 repeated the insist for civil rights and parity of status with the English.

1.3. Motilal Nehru Committee

In 1925 the Indian National Congress finalizes the draft of the Common Wealth of India adopting a ‘Declaration of Rights.’ The Madras Session of the Congress held in the year 1927 – demand incorporation of a ‘Declaration of Fundamental Rights’ in any future constitutional framework. A committee under the leadership of Motilal Nehru was appointed by the National Congress to revise the fundamental rights. It is fascinating to note that the Constitution of the Republic of India, enacted in 1950, incorporated ten of the nineteen rights enumerated in the Motilal Nehru Committee Report, 1928. The rights emphasized as a result of the Motilal Nehru Committee reports were:

- Personal liberty, inviolability of dwelling place and property.
- Freedom of conscience, and of profession and practice of religion.
- Expression of opinion and the right to assemble peaceably without arms and to form associations.
- Free elementary education.
- Equality for all before the law and rights.
- Right to the writ of Habeas Corpus.
- Protection from punishment under ex-post facto laws.
- Non-discrimination against any person on grounds of religion, caste or creed in the matter of public employment.
- Equality of right in the matter of access to and use of public roads and wells etc.
- Freedom of combination and association for the maintenance and implementation of labor and economic factors.
- Right to keep and bear arms.
- Equality of rights of man and woman.

The Simon Commission, selected by the British Government in 1927, Though, totally rejected the demands uttered by the Nehru Committee reports. Afterward The Government of India Act, 1935 was passed exclusive of any bill of rights greatly to the disappointment of the Indian leaders. It was the ‘Sapru Committee’ of 1945 that consequently stressed the require for a written code of fundamental rights and the Constituent Assembly raise a powerful command for the insertion of human rights in the Constitution.

1.4. Constituent Assembly and Human Rights

The Indian Constitution was framed by the Constituent Assembly of India, which met for the first time on December 9, 1946. The Constitution of India gives primary importance to human rights. The demand for a declaration of fundamental rights arose as of four factors.

1. Lack of civil liberty in India during the British rule.
2. Deplorable social conditions, particularly affecting the untouchables and women.
3. The existence of different religious, linguistic, and ethnic groups encouraged and exploited by the Britishers.
4. Exploitation of the tenants by the landlords.

The Constituent Assembly built-in the Constitution of India the matter of the right proclaimed and adopted by the General Assembly in the Universal Declaration of Human Rights. Further on 10th December 1948, when the Constitution of India was in the structure, the General Assembly proclaimed and adopted the Universal Declaration of Human Rights, which definitely influenced the framing of India’s Constitution. Viewed from the Indian perspective, human rights have been synthesized, like it is being, not as an integrated stuff by the Preamble promises and various Constitutional clauses of the National Charter of 1950.[4,5,6]

Human Rights and The Indian Constitution the Constitution of the Republic of India which came into force on 26th January 1950 with 395 Articles and 8 Schedules, is one of the most detailed fundamental laws eternally adopted. The Preamble to the Constitution declares India to be a Sovereign, Socialist, Secular and Democratic Republic. The term 'democratic' denotes that the Government gets its power from the will of the people. It gives a sensation that they all are equal "irrespective of the race, religion, language, sex and culture." The Preamble to the Constitution pledges justice, social, economic and political, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and fraternity assuring the self-esteem of the individual and the unity and integrity of the nation.

1.5. Modern Rights in Modern India

The framers of the Indian Constitution, 1950 were motivated by the motivating goals set out in the Universal Declaration of Human Rights, 1948. The preamble to the Constitution of India, 1950 underlines the call for secure to all its citizens justice, liberty, equality and also the dignity of the personality as important ideals. A number of civil and political rights such as the right to equality, freedom of speech, right to life and personal liberty, the right to free primary education, right to practice and propagation of religion etc., be provided as fundamental rights. A number of economic, social and cultural rights like the right to education, health and work have been provided under the provision of Directive Principles of State Policy, which are fundamental in the supremacy of the country. The legislative body has enacted a range of legislations which seek out to protect and promote the right of the susceptible sections of the society like the disable, the scheduled castes and scheduled tribes, women and children. As far as women are concerned, the legislations wrap issues such as dowry harassment, immoral traffic, prevention of sati and female feticide.

The parliament enacted the Protection of Human Rights Act 1993 which provides for the constitution of the National Human Rights Commission, the State Human Rights Commission and Human Rights Courts, which are constituted for the better fortification of human rights as well as for matters associated therewith or subsidiary thereto National Commission on Human Rights was set up in India on September, 27, 1997.

II. HUAMN RIGHTS AND DUTIES GUARANTEED UNDER INDIAN CONSTITUTION

2.1. UDHR and the Fundamental Rights of Indian Constitution

The Universal Declaration of Human Rights established by the General Assembly on 10th December, 1948, constituted a significant event of the first enormity. It was an encouragement for all the States to value some basic rights. It enumerates the political, civil, economic, social and cultural rights of man. It is a proposal of man's absolute rights and fundamental freedoms. Most of the Human Rights in Universal Declaration are integrated as fundamental rights. Rights in part III of the Constitution of India, which was adopted in 26th, November, 1949 came into force on 26 January, 1950.

The Indian Constitution is a text wealthy in human rights jurisprudence. This is a sophisticated charter on human rights eternally framed by any State in the world. Part III of the Indian Constitution may well characterize as the 'Magna Carta' of India. The Judiciary of India plays a considerable role in protecting human rights. The Indian Courts have become the courts of the poor and the stressed masses and left open their portals to the deprived, the unaware, the illiterates, the demoralized, the have-nots, the handicapped and the half-hungry, half-naked countrymen.

III. DISCUSSION

Human rights are the basic rights available to any human being by virtue of his birth in human race. It is inherent in all human beings irrespective of their nationality, religion, language, sex, colour or any other consideration. The Protection of Human Rights Act, 1993 defines Human Rights as: "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India". Protection of human rights is essential for the development of the people of the country, which ultimately leads to development of the national as a whole. The Constitution of India guarantees basic human rights to each and every citizen of the country. The framers of the Constitution have put their best efforts in putting down the necessary provisions. However, with continuous developments taking place, the horizon of human rights has also expanded. The parliamentarians are now playing a great role in recognizing the rights of people and passing statutes, amending provisions etc. as and when required.



Development of Human Rights

The Human Rights in India originated long time ago. It can easily be recognized from the principles of Buddhism, Jainism. Hindu religious books and religious texts like Gita, Vedas, Arthasatra and Dharmashstra also contained provisions of human rights. Muslim rulers like Akbar and Jahangir were also very much appreciated for his regard for rights and justice. During the early British era, the people suffered a great violation of several rights and this led to the birth of modern Human Rights jurisprudence in India.

On January 24, 1947, Constituent Assembly voted to form an advisory committee on Fundamental Rights with Sardar Patel as the Chairman. Drafted list of rights were prepared by Dr. B. R. Ambedkar, B. N. Rau, K. T. Shah, Harman Singh, K. M. Musnshi and the Congress expert committee. Although there were few amendments proposed, there was almost no disagreement on the principles incorporated. The rights in the Universal Declaration of Human Rights were almost completely covered in the Indian Constitution either in Fundamental Rights or Directive Principles of State Policy. Nineteen fundamental rights were covered in Motilal Nehru Committee Report, 1928 out of which ten appear in the Fundamental Rights whereas three of them appear as Fundamental Duties.[7,8,9]

International Human Rights and Fundamental Rights (Part III of COI)

India had signed the Universal Declaration on Human Rights January 01, 1942. Part III of the Constitution India 'also referred as magna carta' contains the Fundamental rights. These are the rights which are directly enforceable against the state in case of any violation. Article 13(2) prohibits state from making any law in violation of the Fundamental Rights. It always provides that if a part of law made is against the Fundamental Rights, that part would be declared as void. If the void part cannot be separated from the main act, the whole act may be declared as void.

In the case of Keshvanand Bharti v. State of Kerela, the apex court observed: "The Universal Declaration of Human Rights may not be a legally binding instrument but it shows how India understood the nature of human rights at the time the Constitution was adopted."

In the case of Chairman, Railway Board & Ors. v. Chandrima Das & Ors., it was observed that UDHR has been recognized as Model code of conduct adopted by United Nations General Assembly. The principles may have to be read if needed in domestic jurisprudence.

Provisions of Universal Declaration of Human Rights along with corresponding provisions in Constitution of India are as follows:

Brief Description of Provision	UDHR	COI
Equality and equal protection before law	Article 7	Article 14
Remedies for violation of Fundamental Rights	Article 8	Article 32
Right to Life and personal liberty	Article 9	Article 21
Protection in respect for conviction of offences	Article 11(2)	Article 20(1)
Right to property	Article 17	Earlier a Fundamental Right under Article 31
Right to freedom of conscience and to practice, profess and propagate any religion	Article 18	Article 25(1)
Freedom of speech	Article 19	Article 19(1)(a)
Equality in opportunity of public service	Article 21(2)	Article 16(1)
Protection of minorities	Article 22	Article 29(1)

Right to education	Article 26(1)	Article 21A
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Many of the civil and political rights contained in the International Covenant on Political and Civil Rights, 1966 (ICCPR) are also contained in the Part III of the Constitution of India. India has signed and ratified the ICCPR.

In the case of Jolly George Varghese & Anr. v. Bank of Cochin, J. Krishna Iyer observed that though a provision is present in ICCPR but not in Indian Constitution, does not make the covenant an enforceable part of 'Corpus Juris' in India.

Provisions of ICCPR along with corresponding provision of Constitution of India are as follows:

Brief Description of Provision	ICCPR	COI
Right to life and liberty	Article 6(1) & 9(1)	Article 21
Prohibition of trafficking and forced labour	Article 8(3)	Article 23
Protection against detention in certain cases	Article 9(2), (3) and (4)	Article 22
Freedom of movement	Article 12(1)	Article 19(1)(d)
Right to equality	Article 14(1)	Article 14
Right not to be compelled to be a witness against own self	Article 14(3)(g)	Article 20(3)
Protection against double jeopardy	Article 14(7)	Article 20(2)
Protection against ex-post facto law	Article 15(1)	Article 20(1)
Right to freedom of conscience and to practice, profess and propagate any religion	Article 18(1)	Article 25(1) & 25(2)(a)
Freedom of speech and expression	Article 19(1) & (2)	Article 19(1)(a)
Right to assembly peacefully	Article 21	Article 19(1)(b)
Right to form union/ association	Article 22(1)	Article 19(1)(c)
Equality in opportunity of public service	Article 25(c)	Article 16(1)
Equality and equal protection before law and no discrimination on the basis of any ground such as race, colour, sex, language, religion etc.	Article 26	Article 14 & 15(1)

Protection of interests of minorities	Article 27	Article 29(1) & 30
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Some of the rights which were not earlier included in Fundamental Rights but were available in ICCPR. They were considered as Fundamental Rights by various judicial pronouncements. Some of them are Right to fair trial, Right to privacy, Right to legal aid, Right to travel abroad. I will be dealing with them in detail at the later part of this article.

A number of rights that were available in the covenant were not available as fundamental rights at the time of enactment of Constitution. The judicial interpretations have widened the scope of fundamental rights available in the Indian Constitution.

In the court of A.D.M. Jabalpur v. Shivkant Shukla, the apex court had observed that the law of land does not recognize any natural or common law rights other than specifically provided in the Indian Constitution.

Later, in the case of Maneka Gandhi v. Union of India, J. Bhagwati observed; “The expression ‘personal liberty’ in article 21 is of the widest amplitude and it covers a variety of rights, which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19. No person can be deprived of his right to go abroad unless there is a law made by the State prescribing the procedure for so depriving him, and the deprivation is effected strictly in accordance with such procedure.”[110,11,12]

After the present case, the apex court came up with the “theory of emanation” in order to make fundamental rights active and meaningful. Also, relaxation to the rule of ‘locus standi’ was given by the court. Some of the major judicial interpretations of Fundamental Right are as follows:

Right	Case Law
Right to live with Human Dignity	PUCL & Anr. v. State of Maharashtra & Ors.
Right to Clean Air	M.C. Mehta (Taj Trapezium Matter) v. Union of India
Right to Clean Water	M.C. Mehta v. Union of India & Ors
Right to freedom from Noise Pollution	In Re: Noise Pollution
Right to Speedy Trial	Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar
Right to Free Legal Aid	Khatri And Others v. State of Bihar & Ors.
Right to Livelihood	Olga Tellis & Ors. v. Bombay Municipal Corporation
Right to Food	Kishen Patnayak v. State of Odisha
Right to Medical Care	Pt. Parmanand Katara v. Union of India & Ors.
Right to Clean Environment	Rural Litigation And Entitlement Kendra v. State Of U.P. & Ors
Right to Privacy	K .S. Puttaswamy & Anr. v. Union of India & Ors

Human Rights are the basic rights which form the essential part of his/her development as human being. Constitution acts as a protector of those basic rights as Fundamental Rights and DPSPs. More emphasis has been given to the fundamental rights and they are directly enforceable in the court of law. From a deep study of the Part III and Part IV of

the Indian Constitution, it is easily evident that almost all of the rights provided in UDHR (Universal Declaration on Human Rights) are covered in these two parts.

Judiciary has also taken great steps such as relaxing rules of 'locus standi' and now any other person in place of the ones affected can approach Court. The apex court has interpreted the Fundamental Rights available to a citizen and now rights like right to privacy, right to clear environment, right to free legal aid, right to fair trial etc. also find place in the Fundamental Rights.

IV. RESULTS

The Constitution of India in the preamble assure the pride of citizen and this has been well-protected by the Part III (Article 12-35) of the Constitution. Our Constitution not only elaborates the essential human rights in Part III, it also secures them by providing constitutional remedies under Article 32 and 226 of the Constitution. The right to move to the apex court for the enforcement of the basic rights is fundamental as per Article 32.

Part IV (A) of the Constitution embody the Eleven Fundamental Duties of every Indian citizen (Article 51-A). These are: the duties to value the Constitution and its institutions, to live by the dignified morals of the freedom struggle, to defend the sovereignty and integrity of India, to protect the nation, to endorse collective harmony, to relinquish practices offensive to the dignity of women, to conserve the literary heritage, to shield and progress the usual atmosphere, to have kindness for living creatures, to build up the scientific temper, to maintain public property and renounce violence and to struggle towards excellence in all spheres of individual and collective movement. The Eighty-sixth Constitutional Amendment 2002 inserted a new clause (k) in Article 51 (A) instructing "a parent or guardian to provide opportunities for education to his child or, ward between the ages of 6 to 14 years."

Parts III, IV and IV (a) of the Constitution greatly depend upon the judiciary for their analysis and application. The various 'reasonable restriction clauses in Part III, Article 21, and the seldom-used Part IV-A have set the scope for judicial interpretation resulting in the Judicial Review of the administrative and legislative action. Indeed, Article 21 has allowed it to act as a catalyst in prodding the State to put into practice the directive principles in so far as they honestly bear upon "life and personal liberty."

V. HUMAN RIGHTS AND DUTIES: AN INDIAN CONSTITUTIONAL LAW PERSPECTIVE

At the time when the Universal Declaration of Human Rights was made, the Indian Constitution was in the making. Therefore, the Declaration has its effect on the formulation of Fundamental Rights and Directive Principles of State Policy under the Indian Constitution. It is to be noted that many of the rights incorporated in the Declaration of Human Rights find a place in the Preamble in a concise form. The resolve made in the Preamble regarding rights of individuals finds elaborate expression in Part III i.e., the 'Fundamental Rights' and part IV.

'Directive Principles of State Policy' of the Indian Constitution. Some of the rights enumerated in Universal Declaration of Human Rights are the essential ingredients of a democratic system and as such naturally find a place in the Indian Constitution and form the basic structure of the same. Judicial activism has greatly contributed to the expansion, protection, and enforcement of Fundamental Rights and further impacted on the justiciability of Directive Principles of State Policy.

5.1. Fundamental rights under Indian Constitution

Fundamental rights are those rights which are necessary for the well-being of a person. Part III of the Indian Constitution contains the list of Fundamental Rights; that guarantees civil liberties to all the citizens of India to be alive in serenity and synchronization without the fear of being censored by others. The Indian Judiciary has the prudence to penalize those violating these fundamental rights under the provisions of the Indian Penal Code. No individual can be deprived of these rights relating to fundamental liberty in the form of human freedoms. It is the judiciary that safeguards these constitutional rights of the citizens. In some outstanding cases, i.e. all through emergency the State can inflict limitations on the enforcement of these fundamental rights.

The Constitution provides for the enjoyment of 6 Fundamental rights. They are:

1. Right to Equality (under Article 14 – Article 18)
2. Right to Freedom (under Article 19 – Article 22)

3. Right against exploitation (under Article 23 – Article 24)
4. Right to Freedom of Religion (under Article 25 – Article 28)
5. Cultural and Educational rights (under Article 29 – Article 30)
6. Right to Constitutional remedies (Article 32)

5.2. Fundamental duties under Indian Constitution

The Fundamental Duties are a narrative feature of the Indian Constitution in recent times. Initially, the Constitution of India did not have these duties. The Forty Second Constitution Amendment Act, 1976 has incorporated ten Fundamental Duties in Article 51(A) of the Constitution of India. The Eighty-Six Constitution Amendment Act, 2002 has added one more Fundamental Duty in Article 51 (A) of the Constitution of India. As a result, there are now 11 Fundamental Duties of the citizen of India.

The following are the Eleven Fundamental Duties of every citizen of India:

- To abide by the Constitution and respect the National Flag and the National Anthem;
- To cherish and follow the noble ideals which inspired our national struggle for freedom;
- To uphold and protect the sovereignty, unity, and integrity of India;
- To defend the country and render national service when called upon to do so;
- To promote harmony and the spirit of common brotherhood amongst all people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women;
- To value and preserve the rich heritage of our composite culture;
- To protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures;
- To develop the scientific temper, humanism and the spirit of inquiry and reform;
- To safeguard public property and to abjure violence;
- To strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavor and achievement.”
- To provide opportunities for education by the parent the guardian, for his child, or ward between the ages of 6-14 years.

A scrutiny of the above duties reveals that they are pertinent only to citizens and not to the aliens. It is assumed that an inhabitant of India while enjoying fundamental rights, ought to perform these duties. Although there is no provision in the constitution for direct enforcement of any of these duties. The courts are guided by these duties while interpreting diverse laws. These duties have purity as these are included in the Directive Principles of State policy.

VI. JUDICIAL ACCEPTANCE OF HUMAN DUTIES

Part IV-A, which deals with fundamental duties of the citizens, was added by the Constitution (Forty-Second Amendment) Act, 1976, in accordance with the recommendations of the Swaran Singh Committee. It thus brought the Constitution of India in line with Article 29 (1) of the Universal Declaration of Human Rights, 1948.

When the court is called ahead to give effect to the directive principles and the fundamental duty, the court is not to wave its shoulders and say that priorities are a matter of policy and so it is an issue for the policy-making power. Practically speaking, these duties are ethical and societal obligations of Indian citizens to develop into accountable citizens and build up the country. The fundamental duties can be promoted by constitutional means and can be forced only by constitutional methods. Constitutional enactment of fundamental duties must be used by courts as a tool to tap, in State action which is diverting away from constitutional values. The fundamental duties enjoined on citizens under Article 51-A should also guide the legislative and executive actions of nominated or non-elected institutions and organizations of the citizens together with the municipal bodies.[11,12]

As the Verma Committee (1999) on fundamental duties said essentially all that is contained in the fundamental duties is just a codification of tasks integral to the Indian way of life. A scrutiny of the clauses of Article 51-A indicates that a number of these clauses basically refer to such values which have been a part of the Indian tradition, mythology, religion, and practices. Although the fundamental duties were inserted during the emergency and very noble in the literal sense, cannot either be part of a Constitution or a statute nor give any locus standing. They cannot be enforced by a court, but only by constitutional methods. Nevertheless, fundamental duties, though not enforceable by mandamus or

any other legal remedy still provide a valuable guide and aid to interpretation of constitutional and legal issues. In the case of doubt or choice, people's wish as manifested through Article 51-A can be served as a guide not only for resolving the issue but also for constructing or molding the relief to be given by the courts.

In *AIIMS Student's Union vs AIIMS*¹, a three-Judge Bench of the Supreme Court made it clear that fundamental duties, though not enforceable by a writ of the court, yet provide valuable guidance and aid to interpretation and resolution of constitutional and legal issues. Again in *L.K. Koolwal v. the State of Rajasthan*² the Court held Article 51-A is the duty of the citizens however Article 51-A gives a right to the citizens to move the court for the enforcement of the duty cast on State, instrumentalities, agencies, departments, local bodies and statutory authorities created under the law of the State. The Hon'ble Court on similar occasion also stated that the collective duties of the citizens imply the duty of the State.

However, this is not denying that the State does not have duties. If the State does not have duties, then it is under Parts III and IV of the Constitution, namely, fundamental rights and directive principles, where analogous negative and positive duties lie in the State. Moreover, the scrutiny of the Court that fundamental duty gives the citizens the authority to move the court is also not totally undersized of errors. Taking into consideration, that the fundamental duties are not executable, how can courts overlook about making decisions, even consider petitions under it? And if the society does have to move the court to request the State to do its duty it would relatively do it by way of a petition under Article 32 or 226 as an issue of their rights rather than the duty of the State. In Article 51-A under Part IVA, the Constitution of India spells out only eleven fundamental duties to the citizen.

VII. JUDICIAL ACCEPTANCE OF HUMAN RIGHTS

Article 51 of the Constitution of India directs the state to try to foster respect for international law and treaty obligations. The Charter of the United Nations and varied resolutions, declarations, covenants and conventions on human rights form the body of international law and India is a party to most of the human rights treaties.

To give a reliable analysis of the Constitution is the mission of the higher judiciary. The highest legal organ of the state is the Supreme Court of India and the elucidation given by this Court is obligatory on all authorities in India. As an effect of a variety of declarations, conventions, charters, covenants, and resolutions, international human rights have come into survival. International law, nevertheless, does not turn out to be a part of Indian law unless built-in by parliamentary legislation. Therefore, the purpose of international human rights norms in the national jurisdiction is reliant on an amalgamation of these norms in the municipal organization. Where such individual rights have been included in Indian law, the courts have no complexity in enforcing them. For example, the protection of the Human Rights Act, 1993 gives recognition to the rights of life, liberty, equality, and dignity of an individual and embody in them the international covenants. India is also a party to conventions on Elimination of All Forms of Discrimination, 1966; Suppression and Punishment of the Crime of Apartheid, 1973; Prevention and Punishment of the Crime of Genocide, 1948; Elimination of All Forms of Discrimination against Women, 1979; and Rights of the Child, 1989.

*Smt. Nilabati Behera & Lalita Behera vs. State of Orissa & Ors.*³ the Supreme Court asserted the jurisdiction of the judiciary as "protector of civil liberties" under the obligation "to repair damage caused by officers of the State to fundamental rights of the citizens", holding the State responsible to pay compensation to the near and dear ones of a person who has been deprived of life by their wrongful action, reading into Article 21 the "duty of care" which could not be denied to anyone. For this purpose, the court referred to Article 9 (5) of the International Covenant on Civil and Political Rights, 1966 which lays down that "anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation"

Similarly, In *Vishaka & Ors. vs. State of Rajasthan & Ors.*,⁴ Supreme Court said that "gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognized basic human right. The common minimum requirement of this right has received global acceptance. In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the contents of international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein and for the formulation of guidelines to achieve this purpose.... in the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly, guidelines and norms are hereby laid down for strict observance at all workplaces or other institutions, until a legislation is enacted for the purpose. This is



done in exercise of the power available under Article 32 for enforcement of the fundamental rights and it is further emphasized that this would be treated as the law declared by the Supreme Court under Article 141 of the Constitution.”

Further, in *Apparel Export Promotion Council v. A.K. Chopra*⁵, a two-Judge Bench of the Supreme Court yet again dealt with a case of sexual harassment of a lady secretary by her male superior. The court relied on the Convention on Elimination of All Forms of Discrimination against Women, 1979 and other international instruments on human rights.

This approach was once more evidenced in *Chairman, Rly. Board Vs Chandrima Das*⁶, In this case, a woman tourist of Bangladesh was raped in the Railway Guest House by the employees of the railway board. The petition on her behalf was filed by an Advocate of Calcutta High Court. The Supreme Court apprehended that our Constitution in Part III guarantees all the basic and fundamental human rights set out in the Universal Declaration of Human Rights, 1948 to its people and other personnel, i.e., aliens and that It will be appropriate for the court to refer to international human rights norms while interpreting the national constitution.

In *Guruvayoor Devaswom Managing Committee v. C.K. Rajan*⁷, the court said that it will not hesitate to invoke international conventions on human rights to protect group rights of people. It is not only the “first generation” and the “second generation” human rights which have been accepted and applied by the Indian Court, but the “third generation or solidarity right” has also been recognized.

Further in *N D Jayal. V. The Union of India*⁸, a three- judge Bench of the Supreme Court has accepted the right to development as an integral part of human right. The Constitution of India also does not expressly provide for the right of privacy. But the Indian judiciary has traced this right in Article 21 of the Constitution. In *District Registrar and collector, Hyderabad. v. Canara Bank*⁹, the Supreme Court has invoked Article 12 of the UDHR, 1948 and Article 17 of the International Covenant on Civil and Political Rights, 1966, in upholding the right of privacy.

The Indian Supreme Court has followed two lines of reading in support of applying international human rights norms in its domestic jurisdiction. Firstly, the fundamental rights which are guaranteed by the Constitution can be interpreted in the light of international human rights norms, since these norms indicate the currently accepted view of the content of the various fundamental rights of part III of the Constitution of India. Secondly, the court has also said that international covenants declaring universal fundamental rights can be used by the courts as a legitimate guide in developing common law.

VIII. CONCLUSION

The Constitution prescribes fundamental rights such as impartiality facing the law. Neither the Union nor the State legislative, executive or judiciary can act in breach of these fundamental rights. Fundamental duties were supplementary to the Constitution in 1977. Among these are duties to stand for the Constitution and value its morals and institutions, the National Flag and the National Anthem, to write and safeguard the prosperous heritage of our amalgamated culture, to defend and develop the national environment as well as forests, lakes, rivers and wild life and to have the kindness for living creations and to endeavor towards superiority in all spheres of personality and cooperative action. Rights and duties go side by side. Rights without duties are worthless. Hon’ble Supreme Court of India and the court has even relied on international human rights law to protect the fundamental rights of the people and has in some cases tried to interpret the collective fundamental duty of the society as the duty of the state.[13]

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