

Human Rights

UNIT-1

INTRODUCTION TO HUMAN RIGHTS

Chapter 1: International Human Rights

Conventions and Agencies

1.1 Tracing the History of Human Rights

Embarking upon tracing the origin of human rights, the first question that comes to our mind is, where does the history of human rights begin? One would invite debate on two different approaches on studying its origin. One would argue whether its origin should be traced to the legacy of European Enlightenment as a result of which the concept of nation-state developed and morality became one of the tools of governance. This ultimately brought down the feudal structure and challenged the divine rights of the kings.

However, there is another theory that floated in the development of human rights history. It is believed to be encrypted in the secular and religious traditions. The concepts of progressive punishment can be traced to *Hammurabi's Code* in ancient Babylon; the Hindu and Buddhist religions offered the earliest defenses of the respect for all, extended to the ecosystem; Confucianism promoted mass education; the ancient Greeks and Romans endorsed natural laws and the capacity of each person to question; Christianity and Islam advocated brotherhood and at the same time, they endorsed a moral conduct during wars. Therefore, most of the universal cultures tended to rationalize unequal treatment of people. But it is equally true that the real foundation of human rights in the modern world lies in the European enlightenment era. During this period the concern for rights of woman and practice of slavery were addressed.

Human rights are also rooted in the philosophical laws of natural rights and natural law. *Plato (427BC-348BC)* can be said to be the earliest philosophers who suggested the universal ethical conduct and in a way indirectly advocated natural rights of people. Similarly *Aristotle (384BC-322BC)* said that justice, virtue and rights according to the different kinds of socio-political constitution and circumstances.

Cicero (106BC-43BC), one of the most renowned jurist and statesman laid down the foundation of natural rights and human rights in his work 'laws' (52BC). According to him there should be universal human rights laws that would go beyond customary and civil laws. In Greece, there are evidences of equal freedom of speech, equality before law, right to vote, right to trade, similar rights were secured to the Romans by the '*jus civile*' of the Roman law. Thus, it can be a general agreement that the origin of the human rights is usually agreed to be found in the Greco-Roman natural law and doctrines of Stoicism.

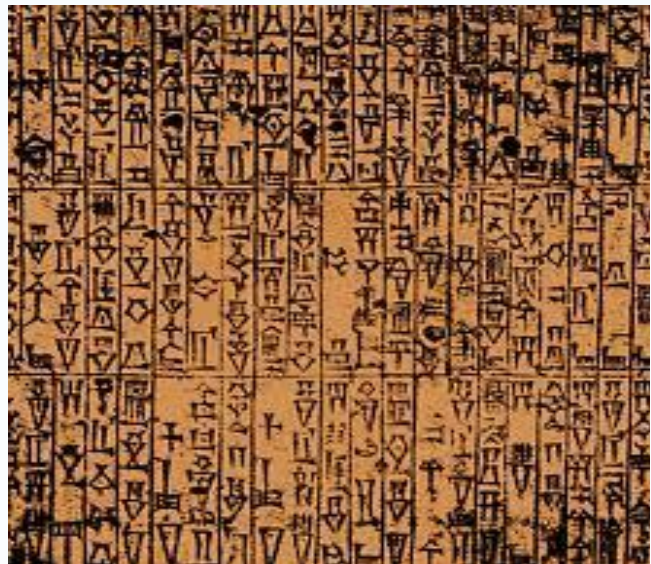


Fig. 1: Hammurabi's Code

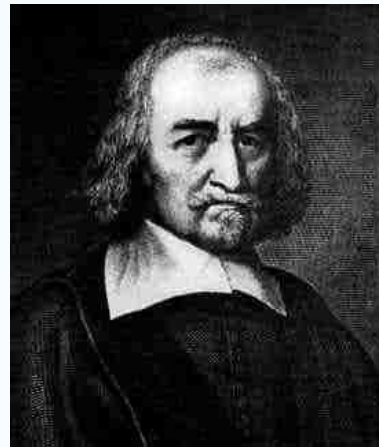
Read and Respond

There are certain questions that need to be answered:

- Q. Do you think that the basic concepts of Human Rights were embedded in all religious teaching? Can you elaborate with certain examples from the religious texts?
- Q. The real concept of human rights was never incorporated in the older civilization and in the European Enlightenments era. Do you agree with the statement?
- Q. Can we say that in the countries like India morality has become one of the tools of governance? Give your view points.

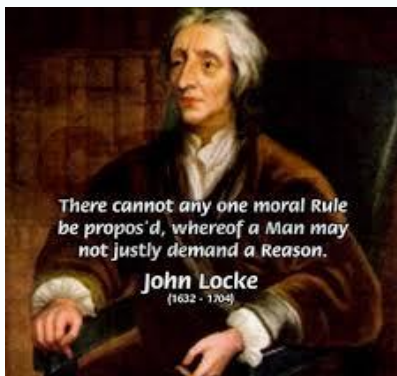
1.2 The Enlightenment Thinkers

Thomas Hobbes: Hobbes *“Leviathan”* published in England in 1651 could be considered as the first work on the power sharing between the king and the natural rights of the individual. The leviathan world did not advocate the formal restraint of power. It allowed few natural rights to the individuals who have willingly delegated rest of their natural rights to the state or the ruler. Therefore, Leviathan gave the concept of *“social contract”* i.e.:- the power to govern comes from the consent of the governed.



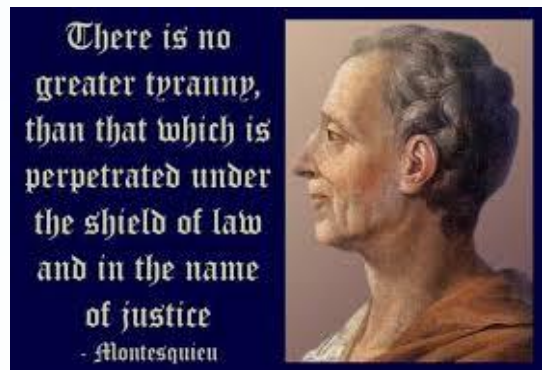
Thomas Hobbes

John Locke: Locke advocated the natural liberty and equality of human beings. According to Locke- *“Man was born free with a title to perfect freedom, and an uncontrolled enjoyment of all the rights and privileges of the law of*



nature, equally with any other man, or number of men in the world.; he had 'by nature a power to preserve his property, that is, his life, liberty and estates against the injuries and attempts of other men'. Thus Locke was considered as a strong advocate of natural rights. His influence could be seen in the US Declaration of independence in 1776. Locke's contribution can also be observed when we recollect the preamble of the universal Declaration of Human Rights which says, *“Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.”*

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Baron de Montesquieu: Montesquieu's contribution in “*the Enlightenment*” remains a landmark contribution on the power structures of government and separation of power. He advanced the theory of social contract. He emphasized on the idea that everyone was born with certain natural rights which no authority could take away. This was the fundamental base of the French Declaration of the Rights.

Read and Respond

The '*social contract theory*' of Thomas Hobbes and John Locke. Relate it with natural rights and their contribution to the human rights concept of 19th century.

1.3 The Modern Concept of Human Rights

In the contemporary world, human rights are directly traced to the Universal Declaration of Human Rights (UDHR) and subsequent treatise they are mainly thought of as being political in nature as these rights are directed to the states and it is the state's responsibility to ensure its effectiveness. Therefore, human rights are primarily not interpersonal rights.

According to Professor *Alan Gewirth*, Human rights arise not from the general good, but from the conditions of human agency and the logical structure of reasons. He argued that, since all normal human beings engage in a self-conscious action in a way where his/her existence is successfully protected. This leads to the universal acceptance of certain rights which may be termed as human rights.

James Griffin saw human rights as the rights given in consistence with the prevailing senses with the objective of universal good and functioning of human autonomy.

According to *John Rawls*, all moral beliefs are inferential and such beliefs would be broadly accepted only when it is in reflective equilibrium. It means that society functions as a system of cooperation which is rational, reasonable, and free and equal - which rearranges itself to conceptualize social justice and in a way to assure human rights.

Read and Reflect

Famous contemporary thinkers of human rights advocate the central usage of the concepts like social justice and equity. The attempt is to bring human rights from the domain of abstract philosophy to the world of reality and under the purview of existing law.

1.4 Categorization of Human Rights

Human rights are not generic and abstract but they are numerous and at the same time specific. To simplify the understanding, human rights may be categorized broadly into following types:

1. Security rights that are protected against criminal offences like murder, rape etc.
2. Rights against the abuse of legal system like false imprisonment, excessive punishments etc.
3. Freedom rights as in the areas of thought speech and expression.

4. Rights of political participation like forming an assembly, protest etc.
5. Equality rights that ensure non discrimination by the state and its agency.
6. Social rights that ensure basic healthcare, education and livelihood.
7. Minority rights which protect people from genocide, ethnic cleansing etc.

Most of the above rights have been incorporated in the UDHR and other treaties. However, the idea of human rights has moral base and no country can shy away to bring these rights in their domestic laws if they claim to be a responsible nation irrespective of international laws and treaties.

Read and Respond

Can you relate these categories of human rights in the constitution of India? Give some examples.

1.5 Human Rights before the First World War

Prior to early 1930s there was no real concept of human rights in the International law. There was a usual practice that human rights are state subject and international agencies or other nations have no right to interfere in the sovereignty of the country. Thus in case of human rights violation by the state and non-state actors on the individual, there was no proper mechanism to address such issues on the international front. This made the concept of human rights non-existent and abstract in the law book of many governments. However two notable achievements could be mentioned:



Fig. 2

1. **Abolition of slave trade:** The nineteenth century saw a clear progress in the abolition of slave trade. Slavery was made illegal in England in 1771 after Somersett's case. By beginning of nineteenth century England and USA had already passed the legislation to outlaw slave trade from their territory. The Proclamation of 1863 by the President of United States Abraham Lincoln against slavery is the best and famous example of the ongoing attempt to ban slavery at that time. It is to be noted countries like Cuba and Brazil still practiced slavery in their domestic land. Later on the anti slavery that International Law was established in 1839, which could be considered as one of the oldest non-government organizations that existed.



Fig. 3

1.5.1 Casualties of War

1. This period also saw the concern for the individual casualties due to war or people

who were prisoners of war. Many countries agreed to safeguard the minimum rights of the individual or foreigners imprisoned in a war or likewise. Therefore, a seed of humanitarian law was sown during this time, which further resulted in the establishment of the International committee of the Red Cross by *Henry Dunant*.

1.6 The League of Nations and its approach towards human rights issue

After the First World War the League of Nations came into existence. It was then considered as the principal international organization responsible for maintaining peace and harmony in the world. Later, in 1919, Covenant on the League of nation was concluded whose preamble was read as follows: ***“The main aim of the organization is to promote international cooperation and achieve international peace and security.”***

The League of Nations passed International Conventions on the Abolition of Slavery and the Slave trade in 1926. With this, slave trade was legally banned in the international forum and the league promoted bilateral tie ups to make anti-slavery laws effective for the member countries. The league also faced issues regarding minority rights. It was because, after the First World War, the political map of Europe was redrawn and many ethnic groups became minority in their new country. There was gross violation of their rights which was a great concern for the League of Nations. However, this individual violation of the human rights could not be addressed by the organization due to lack of clarity on the status of human rights violation and international arrangements. According to one of the celebrated political analyst Laard, he concluded that- ***“The assumptions of national sovereignty were almost accepted everywhere. Regulations regarding the restrictions on the freedom of press, of speech and expression, imprisonment for political offences, persecution on racial grounds, all these things were deplored and denounced. But it was widely accepted that they were ultimately the sole responsibility of the legal government of the territory in question; and not therefore matters over which foreign individuals or governments could take action legitimately.”***



Fig. 4

1.7 Human Rights after the Second World War

Human rights and democracy were the moral bases on which the Second World War was fought. As early as in 1941, the President of United States spoke of the ‘four essential human freedoms’. Those were- (freedom of speech and expression, freedom of every person to worship God in his own way, freedom from want and freedom from fear). Thus, it was clear that the world was aligning itself with the safeguarding of human rights protection globally. The atrocities of Nazis were still fresh and it was a concerted effort of the world community to join together and ensure that the future generations do not have to witness the onslaught and barbarous act like in World Wars. What Hitler and its Nazis had done to the Jews was declared as a crime against humanity.

Therefore, the main focus of the immediate post war crisis was to frame International human rights laws and attempt started to create legal instruments which could protect human rights of

the individual against the state or non-state actors. One of such endeavor could be about the framing of the UN Charter in San Francisco in 1945. At the conference, the member delegates agreed to an International Bill of Rights however it did not materialise.

Read and Reflect

The two World Wars had shaken even the most politically aggressive countries of the world, particularly in Europe. This resulted in the self-realization by nations of the injustice done to mankind in the struggle for political conquest.

The Preamble of UN Charter

“The peoples of United Nations were determined to save succeeding generations from the scourge of war, which twice in our life time has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights , in the dignity and worth of the human person , in the equal rights of men and women and of nations large and small.....”

With the framing of the United Nations, human rights officially got its recognition and today it has become the subject of concern for the international community.

Human Rights under the UN charter: In the *San Francisco Conference*, it was agreed by the delegates that there should be an International Bill of Human rights however, due to lack of proper coordination, it was not given a shape, However, detailed provisions of human rights was infused in the UN Charter which played a vital role in the future making of covenants and agencies of human rights. Some of the provisions were as follows:

- ▶ The Preamble of the Charter laid down. We the people of *United Nations* determined to reaffirm faith in the fundamental human rights, in the dignity and worth of the human person in the equal rights of men and women and of nations large and small....
- ▶ Para 3 of Article 1 of the Charter provided that the achievement of international co-operation in promoting and encouraging respect for human rights and for freedoms for all, irrespective of caste, religion, sex and race would be equal for *United Nations*.
- ▶ The General Assembly and the Economic and Social Council were given the task for the realization of promotion of human rights and fundamental freedoms.
- ▶ Article 55 provided that the United Nations shall promote the following provisions:-



Fig. 5

- higher standard of living
 - full employment
 - economic and social progress
 - international cultural and educational cooperation
 - international social health and related problems
- ▶ Article 56 provided that members of the United Nations pledged themselves to cooperate in achieving the set forth target in Article 55.
 - ▶ Article 62 authorizes Economic and Social Council (ECOSOC) to make proper recommendations for the promotion of human rights and fundamental freedom for all.

It is to be noted that, the Charter is a global Constitution without a bill of rights and it has not defined human rights anywhere in the charter. There is also no provision in the charter to make the provisions as legal binding for the member states.

1.8 Limitation of United Nation with respect to human rights

Even though there was mention of human rights in the main body of the charter, it did not any way made the member state commit to the cause. With certain provisions as in Article 55(c) read with Article 56 simple advised member states to follow and practice human rights as prescribed in Article 55. Therefore without any legal obligations to the implementation of human rights it proved weak and ineffective when it was brought in the practice. Nevertheless, the political thinkers believed that in spite of such limitations United Nation could be applauded to initiate the human rights concern effectively on international platform.



Fig. 6

1.9 United Nation Commission on Human Rights (UNCHR)

Under Article 68 of the UN Charter empowers, Economic and Social Council (ECOSOC) to constitute a commission for the promotion of human rights and such other commissions as may be required for the performance of its functions. Accordingly a commission on human rights was approved by the general assembly on February 12, 1946.

The commission was composed of 18 members who were elected by ECOSOC. Each state member selected its own representatives. The Commission as determined by its terms of reference, was directed to recommend and report on the following terms.

1. on International Bill of Rights.
2. the protection on minorities.
3. discrimination on grounds on religion, sex, race and language.
4. international declaration and conventions on civil liberties, status on women, freedom of expression.

The commission has set up intensive machinery and procedures to monitor compliance by states with regard to international human rights law and investigate any kind of human rights violation. It is done mainly by sending a fact finding missions to countries.

1.10 Human Rights Council (HRC)

In one of the World Summit in New York 2005 number of global issues were discussed and it was finally decided that UN Human Rights Council should be formed which shall be responsible for the protection of human rights and fundamental freedoms for all without any kind of distinction. On March 2006, the General Assembly adopted a resolution to establish Human Rights Council based in Geneva. It shall function as subsidiary organ of the General Assembly.



Fig. 7

1.10.1 Composition of HRC

- ▶ It consists of 47 members who are elected directly and individually by secret ballot by the majority of the member of the General Assembly.
- ▶ The membership is based on equitable geographical distribution. 13 member from African Group, 13 from Asian Group, 6 from Eastern European Group and 7 from Western European group and other states.
- ▶ Membership is open to all members of General Assembly.
- ▶ The member of the Council shall be elected for 3 years and cannot be immediately re-elected.
- ▶ The council has the right to suspend any member on charges of systematic violation of human rights. Such suspension requires consent of 2/3rd members present and voting.

The HRC shall perform the following functions:

- ▶ It shall promote human rights education learning as well as advisory services, technical assistance and capacity building.
- ▶ It shall act as a forum for discussions on all kinds of human rights issues.
- ▶ It shall promote the full implementations of human rights obligations undertaken by states as per the guidelines laid down by international laws on human rights.
- ▶ It shall promote to the General Assembly for the further development of International law in the field of human rights.
- ▶ It shall work in close cooperation with, towards the prevention of human rights violations and respond promptly to the human rights emergencies.
- ▶ It shall work closely with the government, institutions, regional organizations and national human rights commission for the spread of human rights awareness among the civil societies.
- ▶ The council shall submit an annual report to the General Assembly.

1.10.2 The United Nation High Commissioner for Human Rights

A proposal for the creation of the post of United Nations High Commissioner for Human Rights was approved by ECOSOC way back in 1967 however it was passed by general Assembly on December 20, 1993.



Fig. 8

- ▶ The name is approved by General Assembly and appointed by the Secretary General.
- ▶ The High Commissioner is appointed for four years.
- ▶ The High Commissioner shall serve as an Under-Secretary-General.
- ▶ Due regard is given on the geographical rotation while appointing High Commissioner.
- ▶ The person shall hold high moral standing and personal integrity possessing knowledge in human rights field.

The functions empowered to High Commissioner:

- ▶ To promote and protect the effective enjoyment by all for civil, political, and social rights including right to development.
- ▶ To provide advisory services, technical and financial assistance in the field of human rights to States that request them.
- ▶ To co-ordinate United Nations education and public information programmes in the field of human rights.
- ▶ To engage in dialogue with different state governments such that provisions of the human rights could be implemented effectively in the domestic law.
- ▶ To co-ordinate human rights promotion and protection activities through the United Nation System.
- ▶ To rationalize, adapt and strengthen the united nation machinery in the field of human rights.

The High Commissioner is required to report annually to the Commission on Human Rights and to the General Assembly through ECOSOC.

1.10.3 Office of the United Nations High Commissioner for Human Rights (OHCHR)

In the connection of with the programme for reform of the United Nations, the Office of the UN High Commissioner for Human Rights and the Centre for Human Rights were consolidated into a single office of the United Nations, i.e.: OHCHR on September 15, 1997. The office is based in Geneva which is headed by High Commissioner under the designation of Under- Secretary-General. S/he carries out the function specifically assigned by General Assembly. S/he also advises UN Secretary General on the issues of human rights. In the absence of High Commissioner, the Deputy High Commissioner takes care of the functioning of the organization.



Fig. 9

Functions of OHCHR

- ▶ The OHCHR promotes enjoyment of human rights to all world community by taking initiatives enshrined in the United Nation.
- ▶ The office promotes universal ratification and implementation of international standards of human rights law.
- ▶ It helps as coordinating agency in implementing the provisions of human rights under different conventions both domestically and internationally.
- ▶ The office assists in the development of new norms of human rights.
- ▶ It is the first office of implementation of any kind of human rights violation.
- ▶ It supports both logistically and administratively all human rights organs and treaties for smooth functioning.
- ▶ It promotes human rights infrastructure in all the member countries by advising, providing information and education and other technical assistance in the field of human rights.

Read and Reflect

On Nov 2000, a MoU was signed by the Chinese officials and the High commissioner for the development of curriculum on human rights education. The High Commissioner's office will also organize human rights workshops for government officials, judges, prosecutors, lawyers about sensitivity in dealing with human rights issues.

Human Rights Treaties and conventions:-There are atleast nine core treaties which have set up committees to monitor State's parties and follow the international compliance. These obligations are as follows.

1. Human Rights Committee (HRC) by the International Covenant on Civil and Political Rights. (ICCPR)
2. Committee on Economic, Social and Cultural Rights (CESCR) by the International Covenant on Civil and Political Rights (ICCPR)

3. Committee on the Elimination of Discrimination Against Women (CEDAW) by the Convention on All Forms of Discrimination Against Women.
4. Committee Against Torture (CAT) by the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment.
5. Committee on the Rights of Child (CRC) by the Convention on the Rights of the Child.
6. Committee on the Racial Discrimination (CRD) by the Convention on the Elimination of all Forms of Racial Discrimination.
7. Committee on the Rights of All Migrant Workers and Members of Their Families by the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
8. Committee on the Rights of Persons with Disabilities by the Convention on the Rights of the Person with Disabilities.
9. Committee on the Protection of All People from Enforced Disappearance.

The role of these committees is to constantly monitor the Member State's obligation through dialogue from the representative of each state on the basis of detailed report by them. This facilitates in framing the domestic laws in accordance with the international standard laid down in the conventions.

Some of the above mentioned conventions would be discussed in brief later in the other chapters.

1.11 Universal Declaration of Human Rights



Fig. 10

In 1946 UN Commission on Human Rights were constituted to frame the International Bill of Rights, It was an attempt to create human rights instrument globally and for all nations and people. The drafting committee consisting of eight countries were formed which was chaired by Eleanor Roosevelt. Following many sessions and meetings, on 10 December 1948, the UDHR (Universal Declaration on Human Rights) resolution was passed by 48 members of the UN General Assembly and the 8 communist countries abstained from voting. These 48 states had backed the Declaration as the '*common standard of achievement for all peoples and all nations.*' The Universal Declaration consisted of 30 Articles along with Preamble.

This was the first cornerstone in a process to evolve the International Bill of Rights. The International Bill of Rights includes UDHR, ICCPR and ICESCR. The three together forms International Bill of Rights out of which the UN General Assembly had to wait another two decades for the last two to become effective. The two International covenants were adopted in 1966 codifying the two sets of rights mentioned in the Universal Declaration. International

Covenant on Civil and Political Rights and International Covenants on social Economic and Cultural Rights came into force in 1976.

Read and Respond

The UDHR was passed in the General Assembly without any vote of dissent however there were eight countries who abstained from voting. These countries were mainly communist ideology in the likes of Poland, USSR etc,

1. Find out the names of those eight communist countries which abstained from voting
2. What would be the possible reasons for these countries to abstain from voting?

1.11.1 The Preamble of the Universal Declaration

The preamble of the Universal Declaration enshrined itself all the natural law by simply stating “*whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world*”. The Preamble proclaimed it as a common standard of achievement for all people and all nations such that the Declaration is constantly discussed and engaged through teaching and education of such rights and freedom mentioned in it. This would lead to effective recognition not only among the member states but also for the people of territories under their jurisdiction.

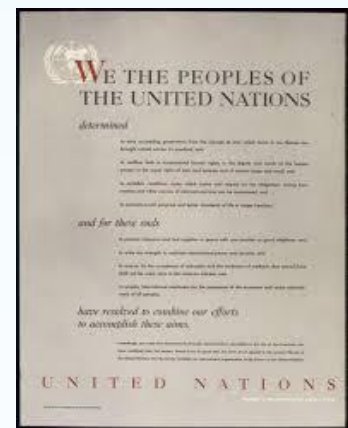


Fig. 11

Read and Respond

Eleanor Roosevelt in her famous speech in the General Assembly said that UDHR may well become the Magna Carta of all Mankind.

- Elaborate the above statement and how it holds true in the contemporary world?

1.11.2 Criticism of the Universal Declaration

Along with the US representative, all the delegates stressed on the points that the Declaration is not a treaty and therefore, it does not hold in itself any legal obligations. The General Assembly was quick to applaud UDHR but at the same time, quick to deny that it is in any form a legal instrument. Therefore, it remained in existence as a moral authority. The result was inevitable, till 1954, there was no progress on the UDHR as to how it should be brought as a legal force and the conception of International Bill of Rights seemed to be very bleak and impossible.

Read and Respond

Do you think that the non legal status of UDHR made it ineffective after its Declaration? Was it a possibility for UDHR to hold a legal status from the beginning? What would have been the likely difficulties in such a scenario?

1.12 India and the Universal Declaration

The Indian Constitution was adopted on 26th January 1950. It clearly reflected the heavy influence of the Universal Declaration and rightly so, as India was one of the signatories to the UDHR. The Preamble of the Constitution has inherited the concept of '*dignity of individual*' from the Preamble of Universal Declaration. Further Part III; Fundamental Rights and Part IV; Directive Principle greatly resembles the Articles of Universal Declaration. Such resemblance could be well understood through the given chart.

Name of the Rights	Universal Declaration	Indian Constitution
Equality before law	Article 7	Article 14
Prohibition of Discrimination	Article 7	Article 15(1)
Equality of opportunity	Article 21 (1)	Article 16 (1)
Freedom of speech and expression	Article 19	Article 19 (1) (a)
Freedom of peaceful assembly	Article 20 (1)	Article 19 (1) (b)
Right to form associations and union	Article 23(4)	Article 19 (1) (c)
Freedom of movement within the border	Article 13 (1)	Article 19 (1) (d)
Protection in respect of conviction for offences	Article 11 (2)	Article 20 (1)
Protection of life and personal liberty	Article 3	Article 21
Protection from slavery and forced labour	Article 4	Article 23
Freedom of conscience and religion	Article 18	Article 25 (1)
Remedy for enforcement of rights	Article 8	Article 32

Therefore from the above chart, it can be inferred that the Indian Constitution was greatly influenced by the Universal Declaration which provided a model to the world for the human rights guarantees. Further, the Supreme Court of India in the case of *Keshwananda Bharti vs State of Kerala* observed that "*The Universal Declaration may not be legally binding instrument but India being a signatory member has understood the nature and the importance of human rights at the time Constitution was adopted.*"

1.13 Articles under Universal Declaration of Human Rights

The Universal Declaration contains 30 Articles. Out of these 30 Articles, 1 to 21 Articles deals with civil and political rights while 22 to 30 deals with economic and social rights. These articles further forms the benchmark for the foundation of two major covenants ICCPR and ICESCR. These Articles are as follows:

Civil and Political Rights

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it is independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3: Everyone has the right to life, liberty and security of person.

Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6: Everyone has the right to recognition everywhere as a person before the law.

Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9: No one shall be subjected to arbitrary arrest, detention or exile.

Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and if any criminal charge against him.

Article 11: (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12: no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13:

(1) Everyone has the right to freedom of movement and residence within the borders of each state.

- (2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14:

- (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
- (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15:

- (1) Everyone has the right to a nationality.
- (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16:

- (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
- (2) Marriage shall be entered into only with the free and full consent of the intending spouses.
- (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17:

- (1) Everyone has the right to own property alone as well as in association with others.
- (2) No one shall be arbitrarily deprived of his property.

Article 18: Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20:

- (1) Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.

Article 21:

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right of equal access to public service in his country.

- (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

1.13.1 Economic Social and Cultural Rights

Article 22: Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his/her personality.

Article 23:

- (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24: Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25:

- (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26:

- (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
- (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
- (3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27:

- (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share the scientific advancement and its benefits
- (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28: Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29:

- (1) Everyone has duties to the community in which alone, the free and full development of his personality is possible.
- (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
- (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30: Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

It is to be noted that the Declaration does not permit a State to derogate from their obligations in public emergency which threatens the life of the nation. However, under Article 29, provided that the rights shall be provided to individuals subject to just requirements of morality, public order and general welfare in a democratic set up. Thus it means that rights provided in the Declaration are not absolute.

1.13.2 International Covenant on Civil and Political Rights (ICCPR)

In 1951, UN General Assembly started drafting the two covenants, i.e. ICCPR and ICESCR which were finally completed by the year 1954. After the series of re-drafting and interstate dialogues among the member countries of UN, the two covenants were open for signature on December 19, 1966. International Covenant on Civil and Political Rights came into force on March 23, 1976. As on September 2012, it had 167 signatory countries.

The Covenant on Civil and Political Rights consists of 53 Articles and is divided into six parts. The first three parts deal with various rights and freedom whereas the last three enumerate various implementation procedures for the effective realisation of these rights.

Part I (Articles 1) refers to the rights of peoples to self - determination states that all people have the right freely to determine their political status and freely pursue their economic, social and cultural development.

Part II stipulated rights and obligations of the State Parties to the Covenant. It makes the State to ensure that the necessary provisions are incorporated in the domestic laws as per the

Covenants. The State must ensure that there should be equality among men and women so that both can enjoy civil and political rights at par with each other.

Part III deals with substantive rights. Such rights are mentioned from Article 6 to Article 27. These rights are not absolute and are subject to limitations.

Part IV, V and VI deals with the procedure for the implementation of the provisions of the covenants. For this a provision was made for Human Rights Committee for monitoring the Covenants among the delegate members.

Articles under ICCPR

PART-I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART-II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
 - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
 - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any

other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

- (c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.
3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.
2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. 1 This

- penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
 4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
 5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
 6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3. (a) No one shall be required to perform forced or compulsory labour, (o) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court. (c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:
 - i) Any work or service, not referred to in sub-paragraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
 - ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
 - iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
 - iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantee to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2.
 - (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.
 - (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled there from only in pursuance of a decision reached in accordance with law and shall, except where

compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (order public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
 - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) To be tried without undue delay;
 - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
 - (g) Not to be compelled to testify against himself or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.
2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, or to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subjected to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regard less of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning freedom of association and protection of the right to organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

PART IV

Article 28

1. There shall be established a Human Rights Committee (here after referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.
3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.
2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.
3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.
2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.
3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.
4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary-General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.
2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected

at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.
2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.
2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accord once with the relevant provisions of this part of the present Covenant.
3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:
 - (a) Twelve members shall constitute a quorum;
 - (b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:
 - (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;
 - (b) Thereafter whenever the Committee so requests.
2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.
3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.
4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.
5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to

the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

- (a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication, the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter.
- (b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State.
- (c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.
- (d) The Committee shall hold closed meetings when examining communications under this article.
- (e) Subject to the provisions of sub-paragraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant.
- (f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in sub-paragraph (b), to supply any relevant information.
- (g) The States Parties concerned, referred to in sub-paragraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing.
- (h) The Committee shall, within twelve months after the date of receipt of notice under sub-paragraph (6), submit a report:
 - i) If a solution within the terms of sub-paragraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
 - ii) If a solution within the terms of sub-paragraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the

written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General.

Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant.
(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.
2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not party to the present Covenant, or of a State Party which has not made a declaration under article 41.
3. The Commission shall elect its own Chairman and adopt its own rules of procedure.
4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.
5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.
6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned.
 - (a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter.
 - (b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached.
 - (c) If a solution within the terms of sub-paragraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned.
 - (d) If the Commission's report is submitted under sub-paragraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.
8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.
9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.
10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations through the Economic and Social Council, an annual report on its activities.

PART V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty- fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall

thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals.

States Parties favours such a conference; the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.
3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

- (a) Signatures, ratifications and accessions under article 48;
- (b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

IN FAITH WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Covenant, opened for signature at

New York, on the nineteenth day of December, one thousand nine hundred and sixty-six.

[Courtesy- www.refworld.org]

1.13.3 International Covenant on Economic Social and Cultural Rights (ICESCR)

The Covenant on Economic Social and Cultural Rights came into force on 3rd March 1976 and by 2012 it had 160 parties or signatory members. The ICESCR comprises of 31 Articles which are divided in the five parts.

PART I deals with the rights of the people of self determination.

PART II of the Covenant laid down the undertakings of the state parties to the Covenant. It says that each member state should take steps either individually or through international assistance

and co-operation for the maximum utilisation of economic resources available in the country with a view to fully realize social ,economic and cultural rights.

PART III of the Covenant deals with such rights which state even cannot derogate at the time of public emergency. Such rights are mentioned from Article 6 to Article 13.

PARTS IV and V deals with the implementation and monitoring mechanism laid down for the member states for the domestic implementation of the provisions mentioned in the Covenants.

Articles under ICESCR

PART I

Article 1

1. All people have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.
2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Article 8

1. The States Parties to the present Covenant undertake to ensure:
 - (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
 - (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.
2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to

hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.
2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:
 - (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
 - (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
 - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
 - (b) The improvement of all aspects of environmental and industrial hygiene;
 - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
 - (a) Primary education shall be compulsory and available free to all;
 - (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
 - (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
 - (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
 - (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.
3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.
4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:
 - (a) To take part in cultural life;
 - (b) To enjoy the benefits of scientific progress and its applications;
 - (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.
3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.
4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

PART IV

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.
2. (a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;
(b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts there from, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts there from, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.
2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.
3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities.

These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

Article 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

Article 22

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

Article 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

Article 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART V

Article 26

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a

- majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.
 3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 30

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

- (a) Signatures, ratifications and accessions under article 26;
- (b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

Article 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.

[Courtesy – <http://www.ohchr.org/>]

1.14 Relationship between the two Covenants

It is to be noted that at the time of adoption of Universal Declaration on Human Rights, there was no distinction between the sets of rights. It was only during the emergence of cold war that the two sets of rights got its identity through two different covenants, i.e.: ICCPR and ICESCR. During the cold war era, the communist group has reservation about the ICCPR and opined that it is state duty to protect these rights whereas the pro-democratic or the capitalist lobbied for the ICCPR and freedom from state regulation. Thus, in the Cold War era, the two groups got separated.

However, there is a close relationship between the two sets of rights. It is evident that the Preamble and Article 1.2 3 and 5 are virtually identical in both the covenants. Preamble of both the covenants derive that the rights are inherently drawn from the human dignity. Their relationship was recognised by the International Conference on Human Rights which was held in Teheran in 1968. It declared in the final proclamation that - *“Since human rights and fundamental freedoms are indivisible, the full realisation of civil and political rights without the enjoyment of social, economic and cultural rights are impossible.”*

Unit End Reflections

Comprehension Questions

1. What are the functions of HRC?
2. What are the achievements that changed the concept of human rights in the international Law?
3. How can human rights be categorized?
4. List Human Rights under the UN charter briefly?
5. List the core Human Rights Treaties and conventions. Also discuss their role.
6. Are you think that the rights provided under the Universal Declaration of Human Rights absolute? Give reasons for your view.
7. Discuss the relationship between two covenants - ICCPR and ICESCR.
8. How are Human Rights rooted in the philosophical laws of natural rights and natural law?
9. What are the limitations of United Nations with respect to Human Rights?
10. What is UNCHR? What were its recommendations?
11. Why was Human the Rights council formed? Describe its composition.
12. How do Universal Declaration of Human Rights and Indian Constitution resemble each other?

CASE STUDY 1

High Court of Delhi: *Suo Moto* Case on Homelessness

On 22 December, 2009, the Municipal Corporation of Delhi (MCD) pulled down a temporary tent shelter for the homeless at Rachna Golchakkar (Pusa Roundabout). Shortly thereafter, it was reported that two of the evicted persons died due to the cold. Following their deaths, on 4 January, 2010, a coalition of groups working on homelessness in Delhi - *Shahri Adhikar Manch: Begharon Ke Saath* (SAM: BKS - Urban Rights Forum: With the Homeless) organised a press conference on the human rights violations of the homeless. The story received extensive media coverage, and on 6 January, 2010, the former Chief Justice of the High Court of Delhi issued a notice, *suo moto*, to the MCD and Delhi Government, seeking an explanation for the demolition of the shelter.

After the High Court took up the matter [writ petition (civil) 29/2010], the Supreme Court Commissioners in the *Right to Food Case* [I.A. No. 94 in writ petition (civil) No. 196 of 2001], sent a letter to the apex court explaining the vulnerability of homeless citizens to the extreme cold, the increase in starvation-related deaths in winter and the negligence by the Government of Delhi. It proposed the setting up of 100 temporary shelters and 500 community kitchens in the city within a week, and 140 permanent shelters by the end of December 2010.

On 20 January, 2010, the Supreme Court ordered the Delhi government to provide both shelter and food to the city's homeless immediately. A week later, the apex court issued notices to all state governments in the country to provide information on the facilities for the homeless in their respective states. According to the order, all state governments are required to build at least one well-equipped

shelter per 100,000 populations. These shelters are supposed to be functional throughout the year on a 24-hour basis.

The High Court of Delhi has (from January 2010 to January 2012) passed 42 interim orders protecting the rights of Delhi's homeless. This has led to several improvements, including in the number of shelters for the homeless. The Supreme Court continues to monitor the status of services for the homeless across India. Both cases are ongoing and full implementation of the progressive orders of both courts by all state governments could lead to a significant amelioration in the condition of homelessness in the country.

Source: Housing and Land Rights Network

Q.1 "Homelessness should be considered as a violation of human rights". Why?

Q.2 Write a short note on the condition of homelessness in urban population.

Q.3 Collect the information about those government policies which may help in addressing the problem of homelessness in your state.

CASE STUDY 2

The POSCO Project, Odisha

In 2005 the Government of Odisha signed a Memorandum of Understanding (MoU) with the South Korean conglomerate Pohang Steel Company (POSCO), the world's third largest steel company, for setting up an export-oriented integrated steel plant, captive power plant, and marine port near Paradeep, Jagatsinghpur District, Odisha. It is supposedly the largest foreign direct investment in India with a total investment of USD 12 billion. The Government of Odisha will grant POSCO mining lease rights for 30 years that will ensure an adequate supply of 600 million tonnes of iron ore to POSCO. The costs of this operation for POSCO have been estimated at less than 1% of the prevailing global market price for iron ore.

4,000 acres of land have been earmarked in Ersama block of Jagatsinghpur District for the purpose of setting up the steel project and associated facilities. The land that would be required for the railway, road expansion and mines is not included in this. The project will have large-scale, irreversible socio-economic and environmental impacts. The proposed plant and port will adversely affect 11 villages and hamlets in three *Gram Panchayats* (village councils) in Jagatsinghpur District, namely - Dhinkia, Nuagaon and Gadakujang. As per the local leadership of the movement against POSCO, more than 4,000 families and a population of around 22,000 will be affected by the project. These include all those persons directly dependent on betel vine cultivation, pisciculture, cashew-nut cultivation and fishing in Jatadhari Muhana - the proposed site of the port. The MoU signed between the Odisha government and POSCO establishes that the government has agreed to transfer resources worth millions for almost no returns to the state exchequer.

For the last six years, villagers of Jagatsinghpur District have been consistently protesting against the establishment of the steel and captive power plant by POSCO. In response to the villagers' protests, the state government and administration, allegedly in collusion with POSCO sent police and paramilitary forces, which in some instances used excessive force against the resisters. The

government has engaged in grave violations of laws, democratic processes and human rights, which include use of state force and intimidation to quell dissent against the POSCO project, setting up of barricades to prevent free movement, attempts of forced evictions, and account of loss of land, housing and livelihood. !e numerous instances of human rights violations reported against the police include beatings, arrests, shootings, torture of suspected anti-POSCO protestors, "filing of false cases against them, as well as arbitrary arrest and detention of one of the leaders of the anti-POSCO movement.

To date 152 cases have been registered against the villagers by the government; 825 warrants have been issued, of which 340 are for women.

On 29 November, 2007 a peaceful protest of the anti-POSCO movement was attacked by private/corporate militia and at least 17 anti-POSCO protestors were injured. On 20 June a bomb was thrown on anti-POSCO villagers, killing a villager Dula Mandal, and severely injuring Dhruba Sahani. Similarly, more than 100 injuries occurred on 15 May, 2010, which were caused by blind-"ring of rubber bullets by police forces during a cruel dispersal of protesters, violating the constitutional right to dissent. Villagers refrain from moving out of the village, even for medical treatment, for fear of getting arrested. More recently, on 23 December, 2011,

Mr. Narayan Reddy was arrested, brought before a local court, and kept in custody for two weeks after he was falsely charged with murder and is reportedly being held in connection with violent incidents among peaceful anti-POSCO protestors and workers engaged by a contractor group. During the clashes one person died and 25 protesting villagers were seriously injured.²²

In July 2010, a four member committee was set up by the Ministry of Environment and Forests to investigate the status of implementation of existing legislation on environmental issues, including the *Forest Rights Act*,

2006 (FRA) and Coastal Regulation Zone (CRZ) rules by POSCO India Pvt. Ltd. Three of the four members of the committee observed that environmental laws were being violated and provisions of the FRA were not followed. !e report stated that there are grave violations of environmental laws and forests rights in addition to fabrication of evidence and suppression of information. !e committee recommended the prosecution of the responsible authorities who violated the environmental laws, as well as the provisions of FRA. On 2 May

2011, the Government of India instead of accepting these recommendations, gave a forest and environmental clearance to the POSCO project. On 30 March, 2012, the National Green Tribunal, however, suspended the environmental clearance accorded to POSCO.

Source: Housing and Land Rights Network

Q.1 How did the PASCO Project, in Odisha affect the environmental concerns of the state and violate the rights of villagers.

Q.2 Locate the areas in the map of India which have been severely affected by the process of industrialisation leading to the popular social and environment movements. Discuss any one of such movements.

CASE STUDY 3

Farmers' Suicides

Alleged to be the largest wave of recorded suicides in human history, the number of Indian farmers that have committed suicide in the last 16 years is estimated to be more than a quarter of a million. The most recent year for which official figures are available is 2009, according to which, 17,368 farmers committed suicide in that same year⁵⁶ - that amounts to one farmer suicide every 30 minutes. While these figures are striking on their own, they do not portray the actual number of farmer suicides taking place. For instance, women are often not included in farmer suicides statistics since most of them lack land titles - a common prerequisite for being recognised as a farmer in official statistics and programmes.

The magnitude of farmer suicides and the affected families is a result of India's longstanding agrarian crisis. Over the past two decades, economic reforms and the opening of agriculture to global markets have increased costs, reduced yields and profits, leading to great financial and emotional distress. Thus, smallholder farmers are often trapped in a cycle of debt, taking on more loans and buying more inputs, which in turn can lead to greater debt.

It has been said that *"indebtedness is the major and proximate cause of farmer suicides in India. Many farmers, ironically, take their lives by ingesting the very pesticide they went into debt to purchase"*.

The loan waiver scheme of the Union Budget 2008 saw a decrease of just 436 suicides (16,196) compared to 2007 (16,632 suicides)⁵⁹ based on the National Crime Records Bureau (NCRB) data. Thus, there were no major changes in the trend of suicides considering that there is still a very high number of suicides within a fast decreasing agrarian population.⁶⁰ The waiver was a welcome step, but it was flawed, as it dealt only with bank credit without addressing the moneylender debt. Consequently, only farmers with access to institutional credit could benefit, although many tenant and poor farmers continued to get loans primarily from moneylenders.

The scheme also excluded farmers holding more than five acres of land, while it made no distinction between dry and irrigated holdings.

The Big Five 'suicide belt' States - Maharashtra, Andhra Pradesh, Karnataka, Madhya Pradesh and Chhattisgarh

- account for two-thirds of all farmer suicides. Maharashtra remains the state with the highest number of such suicides for the last ten years and, as NCRB data suggests, for 2009 alone there were 2,872 farmer suicides in the state. There are firm allegations that the committees that have operated in Vidarbha's crisis districts have been dismissing most of the suicides as 'non-genuine' for the last four years.⁶⁴ Farmer suicides in Vidarbha region of

Maharashtra have been unique not only in terms of numbers but also for the reason that some of those committing suicides, have addressed suicide notes to the Prime Minister, the Chief Minister or the Finance Minister, speaking of debt, soaring cultivation costs, high cost of living, volatile prices and regressive policies that have impinged on thousands of farmers in the last decade.

Professor K. Nagaraj, who has conducted an in depth study on the farmers suicide phenomenon in India, claimed that the highest numbers of farmer suicides become visible in regions of high commercialisation of agriculture and very high peasant debt, with cash crop farmers appearing far

more vulnerable to suicide than those engaged in food crop production.

“The predatory commercialisation of the countryside; a massive decline in investment in agriculture; the withdrawal of bank credit at a time of soaring input prices; the crash in farm incomes combined with an explosion of cultivation costs; the shifting of millions from food crop to cash crop cultivation with all its risks; the corporate hijack of every major sector of agriculture including, and especially, seed; growing water stress and moves towards privatisation of that resource. The government was trying to beat the crisis – leaving in place all its causes – with a one-off waiver”. Behind the striking farmer suicide figures lie individual tragedies, the effects of which haunt the families of the deceased - families inherit the debt, children drop out of school to earn an income, while surviving family members may themselves commit suicide out of utter desperation.

Source-The Working Group on Human Rights in India and the UN (WGHR) report to OHCHR in November 2011

- Q.1 What measures are desirable in agriculture sector to address the concern of farmers' suicide?
- Q.2 Hold an opinion survey to conclude what steps should be taken to improve the condition of farmers in India.
- Q.3 Find some significant laws which are in place for the betterment of farmers in India.



Chapter 2: Human Rights in India

2.1 History of Human Rights in India

Human Rights are given to us by the virtue of birth, only because we are human. These are inseparable, inter-dependent and there is no discrimination in provision of these rights. Human rights are what every human being is entitled to; to allow them freedom to live a dignified, secure life of their choice. They include rights related to the safety of the person; the right to be free from coercion by other individuals, groups or governments; the right to social benefits, rest and leisure; and the right to a good basic education and many more such rights.

In Hindu philosophy, '*dharma*' is perhaps the closest word to '*human rights*'. Actually, *dharma* has many levels of meaning: law, norms of conduct, truth, right, ritual, justice, morality, destiny, religion, and more. '*Vasudhaiva Kutumbakam*' (the world is our family) is the underlying Hindu philosophy. In particular, this philosophy says that rights are not confined to humans alone; animals and plants also have such rights. (In fact, this is a part of the Jain philosophy too.)

Human rights are not rights only; they are also duties, and both are inter-dependent. Hindu philosophy looks at society and the universe as a whole. This differs from the Western view of the 'individual-based' notion of human rights. In fact, most Asian societies reject the individualistic approach to human rights. The Buddhist doctrine, for example, does not accept the concept of life based on the self or ego. It emphasises the holistic nature of things.

The rock edicts of Ashoka (in the 3rd century BC) proclaim the emperor's concern for the well being of the hill-dwellers. This line of thinking shows concern for the disadvantaged people, runs through all the ages and has produced bold advocates like Jyotiba Phule, Periyar and Ambedkar in the recent years.

India passed the Protection of Human Rights Act in 1993. In spite of this and the fact that India has signed the IBR, people are not treated as equals and there is a great divide in the society based on the caste, creed and religion. Almost every week you can read about incidents which can distinctly be linked with human rights violation making headlines in the newspapers.

What can a country, especially one that has signed the ICCPR or the ICESCR, do to make these universal rights available to its people? The economic rights, of course, would depend on the resources that a nation can muster. But what about the civil and political rights? According to the Vienna Declaration, poverty and backwardness cannot be offered as reasons for not subscribing to the universal nature of human rights.

It is hence important to know that being citizen of India what rights do we have according to Constitution of India and if trespassed what legal action can be taken against it. Human rights like education, health, food, work, information; clean



Fig.1: UN and Human Rights

environment, peace, etc are accessed by all even children, women, disadvantaged, minorities, bonded labourers and prisoners.

All laws and regulations laid by the constitution and law enforcing agencies are binding for the protection of rights and violation of these may lead to prosecution. But it is also true that internal and external destructive powers in the country- terrorism, civil movements, militancy etc. mock our legal system. It also aims to endanger the unity and integrity of India.

In the personal context several rights are granted to citizens. Civil and political rights are the entitlements relating to fair and equal treatment, to justice and political freedom and to general security, Some of them are

- ▶ Freedom from slavery and torture.
- ▶ The right to life, liberty and security of person.
- ▶ Equality before the law.
- ▶ Protection from arbitrary arrest, detention or exile.
- ▶ Right to a 'fair trial.
- ▶ Right to own property.
- ▶ Right to privacy, family, home and marriage.
- ▶ Right to nationality.
- ▶ Freedom of religion.
- ▶ Freedom of expression.

2.2 Human Rights for all

Case 1: Juna lives in a city slum. Her parents are daily wagers. She has a brother and the two of them study in a primary school close to their slum. Every time their parents require help in their work, Juna has to stay away from school. Is this fair to Juna?

Case 2: Now consider Salim's situation. He runs a newspaper in a small town. He is now in jail because he had the courage to publish the truth about the misdeeds of the local 'benefactor'. Has Salim been treated fairly?

Both these situations and many others from your own experience, may help you apprehend more clearly how useful local social norms and a state's laws are for ensuring human rights.

So, when these formal and informal enforcement agencies don't work, who can a person appeal to? Can a person then complain against his/her State about the violation of rights given in the Covenants?

The answer is 'yes' if

- ▶ the rights violated are of a civil or political kind,
- ▶ the country concerned has signed the ICCPR, and
- ▶ the victim concerned has exhausted all legal means of redressal inside the country without success.

A person can, then, complain to the Human Rights Committee (at Geneva) under the Optional Protocol to the ICCPR. The Committee takes up the matter with the country concerned. The country's official comments are also sent to the aggrieved person. The Committee reports annually to the UN General Assembly on its activities carried out under this Protocol. Regrettably, India has not signed this Optional Protocol (April, 1999) rendering a person unable to seek protection under this Protocol.

But then, what happens after the UN gets the report? Can it order a country to comply with its human rights obligations?

The UN can, and does, intervene in certain cases. For example, if a country does not allow its people the right of self-determination, political rights of participation for a democratic government, right to nationality, security of foreign nationals, etc., the UN does intervene.

The UN's intervention can be in the form of applying moral, legal or military pressure on the defaulting nation. But there are two major problems that come up.

Firstly, since the issues are so highly political, it can lead to extremely nasty and unfair treatment of different nations. This is because the intervening nations are the five holders of veto power in the Security Council. They are the only ones who are authorised to define grounds for military intervention.

Due to this factor, intervention is seen as an arbitrary action by a powerful state to increase its sphere of influence. Therefore, the pressure of the world public opinion, which used to be a great restraint on the states, has lost much of its strength.

Another problem in curtailing the violation of human rights is the acceptance of a right as such. Some people and nations argue that the rights are relative to one's own culture and tradition. What is considered human rights abuse in one view may be accepted by some nations as law.

In spite of the problems mentioned here some consensus has been achieved in the world about human rights. Of course, the struggle continues.

2.3 Conservation of Human Rights in the Indian Constitution

India is an ancient culture built on a blend of numerous beliefs and religions. It protects and nurtures the values and beliefs inherent in our composite culture. Being a secular country, religious tolerance is the reason for the national unity and integrity.

In India, there have been several social movements for improving the condition of women, minorities, children and other disadvantaged oppressed groups. However, the written laws pertaining to such changes are traceable only from the 19th century onwards. On the other hand, the struggles for rights of human beings in Western nations have been slowly transformed into written social norms over several centuries.

The Indian Constitution provides all citizens equal social, economic and political justice. The first Human Rights Commission in India was appointed in Madhya Pradesh on January 1992. Later on, Government of India made '*Human Rights Conservation Act*' in 1993.

To protect the fundamental rights of citizens, Supreme Court and High Court has issued the following writs.

- ▶ Habeas Corpus
- ▶ Mandamus
- ▶ Prohibition
- ▶ Certiorari
- ▶ Quo Warranto

2.4 The necessity of Human Rights

Human rights are necessary rights. These rights enhance human dignity and make the society prosperous and amicable. Communal harmony and brotherhood are strengthened by realization of human rights. Human rights pave way and clear hindrances that comes across our life, makes peace and brotherhood in society and also takes us to path of progress and development.

There is provision for Human Rights and awareness education for it, under the RTE Act, 2009 at various levels:

At Primary level: To provide for development level needs of children education, health, hygiene and safety. First aid and healthy environment are also vital.

At Middle level: There are a lot expectations and curiosity when a child enters middle classes. Development of mind and body in this stage requires teachers to give directions about virtue, work behaviour and reflection.

At Secondary and Senior Secondary levels: Students behaviour should conserve human rights; achieving these others rights will be automatically protected. Speeches and debates on problems related to human rights- war, abuse, kidnapping, theft, murder etc should be conducted. Students could become scouts and teach others about human rights, care and cooperation.

Human Rights at College level: To create an environment of awareness, so that every student aware of his/her right. Every student to be inculcated with generosity and high morals, not just think of self development but also for national and global development.

Violation of Human rights is a punishable offence. These rights are important for development and well being of human beings and every child right from the formative years must be made aware about them.

2.5 Methods and System for ensuring Human Rights

Indian Culture and traditions have always been a nutrient for human rights. Various evidence of which can be found in our Vedas, Puranas, Upnishads, and epics like the Ramayana, Mahabharata.

Indian history has always conformed to human rights. Since last few years Human Rights and awareness education is emphasized in India at all levels. Supreme Court of India in its historic decision passed RTE which provides primary education to every child till the age of 14, as a fundamental right.

Human Rights Commission 1993 immediately after its installation in the country made Human Rights Education its main purpose. Cooperation and support of NCERT is commendable at the school level, to include this subject as a part of the syllabus.

2.5.1 Human Rights and Women

Besides the fundamental rights enshrined in the constitution of our country there are specific intent in three ways for women.

1. The constitution aims to remove gender based discrimination.
2. The constitution lays emphasis on the fact that women are traditionally exploited and are made to feel inferior. To level up this injustice constitution allows Government to make special provisions for the well being of women.
3. The constitution expects the Government to improve situation of the weaker sections specially women by making special efforts.

According to fundamental Constitutional rights, the right to equality is very important in the context of rights of women in providing:

1. **Equal right to public services**
2. **Right to equal wages-** it should be minimum wages, what government has authorized.
3. **In addition to this, there are other provisions regarding the right to property:**
 - Right to Property for Hindu women.
 - Right to Property for Tribal women
 - Right to Property for Christian women
 - Right to property for Muslim women
 - Claim to Ancestral Property by widows, daughters, mother, paternal/maternal grandmother.

Recently, important amendments have been made in relation to the right to property. Hindu Family System Eradication Act 1976 and Indian Succession Act 1925 are two such amendments that were made in 1939 and 1991 respectively. Commendable step was taken by four states in which, unmarried girls in a joint family were given equal share in property:

- Andhra Pradesh (1968)
- Tamil Nadu (1986)
- Maharashtra (1994)
- Karnataka (1994)

2.5.2 Human Rights and Children

Education for children involved in child labour has been a major focus. With RTE Act 2009, now in place there has been considerable impetus in bringing these children back to school. There are clear provisions in this Act to support education for children belonging to various sections of the society. Some are as follows:

1. Compulsory education for all up to the age of 14
2. Night classes for children who have to work for their family's maintenance so that these children can seek education and seek better work opportunities or employment.

3. To educate child-labourers at national level. Self-help groups play an important role in this.
4. Special arrangement to educate children in Tribal and backward areas, mountainous regions, slums in the city.
5. Health and medical check-up of these children from time to time is mandatory. Only a healthy child can work and study simultaneously and become a good citizen.

2.5.3 Juvenile Delinquency

Juvenile Delinquency is a social problem observed all over the world. In India, according to the Child Act 1960, children less than 18 years of age are Juvenile Delinquents. Unemployment, unsuitable literature, lack of moral education, unrealistic storylines in films confuses children. These circumstances generally affect the rights of children and they become criminal. There are correctional institutions for Juvenile delinquents.

According to UDHR, article 40, UN has emphasized that childhood should be given special attention and help. These children have to be rehabilitated in society. The following points need to be focused on:

1. A child has the right to maintain his/her respect and dignity.
2. To take into account age and circumstances of the child.
3. The child should be provided with the opportunity to remerge in society.
4. A child is to be believed innocent till proven guilty.
5. A child has the right to all basic guarantees and legal or any other kind of help.
6. Every possibility should be explored to keep the child away from legal proceedings and institutions.



Fig. 2: Need to address the issue of child labour

JUVENILES IN NET (in 2012)				
	Delhi	Andhra Pradesh	Maharashtra	Bihar
Murder	100	68	183	65
Attempt to Murder	74	26	188	178
Rape	63	81	106	31
Kidnapping (total)	18	72	44	14
Kidnapping (girl)	10	59	33	91
Rubbery	13	22	100	14

Read and Respond

Various ruling parties at a period of time have proposed to reduce the age of Juvenile crime. The age is to be reduced to 16 years from 18 years, because it is argued that crime is planned and deliberate since juvenile delinquents are sure of eviction. File your views on it.

Human Rights and Juvenile Justice

Juvenile justice is an important subject related to human rights. A formidable number of children world over are living in difficult situation. Juvenile delinquents need a special mention in this context.

Juvenile Justice Act 1986 is an important legislation passed in this direction. It's an important Act with the primary motive to look into neglected delinquent's supervision, protection, development and rehabilitation.

The aim of this act is to protect juvenile delinquents from feeling inferior and having guilty conscience. It wants to give them the opportunity to improve and have a better life.

Read and Respond

If you are a slave, can you rightfully claim equal wages? Since all human beings are equal, they have a right to draw equal wages - men or women. What happens to your right to health, housing, clothing etc. if your right to food is denied (all of them are social and economic rights)? Often, arrest of trade union leaders and subjecting them to inhuman punishments in jail violate a series of human rights. Build an argument in favour of the trade unionist's human rights to show how the civil and social rights are inter-dependent.

2.6 Right to Information

Citizens of democratic country have right to develop the working method and work style so that the desired information of facts is available to them without much deliberation. Minus this democracy cannot be called a government for the people, of the people, by the people.

Article 19 of UDHR says that each person through any medium in the territory has right to information and transmits that information to others.

According to Article 19 (A), Right to Information has not been granted in any article of the constitution but under article 19 (a), Right to Independent expression and statement is indirectly mentioned. But it is to be noticed that under Article 24 schedule 2, Right to Information does not extend to the following:

1. Research and Analysis (RAW)
2. Intelligence Bureau (IB)

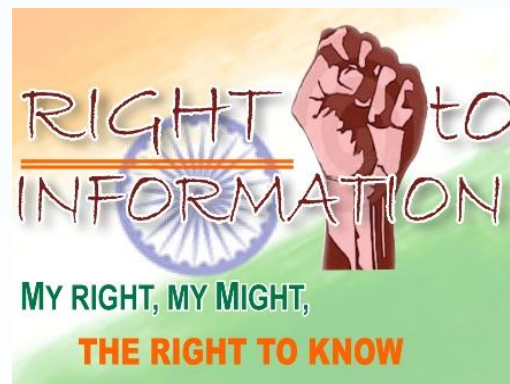


Fig. 3

3. Revenue Intelligence Directorate
4. Enforcement Directorate
5. Central Economic Intelligence Bureau
6. Border Security Force (BSF)
7. Central Reserve Police Force (CRPF)
8. Special Frontier Force
9. Aviation Research Centre
10. C.I.D

But the cases of corruption and human rights violation in these organizations can be accessed with permission from Central and State Commission. Central and State Information Commission has following duties and rights:

1. Register complaints, if a person has paid more tax than levied.
2. Register complaint, if answer not given in stipulated time.
3. Register complaint, if a person asked for information and did not get it.
4. Register complaint, if information is not reserved because public information officer is not appointed.
5. Register complaint, if information given is false and misleading.

According to Article 20 every Public Information Officer can be fined under following basis ₹ 250 per play. The fine can exceed up to ₹ 25,000.

1. Not to impart information without appropriate reason.
2. Not receiving application.
3. Deliberately giving false, incomplete and misleading information.
4. Delay imparting information because of bad.
5. To destroy the information asked for.
6. Obstructing information in some kind.

Read and Respond

1. Do you feel as a concerned citizen of India you have the right to know the security strategy of country? Despite tall claims by ruling governments are we safe?
2. If the response is delayed to RTI, then is it a punishable offence or another RTI?

2.7 Rights of the prisoners

In the Constitution of India, there is no specific mention of rights of prisoners. But there are certain rights given under Part-III of the Constitution, which are available to the prisoners too,

because a prisoner remains a 'person' in the prison. As a human, he/she is entitled to certain rights. A prisoner is deprived of his/her personal liberty, due to the conviction of a crime, and imprisonment is the most common method of punishment provided by all legal systems. It is the responsibility of judiciary to protect and recognize the rights of prisoners. They are to be protected from torture and solitary confinement.

Read and Reflect

Neelwati V/S State of Odhisha, her son, the petitioner, died in police custody. His body was found near railway station, he was hand cuffed. The petitioner in the writ petition was given compensation of ₹ 1,15,000 by Supreme Court against the state. The Court in its theory rendering judgment, states that, where Human Rights are attacked, a writ petition should be filed.

2.7.1 Some rights given to the prisoners

Life as a prisoner should be dignified and comfortable. The inefficiency of our law enforcement system prevents prisoners from enjoying these rights.

- ▶ Prisoners should not be subjected to any physical and mental torture or any kind of inhuman or degrading punishment so as not to disturb and imbalance his mental status as a human being.
- ▶ Should not be confined in a separate cell, except on medical grounds or if he/she has proven to be dangerous to other convicts.
- ▶ Must be presented with means to express his/her grievances faced within the jail.
- ▶ Has the right to meet his/her lawyer and family members at least twice a week.
- ▶ Mostly prisoners do not enjoy a right to free and qualified, medical attention. They don't have choice to have physician of their own except when his/her condition is critical. They have no opinion on treatment. It violates the right to health of a prisoner. Right to life does not include right to die without right to health. If the state does not provide right to health, it is promoting the right to die.

Read and Reflect

The investigation in India generally commences with the arrest of the accused. More than half of the prisoners of the country are detained without adequate evidence. As our judicial system is understaffed and sluggish, many innocent civilians are in miserable conditions in jail for many years.

- ▶ The Bombay high court in September 2009 asked Maharashtra Government to pay ₹ 1,00,000 as compensation to a 40 year old man who languished in prison for over 10 years for a crime he didn't commit.
- ▶ Another incident of Machal Lalang can be taken. He was arrested when he was 23 for causing grievous injuries. Later he was declared mentally unstable and not fit to stand trial. He was then sent for treatment. Doctors later wrote twice to jail authorities that he was successfully treated, but there was no response. He was finally released in 2005 after

intervention of an NGO working for human rights protection. He was 77 years old then. There was a lot criticism from HRC that a man languished in jail for 54 years, which is a life-span for some people.

- ▶ Kewalpati V/S State of Uttar Pradesh, the court ordered convict's wife to be compensated, whose husband was killed in prison by co-accused. In this case the court issued a writ that to take a person's life in jail or to deprive a person of Right to Live is adverse to the nature.

2.8 Right to a Clean Environment

Part 4 article 48 of Indian Constitution states that efforts must be made for promotion and conservation of environment, forest and wildlife. At the same time it is the fundamental duty of every citizen of India that he must conserve and protect the natural environment-forest, lakes and wildlife.

Environment is the space spread in which we live, eat, play, and work.

Some of its part is natural and some manmade. In India planting trees has always been considered important in different religious epics. 'One tree is equal to 100 children', has been our lifestyle.



Fig.4: Recycle Reduce and Reproduce

Environmental pollution in India

1. **Land Pollution:** It is the most arrant kind of degradation which destroys soil's fertility. Agricultural expansion, animal grazing, urbanization, industrialization and deforestation has degraded land beyond repair. Industrial effluents too are released before treatment. Undue advantage of weak implementation of laws related to this is perhaps the major cause of land degradation in India.



Fig.5: Automobile Contribute in Air pollution

2. **Air Pollution:** Life without air cannot be conceived. Delhi is the third most polluted city in the world, where Lakhs of industrial units are set up in residential areas. Supreme Court had ordered to remove these units. In Delhi everyday 22 lakhs cars, 200 tones carbon mono-oxide, 400 ton hydrochloride, 6 ton sulphurdioxide, and a daunting amount of poisonous chemical called TSP emitted in the air. The supreme Court had ordered to remove cars more that fifteen years old from roads in mega-cities like Delhi, Mumbai, Kolkata, Chennai; these cars cause more pollution.

3. **Noise Pollution:** It has been noticed that in big cities and industrial areas like Mumbai, Kanpur, Kolkata, noise pollution has increased from 85 to 115 decibels. According to World Health Organization, it should not exceed 45 decibels. Noise pollution is the major cause of deafness according to researches, *"Insomnia, palpitation, headache, tension, incoherent speech, blood pressure, tiredness, irritating behaviour are some of the problems can be caused by noise above 85 decibels."*

In addition to industrial units and vehicles- fireworks, processions, rallies speeches, constitution work, television, radio at high volume, sounds of animals, train and airplane sound and generator cause noise pollution.

4. **Radiation Pollution:** Alpha, gamma and beta rays and radiating materials have affected our biosphere. Water, air, soil, plant and wildlife and humans beings too have been affected. Cosmic rays released during natural and artificial radiation results in uranium 235, radium 224, carbon 14 etc. Atomic attack on two cities of Japan- Hiroshima and Nagasaki killed lakhs of people also devastated the vegetation, wildlife and humans for many years. TB in human bones, deformities in body, decay in organs, leukaemia, blindness, and infertility is some of these effects of radiations. A lot of peoples singhbhum districts of Jharkhand were affected by radiation released from UCIL. Radiation pollution effects human life adversely.



Fig. 6

5. **Water Pollution:** Water is as important as air for flora and fauna, life cannot be realized without this element. In India 90% of water is used for agriculture, 5% for industries and 3% for domestic purposes. In India most of rivers are polluted by industrial units. Ganga in Haridwar is clean but when it reaches West Bengal, the water is contaminated.

Similarly the Yamuna too has changed into a dirty canal. It is affecting not just the human beings, plants and animal life, but also marine life. Right to pure drinking water is accessed by all.

Some realities of Human Rights Violation

Human trafficking: India is rated as the top human trafficking destination. Each year 20,000-25,000 women and children trafficked from Bangladesh. Around 10,000 Nepal women are brought illegally to India annually. According to a news report Human trafficking is gradually shaping into an organised crime in India.

Right to food: Supreme Court in 2001 ordered all state government to provide cooked food to primary schools. Many poor families are unable to provide food twice a day to their children, resulting in the children unable to concentrate and lack the zeal and stamina to study. Right to food and Right to education are complementary to each other.

- ▶ According to World Health Organization, more than 27% of the world's undernourished population lives in India.
- ▶ Starvation deaths, or death from hunger or low calorie intake, the phenomenon is pervasive in a large number of states. The Centre is capable of coming out with recommendations on identifying clusters of the population going hungry and the protocol for addressing their immediate needs so as to prevent deaths.
- ▶ Rural India today is awash with pro-poor programmes - ICDS, Antyodaya, MGNREGA, Aanganwadi, ASHA, to name only a few - but there has been no significant transformation in calorie intake disparities. For instance, in the tribal pockets of one of the southern states recognised for its high human development indicators, an alarmingly high number of children die each year owing to diseases linked to malnourishment.

2.9 Realities related to realisation of human rights in India

A number of factors like inadequacies within the Constitution, and social-economic inequalities of caste, class, religion, gender etc, make a uniform application of human rights difficult. The State may also fail to provide the resources for the realisation of human rights and alternatively, it may, through its institutions become an aggressor and violator of rights. A number of scholars feel that the sections on Fundamental Rights and Directive Principles are inadequate in protecting human dignity.

2.9.1 Inadequacies of the Fundamental Rights and Directive Principles

Researchers emphasise that the rights are not reserved to the people and there is no preservation of the Fundamental Rights guaranteed to them. The Constitution itself provides the procedure for their amendment and over-riding by the State. Further, the Directive Principles are not addressed to the people. The people cannot, therefore, have the courts instruct the government to provide for humane conditions of life. While there is no explicit system of accountability for the State, the people are given some 'fundamental duties' which could be used by governments to abridge people's rights. Finally, the fact that certain rights such as rights to work, shelter and medical amenities are not made 'fundamental' denies the poor the essential conditions for a truly human existence.

2.9.2 Preventive Detention and Violation of Fundamental Rights

Coupled with this are the extraordinary powers of policing which the State acquires under the provision for preventive detention, ironically in Part III of the Constitution (Article 22). Preventive detention is intended as a 'protective' measure whereby the government can arrest a person to prevent the commission of a crime. Experiences with preventive detention laws like MISA, NSA, and TADA, have shown that frequently these laws are used to bypass normal legal procedures and detain innocent persons, often political rivals, without trial, for long periods.

2.9.3 Violation of the Rights of the Poor and the Disadvantaged

The rights of the poor and the disadvantaged, including women, children, disadvantaged, tribals and minorities are frequently violated. Despite the existence of Commissions to look after the

interests of specific groups, viz., the Minorities Commission, the National Commission for Women, etc, enacting laws like the Prevention of Atrocities Act, 1989 to stop offences against dalits and tribals, and Prevention of Immoral Traffic Act, the Sati Prevention Act, Dowry Prohibition Act etc, crimes against dalits and women have not ceased. Similarly, despite the Bonded Labour (Regulation and Abolition) Act, 1979 banning bonded labour, and various labour laws (Regulation of Industrial Disputes Act and the Trade Union Act), and provisions against child labour, the exploitation of these sections has not abated.

2.9.4 Human Rights and People's Struggles

This, however, does not mean that human rights belong to static category. The history of human rights as a system of equality against hierarchical and ascriptive inequalities has shown that rights are substantiated by people's struggles. Workers movements worldwide have contributed towards the regulation of work hours, amelioration of work conditions and welfare measures for industrial workers. Popular movements and struggles to redefine and enlarge the frontiers of human rights have also occurred in India. The women's movement, the dalit movement, the environmental movement, the peasant movement etc have had important bearings on the definition of the nature and substance of rights. The struggles by the people of Narmada valley against the building of Sardar Sarovar Dam, for example, highlights the right of the people of the valley to protest against their displacement and their refusal to give up their identity, history, culture and means of livelihood.

2.9.5 Role played by an Activist Judiciary

Over the years a number of governmental institutions have also contributed towards the broadening of the scope of citizens' rights. In recent years, the Supreme Court has positively responded to the Social Action Litigations (SALs) and Public Interest Litigations (PILs) brought by Non-Governmental Organisations (NGOs) or concerned individuals, adding new facets to human rights. From the late 1970s, for instance, the Supreme Court reversed the existing legal attitude towards prisoners to give them 'all rights enjoyed by free citizens except those which explicitly taken away by the terms of their sentence' (Charles Sobraj vs. Superintendent, Central Jail, Tihar, AIR, 1978, SC, 1514). It has similarly passed orders prohibiting child labour, sexual harassment of women and protection of environment.

2.9.6 Role of the National Commission for Women

The *National Commission for Women*, set up in 1992, under a Parliamentary Act (The National Commission for Women Act, 1990) has concerned itself with women's rights under the Constitution and issues of women's poor-economic conditions, health and violence against them. Over the years, the Commission has taken up cases of violence, torture and harassment of women including molestation, physical abuse, dowry related violence, custodial abuse and death, torture and harassment within family, in the workplace, and issues of women's legal and political rights for investigation and redemption.

2.9.7 National Human Rights Commission (NHRC)

The *National Human Rights Commission* is another institution established by an Act of Parliament (The National Human Rights Act, 1993) to inquire into violations of people's rights. Institutions

like the National commission for Women and National Human Rights Commission, when effectively used or pressurised by the people, could effectively contribute towards supplementing human rights.

Unit End Reflections

Comprehension Questions

1. India has always been a proponent of human rights since ancient times'. Justify
2. What are rights granted to citizens relating to fair and equal treatment relates to justice and political freedom?
3. How does the Indian Constitution protect human rights?
4. What are the provisions of Human rights Education at various levels?
5. How is the right to equality important in the context to rights of women?
6. What is the system for formal education of children involved in child labour?
7. What are the provisions for the rehabilitation of juveniles in society?
8. Right to information is an important human right but still, it does not extend to some areas. What are these areas?
9. What are the duties of the Central and State Information Commission in the case of corruption?
10. List the rights given to prisoners.
11. How does environmental pollution deprive people of their basic Human Right?
12. What is the status of Human Rights realisation in India?

CASE STUDY 1

Occupation of Schools by Security Forces

The occupation of schools and hostels for school children by security forces has been a widespread phenomenon in conflict areas. Attracted by their *pucca* (brick and cement) constructions, locations, and, electrical and sanitation facilities, armed forces tend to occupy the premises of schools and hostels for use as barracks, stores and bases, thereby precluding students from their right to education. Some school premises are partly occupied by security forces, endangering lives of teachers and students alike, apart from exposing students to abuse. In some cases, security forces have beaten-up school children for protesting their presence in schools.

For instance, school children at Rajkiya Middle School in Sheikhpura, Bihar, clashed with soldiers of Bihar Military Police (BMP), stationed at the west-wing of their school after the students objected to the occupation of their classrooms and the playing of raunchy songs during school time. The People's Union for Civil Liberties (PUCL) conducted a fact- finding on the incident. The fact-finding report revealed that the personnel regularly gamble, play lewd songs and pass indecent remarks on the girl students, apart from using the already inadequate facilities of the school, including toilets and the tube-well. On the day in question, one student, Ritesh Kumar, of class VI, got into an argument with the policemen while drinking water at the common tube-well. The BMP personnel took him to one of the classrooms and beat him up while bolting the door from inside. On hearing his cries, other students broke the door open and ransacked the rooms of the BMP personnel. The children also blocked the nearby highway in protest, while demanding the removal of the BMP personnel from their school.

Ritesh shared with the PUCL fact-finding team that 7 to 8 BMP personnel had beaten him with sticks and gun butts. They also found one of the girl's face still swollen and red from the police beating.

The Public Interest Litigation - *Nandini Sundar & Ors v State of Chhattisgarh* drew attention to the practice of occupation of schools, educational institutions and hostels by armed forces in Chhattisgarh. Recognising the problematic nature of this practice, the Supreme Court has repeatedly ordered vacation of such premises by the armed forces, in the said case. However, the process of vacation of the forces has been slow and inadequate.

Moreover, as per order dated 18 November 2011, the Supreme Court granted a period of two months to the state of Chhattisgarh for the security forces to completely vacate the said premises, after which the Court stated "*that no further extension should be prayed for*". However this has yet to be fully implemented by the State of Chhattisgarh.

The occupation of schools in Jharkhand was brought-up in *Shashi Bhusan Pathak v. State of Jharkhand* and others. On 21 November, 2008, the court ordered in the instant case, that all occupied schools be vacated by the second week of January 2009. It took over two years for this order to be partially honoured by the state. As per order dated 18 October 2011, the court accepted the contention of the state that majority of the schools had been vacated. Similarly, in *Paschim Medinipur Bhumij Kalyan Samiti v. State of West Bengal*, it had been alleged that 22 government-run schools were under occupation of security forces. The Calcutta High Court's order of vacating the schools in this case was complied with.

Source-The Working Group on Human Rights in India and the UN (WGHR) report to OHCHR in November 2011

Q.1 "Occupation of schools by security forces is a violation of human rights of child". Discuss.

CASE STUDY 2

Children go missing: Can it be linked to trafficking?

The *Times of India*, 4 June 2008 carried an extensive report on children going missing in and around the Delhi Uttar Pradesh border. The report hints at possibilities of trafficking of children for organs or begging with 46 children going missing from Ghaziabad in Uttar Pradesh between April and May 2008, within only a month.

An RTI application by Bachpan Bachao Andolan revealed that 60,000 children go missing in the country every year.

One of the expected outcomes spelt out by the Ministry in its Working Group Report submitted to the Planning

Commission of India for the XI Five Year Plan (2007-2012) is - "*Child Tracking system to be in place by the mid-term of the Eleventh Plan for missing children, child labour, children in institutions and alternate care systems and crimes against children to inform planning of services and prevention at district and state levels*".

Source: HAQ: Centre for Child Rights

Q.1 Which are some of the ways that may help to control the crime against children.



UNIT-2

ESSENTIAL RIGHTS FOR HUMAN DEVELOPMENT

Chapter 3: Equality of Opportunity

3.1 Right to Equality of Opportunity

Amongst the various basic rights, the Right to Equality of Opportunity is the mainspring, as it encompasses in itself various other rights, such as, justice, liberty, rights, property etc. Majority of the people in the world believe that the right to equality should be provided unconditionally to all individuals, as 'all men are created equal' i.e., all human beings have similar attributes. Almost all religious traditions maintain that all humans must be considered to be equal, as they are all God's children. Various thinkers and intellectuals have also surmised that all human beings are equal and hence deserve to enjoy the basic human rights, especially right to equality. The majority of theorists of the world share the same belief regarding human beings. According to them all human beings share the same characteristic and needs, hence entitling them to enjoy the right to equality.

Our Constitution also guarantees Right to equality to all individuals and prohibits any kind of discrimination on the basis of class, caste, creed, race or sex. But this declaration is not enough to change the reality of the situation. The prevalence of discriminatory social norms for e.g. the status and disposition of a family surely becomes the determinant of an individual's position and status. Thus, generally, the privileges received by an individual are determined by the status of his or her family in the society. Therefore it would not be wrong to conclude that, as long as the family system exists, it is impossible to establish equality.

This rationale goes on to explain the prevalence of equality in the majority of ancient societies where the family was the smallest and most important unit of society. For instance, inequality was highly prevalent in Classical Greece. According to Aristotle's description of ancient Greece, three social classes were present in Greece and there was a great imbalance in the treatment meted out between citizens and slaves as well as between men and women. Only citizens were entitled to participate in the state activities.

Similarly, the ancient Hindu Society was divided into four castes, namely Brahmins, Kshatryas, Vaishyas and Shudras. The lowest caste faced extensive discrimination and were treated abominably

Similarly, the feudalism prevalent in the medieval European society had established inequality in the society to a great degree. The Church also played an important part in cementing the inequality in society and it was observed that the clergy dominated the society. Thus, legal privileges were prominently based upon status and birth. Inequalities were prevalent in majority of the societies of the world during the ancient and medieval ages. In the pre-eighteenth century



Fig.1: Inequalities are prevalent majority of the societies

the majority of the societies all over the world believed that nature had made men and women unequal in every sense. Besides this the prevalence of inequalities was justified by the various societies and dominant people, on the basis of traditional values, superior race, age, sex culture, wealth, religion etc.

In spite of the various efforts taken for the removal of inequality, it still exists in the contemporary world. It naturally exists in capitalist societies where there is a huge gap amongst various sections of the society on account of unequal distribution of wealth. But, surprisingly, it is also found to be prevalent in socialist societies, where many measures have been taken for redistribution of wealth and regulation of the economic market. In fact, human societies all over the world are riddled with social inequality on the basis of power, status, class or gender.

3.2 Why is equality desirable?

Equality as a political and moral ideal has influenced human society since time immemorial. Every religion and faith of the world advocates equality of human beings, as they consider them to be the creation God. Therefore they advocate equality without any discrimination on the basis of caste, color, sex, race, creed, religion etc.

The doctrine of equality has been a great source of inspiration for several people. For instance on July 4, 1779 the American colonies made a declaration of their independence. It said, *"We hold these truths to be self-evident that all men are created equal, that they are endowed by their creator with certain inalienable rights, which among these are life, liberty and the pursuit of happiness"*. In the 1789 the National Assembly of France declared *"All human beings are born free and equal in dignity and rights."*

Similarly the Universal Declaration of Human Rights reiterates

"Inequality is most visible in the every area of part of the world. No part of the World is entirely free from social and economic inequalities. Even rich countries a face the problem of economic inequality and extreme poverty."

So just like liberty, the doctrine of equality too has been a source of great inspiration for the people. Since the French Revolution, equality has served as one of the leading ideals of the body politic. In this respect, it is at present probably the most

controversial of the great social ideals. There is controversy concerning the precise notion of equality, the relation of justice and equality (the principles of equality), the material requirements and measure of the ideal of equality (equality of what?), the extension of equality (equality among whom?), and its status within a comprehensive (liberal) theory of justice (the value of equality).

The term *"equality"* can be defined as *"parity"*, *"equivalent"*, *"fairness"*, *"impartiality"* or *"egalitarianism"*. However, when the word is used in relation to human beings it is not intended to connote that all people are identical or at par with each other. In a human rights milieu,



Fig. 2

"equality" means that we are all equal in one crucial manner: despite of our differences we all have innate value. We are all equally entitled to human rights simply because we are human, and the individuality that make us distinctive as well as diverse should not make us superior or inferior with regard to human rights. The rule of equality hence requires that every human being and the societies must value and accommodate human differences without any discrimination. Another word, which is complimentary to equality, is non-discrimination. It is not easy to think about "*non-discrimination*" without understanding the meaning of "*discrimination*" In simple words, discrimination means to "discriminate" to "*differentiate*" to "distinguish" or to "*treat differently*". Without the non- discriminative approach, you cannot have equality. So in other words we can say that occurrence of equality means failure of discrimination.

3.3 Human Nature and Inequality

Human beings are most often disposed to discriminate between their fellow beings on the basis of social as well as economic factors which eventually promote inequalities. Several evidences and incidents have highlighted the adverse effects of inequality. It is the need of hour to get rid of these age-old inequalities which are harmful to all members of a society. To do so we need to assess the mechanism that would assist in this process. During the process we also need to analyse the main factors responsible for the human tendency of fostering inequality such as conscious or unconscious bias, social norms, prejudice, reason, emotion, free will etc. We must also study whether it is possible to alter these instincts. Besides this the role of the inner conscience and social instinct (such as altruism, empathy, language and cooperation) in the development of inequality, also need to be scrutinized. We should also analyse their role in eradicating inequality and establishing equality.



Fig. 3

The greatest challenge of eradicating of inequality is in developing techniques for developing the positive conscience.

Inequality prevalent among human beings:

1. **Natural inequality:** Natural inequality is the inequality faced since birth. It is mostly based on -physical characteristics such as colour, sex, height, weight, etc. Natural differences do not create much injustice in the society. Whereas the social, religious, gender or racial differentiation create a great rift in society. Thus, they should be shunned.
2. **Social inequalities are socially created inequalities:** Social inequalities usually arise due to unequal distribution of wealth, power, prestige, status etc. in the



Fig.4: Social inequalities make rich, richer and poor, poorer

society. These kind of social inequalities are usually ascribed and widely accepted by the society. For instance the concept of caste system and “*untouchability*” evolved during the ancient Indian society. This differentiation, known as the caste system was recognized as well as subscribed by the society. In addition to this, the various societies have also witnessed discrimination on the basis of natural differentiation. For instance, the apartheid system for several years, which was based on the belief of racial superiority of whites over blacks.

Read and Respond

Find out in groups about the apartheid system. Bring in at least two points on each of the questions given below and share with your groups.

1. Which year did this prevail?
2. How were the people divided?
3. What were the rights that were denied to the non-whites?
4. What was the aim of apartheid?
5. What is the present situation?
6. Who was the last President under apartheid?
7. What role did Nelson Mandela play?

3.4 Causes of Rise in Inequalities

According to the law of nature all human beings are not the same. There are marked differences amongst human beings which in turn has generated various social groups in the society who discriminate amongst themselves. This leads to the development of inequality in the society.

However it has been observed that although some differences lead to the development of inequality, others do not. They linger on in the society as differences but people are in no way differentiated on that basis. For instance the caste system during the early Vedic period, was merely a difference as people could choose their occupation, according to which they were designated a class. But from the Later Vedic period the caste system became rigid, because people were designated castes according to their birth. They were soon immensely discriminated on this basis. This led to the development of inequality in the society.

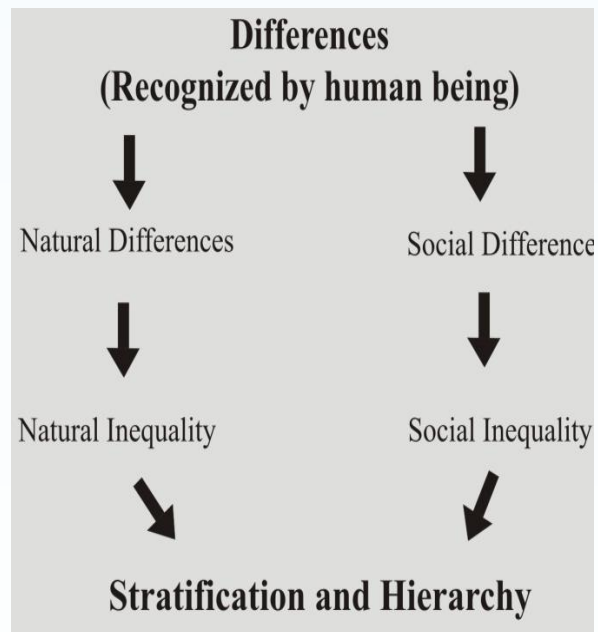


Fig. 5

In the contemporary world, social inequalities in society usually arise due to differences in gender, age, class, ethnicity structural factors, (such as geographical location, citizenship etc.) People are often discriminated on this basis with regard to access to a variety of rights in the society, such as facilities available, political representation, participation etc.

Various studies have revealed that socio-economic and political differences often lead to inequalities. For instance, high death rates and stress-related diseases often are a repercussion of unequal distribution of wealth in the sphere of income. Similarly, democratic institutions in a society may cease to work effectively due to deepening inequalities, which may lead to the development of social conflict as well as political instability and may in turn lead to the establishment of authoritarian regimes.

It has been observed that the patterns of inequality have changed in the post cold-war era, [after-1991] as Eastern European countries have shifted from state controlled to market-based economies. Therefore the nature of social inequalities in the post-socialist regime has undergone a variety of significant changes. For example, although it has been relatively stable in the western-most countries, it rose significantly in many countries emerging from the former Soviet Union. These countries have ever since witnessed extreme poverty. This clearly indicates that inequality amongst various social groups has been developing in different ways across the world.

Cold War (1945-1991) (Between USA and USSR)

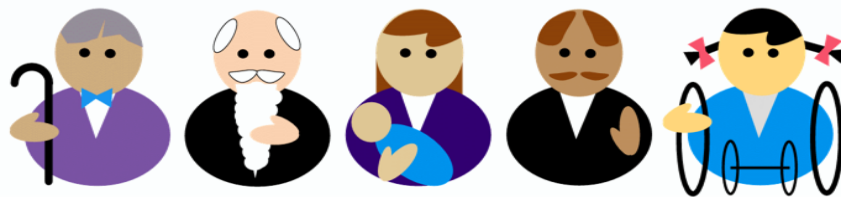
Eastern European Countries	Western European Countries
Poland, Romania, Hungary, Latvia etc.	England, France, Germany, Spain etc

3.5 Inequalities prevalent in India

Various surveys conducted from time to time have revealed the inequalities prevalent in India. For instance, the 2011 census discloses that “the literacy rate in the country was 74.04 percent, 82.14 for males and 65.46 for females. After more than 66 years of the adoption of the new constitution, the derived goal of social justice has not been achieved. The political participation of the backward classes and poor people is negligible. The representation of the Dalits (SC), STs in Central Government Class one Services is less than 15%. 5% class C or Class D services.”

Read and Respond

For your knowledge list out the class C and D services in central government.



What Does **Equality** Mean to You?

Fig. 6

3.6 What is Equality?

a) Equality is not sameness:

One of the misconceptions in our society is that of equating equality with sameness. This error has been used and continues to be used for extremely destructive and malicious behaviours, for example thinking that everyone is the same, believing the same thing, living the same life and consequently exterminating anyone who is in any way different. In fact equality was never meant to mean sameness and the use of the concept of equality to force sameness is a gross abuse of the concept of equality.

Equality means this: equal rights and equal opportunities. That is it. It doesn't mean that everyone has to live the same life. It does not mean that everyone has to dress the same way, think the same way, speak in the same tone of voice or believe the same errors. It doesn't mean that nobody can be distinct, or special, or eccentric, or different from people around them. To reiterate equality means: Equal rights, equal opportunities.

In its original intent, the idea of equality was meant to assist freedom by leveling the field for people who come from rougher backgrounds. But the idea of equality have been misused to sabotage freedom. If everyone is forced to be the same and live the same way, then there is no freedom. And misuse of the idea of equality to mean sameness has been used just to destroy freedom in the communities in which this misuse of the idea of equality is being practiced.

The same is the case for the idea of women's equality. Once again equality means: equal rights, equal opportunities, in this case between women and men. But many feminists have again misused the concept of equality to mean sameness. So they have been teaching women to act like the worst of men. In the process they have been training women to deny themselves the better qualities that are more natural to women than they are to men: qualities such as, tenderness, warmth, elegance and ability to produce as well as to nurture life. Instead, they have put women into a race to become the like men, denying them the right to qualities that are uniquely feminine or what is more natural to women than to men.

In both cases, we see a vast misunderstanding of the concept. Equality does not mean sameness; equality means equal rights. Equal rights benefit freedom, fairness, and human advancement by creating a fair field for everyone. Coercion towards sameness destroys personal freedom by forcing everyone to be the same, even as it undermines human advancement by destroying what is at the root of human advancement: namely innovation. Innovative minds think differently from what is thought around them thereby bringing in progress. The error of confusing equality with sameness is sabotage to human society and undermines its best quality. And if a country is to live up to its promise of freedom, then this error must be confronted and overcome in every place that it exists.

b) The Accepted View of Equality: Equality of Opportunity

Equality cannot be equated with uniformity. It is also not possible to establish absolute equality. Therefore equality means that "equals ought to be treated alike in the respect in which they are equal".

1. Formal Equality of Opportunity

Formal equality of opportunity means that every individual should be provided equal opportunity for achieving higher positions and posts. In fact, higher positions and posts should be concurred to deserving candidates on the basis of merit or fair competition.

The realization of equality of opportunity will not be achieved in a particular environment only but can be achieved in various social environments. For instance, there is a greater possibility of achievement of equality of opportunity in a democratic environment. But even in an autocratic society, it can be fulfilled if the post of autocrat is open to all individuals without any discrimination and the selection is fair, based on merit. In addition to this, the rule of the autocrat may be based on equality of all individuals in the social, economic and political areas. Similarly, a communist society may also provide equality of opportunity, if the head of the communist regime is the best qualified for the post of party membership.

Formal equality of opportunity can be established in a society which is free from guild restrictions and where there are no trade restrictions and open market policies. Similarly, it would also include equal opportunity to all individuals regarding higher positions and posts, on the basis of, merit or fair competition, in opposition to nepotism, where public offices are distributed to one's relatives and friends only.

Equality of opportunity can be concurred in a market economy only if the openings in business firms are publicized, so that any individual may apply for the job without any form of restriction or discrimination. In opposition to this Equality of opportunity is restricted in places where only current employees of a firm are eligible to apply to higher-level jobs. Similarly, equality of opportunity in a market setting means that loans would be provided to all individuals without any form of discrimination, on the basis of expected profit. It also requires that sale, purchase, sales of bonds, sales of shares and other economic activities, provide all firms and economic agents the same opportunities for gain. Moreover generally, equality of opportunity also requires that firms and individuals make transactions impartially for gain. In such a situation, participants in a market setting regard their competitors as potential partners for interaction. Therefore, market agents select those business partners who would help them to achieve their goals via interaction. The ideal of formal equality of opportunity is associated with public life and not private life. But there is a very thin line of difference between them and many issues related to them have often drawn up controversies. For instance issues related to inviting someone for dinner, choosing a marriage partner, formulating alliances etc., do not fall within the sphere of equality of opportunity. Although these kinds of personal issues may involve injustice and may be morally designated as wrong, these aspects of an individual's personal life cannot be included in equality of opportunity. Thus equality of opportunity influences the political, economic and civil aspects of a society but not every aspect of the lives of individuals.

Equality of opportunity sometimes tends to be limited in scope, as it is implemented within the political boundaries of various nation states. Although in such cases equality of

opportunity can be limited in scope, if required formal equality of opportunity could also be broadened in scope. Similarly although Equality of Opportunity regarding trade may be limited in scope, (as it is implemented within the political boundaries of various nation states) but its scope may be broadened by providing a global marketplace, in which all transactions conform to formal equality of opportunity applied world-wide.

2. Substantive Equality of Opportunity

The most essential requirement for proper implementation of Equality of Opportunity is to provide a genuine opportunity to become qualified. For instance in the earlier days, it was the nobles who were given the top positions in bureaucracy. It was much later that they were chosen through competitive examinations. Thus Equality of Opportunity was created.

To ensure the implementation provisions should be made for these competitive exams would be conducted all over the country, so all the bright educated persons are able to give these exams notwithstanding the fact that they are from villages or small towns or big cities. These kinds of provisions, along with the formal announcement of Equality of Opportunity would satisfy the complaints of all the sections of the society. It would lead to the development of a general feeling in the society that sufficient or good enough opportunities to become qualified were provided to all.

The development of equality of opportunity in this manner would greatly help in summing the “good enough” level of opportunity provisions. This could be deduced by comparing the costs and benefits of greater provision of opportunities, with the costs and benefits measured in terms of other conflicting values. The “good enough” level of provisions deduced, would actually give a description of those classes of the society, who do not enjoy equality of opportunity. For instance there could be a class of children, who in spite of being given the provision of scholarship, fail to enjoy equality of opportunity, because they are unable to compete with the wealthy children whose parents impart them private tuitions and training. Therefore, in such cases, the motive to achieve equality of opportunity is lost.

In order to reduce the advantages that may be conferred to some wealthy individuals, several methods have been suggested. One such ideal suggested by *John Rawl* is popularly known as “*equality of fair opportunity*”. *Equality of fair opportunity (EFO)* is a condition in which individuals possessing similar inborn talent and similar aim will witness prospects of success in competitions. They would receive benefits and posts according to their capability and performance in the competition. For instance, there are two individuals Vibha and Rakesh, who possess similar inborn talent and similar aim, but one belongs to a wealthy as well as educated family whereas the other to a poor and uneducated family. In spite of this if they have the same prospects of achieving their ambition of becoming a scientist at NASA, then this condition can be designated as Equality of fair opportunity (EFO). *(But it should be taken into account that the specification of EFO is quite different from the specification given by Rawl in 2001. In this Rawl has explained that socio-economic status of an individual does not have much impact on one's competitive prospects. He also explains the broader ideal of EFO).*

Thus EFO has led to the development of the idea of a classless society. For instance, if in a society prominent positions and posts are passed on to other members of the social group from generation to generation, then such a society does not qualify the condition of EFO.

Thus a society satisfies the condition of EFO if it is classless and no advantages are passed on generation by generation except genetic features and socialization that instils ambition. (Thus individuals gaining advantage by gifts and inheritance will be violating the ideal of EFO.) The concept of EFO completely eliminates the benefits (such as trainings, tuitions, better education, access to influential social network etc). In an EFO society, if certain individuals enjoy the benefits such as training and tuition to enhance their skill on account of wealthy parents, then the society will provide the same benefits (such as public education provisions) to children of non-wealthy parents. But on the other hand, an EFO society may have some parents, (wealthy or poor) who are strongly motivated to help their children in achieving certain aims. These concerned parents do not harm the society in any way and can by all means continue to help these children. Thus, a society fulfills the condition of being an EFO even if certain individuals are benefitted by the support of their parents, as long as their competitors with the same kind of talent and aim are also benefitted similarly by the society itself.

A society could provide more resources for the education of children belonging to poor and uneducated parents, because they take it for granted that the wealthy and educated parents will do it automatically for their children. Thus the enormous state expenditures on less privileged children by the state would be counterbalanced. Thus policies of these kinds would greatly help in establishing EFO. Thus there is no other greater ideal in a society than EFO, that needs to be achieved. This ideal is more precious than all the money in the world. Thus we should not keep waiting for reasonable and cost-effective measures for its realization as there is nothing as valuable as EFO.

Although it is unconvincing to eliminate the word 'ambition' from the EFO formula, it is extremely essential to analyze the issue of differential ambition. Thus if any two individuals have the same ambition but one works hard to achieve it and the other does not, and then the ideal of EFO will not be applicable on them. For instance, two individuals, Molly and Simmi have the same ambition in life, i.e. to gain admission into I.I.T. Molly does not work as hard as Simmi, to achieve the ambition. Due to this Simmi qualifies the I.I.T Entrance examination but Molly does not. In such kind of cases the ideal of EFO will not be applicable. The concept of EFO enfolds the division of responsibility between individual and society. This ideal upholds the ambition of an individual without placing any social responsibility on them.

3. The Scope of Equality of Opportunity

Another aspect needs to be analyzed to accomplish equality of opportunity. For the realization of equality of opportunity, one more aspect needs to be analyzed. For instance in the age of kings, there may have been a warrior society which must be fulfilling all the conditions of formal and substantive equality of opportunity, for recruitment to the warrior posts. In this society, only warriors were encouraged and rewarded. Thus, this warrior society cannot be designated as a society fulfilling equality of opportunity, as it does not

provide any scope and opportunity for people having other talents and for those who want to pursue a career in other fields.(such as dancers, singers, story-tellers, teachers, rock musicians, artists etc.)

This reveals that equality of opportunity can only be achieved when conditions of formal and substantive equality of opportunity are fulfilled for all kinds of human talents and careers. Thus a society that encourages develops and rewards a large variety of talents, is truly a society which fulfills equality of opportunity to the maximum.

Thus, there are two views regarding the wide-scope of equality of opportunity. The first view believes that equality of opportunity can be realized only when all human talents are encouraged, developed, and rewarded. On the other hand, there are others who believe that the wide scope of equality of opportunity can in no way be outlined but the processes that restrict the scope of opportunity should be abolished by all possible means.

4. Equality of Opportunity and Meritocracy

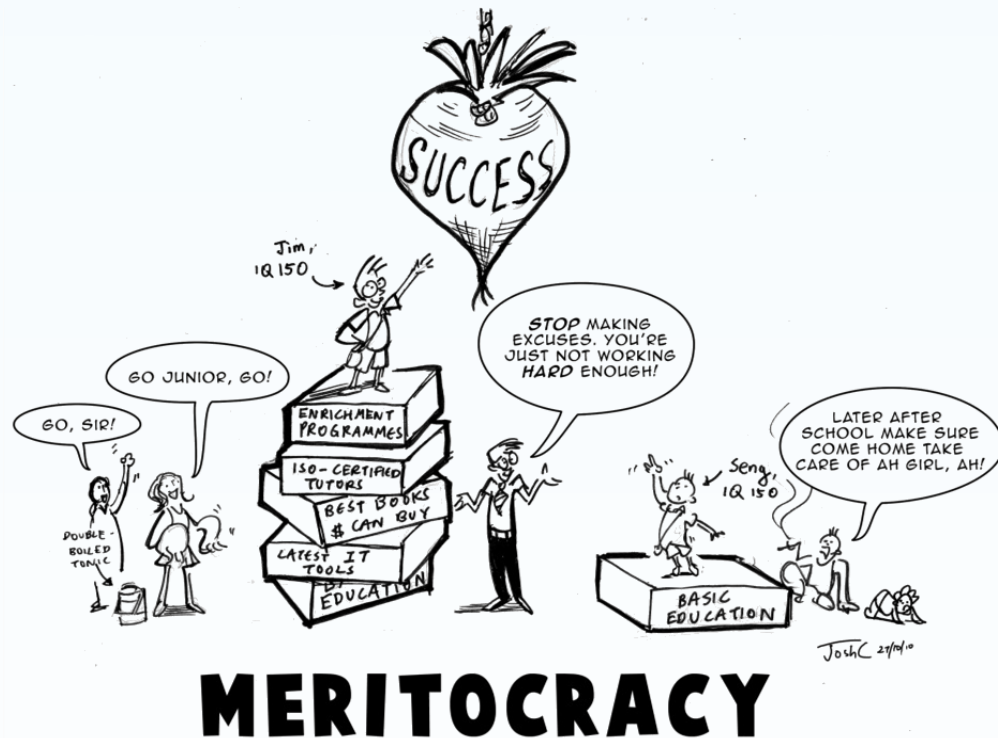


Fig. 7

Formal and substantive equality of opportunity ideals only define the methods by which every individual can rise to important positions and posts of the society. But these ideals do not define the extent of inequality that would be acceptable in a society and would also benefit the society. Equality of opportunity would defeat its purpose if all social positions would be equally important and desirable. This issue has been addressed by the adoption of the term “meritocracy” for the fulfillment of Equality of Opportunity. The term

"meritocracy" is often misinterpreted in term of fulfillment of the formal and substantive equality of opportunity ideals. But it actually refers to a broader ideal. Thus "meritocracy" actually refers to a society in which besides fulfilling the equality of opportunity, rewards and remuneration are received by those individuals who are capable and deserving. Thus according to it individuals should get what they deserve. Therefore, if this ideal is ignored, the less qualified and less capable may gain what more qualified or more capable candidates would deserve.

5. Justifications of Equality of Opportunity

The Equality of Opportunity norms prohibit discrimination on the basis of caste, creed, race, ethnicity, religion, colour, sex, etc. But it must be taken into account that certain kinds of discrimination cannot be designated as unlawful. For instance, a black person may be more comfortable in making black friends. This cannot be considered to be wrong morally. Therefore this cannot be considered as discrimination. But on the other hand, if a firm is bent on employing only whites, this would tend to limit the employment opportunities of the blacks. Thus this kind of discrimination should be considered as unlawful and laws and social customs should be framed to prohibit this kind of discrimination.

In order to fulfill formal and substantive equality of opportunity ideals, discrimination needs to be eradicated. These broader ideals should be valued morally and should be fulfilled unconditionally. They might also be justified on instrumental grounds. For instance the discrimination between men and women should be eradicated in order to fulfill equality of opportunity.

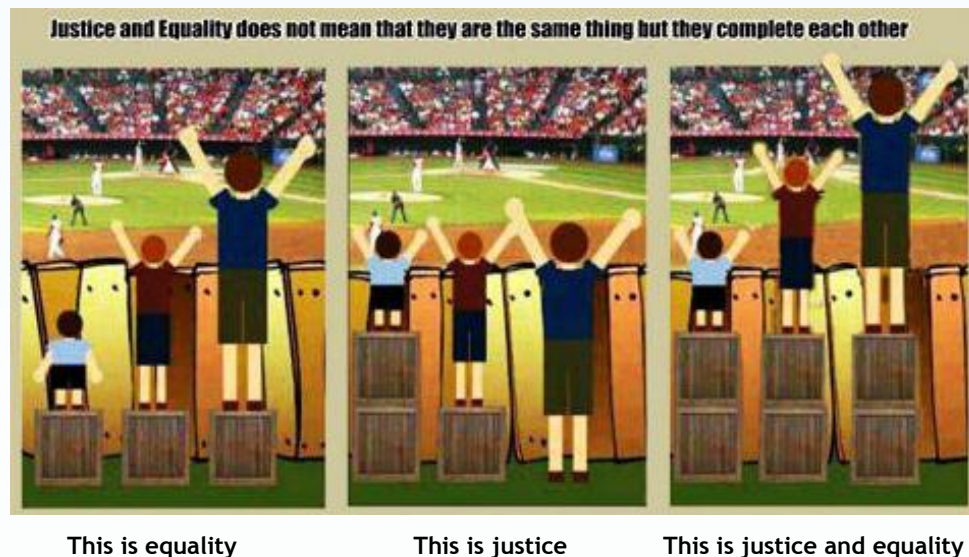


Fig. 8

Thus the ideals of equality of opportunity are not only desirable on the basis of morality but also for the establishment of effective governance. Therefore it should be considered

and designated as a deontological requirement or as a valuable state of affairs which must be promoted.

3.7 Human rights of persons with disabilities

"Disability is a human rights issue! I repeat: disability is a human rights issue."

Those of us who happen to have a disability are fed up being treated by the society and our fellow citizens as if we did not exist or as if we were aliens from outer space. We are human beings with equal value, claiming equal rights..."

Speech by Bengt Lindqvist, Special Rapporteur on Disability of the United Nations Commission for Social Development, at the nineteenth Congress of Rehabilitation International, Rio de Janeiro, 25 - 30 August 2000.



Fig. 9

3.7.1 Disability and Persons with Disabilities

The civil, political, social, economic and cultural rights being provided to normal people should also be provided to people suffering from disabilities. Disability "summarizes a great number of different functional limitations occurring in any population in any country of the world. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature." (Standard Rules on the Equalization of Opportunities for Persons with Disabilities). People suffering from disabilities are often referred to different phrases. For instance they are often called as "differently-able people". This term indicates that disability should not be perceived as an abnormality. The term "disabled people" is often misinterpreted in terms of the capability of the people, (i. e. the person is not capable enough) therefore the United Nations (UN) also uses the term "persons with disabilities".

According to the report of the UN, the world comprises of around 500 million people with disabilities. This number is multiplying day by day due to a number of reasons such as, destruction due to wars and natural calamities, unhygienic living conditions, or the lack of knowledge about prevention and treatment of disabilities.

The less developed countries comprise of the majority of differently able people, due to the absence of essential services such as health care. In addition to this disabilities often tend to rise in the poverty stricken areas. Besides this a disabled family member also tends to make the family poor as his/her presence places higher demands on the family's resources.

It has also been observed that the most vulnerable groups that face discrimination on account of disabilities are- women, children, elders, victims of torture, refugees, displaced persons and migrant workers. The greatest irony is that these highly discriminated groups face even greater discrimination on account of disabilities.

3.7.2 Development of Disability Policy

In the international arena, the UN has strived hard to develop important policies for the people with disabilities. The first step taken in the direction was by the formulation of the Declaration on the Rights of Mentally Retarded Persons (in 1971), which was based on the International Bill of Rights. This was preceded by many other important policies, which were not legally binding. The most important step for the formulation of policies for the people with disabilities was taken in the 1980s. It was in 1981 that for the first time the General Assembly declared the first International Year of Disabled People. This was preceded by the World Programme of Action Concerning Disabled Persons in 1982 and the Decade of Disabled Persons in 1983-1992. The 1990s were also very important years for the people with disabilities, as the UN held a large number of conferences to deal with the rights of the people with disabilities and to formulate protective instruments for them. Some of the conferences held during this time were: World Conference on Human Rights 1993, Fourth World Conference on Women 1995, Habitat II 1996 etc. In the contemporary world the ad hoc Committee on Disabilities is working towards the development of a convention for the protection of people with disabilities, on an international level. Besides this the European Union is also trying to generate awareness towards the rights of people with disabilities. To do so the year 2003 was declared as the European Year of People with Disabilities. Other important steps taken in this direction at the regional level are the observances of the Asian and Pacific Decade of Disabled Persons (1993-2002), the African Decade of Disabled People (2000-2009), and the Arab Decade of Disabled Persons (2003-2012).



Fig. 10

3.7.3 Rights for the people with disabilities at the State Level

People with disabilities often face a lot of differentiation in the society, on account of prejudice and ignorance. Besides this they often lack equal opportunities as compared to normal people, due to lack of facilities or essential services.

International human rights law assures the following rights to all people without any form of discrimination:

1. The right of equality before law
2. The right to non discrimination
3. The right to equal opportunity
4. The right to independent living
5. The right to full integration
6. The right to security

Therefore, the policies formulated for people with disabilities often inculcates the notion of "equalization of opportunities", which is based on the belief that the resources of the society must be available to every individual, including persons with disabilities. Therefore, people with disabilities should also be provided with an equal opportunity to participate in society.

3.8 International and Regional mechanisms for protection and Promotion of Rights of People with Disabilities

International legal policies are formulated as treaties. (which are also called agreements, conventions, or protocol) The terms of the treaty are binding to the states signing it. Once the terms of the treaty have been formulated, the text of a treaty is considered to be authoritative and definitive and is "signed" by the representatives of the countries who agree to abide by it. A state can demonstrate allegiance to the treaty in a number of ways, the most common method being through ratification or accession. Ratification of a treaty can only be done by the countries who participated in its negotiation and formulation. The rest of the states who wish to comply with it may accede to it at a later stage. The treaty becomes valid or comes into force only when a pre-determined number of states agree to it. (Through ratification or accession)

Sometimes a treaty may allow a state to make reservations to only one or more articles of the treaty through ratification or accession, which may also be withdrawn at any time. But sometimes these kinds of reservations are prohibited by the treaty. For the proper implementation of an international treaty it is extremely essential that the states acceding to it issue decrees, change existing laws or introduce new legislation, in order to give a ratified international treaty the force of a national law. However in some countries this is not required as international treaties take precedence over the national laws.

Thus the governments of the various states can be forced to provide the human rights to the people with disabilities, in order to fulfill the provisions of the binding treaties, that they may have ratified. They may also be driven to fulfill the provisions of the non-binding instruments, (such as declarations and resolutions) through negative public exposure. Thus many governments may consequently adapt these policies, in order to clean their international image and to become popular in the international arena.

In order to protect the rights of the people with disabilities and for providing equal opportunities to them, many international instruments have been formulated. Some of them are as follows:

United Nations and Rights of Disabled

Universal Declaration of Human Rights (1948) (article 3, 21, 23, 25) In 1948, the General Assembly of the United Nations adopted the Universal Declaration of Human Rights (UDHR), for the realization of the basic human rights. The human right standards adopted by the UDHR, are accepted by all the member states of the UN. The UDHR also formulated the basic human right standards for people with disabilities. The socio-economic rights of people with disabilities, are outlined in Article 25 (1) of the UDHR. These include the right to an adequate standard of living, such as right to food, clothing, housing, social services, medical facilities, and the right to security. (In condition of unemployment, disability, sickness, old age widowhood etc.) In addition to this, it also guarantees equality before the law and equal protection by the law to all individuals, without any form of differentiation, in Article 7.



Fig. 11

International Covenant on Civil and Political Rights (1966) (article 26)

This treaty outlines many rights for the people with disabilities. It also guarantees equality before the law and equal protection by the law, to all individuals, without any form of differentiation.

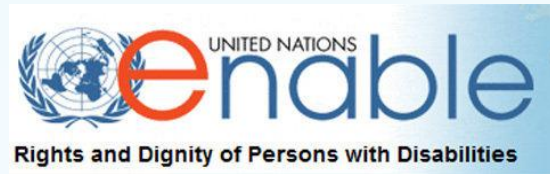


Fig. 12

International Covenant on Economic, Social and Cultural Rights (1966) (article 2)

It does not outline any provisions especially for the people with disabilities. But it indirectly includes the rights of the people with disabilities under "other status" in article 2 (2), which guarantees non-differentiation on the basis of race, colour, and "other status".

For the proper implementation of the rights outlined in the International Covenant on Economic Social and Cultural Rights, the Committee on Economic Social and Cultural Rights, (which is the monitoring body of the Covenant) outlined the following provisions:

Declaration on the Rights of Mentally Retarded Persons (1971)

The UN General Assembly adopted this declaration. In this it clearly outlines that: "The mentally retarded person has, to the maximum degree of feasibility, the same rights as other human beings."

Declaration on the Rights of Disabled Persons (1975)

The UN General Assembly adopted this declaration. This declaration was the first international document to outline the term "disability." Besides this it also inculcates many social, economic, civil and political rights.

Declaration on the Rights of Deaf-Blind Persons (1979)

Article 1 of this Declaration outlines that "...every deaf-blind person is entitled to enjoy the universal rights that are guaranteed to all people by the Universal Declaration of Human Rights and the rights provided for all disabled persons by the Declaration of the Rights of Disabled Persons."

Convention on the Elimination of Discrimination against Women (1979) (article 3)

The Convention on the Elimination of Discrimination Against Women, (CEDAW) does not outline any provisions especially for the people with disabilities, but it indirectly includes the rights of the women with disabilities by providing protection to the rights of all women, without any discrimination.(even on the basis of disability). The greatest irony is that women with disabilities face double discrimination on the basis of gender as well as their disability. In General Recommendation 18, the Committee on the Elimination of Discrimination Against Women,(which is the monitoring body of the CEDAW convention) women with disabilities have been named as the most vulnerable group, on account of double discrimination. It recommends the governments of the various states to keep formulating periodical reports regarding information on disabled women. It also recommends them to adopt special measures to ensure

that women with disabilities *"have equal access to education and employment, health services and social security, and to ensure that they can participate in all areas of social and cultural life."*

The greatest repercussion of the declaration of the International Year of Disabled Persons (1981), was that it led to the development of the World Programme of Action Concerning Disabled Persons (WPA) (1982). The WPA suggests strategies to the entire world for the prevention, rehabilitation and equalization of opportunities for the people with disabilities. It also ensures complete participation of people with disabilities in the social and national arena. The WPA recommends to resolve the issues regarding people with disabilities through a human rights perspective.

Convention (No.159) concerning Vocational Rehabilitation and Employment (Disabled Persons) (1983)

This convention was formulated by the International Labour Organization (ILO), which is an agency of the UN. It recommends the member states on an obligatory basis to "formulate, implement and periodically review a national policy on vocational rehabilitation and employment of disabled persons" (article 2). This treaty also ensures equal opportunity through: "positive measures aimed at effective equality of opportunity and treatment between disabled workers and other workers shall not be regarded as discriminating against other workers" (article 4).

Convention on the Rights of the Child (1989) (article 2, 6, 12, 23, 28)

This convention outlines disability as one of the most prominent reason for discrimination and thus prohibits it through article 2. Besides this the issues regarding the children with disabilities are directly addressed through article 23, which states that disabled children should be ensured a "full and decent life of dignity and participation in the community".

Principles for the Protection of Persons with Mental Illnesses and the Improvement of Mental Health Care (1991)

The UN General Assembly has outlined standards for the protection of people with mental disabilities, in this document. It clearly states that every individual should be ensured the right to the best available mental health care. Therefore people with mental disabilities should be treated with humanity and respect. It also ensures the right to protection from economic, sexual and other forms of exploitation, to people with mental disabilities. It clearly directs non-differentiation on the basis of mental illness. It also guarantees the right to exercise all civil and political rights to people with mental disabilities. It also ensures the well-being of the people with mental disabilities, through the fair hearing by an independent and impartial tribunal established by domestic law, in case an issue arises.

Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993)

In 1993 the General Assembly formulated the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, just after the adoption of the Decade of Disabled Persons. However these Standard Rules are not legally binding for the nations who are its members. In spite of this these Standard Rules are regarded as the most acceptable human right standards, regarding the

people with disabilities. Thus they can be regarded as the moral and political commitment on the part of the Governments of the member states, for the realization of equalization of opportunities for people with disabilities. It encompasses the issues regarding equal participation (such as causes of unequal participation, target areas of equal participation, measures for realization and monitoring of equal participation).

The *UN Special Rapporteur on Disability* assesses the implementation of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities from time to time. Bengt Lindqvist (Sweden), was appointed as the first Special Rapporteur in 1994. Thereafter his tenure was renewed twice, in 1997 and 2000. After the completion of his tenure, Sheikha Hessa Khalifa bin al-Thani (Qatar) was appointed as the Special Rapporteur, in 2003.

General Comment 5 (1994)

The Committee on Economic, Social and Cultural Rights issued the General Comment to eradicate differentiation regarding the people with disabilities in the areas of, equal rights for men and women ("double discrimination") (article 3 of the ICESCR), work (ICESCR articles 6-8), social security (article 9), protection of the family (article 10), adequate standard of living (article 11), right to physical and mental health (article 12), right to education (articles 13 and 14) and the right to take part in cultural life and enjoy the benefits of scientific progress (article 15).

Beijing Declaration on the Rights of People with Disabilities (2000)

At the World NGO Summit on Disability, the Beijing Declaration on the Rights of People with Disabilities was adopted in 2000, which calls for a higher standard of living, equal participation and the elimination of discriminatory attitudes and practices.

Convention on the Rights of Persons with Disabilities (2007)

This treaty on the Rights of the People with Disabilities came into force from May 2008.

African Union (Former Organization of African Unity, OAU)

African Charter on Human and Peoples' Rights (1981) (Article 18)

The African Charter clearly states in its article 18 (4), that disabled people are entitled to special measures of protection. It further reiterates in article 16 (1) that every individual is entitled 'to enjoy the best attainable state of physical and mental health'.

Council of Europe

The Council of Europe is a regional intergovernmental organization. Approximately 45 countries are members, including all the members of the European Union. It was specially formulated to defend human rights and parliamentary democracy. The Council of Europe has not directly worked for the realization of the rights of disabled people. Indirectly it has adopted two important treaties



Fig. 13

which contain the provisions for the protection of the rights of the people with disabilities. These are:

- ▶ *European Convention on the Protection of Human Rights and Fundamental Freedoms (1950) (article 5)*. This Convention in Article 5 clearly states that the right to liberty and security can be infringed upon grounds of mental disability: "No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: [...] the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants."
- ▶ *European Social Charter (1961) (article 15)*. This Charter is an extension of the Convention, which contains provisions for the protection of various social and economic rights, (such as the right to work, or the right to social security). This Charter is considered to be important because it was the first human rights treaty to explicitly mention disability.

Besides these treaties the Parliamentary Assembly of Council of Europe adopted several recommendations, containing policies regarding disabled people, which are as follows:

- ▶ *Recommendation (818) on the Situation of the Mentally Ill (1977)*. This recommendation encompasses provisions for protection of mentally ill people in the court. It also outlines the legislation rules regarding the punishment and detainment of mentally ill people.
- ▶ *Recommendation (1185) on Rehabilitation Policies for the Disabled (1992)*. This recommendation encompasses provisions for ensuring active participation and equal opportunities for disabled people in the society.
- ▶ *Recommendation No. R (92)6 on a Coherent Policy for the Rehabilitation of People with Disabilities (1992)*. This recommendation declares that the rights of disabled people are different from normal people. It further encourages complete integration and the right to independent living of the disabled people in the society.

European Union

The European Union has also made a number of efforts for the realization of the rights of the disabled people. To do so a number of resolutions were adopted by the European Union, which are as follows:

- ▶ *Resolution on the human rights of disabled people (1995)*. This resolution via the European Commission, (which is the executive branch of the European Union) has made provisions for the realization of equal opportunities for disabled people.
- ▶ *Resolution on the threats to the right to life of disabled persons (1996)* works to protect the right to life. It reiterates that the European Union is "opposed to the practice of the active killing by doctors of patients in a persistent vegetative state and disabled new-born children."



Fig. 14

- ▶ *Resolution on the Commission's communication on equality of opportunity for people with disabilities (1997)* accepts that "there are 37 million disabled people in the European Union who do not enjoy full civil and human rights". On this basis it recommends the member states to guarantee disability protection laws in their area of influence.

In addition to this the European Union adopted a (binding) general Framework Directive on equal treatment in employment, in December 2000. This directive prohibits direct and indirect differentiation on the basis of religion, age, sex and disability. This Directive is binding upon the member states. In fact the member states are bounded to implement the directive in their nation, before joining the EU.

3.9 National Protection and Service Agencies

In the contemporary world laws regarding anti-discrimination and full participation for people with disabilities have been implemented by several countries, such as the Australia, India, U K, USA etc.

For instance the Disability Discrimination Act was passed in Australia in 1992. This act aims "to eliminate, as far as possible, discrimination against persons on the ground of disability in the areas of: work, accommodation, education, access to premises, clubs and sport; and the provision of goods, facilities, services and land; and existing laws; and the administration of Commonwealth laws and programs; and to ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law as the rest of the community; and to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community."

In India also two laws have been passed to protect the rights of people with disabilities. These are the protection of the *Rehabilitation Council of India Bill* and the *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act*.

In UK, the Disability Discrimination Act was passed in 1995, for eradicating all kinds of discrimination, (such as in the areas of employment, access to goods, buying or renting land or property, access to facilities and services etc.) against people with disabilities.

In the United States the civil rights law regarding disabled people, is an amalgamation of numerous laws, especially the law concerning the *Americans with Disabilities Act (ADA)*. The ADA attempts to eliminate discrimination against people with disabilities in all areas such as employment, accommodation facilities, commercial facilities, transportation, telecommunications etc. In addition to the ADA the other national legislations regarding people with disabilities are the *Civil Rights of Institutionalized Persons Act*, the *Individuals with Disabilities Education Act* and the *Rehabilitation Act*.

The Indian Constitution ensures equality, freedom, justice and dignity of all individuals and completely mandates an inclusive society for all including the persons with disabilities. The Constitution in the schedule of subjects lays direct responsibility of the empowerment of the persons with disabilities on the State Governments.

Under the Union List (Article 253 - item No. 13), the Government of India passed "**The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995**",

in an attempt to guarantee equal opportunities for persons with disabilities and their full participation in nation-building. The Act extends to whole of India except the State of Jammu and Kashmir. The Government of Jammu & Kashmir has enacted “The Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1998”. As per the provisions of the Persons with Disabilities Act- 1995, persons having a minimum of 40% disability are eligible for entitlement of all benefits provided by the Government.

For the implementation of various provisions of the Act, Government of India adopts a multi-sectoral collaborative approach, involving all the Appropriate Governments i.e. Ministries of the Central Government, the State Governments/UTs, Central/State undertakings, local authorities and other appropriate authorities.

India adopted the National Policy for Persons with Disabilities in 2006. India signed the UN Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities on 30th March, 2007. India ratifies the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) on 1st October, 2008.

India is a signatory to the Declaration on the Full Participation and Equality of People with Disabilities in the Asia Pacific Region. India is also a signatory to the Biwako Millennium Framework for action towards an inclusive, barrier free and rights based society.

In India, at the central level, we have the Ministry of Social Justice & Empowerment(The Disability Division) which facilitates the empowerment of the persons with disabilities. However, the Constitution in the schedule of subjects lays direct responsibility of the empowerment of the persons with disabilities on the State Governments.

Hence, the Social Welfare Boards are established by the State Governments and Union Territories in India for the Persons with Disabilities. At village level, intermediary level and district level, Panchayati Raj Institutions have been assigned for the welfare of persons with disabilities. The non -governmental and voluntary organisations also play a very significant role in providing welfare and rehabilitation services to the persons with disabilities.

Many acts are framed by the Government to ensure equal opportunities for persons with disabilities and their full participation in the process of nation-building. The Government of India has enacted the following legislations for Empowering the Persons with Disabilities and notified Rules and Regulations under the provisions of the Acts and policies:

- (i) **The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act), 1995** - is one of the main Act which has the provisions for education, employment, creation of barrier free environment, social security etc. The Act extends to the whole of India except the State of Jammu and Kashmir. The Government of Jammu and Kashmir has enacted "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1998".

Presently, the Government is in the process of making some comprehensive amendments to this act to make it more inclusive as per the international conventions.

Some highlights of the proposed amendments are:

- ▶ Setting up of a national fund for persons with disabilities.

- ▶ Reorganization of the Central and State coordinating Committees as Advisory Boards with enhanced roles and responsibilities; creation of committees at district levels.
 - ▶ Inclusion of new disabilities such as autism and expanding the scope of existing disabilities.
 - ▶ Ensuring an inclusive environment in education, on roads and in built environment.
 - ▶ Emphasis on means to prevent disabilities.
 - ▶ Affirmative action, including reservation of dwelling units and shops for persons with disabilities.
- (ii) **Independent living as possible.**
- The All India Service (Special Disability Leave) Regulations, 1957
- These regulations may be called the All India Services (Special Disability Leave) Regulations, 1957.
- (iii) **Employees State Insurance Act, 1948**
- This Act was made to provide certain benefits to employees in case of sickness, maternity, employment injuries and to make provision for certain other matters in relation thereto. The Act also guarantees reasonably good medical care to workers and their immediate dependants.
- (iv) **The Mental Health Act, 1987**
- This Act deals with the laws and amendments of laws relating to the treatment and care of mentally ill persons to make better provision with respect to their property and affairs and for matters connected therewith or incidental thereto.
- (v) **Exemptions under Income Tax Act**
- Section 80U, as it existed till the assessment year 1989-90 and earlier years, provided for a deduction in the case of a resident individual assessee suffering from a permanent physical disability (including total blindness). By an amendment made by the Finance Act of 1989, with effect from assessment year 1990-91, the deduction was also made applicable to the assessee who are suffering from mental retardation to the extent specified in the rules made in this behalf by the Board.
- (vi) **Rehabilitation Council of India Act, 1992**
- This Act was formed for the purpose of developing the manpower for providing rehabilitation services, providing the constitution of the Rehabilitation Council of India for regulating the training of rehabilitation professionals and the maintenance of a Central Rehabilitation Register and for issues related with this.
- (vii) **National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability Act, 1999**
- This act grants the constitution of a national body for the welfare of the persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities. This Act has provisions

for legal guardianship of the four categories and creating the enabling environment for them as much

Extensive Infrastructure for Persons with Disability

The government has developed extensive infrastructure in order to deal effectively with the multi dimensional problems of persons with disability and for the development of manpower in different areas. The following seven national institutes have been setup in each major area of disability:

1. Pt. Deendayal Upadhyaya Institute for the Physically Handicapped, New Delhi
2. National Institute of Visually Handicapped, Dehradun
3. National Institute for the Orthopedically Handicapped, Kolkata
4. Ali Yavar Jung National Institute for the Hearing Handicapped, Mumbai
5. National Institute of Rehabilitation Training & Research, Cuttack
6. National Institute for the Mentally Handicapped, Secunderabad.
7. National Institute for Empowerment of Persons with Multiple Disabilities, Chennai

Rules and Regulations

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996

These Rules provide detail information about evaluation and assessment of various disabilities and indicate the authorities, which are to give the Disability Certificate. The Rules also provide the procedure for holding Central Coordination Committee and Central Executive Committee meetings, procedure of notification of vacancies to Special Employment Exchanges, procedure to be followed by Chief Commissioner for Persons with Disabilities in handling the complaints of persons with disabilities, salary and allowances of Chief Commissioner for Persons with Disabilities and the manner in which annual report is to be submitted by him.

Rehabilitation Council of India Regulations, 1997

The Regulations offers details about powers and duties of the Chairperson, powers of the Council and about the meetings of the General Council and Executive Committee, their quorum and proceedings etc.

Rehabilitation Council of India (Standards of Professional Conduct, Etiquette and Code of Ethics for Rehabilitation Professionals) Regulations, 1998

These Regulations set forth the standards of professional conduct, etiquette and code of ethics for rehabilitation professionals.

Rehabilitation Council of India (Conditions of Service of the Member-Secretary, the officers and other employees) Regulations, 1998

The Regulations give details for the conditions of service of the Member Secretary, other officers and employees of the Rehabilitation Council of India.

The National Trust Rules, 2000

These Rules provide information about the process of electing the Members of the Trust, Powers and Duties of its Chairperson and Chief Executive Officer etc.

The National Trust Regulations, 2001

The Regulations provides the brief description of service of the Chief Executive Officer, other officers and staff of the Trust. It also elaborates form and manner in which application is to be made for registration of NGOs and the procedure for appointment of guardians etc.

National Policy for Persons with Disabilities: Declared in February, 2006. It acknowledges that Individuals with Disabilities are valuable human resource for the nation and seeks to generate an environment that provides them equal opportunities, protection of their rights and full participation in society to the fullest of their abilities. The focus of the policy is on (a) Prevention of Disabilities and (b) Rehabilitation Measures.

- ▶ The most important features of the National Policy are:
 - i) Physical Rehabilitation, which includes early detection and intervention, counseling & medical interventions and provision of aids & appliances. It also includes the development of rehabilitation professionals.
 - ii) Educational Rehabilitation including vocational training and
 - iii) Economic Rehabilitation for a dignified life in society.
- ▶ The policy specifically brings the focus on issues regarding women and children with disabilities.
- ▶ Various Ministries/Departments in Central Government and the State Governments and UT Administrations are implementing the policy, which is a continuous process.

Read and Reflect**Press Information Bureau**

Government of India

Ministry of Social Justice & Empowerment

07-February-2014

Cabinet Approves Amendment to Rights of Persons with Disabilities Bill 2014

The Cabinet on 6 February, 2014 approved the proposal of the Department of Disability Affairs to incorporate amendments in the proposed Rights of the Persons with Disabilities Bill, 2014, which are:

- ▶ Definition of person with disability in terms of interaction with barriers also;
- ▶ High support needs person enabled to take independent and inform decision also;
- ▶ Definition of low vision will be notified by the Government;
- ▶ The appropriate Government to take necessary steps to ensure reasonable accommodation for persons with disabilities;

- ▶ No person with disability will be discriminated on grounds of disability;
- ▶ Appropriate Governments to ensure that the persons with disabilities enjoy legal capacity on an equal basis with others, in all aspects of life to have equal rights as any other person before law;
- ▶ Recognizing legal capacity of person with disability, limited guardianship would be the norm, to enable the person with disability to take joint decision with legal guardian;
- ▶ Person with disability would also have the right to appeal against the decision of appointment of legal guardian;
- ▶ Disability Certificate to be valid across the country;
- ▶ Educational institutions funded and recognized will have to provide inclusive education for children with disability;
- ▶ The appropriate Governments to constitute to expert committee with representation of persons with disabilities for identification of posts for Government employment for persons with disabilities;
- ▶ Review period shortened from 5 years to 3 years in case of identified posts;
- ▶ 5 per cent vacancies reserved for persons with disabilities will be computed against the total number of vacancies in the cadre strength;
- ▶ National Commission and State Commission will have power to exempt any post in an establishment from the purview of reservation for persons with disabilities;
- ▶ For greater coverage and employability in Government sector, the appropriate Governments to prescribe relaxation for upper age limit for employment of PwDs;
- ▶ National Commission shall formulate and enforce regulations.

Reservation to the Persons with in Disabilities posts in Government Establishments

Under Section 33 of the Persons with Disabilities Act, 1995 persons with disability gets reservation of not less than three per cent of vacancies in identified posts, by appropriate Governments, of which one per cent each is to be reserved for persons suffering from:

- i) blindness or low vision
- ii) hearing impairment
- iii) Locomotors disability or cerebral palsy

Read and Reflect

Lists of identified posts for the Persons with Disabilities - 2007

Ministry of Social Justice and Empowerment, in pursuance of the provisions of Section 32 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 {1 of 1996}, had constituted an Expert Committee on the 8th February, 2005 under the Chairmanship of Additional Secretary, Ministry of Social Justice and Empowerment.

The Expert Committee, with the help of three sub-committees, made an in-depth study of various jobs performed in Government offices, public sector undertakings and autonomous

bodies including Universities. The Sub-committees also reviewed jobs notified through notification No.16-25/99-NI.I dated the 31st May, 2001 and prepared a detailed list of Groups A,B, C and D posts which were identified suitable for persons with disabilities. The lists have since been published vide Notifications No. 16-70/2004-DDIII dated 18th January, 2007, 15th March, 2007 and 22nd March, 2007.

List of identified posts for the Persons with Disabilities - 2013

Ministry of Social Justice and Empowerment, in pursuance of the provisions of Section 32 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 {1 of 1996}, had constituted an Expert Committee on the 30th December, 2010 under the Chairmanship of Additional Secretary, Ministry of Social Justice and Empowerment.

The Expert Committee, with the help of three sub-committees, made an in-depth study of various jobs performed in Government of India Ministries/Departments, public sector undertakings and autonomous bodies including Universities. The Sub-committees also reviewed jobs notified in 2007 and prepared a detailed list of Groups A, B, C and D posts which were identified suitable for persons with disabilities. The Expert Committee submitted its report on 24th January, 2012. The Central Government accepted the report and the list of posts identified for Persons with Disabilities has been published vide Notification No.16-15/2010-DD-III dated 29th July 2013.

Lists of identified posts for the Persons with Disabilities - 2007

Ministry of Social Justice and Empowerment, in pursuance of the provisions of Section 32 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 {1 of 1996}, had constituted an Expert Committee on the 8th February, 2005 under the Chairmanship of Additional Secretary, Ministry of Social Justice and Empowerment.

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Read and Respond

- ▶ Do some research and find out the barriers/obstacles faced by People with Disabilities.
- ▶ What barriers have been removed or actions taken to ensure that this person with disability can enjoy equality of opportunity? What barriers have not been removed?
- ▶ Do you think people are aware about the provisions given to People with Disabilities? What can you do to spread the awareness among people?

3.10 Rights of Children with Special Needs

The human rights of all children, including those with disabilities, are well considered in The Convention on the Rights of the Child (CRC). The Convention includes a specific article recognizing and promoting the rights of children with disabilities. Besides the CRC, the

Convention on the Rights of Persons with Disabilities (CRPD), adopted by the United Nations General Assembly in December 2006, presents a powerful momentum to promote the human rights of all children with disabilities.

Human rights recognize the need for an inclusive society and it provides both the motivation and the groundwork for the movement towards inclusion for children with disabilities. Inclusion requires the acknowledgment of all children as an important part of society and the respect of all of their rights, regardless of age, sex, language, ethnicity, poverty or impairment. For creating an inclusive society, we need to remove the barriers that might prevent the enjoyment of these rights, and involves the construction of encouraging as well as protective surroundings.

According to the UNESCO Convention Against Discrimination in Education (1966), “ *For the purpose of this Convention the term ‘discrimination’ includes distinction, exclusion, limitation or preference which being based on race colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education*”.

The UN Educational, Scientific and Cultural Organization (UNESCO) states that the inclusion of children who would otherwise be perceived as ‘different’ requires “changing the attitudes and practices of individuals, organisations and associations so that they can fully and equally participate in and contribute to the life of their community and culture. An inclusive society is one in which difference is respected and valued, and where discrimination and prejudice are actively combated in policies and practices.” The World Conference on Special Needs Education (SEN), organized by UNESCO and held in Salamanca, Spain, in 1994, recommended that inclusive education should be the norm. This has now been reaffirmed in the new Convention on the Rights of Persons with Disabilities.

When we talk about inclusion in the milieu of education, it means the creation of barrier-free and child-focused learning environments. It also requires providing proper supports to make sure that all children get education in non-segregated/ discriminated environment. Article 29 of the Convention on the Rights of the Child (CRC), mentions that the child’s education be intended for the development of their personality, talents, mental and physical abilities to their fullest potential; to the preparation of the child for responsible life in a free society, in the spirit of understanding and tolerance.

The process of inclusion not only involves ‘special’ children, but all children. It provides children with disabilities the experience of growing up in a diverse atmosphere. When the education system falls short to provide for or accommodate this diverse and encouraging environment, difficulties arise, leading to marginalization and segregation of children with disabilities.

Here, it important to differentiate between inclusion and integration. In school setting, inclusion requires that schools adapt and provide the needed support to ensure that all children can work and learn together whereas integration means the placement of children with disabilities in regular schools without essentially making any adjustments to school organization or teaching methods. Inclusion is not the same as ‘integration’, which means bringing children with disabilities into a ‘normal’ mainstream or helping them to adapt to ‘normal’ standards rather than adapting and making modifications according to their requirements.

3.11 International principles and systems

For the past four decades, the United Nations has made a strong commitment to the human rights of persons with disabilities. This obligation has been mirrored in major human rights mechanisms as well as within specific measures and programmes, which started with the 1971 Declaration on the Rights of Persons with Mental Retardation and now has concluded in the 2006 Convention on the Rights of Persons with Disabilities. There are many other examples of disability-focused initiatives which include the International Decades of Disabled Persons, the 1993 Standard Rules on the Equalization of Opportunities for Persons with Disabilities and the 1994 Salamanca Statement and Framework for Action for Special Needs Education (SEN).

Human rights instruments and high-level decisions reinforcing the rights of persons with disabilities.

Complementing the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, the following texts and international events specifically address the rights of persons with disabilities:

1971 - Declaration on the Rights of Mentally Retarded Persons stipulates that a person with an intellectual impairment is accorded the same rights as any other person

1975 - Declaration on the Rights of Disabled Persons proclaims the equal civil and political rights of all disabled persons, and sets standards for equal treatment and access to services

1981 - International Year of Disabled Persons (United Nations)

1982 - World Programme of Action concerning Disabled Persons

1983–1992 - International Decade of Disabled Persons (United Nations)

1990 - World Declaration on Education for All and Framework for Action to Meet Basic Learning Needs adopted at the World Conference on Education for All, in Jomtien, Thailand in March 1990, promotes “equal access to education to every category of disabled persons as an integral part of the education system”

1993 - United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities provide detailed guidelines for policy development and implementation

1993–2002 - Asian and Pacific Decade of Disabled Persons

1994 - Salamanca Statement and the Framework for Action on Special Needs Education. Adopted by the UNESCO World Conference on Special Needs Education: Access and Quality, Salamanca, Spain, 7-10 June 1994. Adopted by 92 governments and over 25 international organizations, putting the principle of inclusion on the educational agenda worldwide

1995 - World Summit for Social Development, Copenhagen Declaration and Programme of Action calls upon governments to ensure equal educational opportunities at all levels for disabled children, youth and adults, in integrated settings

1998 - Human Rights of Persons with Disabilities, Commission on Human Rights Resolution 1998/31]

2000 - World Education Forum, Dakar, Statement and Framework for Action established attainable and affordable educational goals, including the goals of ensuring that by 2015 all children of primary age have better access to complete free schooling of an acceptable quality, that gender disparities in schooling are eliminated and that all aspects of educational quality are improved

2000 - Human Rights of Persons with Disabilities, Commission on Human Rights Resolution 2000/51

2001–2009 African Decade of Disabled Persons

2002- UN General Assembly Resolution on **The Rights of the Child**, following the World Summit on Children, calls upon States to take all necessary measures to ensure the full and equal enjoyment of all human rights and fundamental freedoms by children with disabilities, and to develop and enforce legislation against their discrimination, so as to ensure dignity, promote self-reliance and facilitate the child's active participation in the community, including effective access to educational and health services

2002 - 'A World Fit for Children', outcome document of the UN General Assembly Special Session on Children makes clear reference to the rights of children with disabilities, especially regarding protection from discrimination, full access to services, and access to proper treatment and care, as well as the promotion of family-based care and appropriate support systems for families

2003–2012 Second Asian and Pacific Decade of Disabled Persons

2004–2013 Arab Decade of Disabled Persons

2006- UN Convention on the Rights of Persons with Disabilities

2006–2016 Inter-American Decade of Disabled Persons

<http://www.un.org>

3.12 Convention on the Rights of the Child

The United Nations Convention on the Rights of the Child (CRC) was approved collectively by the General Assembly on 20 November 1989. It was opened for signature on 26 January 1990 and came into force in record time on 2 September 1990. India is a signatory to the convention. Till now, it has been ratified by 191 States.

The 1989 Convention on the Rights of the Child (CRC) is the earliest obligatory mechanism in international law to deal with the human rights of children at length, and is distinguished for the enclosure of an article exclusively talks about the rights of children with disabilities. The Committee on the Rights of the Child monitors and supports the execution of the CRC.

The CRC categorizes four general principles that give the groundwork for the achievement of all other rights:

- ▶ The best interests of the child;
- ▶ Respect for the views of the child;

- ▶ Survival and development;
- ▶ Non-discrimination.

The principles of the CRC reviewed in article 7 of the Convention insist on the basic rights of all children with disabilities to the entire range of human rights inherent to all children. The wellbeing and the voice of children with disabilities are commonly ignored and underestimated. To overcome with this problem, the convention puts the obligation on the States to include children with disabilities in decision-making processes for the participation and the best interests of the children themselves. Both article 7 and article 24 put emphases on their right to appropriate support in making their voices heard.

3.12.1 Education for Special Children

Article 24 of the Convention particularly has suggestions for children. It replicates a lucid obligation to the principle of inclusive education as a goal. It talks about the specific needs of children with severe and complex sensory impairments and how to help them with specific supports to learning such as sign language, low vision aids and Braille. There may be other children with disabilities who need changes in the curriculum, classroom setting, styles of teaching, etc. These modifications may not be suitable for all children with disabilities. The support and modifications have to be individually customized according to the needs of the child. It recognizes the right of all children with disabilities to be included in the general education systems and to receive the individual support they require. It also guides to make general change to eliminate barriers and give practical accommodation. It has to ensure that in providing support services required by children with disabilities, they are not excluded from mainstream educational opportunities.

Ensuring that children with disabilities receive good quality education in an inclusive environment should be a priority of all countries. The United Nations Convention on the Rights of Persons with Disabilities (CRPD) recognizes the right of all children with disabilities both to be included in the general education systems and to receive the individual support they require. Systemic change to remove barriers and provide reasonable accommodation and support services is required to ensure that children with disabilities are not excluded from mainstream educational opportunities.

The Need for the inclusion of children and adults with disabilities in education is important for the following reasons:

1. Education is the most important determinant of not only personal well-being and welfare but also contributes to human capital formation.
2. Excluding children with disabilities from educational and employment opportunities puts a heavy cost on social and economic factors Education will strengthen their earning capacity.
3. To achieve the aim of Education for All or the Millennium Development Goal of universal completion of primary education, the countries need to ensure the access to education for children with disabilities.

4. Countries that are party to the CRPD have to fulfill their obligations under Article 24 which stresses the need for governments to ensure equal access to an “inclusive education system at all levels” and provide reasonable accommodation and individual support services to persons with disabilities to facilitate their education.

Education is fundamental in itself but also helpful for contributing in employment and other parts of social activity for all children including the children with disabilities. Most of the societies lay emphasis on attending school as it helps individuals in becoming a

complete and better person. Education helps a person to build good social relations which in turn can transform the condition of people with disabilities in society and help asserts their rights. Inclusive education and society help children be more familiar and sensitive towards other children with a disability, which can reduce prejudice and discrimination in the long run. Therefore, inclusive education is essential in creating and promoting inclusive and just societies.

United Nations Convention on the Rights of Persons with Disabilities

The purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.



Fig. 15

Read and Reflect

The rights and frameworks which focus on education and special needs children

The United Nations' Universal Declaration of Human Rights (1948) was the foremost instrument to define education as fundamental human right of all people. It was further included by different international conventions, including the Convention on the Rights of the Child and more recently in the CRPD.

The World Conference on Special Needs Education in Salamanca (1994), Spain produced a statement and framework for action. The Salamanca Declaration encouraged governments to design education systems that act in response to different needs so that all students can have access to regular schools that accommodate them in child-centred pedagogy.

The Education for All Movement is a global movement to provide quality basic education for all children, youth and adults. Governments around the world have made a commitment to achieve, by 2015, the six EFA goals: expand early childhood care and education; provide free and compulsory education for all; promote learning and life skills for young people and adults; increase adult literacy by 50%; achieve gender parity by 2005, gender equality by 2015; and improve the quality of education.

The Millennium Development Goal of universal primary completion stresses attracting children to school and ensuring their ability to thrive in a learning environment that allows every child to develop to the best of their abilities.

In Article 24, the CRPD stresses the need for governments to ensure equal access to an “inclusive education system at all levels” and provide reasonable accommodation and individual support services to persons with disabilities to facilitate their education.

In India, children with disabilities are covered under Chapter 5-Education the Persons with Disabilities (Equal Protection of Rights and Full Participation) Act 1995. Education is the most effective medium of social and economic empowerment. According to the Census, 2001, fifty-one percent persons with disabilities were illiterate. This is an awfully large percentage. There is a great need for Inclusive education to mainstream the persons with disabilities in the general education system. Maintaining the spirit of the Article 21-A of the Constitution, guarantees education as a fundamental right, Section 26 of PWD act 1995 provides free and compulsory education has to all children with disabilities up to the minimum age of 18 years.

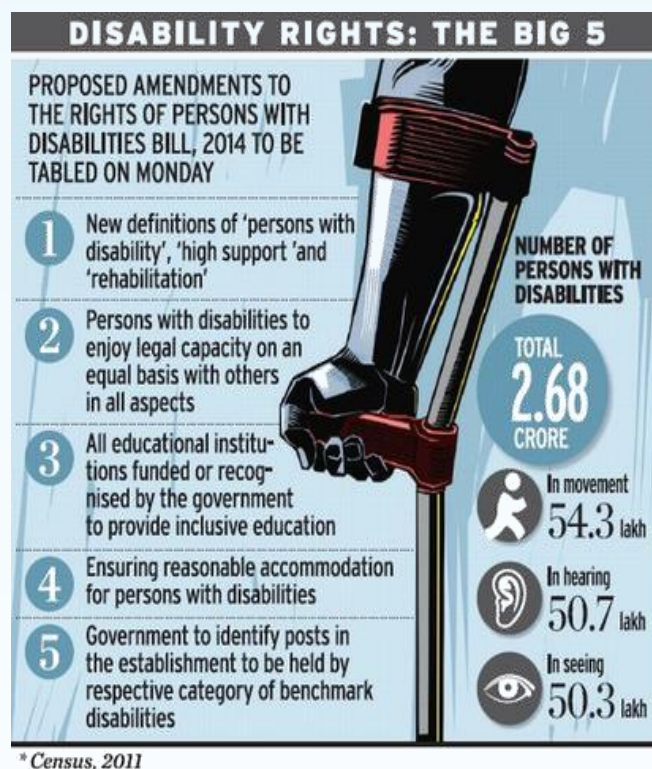


Fig. 16



Fig. 17

The Government of India launched **Sarva Shiksha Abhiyan (SSA)** with the goal of achieving eight years of elementary schooling for all children, including those with disabilities in the age range of 6-14 years by 2010. There is also provision to give free education under the Integrated Education for Disabled Children (IEDC) Scheme for Children with disabilities in the age group of 15-18 years. SSA ensures the availability of a variety of educational options, learning aids and tools, mobility assistance, support services etc. to students with disabilities. This includes education through an open learning system and open schools, alternative schooling, distance education, special schools, wherever necessary home based education, itinerant teacher model, remedial teaching, part time classes, Community Based Rehabilitation (CBR) and vocational education.

Sections (26-31) under Chapter 5-Education the Persons with Disabilities (Equal Protection of Rights and Full Participation) Act 1995:

Section 26 - Appropriate Governments and local authorities to provide children with disabilities free education, etc.

Section 27 - Appropriate Governments and local authorities to make schemes and programmes for non-formal education, etc.

Section 28 - Research for designing and developing new assistive devices, teaching aids, etc.

Section 29 - Appropriate Governments to set up teachers' training institutions to develop trained manpower for schools for children with disabilities

Section 30 - Appropriate Governments to prepare a comprehensive education scheme providing for transport facilities, supply of books, etc

Section 31 - Educational institutions to provide amanuensis to students with visual handicap.

3.12.2 The Role of the Government, Voluntary Groups and NGOs in Affirmative Action

The word "affirmative action" was first originated in 1960's in United States. It was used to decrease the discrimination and promote actions that achieve non-discrimination in employment. **Affirmative Action (AA)** is also recognized as **employment equity** in some countries. It refers to policies that take factors including "colour, caste, gender, sexual orientation, religion, race, ethnicity, or national origin" into contemplation in order to help an underprivileged group "in areas of education, employment, and business", usually necessary to counter the effects of the past discrimination.

Affirmative action is sometimes described as "positive action." In simple words, affirmative action refers to the purposeful efforts to offer full and equal opportunities in education, employment, and other areas to minorities, women, and persons belonging to other conventionally deprived social groups. To ensure equal opportunity in education and employment, affirmative action can be planned in a form of program and policy that seeks to redress past discrimination through active measures.

Different nations have different policies concerning the nature of affirmative action. In India, it applies a quota system, where a specific percentage of vacancies or jobs are put aside for disadvantaged group while some other countries don't have specific quotas; but they give preference to the members of minorities groups in the selection processes.

3.12.3 Why is there a need for affirmative action?

Due to the continued discrimination against people with disabilities, they are not able to enjoy full equality as other people do. In order to reverse this situation, States require to take on measures that are known in different countries as "specific measures," "fair discrimination," "reverse discrimination," "positive discrimination" or "**affirmative action**." The main goal of these measures/actions is to achieve equality, and this is often achieved by giving them some relative benefit. For instance efforts to reward companies for employing people with disabilities would make this companies favour people with disabilities over other people. The workplace needs to

make appropriate accommodations for the employees with disabilities because they require specific treatment that differs from that of other employees in order to conquer disadvantages, achieve equality, and promote the enjoyment of human rights rather than violating them. It is covered under Article 2 of the Convention on the Rights of Persons with Disabilities that, the failure to offer reasonable accommodation would be considered a form of disability-based discrimination prohibited under the Convention.

In other words, affirmative action is proposed to increase the opportunities for the minority or underprivileged/vulnerable groups to give them equal treatment within a society to that of the privileged majority groups.

The Government has selected certain "minority groups" within a society and with the help of affirmative action; it tackles the existing inequity and facilitates the equilibrium for past discrimination, ill-treatment or abuse these minority groups have faced in the society.

3.13 United Nations and Affirmative Actions

The International Convention on the Elimination of All Forms of Racial Discrimination (Article 2.2) affirms that countries that are part of the convention need affirmative action programs in order to eliminate prejudice or discrimination. It also states, though, that such programs "shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved." The United Nations Human Rights Committee affirms that "the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant. For example, in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions. Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population. However, as long as such action is needed to correct discrimination, in fact, it is a case of legitimate differentiation under the Covenant."

3.14 Affirmative Actions in India

In the Indian milieu, affirmative action is intended to improve the welfare of backward classes/communities by implementing the reservation in jobs and education system. Prior to the independence of India, many leaders like Mahatma Gandhi and Dr. B. R. Ambedkar raised the issues of the marginalized and worked to advance their interests. Post independence, the affirmative action programmes in India targeted Scheduled Castes and Scheduled Tribes, who were at the bottom of the caste hierarchy and the tribal communities.

In the Indian context, reservations have been the mainstay of the Affirmative Action (AA) agenda, which is driven by the constitution and the government. The ideals of AA for SCs and STs enshrined in the constitution ensured that the policies do not become a matter of legal dispute. The Indian government has, as part of the AA policy, reserved 15% and 7.5% posts in government agencies, government enterprises and educational institutions for SCs and STs, respectively (in later years, 27.5% for Other Backward Castes (OBCs) as well).

The role played by the corporate sector in AA in India, in the pre liberalization era, was limited to the mandatory reservation policies for the public sector enterprises. Besides this there were hardly a handful of company, which proclaimed their commitment to a diverse workforce and the upliftment of the marginalized. But with India's meteoric rise as an economic power house. After 1991, the dynamics of India changed drastically for the disadvantaged communities. However, in the contemporary world, to eradicate the adverse effects of disparities on the income levels and the opportunities, the plea for an inclusive society is increasing day by day.

The Constitution of India addresses the widespread deprivation of the communities in a chapter titled "Special provisions relating to certain classes" in Part-XVI. Special provisions were made for the Scheduled Castes and Scheduled Tribes in Part-X of the Constitution. The Constitution provides for the protection and promotion of their social, economic, educational, cultural and political interests to remove the disparities and to bring them on par with other sections of the society. In addition, many articles in Parts III, IV, IX, IX-A, Fifth and Sixth Schedule of the Constitution reinforce these arrangements. Article 14 provides that States shall not deny any person equality before law or the equal protection of laws within the territory of India. Article 15 operationalises the concept of equality in a manner which specifically touches upon the conditions of the Scheduled Castes and Scheduled Tribes.

Social safeguards like abolition of untouchability, access to religious institutions and prevention of atrocities are contained in Article 17, 23, 24 and 25(2)(b) of the constitution. The provisions of Articles 23, 24 and 46 form part of economic safeguards for Scheduled Castes and the Scheduled Tribes which prohibits bonded labour system and child labour. Article 46 notes that the State shall promote with special care the educational and economic interests of weaker sections of the people and, in particular, Scheduled Castes/Scheduled Tribes and shall protect them from social injustice and all forms of exploitation. Article 15(4) empowers the State to make special provisions for the advancement of socially and economically backward classes or citizens and for Scheduled Castes/Scheduled Tribes. Article 16, which provides equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State and prohibits any discrimination on grounds of religion, race, caste, sex, descent, place of birth, residence or any or all of them, has made a very special provision which permits Parliament to make any provision for 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. It is through this provision that reservations in appointments and promotions for Scheduled Castes and Scheduled Tribe and for OBCs in the matter of recruitment have been made.

In 2006, the heads of nodal agencies representing Indian industry, including the Confederation of Indian Industry (CII), the Federation of Indian Chambers of Commerce and Industry (FICCI) and the Associated Chambers of Commerce and Industry of India (ASSOCHAM) outlined the basic criteria to be followed for affirmative action to be undertaken by companies via policy implementation and positive discrimination in the hiring of candidates.

The basic form of affirmative action as public policy in India has been in the form of reservations for government jobs and in public educational institutions for certain social groups defined as underprivileged. There have been no attempts to force or encourage private sector reservation of a similar type. For most of the post Independence period, such reservation was confined to the

Scheduled Castes and Scheduled Tribes, usually at just over one fifth of the total jobs/seats available. In the later 1980s, reservation was also introduced for social groups defined as “Other Backward Classes”, which were essentially socially lower castes who had achieved levels of political and economic voice far greater than their perceived social positions. These new reservations, which effectively meant that just above half the positions would be reserved, led to urban middle class outrage and protests at the time that they were introduced. Ironically, however, soon after the introduction of such new reservations, a freeze on new employment at the Central Government level and for most state governments effectively meant that such reservations became irrelevant. However, they did make some difference in terms of access to institutions of higher education for students from such groups.

3.15 Laws arising out of violation of rights related to the equality of opportunity

Legal enforcement of equality of opportunity

Judicial systems play an essential role in protecting and enforcing the right to education as an entitlement. The enforcement of legal mechanisms guaranteeing equality of opportunity in education is crucial in safeguarding such entitlement. In the case of violation of the right to education and denial of equality of opportunity, everyone must be able to have recourse before courts or administrative tribunals on the basis of international legal obligations as well as to existing constitutional provisions on the right to education. Decisions by courts across regions demonstrate how courts have upheld the right to education and equality of opportunities in education. Case law from several countries shows that individuals can claim their entitlement to equality of opportunity in education.

In India, jurisprudence also underlines State obligations relating to the right to education and the equality of educational opportunities. The Supreme Court of India has interpreted the provisions on equality before the law in article 14 of India’s Constitution to promote equality in law and in fact. Equality in law must ultimately find its *raison d’être* in equality in fact.⁵⁷ A Constitution Bench of the Indian Supreme Court held that “What is fundamental, as an enduring value of our polity, is guarantee to each of equal opportunity to unfold the full potential of his personality. The philosophy and pragmatism of universal excellence through equality of opportunity for education and advancement across the nation is part of our founding faith and constitutional creed.”⁵⁸

Office of the Chief Commissioner for Persons with Disabilities, New Delhi

The Office of the Chief Commissioner for Persons with Disabilities has been set up under Section 57 of the Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995 and has been mandated to take steps to safeguard the rights and facilities of the persons with disabilities.

Based on the complaints filed before the Presiding Officer, if the provisions of the Persons with Disabilities Act, any rules, bye-laws, regulations, executive orders or instructions are violated or are not implemented, the Chief Commissioner takes up the matters with the concerned authorities. The Act also empowers the Chief Commissioner to issue suo - moto notice of any such non-compliance.

Advocacy, Educational and Training Materials

For advocates

Guide to Disability Rights:

This guide deals with the issues of disabled people related to the system. It therefore provides the first hand information and practical remedies for issues related to employment, medication, social security, tax benefits and education.

Training materials for Lawyers and NGOs on the European Convention on Human Rights and the rights of people with mental health problems and/or developmental disabilities (Mental Disability Advocacy Center, Budapest, 2002):

The Mental Disability Advocacy Center (MDAC) and its partner NGOs, prepared a training manual in 2002 for lawyers and NGOs invited to attend its training seminars. The manual was designed to provide an insight and first hand information on human and civil rights of the people with mental health and/or developmental disabilities. It also provided an overview of the European Convention on Human Rights of disabled people. Besides this it also explains the various definitions regarding mental health problems and developmental disabilities. It also lists the relevant articles of the European Convention on Human Rights and case law of the European Court of Human Rights and the Council of Europe Committee for the Prevention of Torture.



Fig. 18

For teachers

en messages about children with disabilities (UNICEF)

It outlines several practical remedies, in order to provide a safe and equitable environment for children with disabilities.

The Disabled: "Making Our Own Charter" (by Richard Pierre Claude in: *Popular Education for Human Rights: 24 Participatory Exercises for Facilitators and Teachers*, HREA, 2000)

These exercises are extremely beneficial as they can be adapted to diverse environments and cultures. These exercises lead to the development of a concise Preamble to a Charter for the Disabled, as these exercises help the participants to identify some of the special needs of people with disabilities. They are thus able to formulate a series of human rights for the disabled that reflect their needs and also comply with the existing



Fig. 19

international and national right standards. This further helps them to develop and implement an action plan which ensures that people with disabilities get to know about their human rights.

Read and Respond

1. Relate examples of discrimination and inequality, faced by people with disabilities in their everyday lives.
2. Do you think the people with disabilities face discrimination only on account of their disability? List some other kinds of discrimination due to which people with disabilities may suffer?
3. Discuss whether the discrimination faced by the people with disabilities affects their near and dear ones? (i.e. their friends and family).
4. Divide the class into small groups and discuss:
 - ▶ The causes of discrimination and inequality
 - ▶ People responsible for discrimination and inequality? (Individuals or society as a whole)
 - ▶ Whether discrimination is usually intentional or unintentional
 - ▶ Remedies for making people aware of their discriminatory behavior towards people with disabilities.
 - ▶ The impact on the disabled people and the society as a whole, if the root causes of discrimination and inequality are not addressed

Read and Respond

Discuss in pairs

- a) The training for female recruits should be different from the male recruits in the armed forces?
- b) Do 'gender-free' work policies put people at risk?
- c) Do we require changing the 'equality of opportunity' legislation for some jobs and making them free from equality of opportunity?

Unit End Reflections

Comprehension Questions

1. Why is Equality of Opportunity considered to be the most confusing right?
2. Why can equality not be equated with uniformity?
3. Do you think that the greatest challenge for eradicating inequality is in developing techniques for developing the positive side of human nature?
4. Describe the ideal of Formal Equality of Opportunity? Do you think that Formal equality of opportunity can be fulfilled in a democratic environment only? Give reasons.

5. How can a society realize John Rawl's ideal of "equality of fair opportunity"(EFO)?
6. Does the term "meritocracy" imply only the fulfillment of the formal and substantive equality of opportunity ideals?
7. How can the fulfillment of Formal and substantive equality of opportunity ideals be justified?
8. Why are the people with disabilities considered the most vulnerable groups?
9. Describe the journey of the development of disability policies by the UN for the realization of Equality of Opportunity.
10. Discuss the policy that you would consider to be a milestone in the realization of Equality of Opportunity for the people with disabilities.
11. Describe some of the Advocacy, Educational and Training Materials adopted that greatly help in the proper implementation of the goal of Equality of Opportunity.
12. How does the Indian Constitution guarantee Equality of Opportunity to the people with disabilities?
13. Outline the International provisions adopted for the realization of Equality of Opportunity for children with special needs?
14. What is meant by the term "affirmative action"? Why do you think there is a need for Affirmative action?
15. Describe the legal enforcement of equality of opportunity in India?

Case Studies

CASE STUDY 1

"I (Jackson Gonmei, hailing from North East, India) was working at call centre in Delhi associated with a California-based company since 2012. In June, they asked me to stop coming with no notice. But till date they did not clear my last month's salary.

"Every time I call they challenge me saying, 'try and do whatever you want.' They are rude and misbehave.

"I have started the legal process through the northeast helpline.

"For months I asked for an employment letter but they refused.

"Because we are treated as outsiders, they get away with suppressing us. I am not chasing the money; I think it is time that I have to speak up.

"On the streets people comment, 'Are you from Nepal or China?' Do you know Karate, Kung-fu? Do you eat snakes, dogs?"

Answer the following questions

- a) Why do the North-Eastern people face discrimination in other parts of India?
- b) Search more case studies regarding discrimination against the North East people. List the ways in which they are discriminated.
- c) Suggest remedies for eradication of racial discrimination of this kind.

<http://www.aljazeera.com/indepth/features/2014/02/voices-from-india-northeast-201421811314600858.html>

CASE STUDY 2

Age discrimination: New phenomenon emerging at the workplace

"Companies don't want elderly or even middle-aged employees. Even if they are selected, they aren't provided equal opportunities for growth and training compared to younger employees," laments 62-year-old KCV Georgie, a consultant with Vidya, an NGO based in Delhi. After running his father-in-law's business, Georgie started looking for a job that would earn him a comfortable salary and keep him busy. But at the ripe age of 55, opportunities were hard to come by.

- a) Talk to the elderly people around you to find out about the various kinds of discrimination they often face in the society.
- b) Is the discrimination of this kind against the elderly justified?
- c) Are there laws in India for the prevention of inequality in opportunity for the elderly people?

http://economictimes.indiatimes.com/articleshow/9341329.cms?utm_source=contentofinterest&utm_medium=ext&utm_campaign=cppst

CASE STUDY 3

In a matter heard at the Anti-Discrimination Tribunal (McRostie v Boral Resources Qld Pty Ltd [1999] QADT 4) a woman had been discriminated against at work on the basis of her gender. It was found that the employer had treated Ms McRostie less favourably by paying her less than the male colleagues, and awarded her \$5,960 as loss of wages. The Tribunal also found that she was not given the same opportunities as men in the workplace, including relieving in more senior positions. MsMcRostie was awarded the sum of \$7,500 by way of general damages to compensate her for her hurt and humiliation.

Discuss - Besides unequal wages, what are the other kinds of discrimination faced by women at the workplace?

CASE STUDY 4

This case, *Youth Bowling Council v. McLeod*, was heard by a Tribunal and was then appealed to Divisional Court which dismissed the appeal. The Ontario Court of Appeal later endorsed the Divisional Court decision.

By age 11, Tammy had bowled for five years in the local recreation league. She and several others qualified to enter a province-wide competition sponsored by the Youth Bowling Council.

Tammy has cerebral palsy and uses a wheelchair, but she has some movement and coordination. So she could bowl, her father built a wooden ramp, the top of which rests in Tammy's lap. She lines up the ramp towards the bowling pins and lets the ball roll down the ramp.

Just before the competition, the Council ruled that Tammy was ineligible to take part. While the Council's rules allowed persons with disabilities to use special equipment to assist them in recreational bowling (provided the equipment did not add force or speed to the ball), they prohibited the use of such equipment in competitions.

The Tribunal and later the Supreme Court of Ontario heard Tammy's application. The Youth Bowling Council argued that it had not violated her rights under the *Code*, because Tammy wasn't capable of the essential requirement of bowling—manually releasing the ball. The Council also contended that the use of special devices would make competition between the bowlers unfair, because the skills assessed would not be common to all competitors.

Tammy's lawyers argued that Tammy was bowling—she was using the ball to knock down pins. Also, the Youth Bowling Council had a duty to accommodate her under the *Code* by allowing her to use the ramp. Speed and accuracy tests showed that Tammy did not gain any advantage over other bowlers. Her ball speed was too low for maximum results and her accuracy no better than average.

Group discussion questions:

1. Could Tammy perform the essential requirement of bowling? Should this argument have been a factor in determining whether a violation occurred?
2. Should the Council have to accommodate Tammy (for example, should they allow her to bowl in competitions with the ramp)?
3. Would the Council experience undue hardship if it accommodated her in competitions? Would it change the sport too much? Give your reasons.

Discussion points:

This case, *Youth Bowling Council v. McLeod*, was heard by a Tribunal and was then appealed to Divisional Court. The Divisional Court decision was later endorsed by the Ontario Court of Appeal.

This was the issue: could Tammy perform the essential requirement of bowling, and should this have been a factor in determining whether a violation had occurred?

The Court agreed that manual control and release of the ball (that is, the physical activity in delivering the ball) were the essential requirements of bowling. Tammy needed the ramp to release the ball and thus could not perform the essential requirement.

Since Tammy could not perform the essential requirement without her ramp, did the Council have an obligation to accommodate her? The Tribunal said, “Yes, it did.” In effect, the rule that the ball must be manually controlled has an adverse impact on many people with disabilities such as Tammy, or people without full use of a hand or arm.

The *Code* says that an organization must accommodate a person with a disability who cannot meet essential requirements, unless it can prove undue hardship.

Would it cause undue hardship to accommodate Tammy in competitions? The Court said “no” for several reasons. Allowing Tammy to use her ramp would not give her an unfair advantage over other bowlers. As the tests proved, Tammy had no competitive advantage over others. While the Council said that skills should be common to all competitors, it did not account for other differences, such as height, weight or maturity, which also affect a person's ability to bowl.

The Court rejected the argument that special devices could be used in recreational bowling but not in competitive bowling.

Was it fair to welcome persons with disabilities in recreational bowling but not in competition, particularly when such persons would have no proven competitive advantage? As the Tribunal pointed out, all participants strive to win, whether they are in recreational or competitive settings, and everyone should have the opportunity to take part in both settings.

The Court supported the Tribunal's decision that Tammy had been discriminated against based on her disability. The Court ordered the Council to allow Tammy to use the ramp in competitions. This effectively permits all bowlers with disabilities to use special equipment as long as the equipment does not mechanically add force or speed to the ball.

<http://www.ohrc.on.ca>

Chapter 4: Human Rights and the use of Natural Resources - Land and Water conservation and the future

4.1 What are Natural Resources

Since time immemorial human beings have been doing their best to utilize the abundant natural resources endowed by nature, to their advantage and need. Natural resources refer to all those things which are not man-made. They present themselves in nature in their original untouched form. The earth is replete with a wide variety of natural resources such as rivers, mountains, precious stones, minerals etc. Which, have evolved and thrived on its surrounding environment? The wide variety of natural resources available on the earth can be grouped and classified as follows.

List of Natural Resources

- ▶ Forest resources (pertaining to plant and tree life)
- ▶ Aquatic/Marine resources
- ▶ Hydro geological resources (water bodies of all kinds)
- ▶ Animal resources (domesticated animals or those that can be easily approached by humans)
- ▶ Microbial resources (organisms that aren't visible to the naked eye)
- ▶ Human resources (the population at large)
- ▶ Atmospheric resources (anything that humans cannot control- rainfall, sunlight, temperature and the like)
- ▶ Crop resources (agriculture growth)
- ▶ Geological resources (naturally occurring formations -rocks, valleys, minerals, precious metals and the like)
- ▶ Edaphic resources (anything related to the soil and its properties)
- ▶ Wildlife resources

4.2 Natural Resources and their Uses

Soil

- ▶ Soil usually covers around 10% of the earth's surface and is used for cultivation, housing and other human activities.
- ▶ Soil is also used for making shelter by many human beings, especially the tribal people.

Water

- ▶ Water is most importantly required for drinking.
- ▶ Freshwater is also required for irrigation of crops.
- ▶ Water bodies (such as oceans, lakes and rivers) also provide transportation facilities.

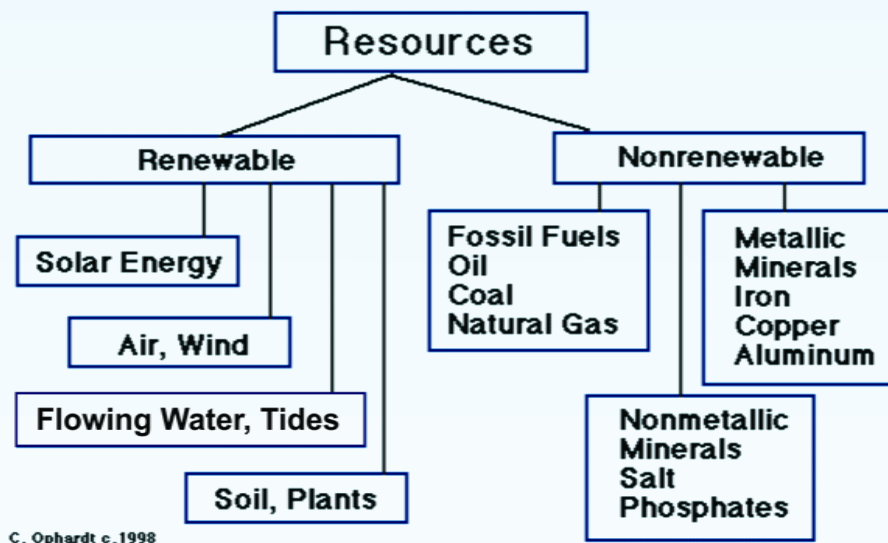


Fig. 3

Natural resources can further be categorized as **renewable** and **non-renewable resources**. Renewable resources can regenerate itself again. For instance plants and animals are renewable resources. On the other hand nonrenewable resources are those which cannot be reproduced. For instance fossil fuels are non-renewable. Thus non-renewable resources need to be he utilized carefully since they are exhaustible and so that they are available for the future generations.

In the recent years, natural resources have greatly depleted due to careless use by humans. It is the need of the hour to make effective attempts to use natural resources in a prudent manner. The former American president, It reiterated the seriousness of the problem in the following words: “The conservation of natural resources is the fundamental problem. Unless we solve that problem, it will avail us little to solve all others.”

Water and land are most essential to support life and satisfy the basic human needs. In addition to this the land and water resources are also extremely essential for agriculture and rural development. They are the most crucial components in the pursuit of establishing food security, climate change adaptation and in eradicating poverty. Therefore it is extremely essential to manage these resources carefully for sustainable development.

Degradation and depletion of natural resources in the recent years has greatly affected the livelihoods of millions of rural people across the world. Thus, one can envisage the importance of land and water conservation for the preservation of our environment. Research and new developments are required in the area, to diagnose the problems. Land conservation is extremely essential for protecting the habitats, forest and natural resources. The conservation of these resources will greatly affect the quality of the air we breathe, the water we drink, and the food that we eat.

Taking into account the abundant water resources available, (water covers 70 percent of the earth) water conservation may not sound important to many people around the world. But the fact is that most of the earth’s water is saltwater, which is not potable Fresh water accounts for

only 3 percent of the water available on earth. Much of that too is either frozen as glaciers and ice caps or is located under the ground. Thus the only fresh water sources available for the over 6.7 billion people all over the world are rivers, lakes and annual rainfall. This helps us to conclude that water conservation extremely important.

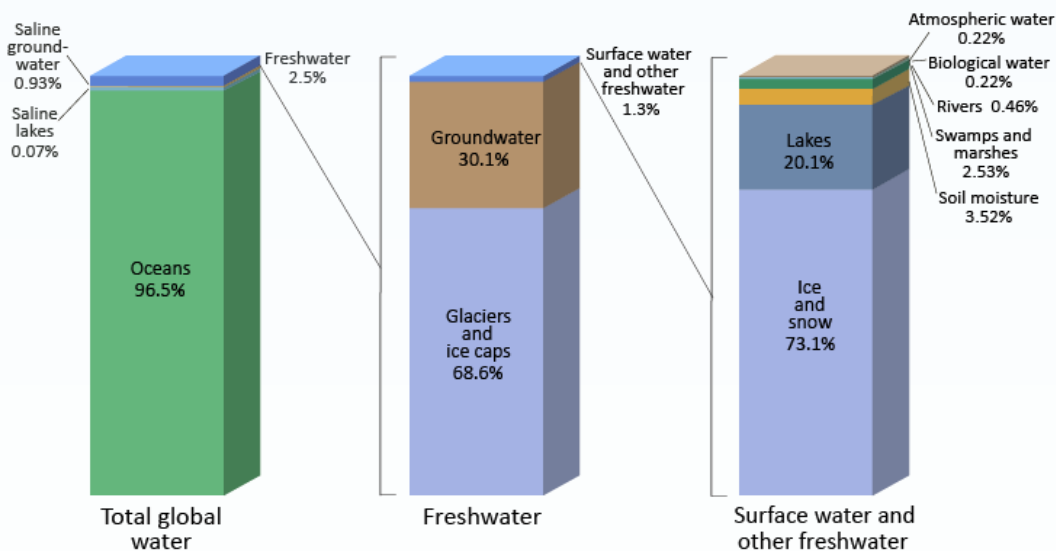
There is no doubt that the land and water resources are the most precious of all the natural resources. The availability of agricultural land is greatly affected by competing human needs. The diversified use of land in the field of agriculture, industry, domestic and other uses further affects the availability of land. Diversion of land from agricultural use to non-agricultural use also adversely affects the growth in the agricultural sector. Besides this the greatest problem is that the available land is also of not good quality due to soil-erosion and other degradation problems.

Water as a resource is extremely essential as it supports all forms of life on the earth. Besides being essential for sustaining human life, it is also extremely essential for agricultural and industrial development. The water available is usually confined in the following forms:

- i) Soil moisture
- ii) Stored water in surface storage like reservoirs, tanks, ponds, temple tanks, and in open walls etc.
- iii) Ground water in the sub-surface
- iv) Sea water
- v) Wastewater like sewage and effluent.

Rainfall is also an important source of water. Depending upon the amount of rainfall, an area becomes drought or flood affected and thus may harm agricultural production.

Distribution of Earth's Water



Source: Igor Shiklomanov's chapter "World fresh water resources" in Peter H. Gleick (editor), 1993, *Water in Crisis: A Guide to the World's Fresh Water Resources*.

Fig. 4

Land is a non-renewable natural resource. In addition to this, land as a resource, is constantly facing problems due to the increased pressure on it as a result of due to the increasing population. The ensuing competition between the agriculture, industrial and housing sectors is inevitable. Besides this, land also faces the problem of land degradation on account of soil erosion, rain or wind action and faulty cultivation practices. This results in poor yields, less economic benefits, reservoir sedimentation, reduction in storage capacity, reduction in hydel power, ecological imbalance, environmental pollution, droughts, floods and several other problems.

Therefore it is extremely essential to conserve, develop and manage land and water resources. This would include measures for preserving the biological content of soil, moisture conservation, flood control, watershed development programmes etc. This will lead to the development of the ecology on a sustainable basis.

4.3 Land and water conservation and future

Food security can be established in the world only through proper use of land and water resources. Since ages, several factors like demographic pressures, climatic changes and the increased competition for land as well as water have led to the increase in food insecurity, especially in developing nations of Africa and Asia. Therefore one of the greatest challenges faced by the world is to provide sufficient food for every individual.

Read and Reflect

"All are places where shortages of water contribute to poverty. They cause social hardship and impede development. They create tensions in conflict-prone regions. Too often, where we need water we find guns. [...] There is still enough water for all of us - but only so long as we keep it clean, use it more wisely, and share it fairly"

Ban Ki-moon, UN Secretary General

The rising population of the world continues to pose a threat to the food security of the world. According to a survey of the United Nations made in 2009, the population of the world (which is approximately 7 billion) is expected to increase to about 9 billion by 2050. In order to provide food security to this growing population, tones of cereals and 200 million extra tones of livestock products will need to be produced every year (Bruinsma Report, 2009). This is even more challenging for developing countries, which face the problem of not only not producing enough food but also face the problem of ensuring equal access of food for everyone. In the contemporary world almost 1 billion are undernourished. The most affected areas are the Sub-Saharan African region (Having approximately 578 million undernourished people).

There appears to be no ray of hope for the establishment of food security in the developing countries in the near future. According to the recent reports, one person in twenty still risks being under nourished, even if the agricultural production doubles by 2050. Thus these reports predict the prevalence of 370 million undernourished people by the end of 2050, most of who will again be in Africa and Asia. Such growth would imply agricultural remaining an engine of growth, vital to economic development, environmental services and central to rural poverty reduction.

The greatest requirement for the establishment of food security in the world is increase in agricultural production. The rate of increase of agricultural production should be faster than the

rate of increase of population growth. This is possible only through sustainable development that makes effective use of land and water resources, without harming these resources. Unfortunately, on the flip side, agriculture is also a major contributor to greenhouse gases, accounting for 13.5 percent of global greenhouse gas emissions. (According to the report of IPCC, 2007)

Recently a number of policies, practices and technologies have been advocated internationally, to increase production and strengthen food security. Thus a number of institutional mechanisms, financial facilities, trade and market policies have been developed internationally, for the effective implementation of food security all over the world. Besides this for the establishment of food security at the national level, a number of measures to increase production, (such as adoption of market-friendly policies, institutions, incentives, infrastructure and services needed to improve productivity etc.) have been implemented. In spite of this the world is still facing the challenge for the effective realization of food, for all individuals.

4.3.1 Increased competition for land and water resources -A major threat to food security

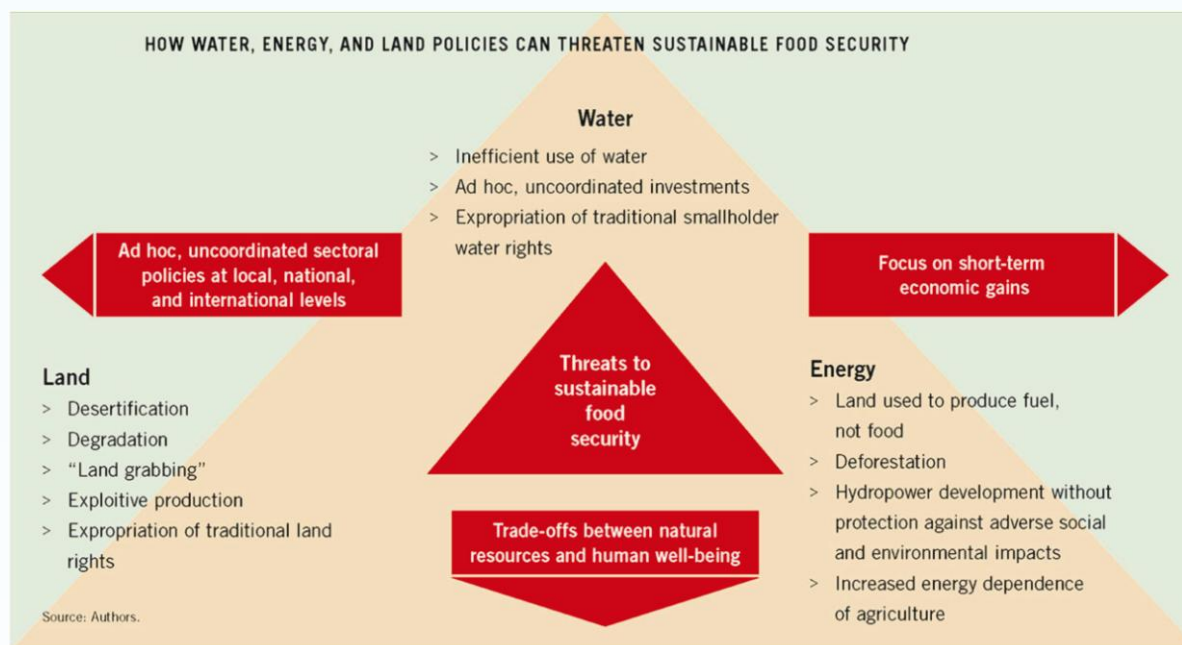


Fig. 5

It has been observed that the rate of growth in agricultural production has slowed down considerably. For instance recently only half the 3 percent annual rate of growth has been recorded in the developing countries. The situation worsened in 2007 and 2008, due to increase in prices of food grains. Since then there has been a growing competition for land and water, as numerous commercial investors have been competing with each other to acquire tracts of farmland in the developing countries. Besides this the production of bio fuels seems to be more lucrative, thereby leading to lesser interest for production of food in many areas. In addition to

this, a series of floods, droughts and landslides have further threatened the stability of land and water resources.

It has also been observed that numerous structural problems have further enhanced the threat to the stability of land and water resources. The problem of water scarcity and the degradation of water related ecosystems are increasing day by day. Stagnation and pollution of water bodies are also constantly increasing.

It has been observed that in the majority of large rivers, only 5 percent of the former water volumes remain. On the other hand it has also been noticed that the water from some rivers like the Huang He (in China) have been over used to the extent that they do not meet the sea in some parts of the year. In addition to this over use of water resources has led to the drying up of numerous large lakes and inland seas. The disappearance of half the wetlands of Europe and North America is a testimony to this problem. This has led to the reduction in water reservoirs, water supply and hydropower. The level of groundwater is also constantly going down due to its intensive use. Besides this aquifers are becoming increasingly polluted and salinized in some coastal areas. It is lamentable that ecosystem impairment (such as, reduction of soil quality, loss of biodiversity etc.) is a common malady in most parts of the world.

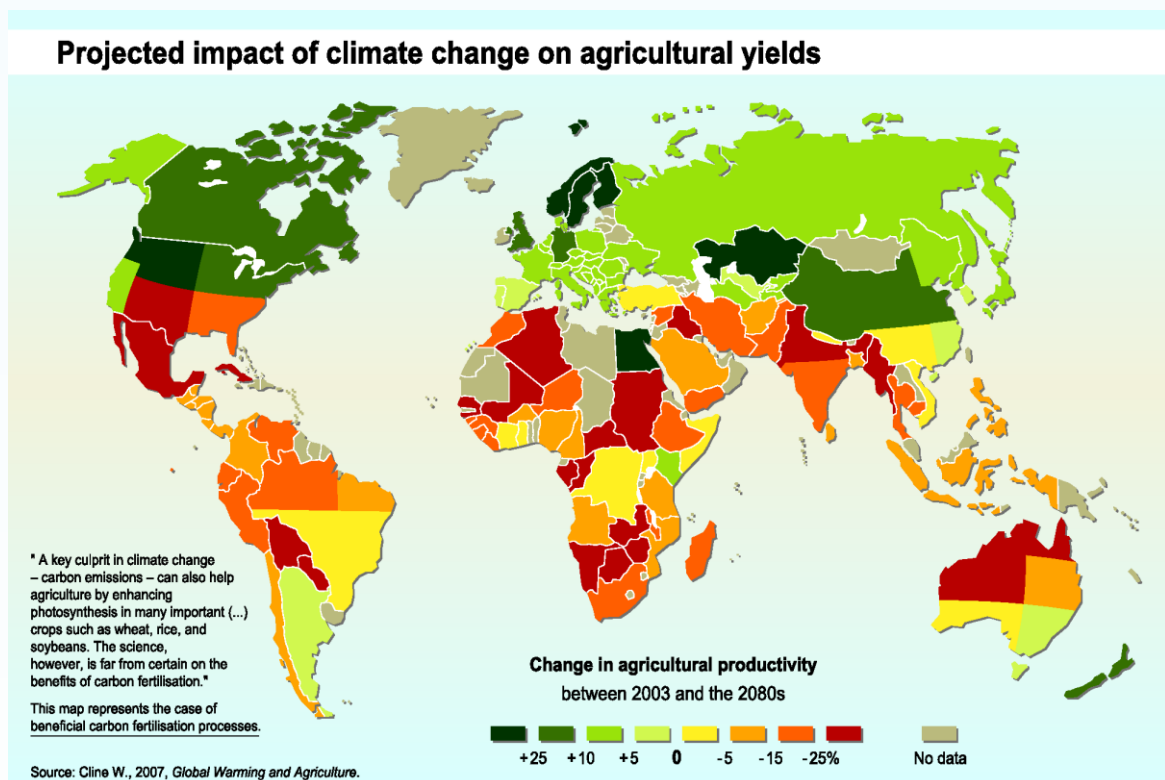


Fig. 6

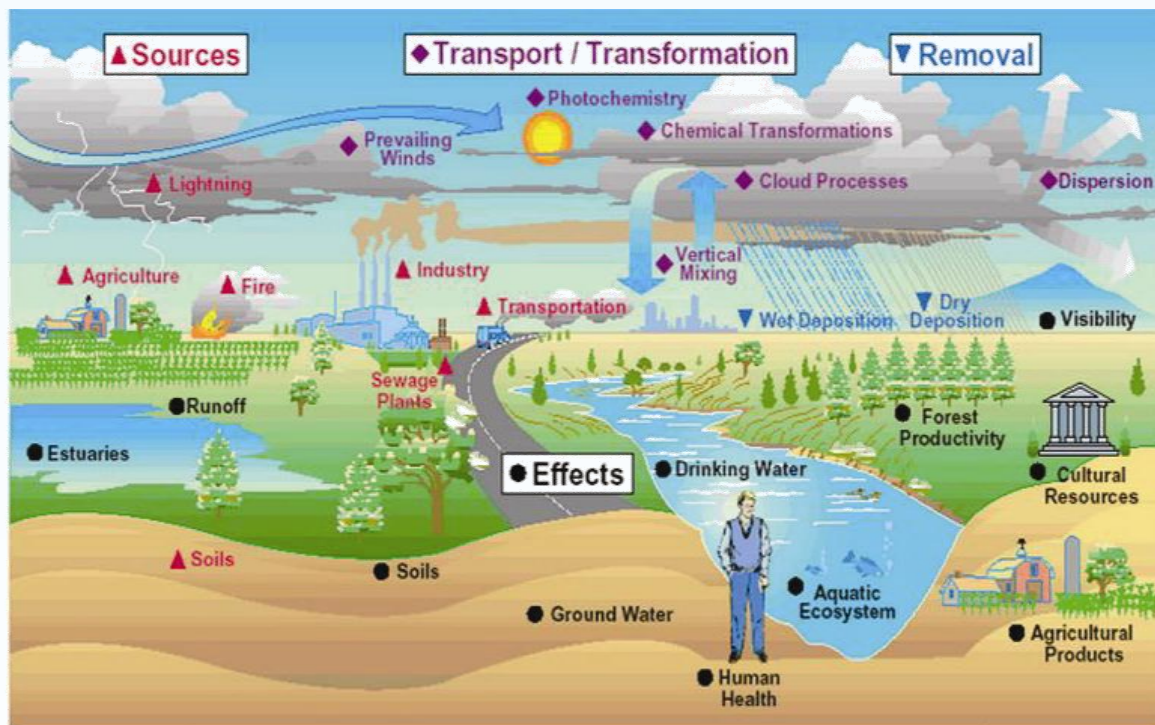
Climatic changes have also greatly affected the agricultural production. Global warming has made the weather highly unpredictable as it has led to the development of extreme weather conditions and a shift in the rainfall pattern. The group most vulnerable to the harmful impact of

climatic changes is the poor farmers in the low income countries, as they are not equipped with technology or resources to adapt to these changes.

The steady increase in profit from trade in inland aquaculture area, has also contributed to the increased competition for land and water resources. According to the recent survey made by FAO in 2010, the average annual per capita supply of fishes food from aquaculture for human consumption has increased at an average rate of 6.6 per cent per year between 1970 and 2008. This has lead to the increase in demand for water and land for the construction of fish ponds.

4.4 Use and Abuse

Thus, the destruction of ecosystems has greatly affected the production potential of important food-producing zones. The impact has been the greatest in developing countries, where the presence of water and soil nutrients is not in abundance.



© Environmental degradation is the deterioration of the environment through depletion of resources such as air, water and soil ; the destruction of ecosystems and the extinction of wildlife.

Fig. 7

However many parts of the world have been able to reverse the negative trends discussed above and are serving as a model for indicating the pathway towards sustainable development through the adoption of better technology, good management practices and policies.

These trends are visible in the recent survey of the **State of the world's land and water Resources for food and agriculture (SOLAW)**. The report of SOLAW states that the world's cultivated area has grown by 12 percent over the last 50 years. It also states that the global

irrigated area has doubled over the same period, which in turn has led to the net increase in cultivated land. This has resulted in the increase in agricultural production to approximately 2.5 and 3 times.

However, the increase in agricultural production has also led to the degradation of land, water resources, deterioration of the ecosystem, goods and services such as biomass, carbon storage, soil health, water storage water supply, biodiversity etc. Recent surveys indicate that 11 percent of the world's land surface and 70 percent of all water drawn from aquifers, streams and lakes is used for agriculture. Only big landholders who have access to land and water have primarily benefited from the agricultural policies formulated so far. These agricultural policies do not focus on the needs of small-scale producers. Thus the small-scale producers are still most vulnerable to land degradation and climatic uncertainty due to which they are still living in poverty.



Fig. 8

Therefore it has been observed that the land and water resources have not kept pace with the increasing agricultural development. This in turn has increased the competition over the littleland and water resources that are available. Thus a number of adaptable and collaborative policies need to be developed, in order to eradicate this problem and to effectively utilize the scarce natural land and water resources.

According to the recent surveys, 70 percent more food production will be required by 2050 in most parts of the world will arise, due to increasing population. Though 100 percent more food production will be required in developing countries in comparison to the production of 2009. In spite of this, the agricultural policies formulated so far do not favour those countries, who need to produce more in the future. It has been observed that the average availability of cultivated land per capita in low-income countries, is less than half that of high-income countries. Therefore the only way to increase agricultural production is by the development of sustainable land management policies and effective policies for the use of water through reliable irrigation facilities. To do so, the prevailing policies on agricultural production need to be critically reviewed. Thus the most common problem faced by the land and water systems is the progressive breakdown of their productive capacity, due to excessive demographic pressure and unsustainable agricultural practices. The problem is further aggravated due to climatic changes, competition with other sectors and socio-economic changes. These problems require immediate attention because there can be no substitutes for these natural resources.

Therefore in order to address the problem of food security, agricultural production needs to be expanded efficiently. It should also be taken into account that the provisions adopted to do so should in no way have any negative impact on the ecosystem. Thus the governments and the

private sector, including farmers, need to be much more proactive to effectively implement sustainable land and water management practices. To do so they not only need to promote technical options for the same but also to remove constraints and build flexibility. These must include the following actions:

- (1) The removal of distortions in the incentives framework.
- (2) Improvement of land tenure and access to resources,
- (3) Strengthened and more collaborative land and water institutions.
- (4) Efficient support services (including knowledge exchange, adaptive research and rural finance), and
- (5) Better and more secure access to markets.

Thus to achieve food security and to adopt sustainable land and water management practices, proper financial and institutional assistance will have to be provided by the entire global community. For this the negative trend in national budgets will have to be reversed and new financing options such as payment for environmental services (PES) will have to be adopted. In addition to this, the global community also needs to effectively integrate the international policies and initiatives dealing with land and water management. These changes will certainly help in the realization of food security for all individuals, through sustainable agricultural practices within environmental limits.

4.4.1 The Present Status of Land and Water Resources

During the last fifty years, many forests wetland and grassland habitats have been converted into cultivable land. This has led to the increase in the amount of cultivable land by 12 percent. In addition to this the irrigated area has also doubled. However there is inequality in the availability of the land and water assets, amongst the various countries of the world. It has been observed that majority of the land that is available, is either under cultivation or is being used for some other ecological or economical use. Therefore there is very limited scope for further expansion of land for cultivation. Only parts of South America and sub-Saharan Africa still offer scope for some expansion of land for cultivation. In addition to this competition for water resources has led to the increase in water scarcity, in most parts of the world. In fact 40 percent of the world's rural population is facing the ordeal of intense water scarcity today.

Land Distribution, Usage and Suitability

The total land available all over the world is 13.2 billion ha. From this about 22 percent of the total land area is situated in low-income countries. Besides this, about 12 percent (1.6 billion ha) of the land is currently in use for cultivation of agricultural crops, 28 percent (3.7 billion ha) is under forests, and 35 percent (4.6 billion ha) comprises grasslands and woodland ecosystems.

In spite of availability of land, its use greatly depends on the prevalent climatic and soil conditions and human influences. This reason accounts for the presence of deserts across the lower northern latitudes of Africa and Asia, dense forests in the heartlands of South America, along the seaboard of North America, across Canada, Northern Europe and Russia, and in the tropical belts of Central Africa and Southeast Asia. Grasslands and woodlands cover 33 to 39

percent and forest land around 20 to 33. Majority of the land (One fifth or more of the land area) is used for cultivation in South and Southeast Asia, Western and Central Europe, and Central America and the Caribbean. The usage of land for cultivation is much less in the sub-Saharan and Northern African region, which accounts for only one tenth of the total land available. Thus it has been estimated that the total cultivable land in the world accounts for only 12 to 15 percent of the total land available.

Net Changes in Major Land Use (Mha)

	1961	2009	Net increase 1961-2009
Cultivated land	1368	1527	12%
- Rainfed	1229	1226	-0.2%
- Irrigated	139	301	117%

www.fao.org

The amount of cultivated land has increased by 159 Mha since 1961. The increase in cultivation over the last 50 years is mainly attributed to increase in irrigation, which has almost doubled.

Over the period, the irrigated area has more than doubled and the number of hectares needed to feed one person has reduced dramatically from 0.45 to 0.22 ha per person. In addition to this, surveys made for the time period from 1990 and 2010, indicate a major decline (of about 135 Mha i.e. 3.3 percent) in the forested area. This indicates that the expansion in the cultivated area has been partly achieved through conversion of previously forested areas into cultivable land.

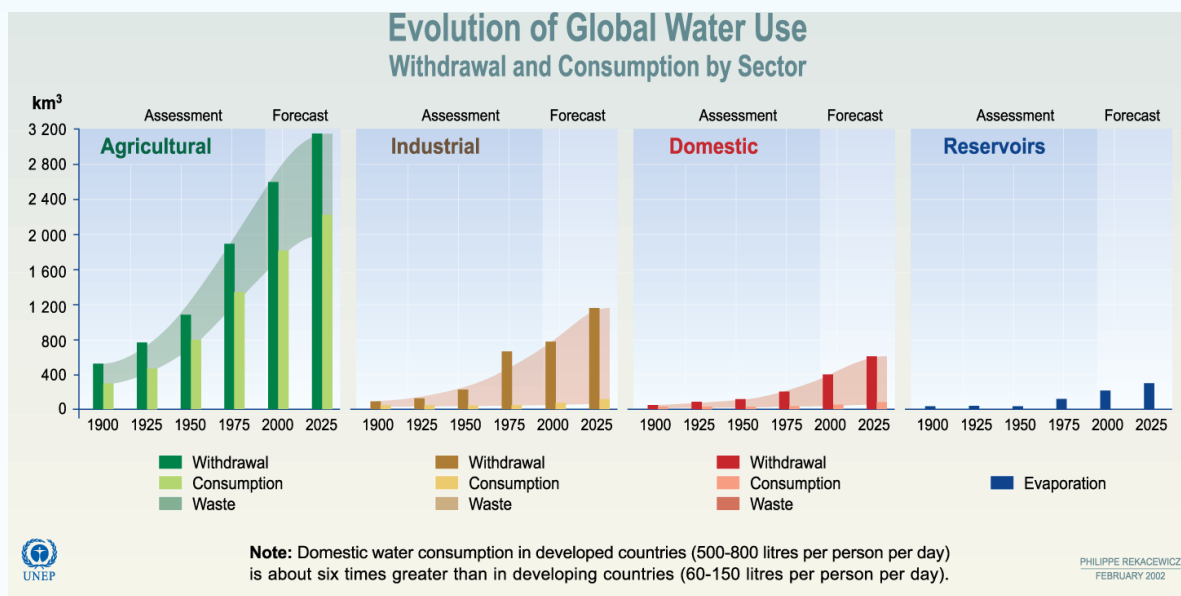
It has also been estimated that in the entire world, about 0.23 ha of land is cultivated per head of the world's population. High-income countries cultivate more than twice the area per capita (0.37 ha) than low-income (.017 ha) countries, while middle countries cultivate 0.23 ha per capita.

FAO has clearly defined land quality in terms of agriculture, i.e. according to its capacity in yielding crops. For instance only 53 percent of the currently cultivated land is mostly of prime (28 percent of the total) or good quality. The largest proportion of prime land currently cultivated is found in Central America and the Caribbean (42 percent of the total), followed by Western and Central Europe (38 percent of the total) and Northern America (37 percent of the total). Besides this for high-income countries as a whole, the share of prime land in currently cultivated land is 32 percent. In low-income countries, on account of poor quality of soil, only 28 percent of total cultivated land is prime land.

Usage, Withdrawals, Scarcity and Quality of Water

The hydrological cycle, accounts for renewing water resources, which amounts to 42000 km³/yr. From this, about 3900 km³ is withdrawn and used by humans from rivers and aquifers. In addition to this some 2710 km³ (70 percent) is used for irrigation, 19 percent is used for industries and 11 percent is used for the municipal sector. Estimates reveal that more than 60 percent of all water withdrawals get renewed by a process which returns the water withdrawn, back to the local hydrological systems, which is ultimately renewed back to the rivers or underground groundwater.

Due to increase in irrigated area which has almost doubled over the last 50 years, water consumption for agriculture has also increased. The total amount of water withdrawn from water resources still consists of a small share of internal renewable water resources (IRWR), which is about 9 percent. However the amount of water withdrawn for consumption varies greatly from region to region throughout the world. For instance Europe withdraws only 6 percent of its internal water resources for consumption. From this only 29 percent of water is utilized for irrigation. However intensive agricultural economies of Asia, withdraw 20 percent of water for consumption from its internal water resources. From this more than 80 percent is utilized for irrigation. Besides, this in the low rainfall regions of the Middle East, Northern Africa and Central Asia, the maximum water is withdrawn. From this around 80-90 percent of it is utilized for agriculture. Therefore the rivers and aquifers are found to be depleted beyond sustainable level.



Source: Igor A. Shiklomanov, State Hydrological Institute (SHI, St. Petersburg) and United Nations Educational, Scientific and Cultural Organisation (UNESCO, Paris), 1999.

Fig. 9

Recent surveys reveal that only 40 percent of the population of the world resides in the transboundary river basins, whereas 90 percent of the population of the world resides in the countries possessing basins that cross international borders (Sadoff and Grey, 2005). These 263 international water basins, account for about 50 percent of global land area and 40 percent of freshwater resources. (Gordano and Wolf, 2002). Several of these transboundary rivers are the largest rivers of the world, which in turn provide the maximum amount of water for consumption in the world. Therefore due to rise in the need for water resources for agriculture, the greatest requirement recently has been to draw up collaborative formulae for sharing of these water resources by the various countries concerned. This has been accomplished through several treaties and agreements between riparian countries. Some such international agreements formulated recently are - the 1997 UN Convention on the Law of the Non-navigational Uses of International Watercourses and the Southern African Development Community (SADC) Protocol on Shared Water Resources.

Water Withdrawal by Major Water Use Sector (2003)

	Total withdrawal by sector								
	Municipal		Industrial		Agricultural		Total water withdrawal	Total freshwater withdrawal	Fresh withdrawal as % of IRWR
Continent									
Regions	r	%	km3/yr	%	r	%	km3/yr	Km3/yr	
Africa	21	10	9	4	184	86	215	215	5
Northern Africa	9	9	5	6	80	85	94	94	201
Sub-Saharan Africa	13	10	4	3	105	87	121	121	3
Americas	126	16	280	35	385	49	791	790	4
Northern America	88	15	256	43	258	43	603	602	10
Central America and Caribbean	6	26	2	11	15	64	24	24	3
Southern America	32	19	21	13	112	68	165	165	1
Asia	217	9	227	9	2012	82	2456	2451	20
Western Asia	25	9	20	7	227	83	271	268	55
Central Asia	5	3	8	5	150	92	163	162	61
South Asia	70	7	20	2	914	91	1004	1004	57
East Asia	93	14	150	22	434	64	677	677	20
Southeast Asia	23	7	30	9	287	84	340	340	17
Europe	61	16	204	55	109	29	374	374	6
Western and Central Europe	42	16	149	56	75	28	265	265	13
Eastern Europe & Russian Federation	19	18	56	51	35	32	110	110	2
Oceania	5	17	3	10	19	73	26	26	3
Australia & New Zealand	5	17	3	10	19	73	26	26	3
Pacific Islands	0.01	14	0.01	14	0.05	71	0.1	0.1	0.1
World	429	11	723	19	2710	70	3862	3856	9
High-income	145	16	392	43	383	42	920	916	10

Middle income	195	12	287	18	1136	70	1618	1616	6
Low income	90	7	44	3	1191	90	1324	1324	18
Low income food deficit	182	8	184	8	1813	83	2180	2179	16
Least developed	10	5	3	1	190	84	203	203	5
includes use of desalinated water									

Source: FAO(2010c)

Water resources are distributed unevenly all the world over. Therefore while some countries possess abundant water resources, there are several countries that suffer on account of scarcity of water. In addition to this, countries possessing abundant water resources often face the problem of non-accessibility of water due to the highly expensive consumption systems, which they may not be able to afford. They may also face problems when water resources available are situated far off from the agricultural lands. Therefore the problems faced due to water scarcity, can be of the following three kinds:

1. **Physical problems** - These kind of problems arise when the available water resources are not enough to satisfy the demand.
2. **Infrastructural problems** - These kinds of problems arise when the available infrastructure is not good enough, to utilize the available water resources to the maximum.
3. **Institutional problems** - These kinds of problems arise when the available institutions and legislations fail to ensure reliable, secure and equitable supply of water to users.

In addition to this, in the case of physical water scarcity, it has been observed that an average withdrawal rate above 20 percent of renewable water resources creates a substantial pressure on water resources. The withdrawal rate above 40 percent of renewable water resources, is termed as 'critical'. For instance some countries of the Middle East, Northern Africa and Central Asian region are already withdrawing water above the critical thresholds. Such situations are leading to an excessive stress on the ecosystem which is constantly harming it. It is also increasing the problem of scarcity of water. According to an estimate, currently more than 40 percent of the world's rural population residing in river basins face water scarcity.

Majority of the countries have formulated methods to use their water resources to the maximum capacity, through the formulation of policies and investments for fulfilling the demands of water. The cost of these new water development projects is extremely high. Besides this these methods are also harming the ecosystem. In addition to this the demand of water exceeds the supply in majority of the countries. This imbalance has led to the development of extreme stress on the agricultural sector. At the same time the demand from other sectors, particularly municipal and industrial demand has been growing faster than agricultural demand. Whereas in less-developed countries agricultural use remains dominant, in Europe 55 percent of water is withdrawn by industry. Water stresses occur locally across the globe, but some entire regions are highly

stressed, particularly the Middle East, the Indian sub-continent and northeastern China. Sub-Saharan Africa and the Americas generally experience lower levels of water stress.

Another problem encountered is the depletion in the quality of water. This happens when the water that is used in domestic and productive activities is discharged again into the environment, its quality changes. Agriculture is also greatly responsible for the depletion in the quality of water, due to pollution from nutrients and pesticides which are constantly added to increase productivity. Besides this, salinisation has also led to the depletion in the quality of water. For instance water salinity problems have been reported in large irrigation schemes in Pakistan, China, Argentina, Sudan and many countries in Central Asia, where more than 16 Mha irrigated land are now salinised. (FAO, 2010c) Therefore increasing population and economic growth, combined with little or no water treatment, have led to grave negative impacts on water quality.

4.5 The link amongst land-water resources and the socio-economic progress

It is a known fact that the poor people have little or no access to land throughout the world. Moreover the ones that possesses small and holdings, lack proper resources to manage it to manage properly. They lack knowledge and resources regarding latest farming techniques and systems. Nevertheless, It is not only the poor that possess degenerated lands. Many affluent people also have the misfortune of living on. In fact only sixteen percent of the poor people reside in degenerated lands. Transformation of the ecosystem from time to time has greatly affected the land produce of people and thus it often destroys the poor person's meager land produce. A large number of techniques have been applied to determine the levels of poverty in the various societies. For instance the most common technique used by FAO is stunting, which is used as an audit to determine the level of undernourishment caused due to poverty, in children and young people. Today stunting is considered to be the most trustworthy method of determining poverty. Reports indicate that poverty is highest in Africa and Asia, especially in sub-Saharan Africa and India. Nearly half i.e. 45% of the rural people in sub-Saharan Africa, come under the category of poor people.

It has been observed that the majority of poverty stricken people hail from marginal areas, where there is a great uncertainty regarding ownership of land and water resources. Small and poor farmers constantly face the problems of possessing small and degraded lands, lack of security of tenure and natural disasters and uncertain changes in the weather. In addition to this they do not have the access to the latest and best technologies for cultivation. Thus to alleviate the

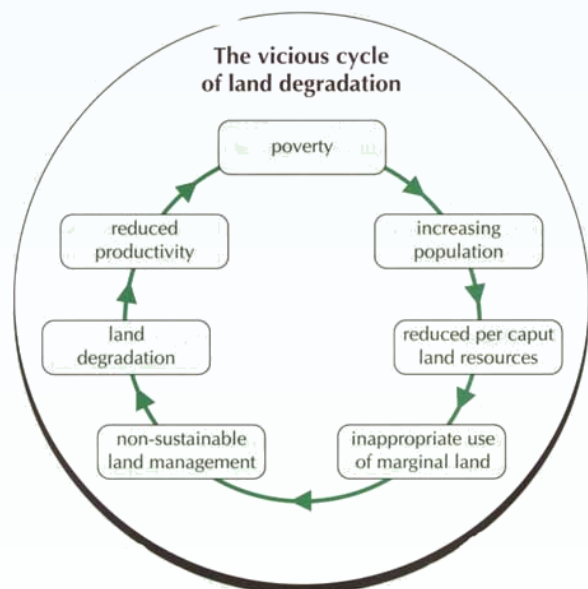


Fig. 10

problems, efforts must be made to equip the marginalized farmers with the best techniques of farming. In fact better land and water tenure arrangements and farming techniques willing turn lead to eradication of food insecurity and poverty.

Intensify efforts on poverty reduction

Introduction of new farming techniques like nitrogen-responsive techniques, seasonal cultivation, and availability of new irrigation techniques during the course of green revolution led to a large scale increase in production, in Asia. This in turn reduced poverty to a certain level in Asia and also served as the basis of industrial as well as economic development for the next 25 years. Studies reveal that as a result of one percent increase in productivity, there would be one percent reduction in poverty by as well. This in turn led to the rise in human development index by 0.1 percent. Nevertheless it should be taken into account that the benefits of improved production are not enjoyed equally by all sections of the society. It has also been observed that many times production intensification strategies have led to loss of both land and jobs of the poor. Very often, there is also decrease in income of the poor farmers who are using production intensification.

Irrigation and poverty reduction

It has been observed through various studies on around twenty six irrigation plans working in six countries in Asia, that improvement in irrigation techniques, led to reduction in poverty. These reports state that the resources available to poor people is much less in comparison to rain fed areas, especially in India and in Southeast Asia. Provision of water for agriculture improved the crop productivity to a high degree, which in turn led to higher income. As a result of this poverty did reduce to a certain degree.

Regional distribution of water management methods

Sub-region	Irrigation					Other water managed areas	Total water managed area
	Full or partial control	Spate irrigation	Total irrigation	in % of total	in % of cultivated		
Indian subcontinent	55 595 113	-	55 595 113	43	36	-	55 55 113
Eastern Asia	54 460 500	27 000	554 487 500	42	55	-	54 487 500
Far East	4 016 874	-	40 116 874	3	60	-	4 0116 874
Southeast	9 983 995	-	9 983 995	7	25	352 500	10 336 495
Islands	6 341 522	-	6 341 522	5	13	3 841 450	10 182 972
Asia	130 398 004	27 000	130 425 004	100	37	4 193 950	134 618 954

Irrigation techniques

Country	Irrigation techniques					
	Surface		Sprinkler		Micro-irrigation	
	ha	%	ha	%	ha	%
India	49 330 000	98.5	700 000	1.4	71 000	0.1
Japan	2 830 079	90.5	243 000	7.8	55 000	1.7
Mongolia	13 900	24.3	43 400	75.7	-	-

Intensification of irrigated land, in ten countries

Country	Area under irrigation ha	Irrigated crops ha	Intensification %
Bangladesh	3 751 041	3 167 756	84
Bhutan	39 734	27 900	72
India	50 101 000	66 144 000	132
Sri Lanka	570 000	666 700	120
Korea, Rep.	888 795	978 795	110
Cambodia	390 461	313 000	80
Lao PDR	155 394	162 692	105
Myanmar	1 555 146	1 911 162	123
Malaysia	362 600	477 606	132
Philippines	1 550 000	1 492 676	96
Total (10 countries)	59 363 445	75 362 287	127

However one of the greatest disadvantages faced in the area of irrigational facilities is that it is accessible to only a very small part of the population. This inequality faced in the field of irrigation is due to multiple reasons and also affects multiple areas in the market such as labour, transport, processing and packaging.

Multiple impacts like these have been revealed by several authors in Asia and they have broadly classified the advantages of private and communal groundwater development in India, as 'pro-poor'.

Thus, the efforts made have affected poverty in a positive way in the following ways:

1. Improvement in productivity of crops.
2. Increase in deploying employment
3. Increase in incomes

But the long term impact of irrigation on the poor is on multiple levels such as, increase in productivity, increase in rural employment, increase in rural spending capacity, and reduction in vulnerability of the poor.

The important challenge today is to maintain a balance between the land to meet water systems and the increasing demand of the people. Majority of the countries are working towards the development of integrated river basin development, with the aim of achieving this. The greatest disadvantage faced achieving this is the extensive use of river basins for urbanization, setting up industries and for agricultural use. However in the 21st century, people are slowly realizing the importance of integration. Due to the scientific advancement, the world today is aware of the importance of water cycle, reuse of wastewater and methods for eradicating pollution due to chemicals. They also realize the importance of maintaining the environment. One major step in the direction is through the protection of forests and wetlands, which play a key role in maintaining the water cycle naturally. Therefore, a number of techniques for resource management need to be adopted to address the problems regarding land and water systems.

4.6 Increasing competition for land and water resources

Due to increased pressure on land and water resources, the greatest problem faced is that some of the countries experiencing the fast population growth are those where land and water resources are scarce. Land and water for crop production, which already lacking in some locations, will experience rising competition, particularly from fast-growing urban settlements. Though increasing respect for the conservation of a broader ecosystem will aid amelioration of land and water competition within agriculture will cause a challenge.

4.6.1 Increasing pressure on water due to increasing irrigation

Irrigation facilities have increased from 6 to 7 percent in developing countries, and around from 8 to 9 percent in the entire world. But this increase is proving to be disadvantageous in the sense that it has led to increase in stress on water.

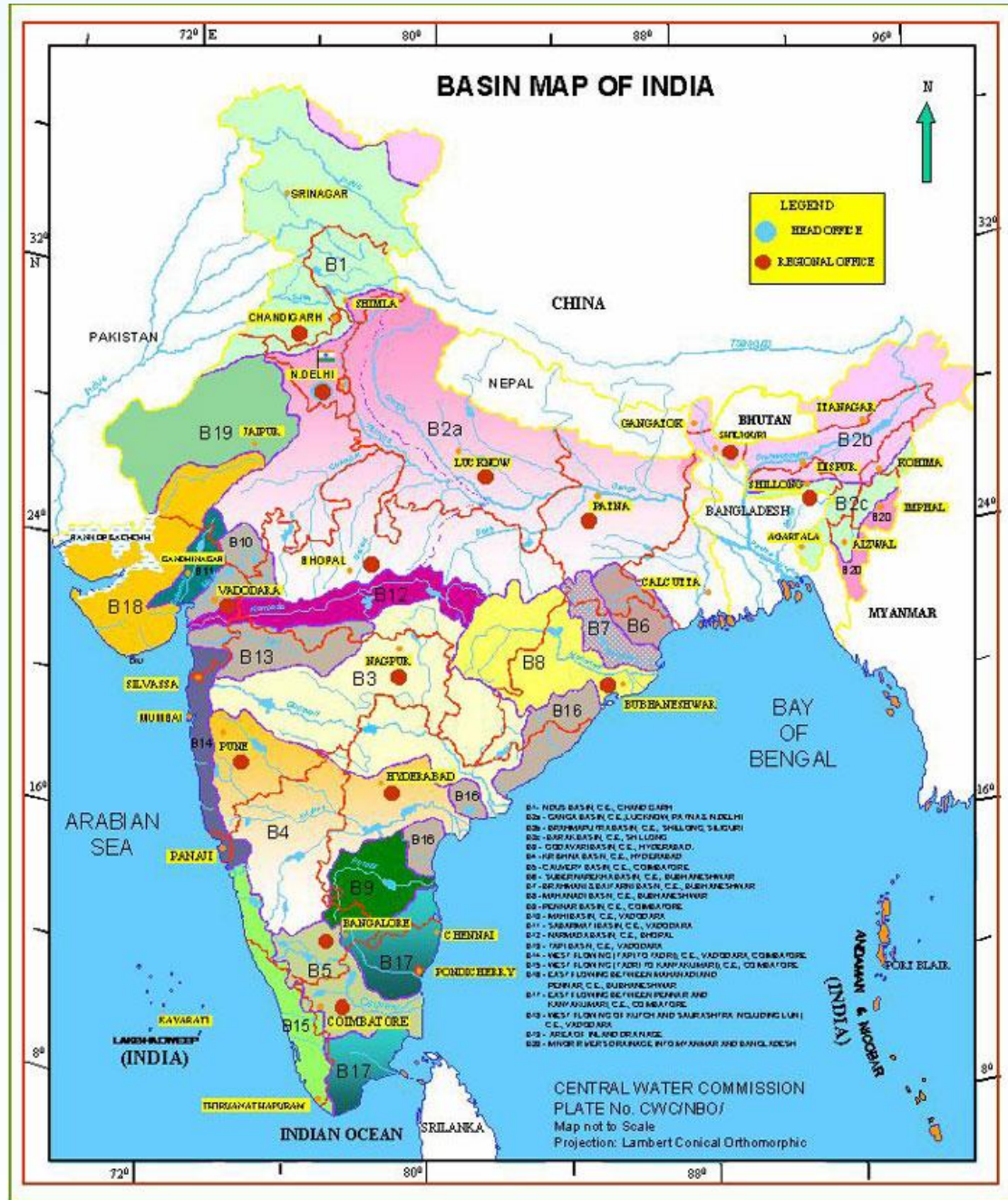
Studies reveal that, water retraction level may become stable or may even improve in industrial nations and nations undergoing transition. Similarly water retraction in high-income countries is also anticipated to reduce by 17 percent. On the other hand water retraction in the low-income nations facing food-deficit is anticipated to increase by 10 percent. The biggest increase is anticipated in Southeast Asia (here irrigation is expected to increase by 55 km³ annually or may increase by 19 percent of present water retraction level). In South America it is expected to increase by 59 km³, or 53 percent of present water retraction levels). In the sub-Saharan Africa irrigation is expected to increase by 21 percent. Therefore the general increase in water withdrawals is expected to be 22 km. However, in all the three regions, the water level retracted due to irrigation will be only 5 percent.

However, in regions like the Near East and Northern Africa, water stress has risen above the danger level. This is because, in these regions, retraction of water is equal to or more than the total renewable water. These areas also experience low rainfall. In Northern Africa especially, water stress has greatly increased due to a large amount of irrigation. This has resulted in a great deal of groundwater overdraft and also the consequent efforts in water recycling.

Although differences in water related stress are easily visible at the global level, many times they remain invisible at the national level. For instance in countries like Arabia, Yemen, Saudi Arabia and Libya, water withdrawal due to irrigation in between 2005 and 2007, was much more

than the water renewable annually. Similarly in China, water stress is extremely high in the northern region. Studies reveal that it will continue to do so. Besides this regions like the Arabian Peninsula face a greater challenge due to depletion of their water resource.

4.6.2 Urbanization



For International / State boundaries and Coast - Line refer to Survey of India maps.

Fig. 11

The greatest challenge faced in the area of farming is to satisfy the increasing requirement of land and water. Urbanization is a continuous process. Therefore land is also required continuously to keep pace not only for farming but for increasing urbanization due to rise in population. Therefore growth in urbanization, industries etc., are likely to increase water stress. This trend is visible in areas such as Sana's Basin in Yemen and in the Oumer Rbia River in Morocco.

In developing countries the problem of deficit land due to urbanization is around ninety percent, said to be the highest in the world. However urbanization can be advantageous if it leads to the rise of high-value agriculture and high value gardening for urban markets. Urbanisation may also lead to the use of techniques such as treatment of sewage water for conversion into water rich in nutrients. This would increase the re-use of water and decrease of polluted water. However effectual guidelines need to be developed for the regulation of safe re-use of water.

4.7 Augmentation of attentiveness towards environmental necessities

Transformation of land, water and farming systems greatly affect the ecosystems. Therefore the greatest requirement today would be to regulate and manage these resources in an effective manner. This would lead to the sustainable development of the ecosystem. People must be made aware about the interdependence of the various parts of the ecosystem (such as land and water). This will lead to awareness regarding protection of the ecosystem. People involved in farming and industries will adopt techniques to protect the ecosystem.(for instance techniques to reduce soil erosion and increase the carbon content) Similarly there should be planning for the use of land- and water for both cultivation and industries. In fact cultivation has already been restricted to a total amount of 1.5 billion hac. (11 percent of the total land area of the world).This is because a large amount of forested land has been declared as protected land.



Fig. 12: Availability of potable water is an issue

4.8 Causes and repercussions of land and water degeneration

In the contemporary world, land degradation is by no means only soil erosion or deprivation of the fertility of soil. In fact it also refers to the degradation and imbalance of the ecosystem. This results in the loss of benefits delivered by the ecosystem. Therefore land degeneration should be apprehended as an integration of



Fig. 13: Pollution has led to degeneration of water

land, soil, as well as all the benefits, (biophysical or socio-economic) associated with the ecosystem.

Studies reveal that, nowadays, activities like farming, grazing and forest management predominantly leave a negative impact on the ecosystem. Therefore human-induced factors causing misappropriation of land, (such as pollution, Stalination, cultivation, deforestation etc.) are by far the most for problems like soil erosion and imbalance in the ecosystem. In fact majority of the causes like floods, forest fires, droughts and landslides, that appear to be natural, are also in some way or the other induced by human beings. Lack of adaption to local ecological environment, those schemes that are implemented for effective ecological management has resulted in increased land degradation.

Read and Reflect

Between 1990 and 2010, the net forest area in the Latin America and Caribbean region decreased by about 87 Mha, or almost 9 percent. In particular, the Amazon Basin, which contains the world's most extensive tropical rainforest, encompassing unique biodiversity, has one of the world's highest rates of deforestation. Commercial farmers have cleared large areas for soybean exports in Brazil, Bolivia and Paraguay, for coffee in Brazil, and for bananas in Central America, Colombia, Ecuador and the Caribbean. Small scale farmers also cause forest degradation by employing slash-and burn practices in migrating their agricultural practices around forests.

Source: CDE (2010)

Recently FAO along with World Overview of Conservation Approaches and Technologies (WOCAT), for Land Assessment in Dry lands (LADA), has evolved an assimilative and scalable skeletal framework for estimating land degeneration. This venture began due to initiation and assistance of UNCCD. It has been developed on the ideals of ecosystem services, which were evolved by Millennium Ecosystem Assessment (MEA, 2005). It encompasses a new approach for assessing the presence, extent, causes and repercussions of land degeneration. It also suggests and outlines some suggestions for efficient management of land, so as to eradicate further degeneration of land. This procedure of assessment is not similar to Global Assessment of Soil Degradation (GLASOD), which took into account only the condition of soils. Therefore '*Land degeneration*' does not only mean degeneration of the soil but, encompasses many more aspects such as degradation of the ecosystem and the components related to it, destruction of biodiversity, intensive farming etc.

In addition to the previous schemes, FAO (LADA) is presently developing a new program for the effective implementation of FAO-LADA policies, for integrative analysis of global datasets (GLADIS: Global Land Degradation Information System). GLADIS evaluates the situation, shifts the repercussion of land degeneration on the society with the help of certain prevalent socio-economic and environmental indicators.

The Main Characteristics of the Fao-Lada Framework

- ▶ The key role of stakeholder evaluation of the status and trends of multiple ecosystem benefits spanning three dimensions -social, economic and environmental -widely recognized as the three pillars of 'sustainability'.
- ▶ Degradation is deemed to be occurring whenever pressures exerted upon an ecosystem trigger a continual declining trend (over a period of approximately ten years or more). In the value of one or more benefits to levels below that which is considered acceptable by the community of stakeholders that, directly or indirectly, is responsible for the 'management' of the ecosystems. The underlying rationale is that stakeholders will continually make trade-offs among various benefits in order to 'manage' the ecosystem towards the attainment of acceptable levels on all three 'sustainability' criteria.
- ▶ Degradation can be considered to be permanent when the cost of rehabilitating degraded land using currently available technologies would be judged unacceptable by stakeholders, from economic and or social standpoints.
- ▶ The 'state of land degradation' (equated to the condition of ecosystem benefits at a point in time) as well as 'trends in land degradation can only be evaluated against a reference year. Both 'state' and 'trend' are important considerations in evaluating the urgency for remedial actions. Critical situations occur when low 'state' occurs simultaneously with a rapidly declining 'trend' in ecosystem services. Areas with low to moderate 'state' and declining 'trend' should be highlighted for preventative actions for greater cost-effectiveness.
- ▶ Data collection methodologies used to measure various aspects of degradation evolve over time. The FAO-LADA framework can be applied independently of specific methodologies and at various scales. Either measured variables or related indicators can be used.
- ▶ Drivers and impacts of land degradation are assessed at different scales. This allows comprehensive understanding of the behaviours and strategies of various land users, and facilitates coherent actions at different levels of decision-making.

Source-fao.org/docrep/017

The GLADIS evaluation programme concludes that the main causes of land degeneration are ineffective management and usage of land. For instance, forests are greatly responsible for developing biomass, as well as protecting biodiversity and soil erosion. Therefore adaptation of deforestation for the sake of increasing cultivation, leads to the destruction of the services obtained from the ecosystem. In addition to this, the quality of the soil also deteriorates due to large scale cultivation, resulting in severe land degradation.

Observation of recent shifts is an extremely significant procedure for the assessment of the services obtained from the ecosystem. GLADIS program has evaluated the changes in the services obtained from the ecosystem, in between the years 1990 and 2005, for observing further advancement or degradation of land. These studies reveal an increasing trend in land degeneration all over the world. According to the report, degradation of land is highest on the

west coast of America, Southern Europe, North Africa, Sahel, Africa, and the whole of Asia. The study elaborates that the danger is posed predominantly on quality of soil, biodiversity and quantity of water. The greatest threat is the loss of soil quality, followed by biodiversity loss and water depletion.

4.9 Relationship between land - water resources and climatic changes

The method of handling land and water resources, greatly affects the factors influencing climatic changes, negatively as well as positively. It has been observed that, this relationship between land-water resources and climatic changes is greatly dependent on the various agricultural and industrial systems. The development and adoption of various agricultural and industrial practices affects the factors influencing climatic changes, to a large extent. For instance, malpractices such as deforestation and mismanagement of industrial wastes, has affected the emission of greenhouse gases tremendously.

It has been observed that, the adoption of several management approaches to development could lead to the increase in carbon content and reduction in direct emission of greenhouse gases. However studies reveal that the sustainable management of land- water resources leads to the development of resilience cultivation, even during threatening climatic changes. In fact many times it also positively influences the factors affecting climatic changes and would lead to the development of cost-effective alleviation opportunities.

4.9.1 Opportunities leading to the adaptation of climate changes

In order to adapt to climatic changes, the cultivators and the policy-designers need to handle a number of challenges, such as:

- (1) The capacity to adapt to prevalent techniques or implement new to manage the climate changes.
- (2) To be able to plan for the required infrastructure and incentives, for effective adaptation of climatic changes.

Malpractices, such as adoption of non- sustainable farming techniques could lead to the deterioration of land and water resources. This may also harm the ability to respond to climatic hazards in the future. Therefore sometimes the adoption of autonomous initiatives suitable to the locality, on behalf of individual cultivators, without the interference of policy makers, should also be encouraged. However for effective adaptation to climatic changes and for the achievement of long-term benefits, proper planning, transformation of policies, infrastructure and institutions is required.

According to the recent surveys, the biggest hurdle in managing climatic changes currently and in the future is management of water resources. The management of water resource will be greatly affected by the water availability (both naturally and seasonally) as well as the competition in demand for water in agriculture and other sectors. Therefore it is imperative that the various land systems develop and implement new irrigation practices for effective adaptation to future climatic changes. In addition to this, proper water management and irrigation management are extremely essential for both production of as well as the competing human and environmental

requirements. Therefore efficient water management for agriculture as well as industries, various new farm-level and irrigation system-level techniques need to be formulated.

Efforts should be made to improve monitoring of weather forecasting and seasonal forecasting. These kind of forecasting techniques, especially for the optimum usage of rainfall have been created and are available in

some nations. However for better and user-friendly implementation of weather forecasting a lot more effort is required.

The governments of the various nations should adopt techniques to address the problem of climatic change. This could be done by the effective planning, together with implementation of programmes, policies, infrastructure, investment so as to improve water and irrigation resources. Besides this the government should also focus on proper planning and implementation of appropriate land tenure arrangements, well outlined property rights and operative markets for various products, including water pricing schemes.

Therefore all programmes implemented for the improvement of land and water resources and sustainable development of the environment should be resilient to the changes in the weather and the market, thus leading to sustainable development of land and water management. For instance, it has been evaluated that the emission of carbon dioxide could be reduced to around 4-18 billion tones by effective management of farming, forests, live stocks, tillage, land restitution and yield of bio-energy from biomass.

Depletion in the level of the groundwater will sooner or later greatly affect the total amount of water accessible for cultivation and various other purposes in the majority of areas. Increased usage of groundwater, vast usage of tube well technology, availability of low priced energy and lucrative markets are the main causes of reduction of groundwater level. However in spite of this depletion of water resource can be avoided by introducing recharge.

In fact majority of the world's best quality water resources which were readily available, have deteriorated and exhausted, due to large scale and unregulated retraction of water by humans. One of the biggest example in this category is the exhaustion of the aquifer in the Central Valley of California or the Ogallala water resource in the Great US Plains. In addition to this some other examples in this category are the agricultural tracts of Punjab, Plains of North China and the Souss basin in Morocco. Here the reduction in water resource has been recorded as 2 meters

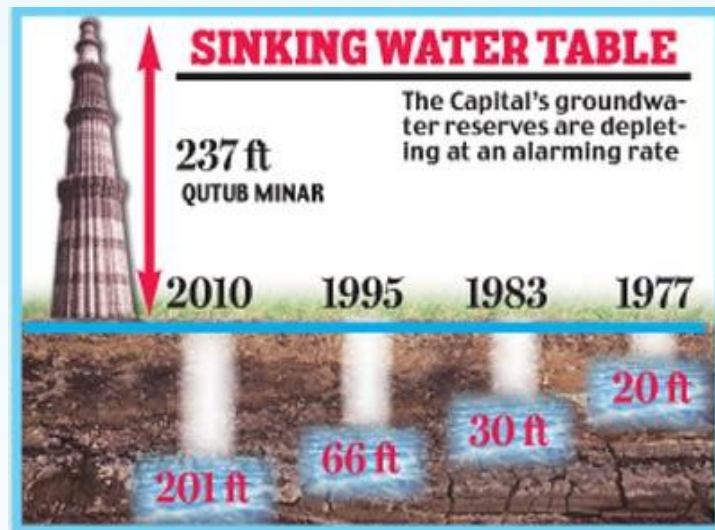


Fig. 14

annually after 1980. Similarly in Yemen, withdrawal costs of water are inelastic for both independent farmers and for the community, which sometimes is from the depth of around 1 km.

In some parts of the world, exhaustion of groundwater has resulted in the disintegration of several aquifers. One of the most prominent examples in this category, is the Central Valley of California. Here the aquifers have collapsed due to regular and large scale withdrawal of even deeper water for the purpose of irrigation. In Iran too, heavy retraction of groundwater has resulted in drying up of the conventional springs and wells, known as '*qanat*'.

Major problem faced by the aquifers is salinisation of groundwater. This has happened in several areas, due to percolation of saline water into the aquifer, during the process of drainage of water during irrigation from a saline water resource. In fact on many islands and in the coastal areas, excessive withdrawal of groundwater has induced percolation of saline water. This has ruined several economically beneficial ground water resources, which can no longer be used for water supply for various purposes, especially irrigation. For instance several water resources of the coastal areas of Gaza, West Java, Gujarat and Mexico, have been completely salinised.

According to the survey made by FAO, regarding usage of aquifers in the field of agriculture all over the world, around forty percent of the areas irrigated all over the world are highly dependent on ground water. The major food producing areas in the world also rely on groundwater. The aquifers in many of the food producing areas, such as, Punjab and North China Plain, are constantly declining. Besides this, in four major food producing areas of the world, such as India (64 percent) and USA (59 percent) water resources are declining. Therefore declining aquifers are posing the greatest threat to the production and supply of food in the world.

STATUS AND TRENDS IN GLOBAL LAND DEGRADATION	
Typology of degeneration of ecosystem	Intervention Procedures
Type: 1 - High degeneration trend Or highly degraded lands	Rehabilitate if economically feasible: Mitigate where degrading trends are high
Type: 2 - Moderate degradation trend In slightly or moderately degraded land.	Introduce measure to mitigate degradation
Type: 3 - Stable land. Slightly or Moderately degraded	Prevention interventions
Type: 4 - Improving lands	Reinforcement of enabling conditions which Foster SLM
Source- fao.org/docrep/017	

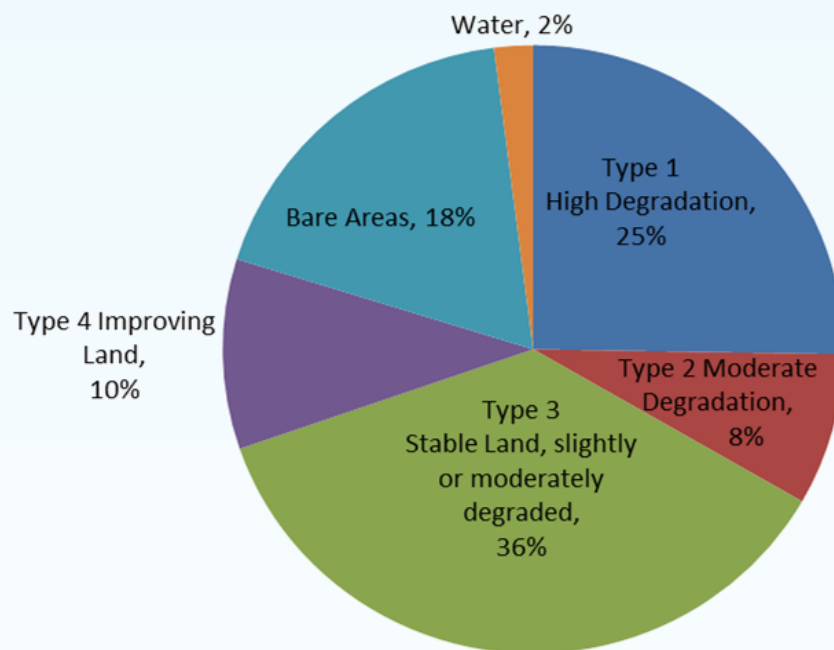


Fig. 15

Major food-Producing Countries dependent on Groundwater

Country	Area equipped for irrigation (ha)	Groundwater (ha)	Surface Water (ha)	Dependence on groundwater (% of area equipped of irrigation)
Brazil	3149217	591439	2557778	19%
China	62392392	18794951	43597440	30%
Egypt	3422178	331927	3090251	10%
India	61907846	39425869	22481977	64%
Pakistan	16725843	5172552	11553291	31%
Thailand	5279860	481063	4798797	9%
USA	27913872	16576243	11337629	59%

Source: Siebert et al. (2010)

Global production systems	Cases or locations where systems are at risk	Risk
Rangelands	Pastoral and grazing lands, including on fragile soils in Western	Desertification, out-migration, land abandonment, food insecurity,

	Africa(Sahel),North Africa, parts of Asia.	extreme poverty, intensification of conflicts.
Forests	Tropical forest-cropland interface in Southeast Asia, the Amazon basin, Central Africa, and Himalayan forests.	Cropland encroachment, slash-and-burn, leading to loss of ecosystems services of forests, land degradation.
	Deltas and Coastal Areas: Nile delta, Red River delta, Ganges/ Brahmaputra, Mekong, etc. and coastal alluvial plains: Arabian Peninsula, Eastern China, Bight of Benin, And Gulf of Mexico.	Loss of agricultural land and groundwater, health-related problems sea-level rise, higher frequency of cyclones (eastern and Southeast Asia), increased incidence of floods and low flows.
Other locally important systems	Small Islands including Caribbean, Pacific islands.	Total loss of freshwater aquifers, increased cost of freshwater production, increased climate-change related damages (hurricanes, sea-level rise, floods)
	Peri-Urban agriculture	Pollution, health-related problems for consumers and producers, competition for land.

Source: fao.org/docrep/017

4.10 Ensuring gain of land and water resources

One of the greatest necessity today is to devise policies for implementing inclusive and steadfast land tenure. Recent surveys reveal that in developing nations the per capita shares of land will reduce to half by 2050. This will increase the tension of finding new lands for farming and for constructing houses industries etc. In spite of the existence of a vast amount of land, it is unavailable for cultivation. The reason behind this is that majority of it is utilized for either some kind of economic activity or for delivering indispensable ecosystem services for the biosphere. Besides this, the available land is not always accessible in areas where demand is highest. However studies indicate that around 120 Mha of new land may be available for cultivation by the year 2050.

Read And Reflect

Water is a key foundation, whose importance can hardly be overestimated. It is a common denominator of the leading global challenges of our time - energy, food, health, peace and security. Water management can reduce the risk of disasters, such as droughts and floods. With transboundary river basins and aquifer systems representing almost half the earth's surface, water cooperation is vital for peace.

Irina Bokova, UNESCO Director-General.

Keynote address to the High-level panel discussion organized by the Government of Finland at the Rio+20 Conference.

It is extremely essential to develop global and national policies for the augmentation of cultivated lands. These policies should focus on maintaining a balance between this expansion and the actual usage along with the protection of ecosystem functions. Special attention should be paid to the security of global gene pools and for increasing the terrestrial carbon pools. These decisions regarding augmentation of land should be taken via proper reasoning and involvement of the community of the concerned nation as well as the world. A proper evaluation of the policy formulated is extremely essential, in order to evaluate the disadvantages and threats regarding alternative land uses.

After the formulation of the policy to boost land for cultivation, what should be the incentives so as to encourage the optimal usage of the expanded cropland?

1. First of all techniques for proper management of the various kinds of pressures on land need to be adopted. To achieve this well organized institution need to be established, especially for the management of land tenure.
2. Secondly policies and institutions need to be developed, to maintain the integrity and sustainable development of the ecosystem via appropriate usage of land and water resources.

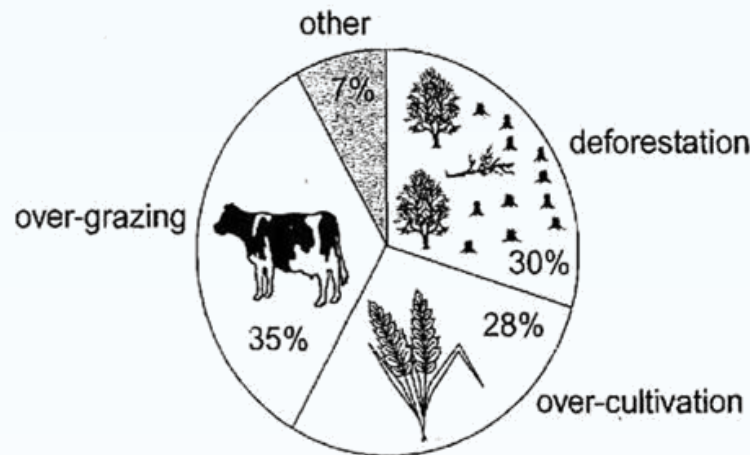
In addition to this policies and schemes to motivate the expansion of sustainable cultivation are extremely necessary. Besides this, new technological researches, advisory provisions for cultivators, outlining provisions for industries, formulation of guidelines for water supply in the urban areas, provisions for capital and credit, and progression of the market, need to be ensured. Ultimately the cultivation and production system should ensure economic and viability complies with the principles of sustainable development of land and water resources. Therefore cultivation should ensure replacement of the ecosystem services that may have been lost and should also decrease trade-offs. Regular evaluations and check must be made to ensure effective decisions regarding the same.

In order to ensure sustainable development, land and water resources should be used taking into account the requirement of the resources in future. Provisions and policies adopted should be for long term, so as to ensure the availability of land and water resources in the future also. In order to achieve this long term planning, majority of the nations have adopted individual freehold system or long leasehold tenure. But extra caution is required in nations lacking communal rights. In such cases two solutions can be sought out .The first process directs the nations to support communal land tenure systems. This can be done by providing legal assistance for acknowledgement, security and demarcation of lands and by assisting the owners of the land by teaching them techniques of self management and self-regulation. This process has been adopted in countries like India, South Africa, Brazil and Ghana. The second process encourages the implementation of several legal and institutional modifications, so as to ensure transformation of communal rights, into individual property rights. For example, this could be achieved by

transforming plots in community areas into individual property. This solution is provided by the land laws of many nations like, Tanzania and Mozambique.

Land markets can help manage competing uses and growing scarcity. Land rental markets have been shown to enhance efficiency and equity in land allocation. However, rental markets have often been constrained by insecurity of land owner-ship or by prohibitions controls on land rental and share-cropping. For rental markets to reach their full potential, land tenure security and registration need to be improved as well as the regulation of rental markets need to be eased. Land sales markets also require well-developed property rights and administration.

Causes of worldwide land degradation



Causes of land degradation by region

Region	% land degraded by...			
	deforestation	over-cultivation	over-grazing	Total land degraded
North America	0.2	3.3	1.5	5%
Europe	9.8	7.7	5.5	23%
Oceania*	1.7	0	11.3	13%

* A large group of islands in the South Pacific including Australia and New Zealand

Fig. 16

Several nations across the world have been executing land reallocations and reforms. Very often the government finds it very difficult to manage the land possessed by the State due to incursions, settlement, past possession claims, rent, sale and illegal allotment. Very often the

governments are not even aware of the location and amount of land that they possess. The State needs to maintain a cadastral register, containing the exact information of State owned assets so that effective implementation of reforming can take place. Necessary judiciary safeguards also need to be developed for the security of State owned lands. Therefore for the successful implementation of land reforms, policies should be accompanied by provision of credit, proper training of concerned officials and providing empowerment in planning and implementation.

In addition to this, reforms can be successfully implemented, only when individuals are aware of their pre-existing rights. Due to lack of knowledge, the reforms would be opposed by all beneficiaries and will not be implemented on account of resistance by strong stakeholders. The situation would be further aggravated due to lack of suitable institutions required for their implementation. Besides this the existing registration norms may prevent a number of existing users from getting their rights acknowledged. Safeguards for particular users may lead to the establishment of inequality for many others. In addition to this, reforms may be able to achieve their exact aim of economic benefit, but may lead to the degradation of the ecosystem. Thus it is extremely essential to plan the aims and procedures of the reforms or policies carefully in tune with the historical, political and environmental perspective.

Read and Reflect

One of the primary objectives of the UN International Year of Water Cooperation 2013 is to break down, analyse and achieve a common understanding on the essence of 'water cooperation'. Water cooperation refers to the peaceful management and use of water resources among various players and sectors and at different levels. Indeed this consists of acting together toward a common end and mutual benefits.

Hans d'Orville, UNESCO Assistant Director-General for Strategic Planning at side event Thematic Session on Water Cooperation organized by the Government of Tajikistan at the Rio+20 Conference.

4.11 Ensuring access to water and guaranteeing elasticity in water distribution

At present the greatest problem posed to the availability of water resource for future use is the usage of the renewable water resources in most parts of the world.

Therefore the greatest requirement today for protection of water resources for the future usage is to set up systems ensuring contemporary rights, which would in turn help in protecting water resources and land resources responsibly. However there are two major constraints in achieving this.

1. The process of guaranteeing basic access to water resource for the fulfillment of constructive usage of land resources, still has to go a long way in order to include all users.
2. After its achievement, the biggest requirement would be to provide high scale knowledge to the users and regulators, in order to secure elasticity in usage of water resources.

For the achievement of basic rights for cultivators, progressive conversion of conventional usage into adequately safeguarded rights is required. Therefore the biggest concern of WUAs is to guarantee flexibility in rights concerned with water usage. For its realization, the amount of

association should be proportionate to the natural system. In addition to this, allotment and transfer of resources should be done in an effective manner amongst the members. The primary requirement for achieving this, is via management of flow of information from the water regulator and also amongst users. Therefore users need to be knowledgeable.

Realizing the need, majority of contemporary water management systems guarantee flexibility in water usage, water usage rights in the interest of general public, provision of maintaining good quality of water and provide means of knowledge and research for local organizations working for management of land and water resources. Therefore to resolve the problem of water management in various localities, decentralized solutions are coming up for the management of both surface and groundwater, through tie ups with users of the locality.

4.12 Land and Water Conservation in India

Measures to enhance the quality of soil as well as water to boost the agricultural output/yield are necessary for any nation. To do so various programmes were implemented as a part of the first five year Plan. Therefore, from the beginning there has been a stress on the evolution of techniques to identify and eradicate the problem as well as implement of proper laws and policies. However during the course of the five-year plans, the activities, policies and programmes regarding soil and water conservation, have considerably changed.

In the Third Five-Year Plan, The centrally-sponsored Scheme of Soil Conservation in the catchments of River Valley Projects (RVP) commenced. Subsequently under the Sixth Five-Year Plan, the Flood Prone (FPR) was initiated with the purpose of studying the consequences of the 1978 floods. Both these projects were combined in the Ninth Five-Year Plan, on the suggestion of Expenditure finance Committee and was resumed under Macro Management Mode from November 2000 onwards. As a result of the Catchment Management of River Valley Projects and flood Prone Rivers programme, 53 Catchments were involved, covering around 27 States. The complete Catchment area of 141 million ha, out of which 28 million ha requires urgent treatment. Around 6.08 76 million ha was treated till 2004-05, with an expenditure of Rs. 1894 crore. During 2005-06, an area of 0.17 million ha. was treated, with an expenditure of Rs. 145 crore.

As part of the Seventh Five Year Plan, a programme for the Reclamation of Alkali Soil was funded by the central government. This scheme was applicable in Punjab, Haryana and Utter Pradesh. Later on this scheme was extended to various other Indian States, where the problem regarding alkali soil persisted. The Ninth Plan covered the objective of restoring optimum crop production by improving the physical aspect of alkali soils through improvement in irrigation techniques, land tilling, drainage system, soil conservation etc. As a result of the Macro Management Scheme, around 0.03 million ha of land has been reclaimed, increasing an expenditure of Rs. 9.29 crore, in between the years 2005-06.

The Eighth Plan, which commenced between 1994-95, initiated another programme of Watershed Development and was implemented in seven North-Eastern States, where shifting cultivation pursued. The Centre provided complete assistance for this programme .Under this plan around Rs 31.5 crore were allocated by the government. Under the Ninth Plan, around 1.57 lakh ha of land was treated with an expenditure of Rs.82 crore.

Subsequently a new scheme on the basis of new watershed, has been implemented from November 2000, with the expenditure amounting to Rs.10,000 per ha. As a result of this Tenth Plan, an area of 0.89 lakh ha. has been revived. The expenditure estimated on this plan, till the end of 2005-06, was Rs.88.32 crore.

4.13 Requirement for alternative Water Policy in India

Water is the most essential factor for human existence and development. Recently a number of techniques have been adopted for the sustainable and equitable usage of water. This could be achieved through the adaptation of a number of water conservation techniques and cultivation techniques. However a large number factors (such as urbanization, increase in population, industrialization etc.) have interfered in the course of nature and have led to hazardous changes in the water cycle, rainfall, moisture content of the soil and surface and underground aquifers. This has resulted in pollution, overuse and depletion of the available vital water resources. In addition to this it has also led to the deterioration of the natural cleansing ability of water.

Thus water is one of the most significant components of our national level planning for development in the 21st century. Water management is extremely essential, not only on account of restricted water resources, but also for better crop cultivation, for the realization of food security for the increasing population. This would also help in the realization of eradication of poverty. Besides this it is also required for the eradication of social conflicts that arise due to water scarcity.

In order to reduce the harmful effects of depletion of water resources due to overuse and to guarantee the optimal usage of water resources to eradicate poverty as well as realize the planned economic development, an effective water policy is extremely essential. The national water policy thus formulated for the twenty-first century, should acknowledge water as a prime national resource for ensuing national planning and development. Water management needs to be decentralized and state governments as well as local communities must be involved in the execution of the programme. The water management policies formulated should have a descriptive framework and be flexible enough to suit various situations. Such as agro-climatic zone, location, density of population etc. In addition to this water policies for specific regions also need to be developed, separately due to differences in rainfall, surface and underground water content.

In September 1987, the first National Water Policy was adopted. Later on, in April 2002, it was revised by the National Resources Council. Recently the expansion and management of water resources have been facing a number of challenges, such as depletion and pollution of water resources. However on the other hand a large number of local initiatives for water conservation have also gathered momentum; thereby facing the growing challenges regarding water resources. The need of the hour is to strengthen these initiatives. For doing so it is necessary to provide community water rights, strengthen the processes of water conservation and management as well as declaration of water resource as a common property resource.. Besides this an analysis of the 73rd and 74th amendment, should also be made.

Read and Respond

Read the 73rd and 74th amendment and discuss in groups how it has improved the status of land and water conservation.

4.13.1 The Vision: Key Elements of the Alternative Policy

Planning on the part of the centre is often disadvantageous, as distant planning is unable to analyse the social, cultural, ecological or other eventualities of various regions. Therefore they are unable to respond to the problems associated with access to water resources and problems of water depletion, drought. Therefore the key objective of policies concerning land and water resources, is to resolve the problems concerning water conservation, water quality, water depletion, droughts, and sustainable and equal distribution of water. In order to achieve this, the water resources of the locality should be used and conserved to the optimum capacity. To accomplish this, the local community users must be included in policy making and water resource management. However, the government should support and regulate the process by providing appropriate technical and financial assistance.

Therefore in order to achieve the aim of securing full employment and food security, the community should be involved in watershed development. Although there has been a an increase in food grain production of about 200 million tonnes by the year 2000, it further needs to be increased to around 300 million tonnes by the year 2020. Studies reveal that out of 195 mha, only 142 mha of net land is under cultivation. This may get reduced to 140 mha in the coming times similarly only 54 mha land is irrigated, which may increase to 65 mha by 2020. However 141 mha land depends on rains, since the last 20 years. Studies reveal that, around 42 mha of cultivable land is present as fallow land and wasteland. In around 11 mha of land watershed development is required to make it cultivatable. Therefore around 141 mha of rain-fed land requires watershed development, which may get reduced to 110 mha by 2050, as shown in the table

Land Area of India by Usage (mha): Current and Projections for 2020 and 2050

Usage	Area Reported (1995-96)	Projections for 2020	Projections for 2050
Culturable area	195	190	185
Net irrigated area	(54)	(65)	(85)
Non-irrigated/rainfed area	(130)	(110)	(80)
Area covered by trees	(11)	(15)	(20)
Forest area	69	66	65
Non-agricultural use	22	30	36

(urban, roads, etc.)			
Barren	19	19	19
Total area reported	305	305	305

Source: CWC for current land area; projections by author

In the major cities, there is increasing demand of water for domestic use and industrial use, especially for thermal power generation. Fulfillment of this demand leads to the ignorance of the basic requirements of rural areas. This demand is increasing day by day. In addition to fulfilling the rural and urban demands, maintenance of aquifers and river systems is also required, which includes activities like, sustaining minimum flow of water, security from agricultural and industrial pollution, and prevention of sand extraction from the riverbed for the survival of aquatic life and for maintaining ecology. Due to this rising demand of water, the community needs to be made aware of techniques of optimum use of water without wastage and practise water conservation.

Water policies should also concentrate on maintaining quality of water and protect water bodies from getting polluted. This could be done by the “polluter pays principle”. Besides this, new techniques based on new technologies are essentially required for eradicating pollution, conservation and recycling of surface as well as underground water. Water conservation needs to be declared as the most important aspect to maintain the ecology of the environment.

SORRY STATE		
Land degraded by water erosion		
State	TGA*	Area%
Uttar Pradesh	2,38,566	54
Madhya Pradesh	3,08,641	44
Karnataka	1,91,791	41
Jharkhand	79,714	40
Andhra Pradesh	2,75,045	32
Meghalaya	22,429	31
Assam	78,438	30
Maharashtra	3,07,713	29
Source: National bureau of soil survey and Land use Planning (ICAR)		
* Total geographical area in kilometre square		

4.13.2 National Land Utilization Policy

Land encompasses the entire ecosystem, such as soil, water, flora and fauna. It is the center of all activities conceived by human beings and thus becomes one of the most important factors that supports life on earth.

However, this natural resource of land is limited. It is only 20% of the earth's surface. The pressure on land resources is increasing day by day on account of the needs of the growing population and environmental degradation.

India, The seventh largest country in the world has almost 2.4% of the world's land resource and holds around 17% of world's population. Therefore, management of land resources is a prime concern in India.

Industrialization, urbanization and expansion in cultivation are constantly rising. The livelihood of the majority of the people is also dependant on land. Besides this the government also often needs land to carry out the various activities. Therefore land resource is the most essential requirement both for development as well as for the requirements of the society and ecology. Very often the various sectors requiring land compete with each other, which sometimes lead to conflicts. All this has elevated the pressure to carry on sustainable development on land.

Therefore it is extremely required to use the land resources optimally, prevent conflicts over land and ensure sustainability of land resources. In addition to this, it is also necessary to provide the essential land for industrialization, urbanization, developing infrastructure, agriculture and for providing food security.

The Entry No-18 of the Seventh Schedule (the State List) of the Constitution of India has declared that, since land is a state subject, it is the duty of the State Governments to assess and collect land revenue, maintain records of land and manage other aspects of land. Therefore, it is the duty of the state to do the planning regarding land.

Article 39 of the constitution states

- (1) The possession and regulation of the material resources of the nation should be allocated amongst those who would work for the common benefit and
- (2) The benefits of the economic system should be equally distributed amongst the commoners.

According to Article 243ZD (1) of the Constitution, “There shall be constituted in every State at the district level a District Planning Committee to consolidate the plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole”.

While the Constitution has focused on facilitative planning, the activities of the Centre stress on policies, framework and laws to be implemented by the States as well as the Union Territories. This planning includes activities like distributing monetary help and support.

However, on the issue of usage of land, currently, no common policy is being followed all over India. Different departments of the centre like the department of urban development, rural development, industrial development, transport development, mining development, agricultural development etc., are following their own individual policies. For instance the rural department has been following the approach of reforming the issues of land ownership, rehabilitation of land, adoption of new approaches for land record management and watershed management. However till date no policies have been developed for management of land resources in the rural areas, although nearly 50% of India’s population is dependent on land resources.

A befitting plan for land resources would include, logical and sustainable usage of land, which is sensitive to all developmental, socio-economic and environmental requirements. It would include scientific and technical planning, planning of optimum land usage, along with inclusion of the community in decision making. This would cater to both contemporary as well as future demands regarding proper usage and management of land resources. Thus, for the planning of proper usage and management of land resources, an integrated planning of various sectors such as, commerce, agriculture, industry, mining, forests, housing, transport, urban, rural and environmental, is required.

The National Commission on Agriculture, (1976) has stressed on the scientific planning and usage of land, for the realization of food security, self reliance, protection as well as adoption of enhanced livelihoods. The National Policy for Farmers (2007) has suggested the formation of Land

Use Boards, in sync with district-level land-use Committees, so as to deliver appropriate and qualitative counseling to farmers on land usage. The Committee on “State Agrarian Relations and the Unfinished Task in Land Reforms”, (2009) has also stressed on the requirement of planning for land management and usage.

The Sustainable Development strategy of Agenda 21, which is not obligatory, implemented one of the planning of the United Nations (UN). Later on the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro, Brazil, in 1992, around one hundred and seventy nations ratified it. This agenda is an exponent of the realization of sustainable development via proper planning of land usage and management.

Guiding Principles for the National Land Utilization Policy

- 1st Principle:- Human beings are at the centre
- 2nd Principle:- Inclusive growth, poverty eradication and gender equality equal opportunities
- 3rd Principle:- Balanced development and intergenerational justice
- 4th Principle:- Efficient utilization of resources and mitigation of impacts
- 5th Principle:- Integrated and comprehensive development planning
- 6th Principle:- The States re custodian of land
- 7th Principle:- Harmonization with existing policy, legislative and regulatory framework.

“Land use planning” has also been defined by the United Nation’s Food and Agriculture Organization as well as the United Environment Programme in 1999, in collaboration with the international organizations. It states that Land use planning is a regular as well as repetitive procedure, adopted to satisfy the requirements of the people and for the realization of the sustainable development of the land resources. It strives for the optimum as well as sustainable use of natural resources, after analyzing the physical, social, economic, legal and institutional capacities along with restrictions.

“Land use planning” can also be defined as the procedure of analyzing the various methods of land use. It also includes the analysis of the various socio-economic and physical conditions, for the adaptation of appropriate land use planning, for a particular nation, province, region, district, city, village etc.

The contemporary land use planning in India is inappropriate as it does not include the various local, regional and state levels. In addition to this for the optimum as well as sustainable use of land, a comprehensive, systematic, integrated and scientific planning of land use is required in India.

The Act passed by the Constitution in 1992, has implemented the process for providing land use planning in metropolitan areas and districts, via municipalities and panchayats. However the District Plans prepared recently ignored the urban and environmental matters.

Due to lack of District level planning, regulation of spatial land use plans do not generally exist. Therefore regional development triggered by urbanization or industrialization that also initiate land use planning, need to be regulated for ensuring sustainable development.

If these issues are not resolved, the unplanned and haphazard development may lead to land use conflicts. This may harm the agriculture, ecosystem and environment. It would also result in loss of productive land.

Therefore the major issues to be resolved are the conflicts and competition over land use. Competition over land is inevitable when several individuals strive for the same piece of land. In the rural areas this competition over land could be for cash crops, food crops, industrial or agro-industrial development of Special Economic Zones (SEZs). It could be even for Special Investment Regions such as highways, theme cities, townships or for thermal and power projects.

“Conflicting land uses” are those which greatly affect the neighboring land users. Some of these are cultivation in forests, mining in forests, development of highways, industrial pollution, urbanization or industrialization on agricultural lands and urban waste disposal in peri-urban areas. Therefore the major issue regarding conflicting lands, is the negative affect caused other land users. For instance, industrialization may affect other land users due to pollution. Similarly urbanization may affect other land users due to destruction of the ecosystem.

In addition to this, the competing and conflicting land uses also become the main cause of conflicts in society amongst the community, authorities or future investors.

Land usage underwent many important changes in the years, 1950, 1951, 2007 and 2008. During these years, land under net cultivated areas, forests and non-agricultural lands have increased. Whereas the lands under the category of “other areas”, has decreased to half, i.e. from 40.7% to 22.6%. This implies that to fulfil the future requirements of land, the agricultural and forest lands may have to be used. In addition to this, the per capita amount of agricultural land has also decreased to 67% from 1951 (0.48 Ha) to 2007/08 (0.16 Ha).

Degeneration of soils and land on account of soil erosion is another grave problem in India. According to the report of 2010, the total amount of degenerated land in India is around 120.40 million Ha. Land degradation reduces the fertility of the soil by making it alkaline, saline, acidic or water logged. Mostly poor farmers and tribals use the degraded soils. Soil degradation reduces the productivity of lands for around Rs. 285,000 million. This results in around 12% loss of the total productivity.

It has been observed that projects related to water resources are often planned without focusing on the overall betterment of people, sustainable development of ecology and optimum usage of water resources. Therefore the aquifers are being used for other purposes. Industrial pollution is affecting the availability of safe water and is harming the environment as well as the health of people. Majority of the rivers in India are being polluted and the destruction of aquatic ecology, is preventing them from performing self-purification. This has affected the quality and availability of water resources.

Land use changes such as deforestation for increasing agricultural land has increased the CO₂ level in the atmosphere. This has led to climatic changes, such as global warming. This has further led to the increase in droughts and floods.

In addition to this, increasing urbanization, industrialization, usage of chemicals in the field of agriculture, emission of pollutants including toxic emissions, discharge of effluents which are toxic and biodegradable, has increased occurrence of pollution as well as natural disasters. This has also led to increased risk on biodiversity and loss of ecosystem services.

Therefore it is extremely essential to formulate a policy at the national level, incorporating the needs of the various sectors, for the optimal usage and management of land resources.

This policy should also give autonomy to the various states to formulate policies according to the needs of their regions. However the States should formulate the policy by involving all stakeholders and legalities. The future policies should also be formulated as per these policies, for sustainable development.

After intensive debate and consideration, the Government of India, under the Ministry of Agriculture, formulated the “National Land Policy Guideline and Action Points” in 1988. For successfully enforcing this policy, imposition of laws and penalties were also advocated, in cases of violation. This policy was presented before the ‘National Land Use and Wasteland Development Council’, for review. This council held its first meeting under the chairmanship of the Prime Minister, on 6th February 1986 and advocated to implement the policy at the State level. However this policy did not prove to be very effective.

4.14 Looking ahead

The land and water resources have been facing several challenges over the years, such as increasing the production of food by at least 70 percent by the year 2050, increasing food security, sustainable development of land and water resources, protection of the ecosystem etc.

Studies reveal that there is a great pressure on the land and water resources due to the prevalent agricultural practices and human activities. Trends reveal that this pressure will increase in the coming years, due to increase in demand. This will not only lead to the deterioration of land and water resources but will also threaten the food security and the resources on which the livelihoods of people are dependant. This will lead to the increase in poverty. In order to avoid this situation, various measures need to be adopted for the development of sustainable land and water management. This would further expand production efficiently, without any kind of negative impact on the ecosystem, on which the world is highly dependent.

For the achievement of this goal, adjustments need to be made in the policies, incentives, institutions, financing and programmes, at the national as well as the international level. In addition to this, the world needs to realize the importance of sustainable intensification patterns and practices, of extending the cultivated area. Therefore for future benefit the global community and nations need to alter their practices, which can be achieved by the adoption of political paths, by providing financial support for sustainable intensification and by establishing the necessary institutions. Only via such changes can the world achieve sustainable development, management and fair and equitable distribution of resources, without damaging the ecosystem.

General Assembly resolution 1803 (XVII) of 14 December 1962, "Permanent sovereignty over natural resources"

The General Assembly,

Recalling its resolutions 523 (VI) of 12 January 1952 and 626 (VII) of 21 December 1952,

Bearing in mind its resolution 1314 (XIII) of 12 December 1958, by which it established the Commission on Permanent Sovereignty over Natural Resources and instructed it to conduct a full survey of the status of permanent sovereignty over natural wealth and resources as a basic constituent of the right to self-determination, with recommendations, where necessary, for its strengthening, and decided further that, in the conduct of the full survey of the status of the permanent sovereignty of peoples and nations over their natural wealth and resources, due regard should be paid to the rights and duties of States under international law and to the importance of encouraging international co-operation in the economic development of developing countries,

Bearing in mind its resolution 1515 (XV) of 15 December 1960, in which it recommended that the sovereign right of every State to dispose of its wealth and its natural resources should be respected,

Considering that any measure in this respect must be based on the recognition of the inalienable right of all States freely to dispose of their natural wealth and resources in accordance with their national interests, and on respect for the economic independence of States,

Considering that nothing in paragraph 4 below in any way prejudices the position of any Member State on any aspect of the question of the rights and obligations of successor States and Governments in respect of property acquired before the accession to complete sovereignty of countries formerly under colonial rule,

Noting that the subject of succession of States and Governments is being examined as a matter of priority by the International Law Commission,

Considering that it is desirable to promote international co-operation for the economic development of developing countries, and that economic and financial agreements between the developed and the developing countries must be based on the principles of equality and of the right of peoples and nations to self-determination,

Considering that the provision of economic and technical assistance, loans and increased foreign investment must not be subject to conditions which conflict with the interests of the recipient State,

Considering the benefits to be derived from exchanges of technical and scientific information likely to promote the development and use of such resources and wealth, and the important part which the United Nations and other international organizations are called upon to play in that connection,

Attaching particular importance to the question of promoting the economic development of developing countries and securing their economic independence,

Noting that the creation and strengthening of the inalienable sovereignty of States over their natural wealth and resources reinforces their economic independence,

Desiring that there should be further consideration by the United Nations of the subject of permanent sovereignty over natural resources in the spirit of international co-operation in the field of economic development, particularly that of the developing countries,

I

Declares that:

1. The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.
2. The exploration, development and disposition of such resources, as well as the import of the foreign capital required for these purposes, should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities.
3. In cases where authorization is granted, the capital imported and the earnings on that capital shall be governed by the terms thereof, by the national legislation in force, and by international law. The profits derived must be shared in the proportions freely agreed upon, in each case, between the investors and the recipient State, due care being taken to ensure that there is no impairment, for any reason, of that State's sovereignty over its natural wealth and resources.
4. Nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interests, both domestic and foreign. In such cases the owner shall be paid appropriate compensation, in accordance with the rules in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law. In any case where the question of compensation gives rise to a controversy, the national jurisdiction of the State taking such measures shall be exhausted. However, upon agreement by sovereign States and other parties concerned, settlement of the dispute should be made through arbitration or international adjudication.
5. The free and beneficial exercise of the sovereignty of peoples and nations over their natural resources must be furthered by the mutual respect of States based on their sovereign equality.
6. International co-operation for the economic development of developing countries, whether in the form of public or private capital investments, exchange of goods and services, technical assistance, or exchange of scientific information, shall be such as to further their independent national development and shall be based upon respect for their sovereignty over their natural wealth and resources.
7. Violation of the rights of peoples and nations to sovereignty over their natural wealth and resources is contrary to the spirit and principles of the Charter of the United Nations and hinders the development of international co-operation and the maintenance of peace.
8. Foreign investment agreements freely entered into by or between sovereign States shall be observed in good faith; States and international organizations shall strictly and conscientiously respect the sovereignty of peoples and nations over their natural wealth and resources in accordance with the Charter and the principles set forth in the present resolution.

Unit End Reflections

Comprehension Questions

1. Define Natural Resources. Discuss any two major types of natural resources.
2. Describe briefly the main natural resources and their significance to human life.
3. How has increased competition for land and water resources become a major threat to food security?
4. What do you understand by SOLAW? Discuss the role played by SOLAW in land and water conservation?
5. Critically examine the present status of land and water resources in the world.
6. How is Socio-economic development dependent on adequate land and water resources.
7. Discuss the relationship between poverty reduction and irrigation.
8. Does land degradation simply mean soil erosion? Explain
9. Mention the impact and causes of land degradation. Give two examples of such degradation with its causes.
10. Discuss the impact and causes of water degradation.
11. What do you understand by GLADIS?
12. What is WOCAT?
13. Discuss the reasons of depletion of groundwater?
14. Which measure or steps would you suggest be adopted to ensure the availability of land and water resources in India?
15. Why does India need an alternative water policy?
16. Write the key elements of the alternative water policy of India.
17. Discuss the National land Utilization Policy of India.

Read and Reflect

- ▶ Every day, 2 million tons of sewage and other effluents drain into the world's waters.
- ▶ Every day, more people die from unsafe water than from all forms of violence, including war
- ▶ The most significant sources of water pollution are lack of inadequate treatment of human wastes and inadequately managed and treated industrial and agricultural wastes.
- ▶ The quality of water necessary for each human use varies, as do the criteria used to assess water quality. For example, the highest standards of purity are required for drinking water, whereas it is acceptable for water used in some industrial processes to be of less quality.
- ▶ 2.5 billion people have unreliable or no access to electricity.
- ▶ As a general trend, energy and electricity consumption are likely to increase over the next 25 years in all world regions with the majority of this increases occurring in non-OECD countries.

- ▶ By 2035, energy consumption will increase by 35% which will increase water consumption by 85%
- ▶ Hydropower supplies about 20% of the world's electricity, a share that has remained stable since the 1990s.
- ▶ Energy requirements for surface water pumping are generally 30% lower than for groundwater pumping. It can be expected that groundwater will become increasingly energy intensive as water tables fall in several regions.
- ▶ Globally, irrigation water allocated to biofuel production is estimated at 44 km³, or 2 % of all irrigation water. Under current production conditions it takes an average of roughly 2,500 litres of water (about 820 litres of irrigation water) to produce 1 litre of liquid biofuel (the same amount needed on average to produce food for one person for one day).

Sources: United Nations World Development Report 4. Volume 1: Managing Water under Uncertainty and Risk WWAP, 2012

United Nations World Water Development Report 3, Water in a Changing World, WWAP, 2009.

World Bank Thirsty Energy Initiative, 2014

WHEN the International Decade for Action 'Water for life '2005-2015 started

The world is waking up to the water and sanitation crisis. At the United Nations Millennium Summit in September 2000, the largest ever gathering of world leaders adopted the Millennium Declaration; from the Declaration emerged the Millennium Development Goals, an integrated set of time bound targets for extending the benefits of globalization to the world's poorest citizens. Among them was target 10. To cut in half the proportion of people without sustainable access to safe drinking water. At the Johannesburg World Summit for Sustainable Development, in 2002, this target was expanded to include basic sanitation, and water as a resource was recognized as a critical factor for meeting all the Goals. This sanitation objective is now an integral part of target 10.

Since Johannesburg, further international deliberations on water and sanitation have helped advance cooperation and action in this area. Significant progress has been made since then in providing people with access to clean drinking water and basic sanitation. But a major effort is still required to extend these essential services to those still unserved, the vast majority of whom are poor people.

Given the magnitude of the task, in December 2003, the United Nations General Assembly, in resolution A/RES/58/217, proclaimed the period 2005-2015 International Decade for Action 'Water for Life'. The decade officially started on World Water Day, March 22, 2005.

WHAT is the purpose of the International Decade for Action 'Water for Life' 2005-2015?

The Primary goal of the 'Water for Life' Decade is to promote efforts to fulfil international commitments made on water and water-related issues by 2015. Focus is on furthering cooperation at all levels, so that the water related goals of the Millennium Declaration, the Johannesburg Plan of Implementation of the World Summit for Sustainable Development, and Agenda 21 can be achieved.

The challenge of the decade is to focus attention on action oriented activities and policies that ensure the long-term sustainable management of water resource, in terms of both quantity and quality, and include measures to improve sanitation. Achieving the goals of the 'Water for Life' decade requires sustained commitment, cooperation and investment on the part of all stakeholders from 2005 to 2015 and far beyond.

UNIT-3

Chapter 5: Human Rights and Environment

5.1 Environment in Relation to Human Rights

Pollution is one of the main factors responsible for the spread of diseases amongst billions of people and also for more than 2 million annual deaths. The entire world is suffering from the consequences of deterioration of the environment, degradation of the ecosystem, water shortage, improper management and disposal of toxic wastes, deforestation and natural disasters. The degradation of the ecosystem has the greatest impact on the indigenous peoples, as their livelihoods are greatly dependent on the ecosystem. Besides this the climatic changes and environmental degradation also have a negative impact on the wellbeing and health of human beings. This has also led to the spread of many new and vector born diseases like malaria. These facts clearly indicate the close link between environment and attainment of human rights, for which an integrated approach towards environment is required.

Human beings are greatly dependent on the environment in which they reside. Therefore for the realization of human rights such as, rights to life, health, food, water and sanitation, a secure, clean, healthy and sustainable environment needs to be established. Lack of a healthy environment, prevents human beings from living a life of dignity. On the other hand safeguarding human rights also helps in safeguarding the environment. This can be achieved via participation of people in decision making, where they can ensure the inclusion of decisions for development of a sustainable environment.



Fig. 1



Fig. 2: The essential 3 Rs

The Stockholm Declaration on Human Environment declared in 1972, “*Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that*

permits a life of dignity and well-being". This declaration drew the attention of the world towards the need of the right to a healthy environment. It put forth a number of questions, such as: What is the advantage of devising a right for a healthy environment? What all should be included in the right? Which people should enjoy this right? Who will be responsible for the fulfillment of the right? What is essential for successfully implementing the right? Is there a need to formulate an international law on the right to a healthy environment?

The relevance of the sequestions has not decreased in the contemporary world too. However several debates and discussions over the last decades have made the community of the world to realize the importance of a healthy environment. In the recent years a large number of international treaties, resolutions and declarations, have highlighted the importance of right to a healthy environment.

For instance, the Rio Declaration on Environment and Development has stressed on the requirement of assimilating both environment and development, for the realization of sustainable development. This would also be beneficial for a healthy life in harmony with nature. In addition to this a variety of MEAs, (multilateral environmental agreements) have acknowledged the relationship between the environment and well-being of human beings. Many MEAs also outline environmental information as well as provisions regarding well-being of environment and humans. In addition to this many human right treaties of America and Africa have highlighted the right to live in a healthy

environment, through various ways. The organizations and bodies responsible for the implementation of the universal human rights conventions, have also emphasized the relationship between the human rights and environmental issues, via issuing general comments.

The UN human rights system have also drawn the attention of the world towards the relationship between human rights and environmental through the implementation of special procedures that have clarified environmental issues concerned with Human rights, like disposal of toxic waste,

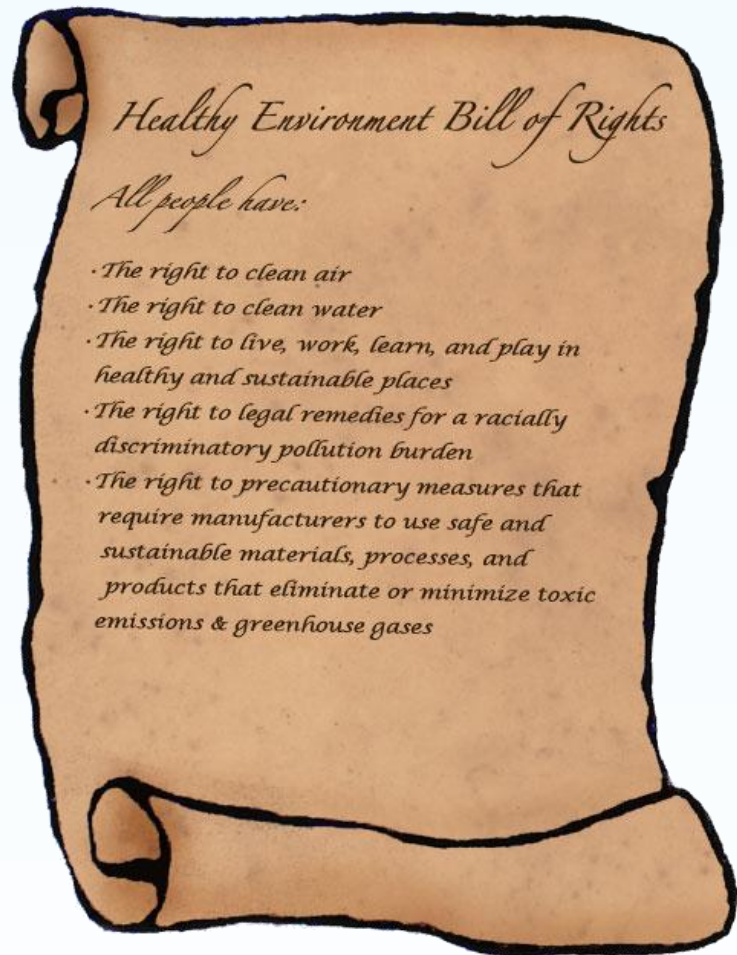


Fig. 3
www.ehumanrights.org

rights, of native people, shortage of water and food, climatic changes etc. Later on the UN Human Rights Council, during its 19th session, which was held in March 2012, developed a three-year mandate, for the establishment of an independent Expert on Human Rights and the Environment. UN Council has also passed resolutions to analyze human right obligations for the realization of the right to a safe, clean, healthy and sustainable environment. It would also help in formulation and promotion of appropriate human right practices and recommendations for the establishment of sustainable environment through the realization of Millennium Development Goals.

According to the UN Resolution, the Independent Expert would be submitting its report to the Council, at its twenty-second session. Later on it was supposed to submit its report annually to the council. In its report it was not only supposed to sum up its conclusions, but was also supposed to outline provisions for the future. However the Independent Expert was advised to give its conclusions and recommendations, after consulting several individuals as well as organizations such as: the various Governments of nations, international organizations, human right institutions of various nations and various institutions of the civil society, private sector and academic organizations. In addition to this the Independent Expert was advised to work in close coordination with the other institutions, procedures and organs of the Human Rights Council and United Nations. This would also help in avoiding unnecessary duplication, of previously sought out procedures.

Besides the human right treaties, procedures, organizations and bodies, the various regional human right procedures and organizations have also done a significant amount of work for the protection of human right and environmental issues. There have been several cases when they have been confronted with applications or petitions of victims or non-governmental organizations, with problems including the environmental issues also. Therefore, while resolving these problems they try to ascertain the environmental issues with which the violated right may have been linked. This has led to the highlighting of the requirement of environmental rights. Thus every now and then the issue of right to a healthy environment keeps arising, during the course of the realization of various other human rights.

5.2 Meaning and definition of environment

Environment has an enormous significance in the lives of human beings. Environment can be defined in a number of ways. The simplest explanation of environment is the 'surrounding'. Surroundings include everything that engulfs us. These surroundings include not only the physical environment but also the social, cultural and workplace environment too. In general, it constitutes everything and everyone to which humans beings may respond. Therefore environment includes everything that surrounds a human being. Environment may be

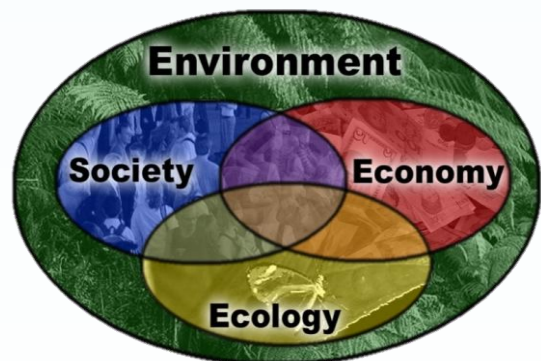


Fig. 4

said to be the amalgamation of several physical as well as organic factors that affect the development of living beings or inhabitants.

However, environment has been defined by a number of groups and organizations in various ways. The Encyclopedia of Environmental Sciences has defined environment as "the aggregate of all external conditions and influences affecting life and development of an organism" (Platt, 1971). The American Heritage Stedman's Medical Dictionary has interpreted environment as "The totality of circumstances surrounding an organism or group of organisms, especially the combination of external physical conditions that affect and influence the growth, development, and survival of organisms".

Scientifically environment includes all the biotic and abiotic factors that affect the existence and development of an organism or an entire ecological community. Biotic factors consist of the organisms, their food, and their relationships. Abiotic factors consist of important resources surrounding the living organisms, such as sunlight, soil, air, water, climate, and pollution. However living organisms react to the transformation in their environment by evolutionary adaptations in the physical attributes and demeanor.

The environment that influences an individual changes constantly due to the stimulation which it receives from the individual during his entire lifetime. To be precise the environment surrounding an individual will be framed by various kinds of forces around him, including forces like political, social, economic, cultural, physical, intellectual, moral, emotional etc. Therefore environment does not only include the physical surroundings of an individual but is in fact an amalgamation of all the external factors, influences and conditions, which have an impact on the life, nature, behavior and development of living beings. The environment is not static but dynamic and it is man who is mainly responsible for the dynamism

5.3 Different Kinds of Environment

The environment can be classified into three types according to its impact on human beings:

- (a) Physical or abiotic Environment,
- (b) Biotic Environment, and
- (b) Social and Cultural Environment,

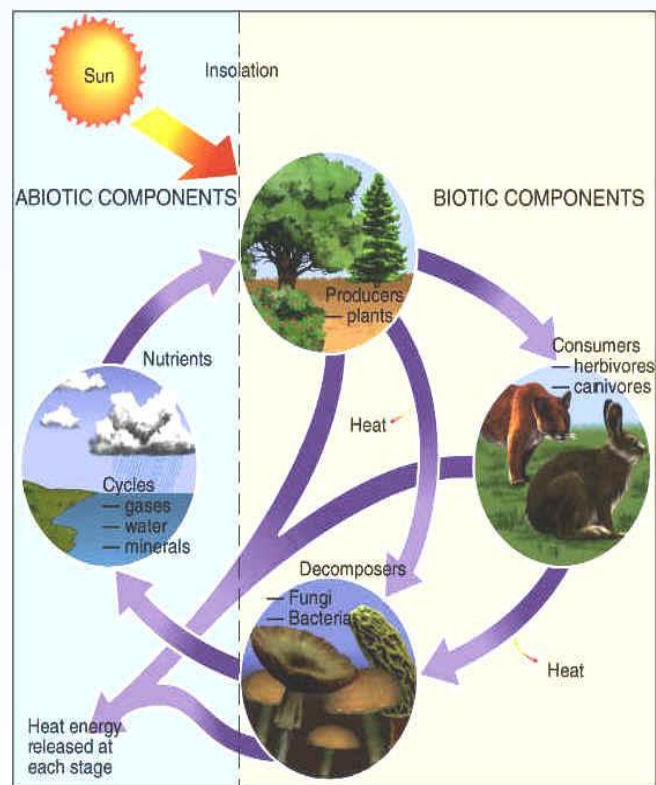


Fig. 5

1. Physical Environment

The physical environment which is also known as a- biotic environment or natural environment pertains to the weather, climatic conditions or the physical surroundings of living beings.

The a-biotic or physical environment refers to the various non living or physical constituents such as atmosphere, land, water, soil, wind, humidity, pressure, sunlight, rainfall etc. which surround and affect the living beings.

Climatic conditions leave a great impact on the complexion of human beings. For instance the white skin of Europeans is due to the cold climatic conditions, whereas the dark complexion of the Asian and African people is due to the hot climatic conditions.

The climatic conditions also formulate the physical structure of living beings. This happens when individuals try to adjust in a particular physical environment.

Moreover, the climatic conditions also have a great impact on the working efficiency of human beings.

2. Biotic environment

Biotic environment, which is also known as the biological environment or organic environment, refers to the surroundings of all animate objects.

Biotic environment consists of living entities such as plants, animals, mammals, aquatic animals, microorganisms like bacteria and fungi, as well as human beings.

The biotic environment is extremely important as all living beings are dependent on each other to a great degree. For instance on one hand human beings greatly depend on plants for oxygen and food. On the other hand, plants also are dependent on human beings for carbon dioxide.

3. Social or cultural environment

Social Environment refers to the social, economic and political surroundings of human beings. It also includes the culture and life style of an individual. It has been observed that these social, economic and political, historical, moral, cultural and emotional conditions not only affect the life of an individual but also influence the nature and behavior of an individual. It is interesting to note that these social or cultural environment is formulated by human beings themselves, through their thoughts and various social and cultural activities.

Role of a natural and clean environment, in the existence of human life

There is great importance of a natural and clean environment in the lives of human beings. The earth is home to all human beings and it provides all the basic requirements such as air, water, food, shelter etc. required for human existence. The whole life support system of human beings depends on the environment and ecology of the earth. The natural environment is also a source of beauty and health. Therefore it is very important to protect our environment and planet earth, as nature plays a key role in human health and well-being. A number of researches that

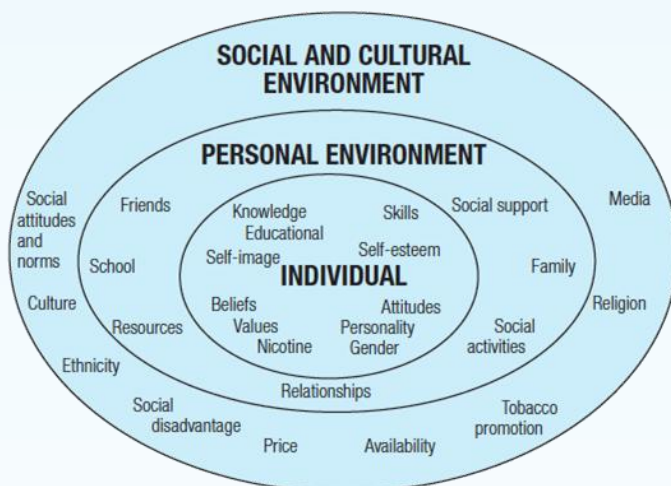


Fig. 6

have been conducted in the recent years agree with this phenomenon and have therefore highlighted the importance of a natural and clean environment in the lives of human beings. For instance a research paper written by *Cecily Maller*, evaluates the importance of the natural as well as clean environment in the lives of human beings and concludes that human association with nature is extremely beneficial. In fact according to their report association with nature is also beneficial in preventing mental

illness. Unfortunately the environment of our planet earth has deteriorated greatly in the recent years. Issues like pollution, deforestation, hunting, global warming etc have led to the degeneration of natural resources, the environment and the extinction of many species of plants as well as animals. There is great shortage of clean water. The environment and ecology is being disturbed due to excessive construction of buildings as well as factories. However if we realize the importance of a clean and natural environment for the well being of our planet earth and take appropriate steps, we can reverse some of the harm that has already been committed. A large number of people all around the world are taking up this challenge and are formulating plans to take appropriate action for the protection of our planet.

Thus human beings are definitely an integral part of the environment and the environment plays a great part in all aspects of human life including the realization of human rights. This dependency and interrelation of human rights and environment, was acknowledged at the **United Nations Conference on the Human Environment** in 1972. This conference acknowledged that the environment plays a big role for the well-being of human beings and for the realization of human rights, especially the right to life.

Environmental rights are a kind of collective rights and fall in the category of the third generation rights. Collective rights have an impact not only on individuals but on an entire group of people or societies. For instance, global warming has an impact on all living beings, irrespective of the nation they belong to. Therefore all human beings must pay due regard to the ecosystem and protect it making possible the right to a healthy environment a possibility. Some other rights that fall under the category of community rights are right to peace, right to sustainable development, right to communication etc.

The environment plays a both positive as well as a negative role on the human rights of people. It affects the right to life, as it provides the essential elements for a comfortable and respectable life. Environmental degradation, such as excess radiation, polluted drinking water, polluted soil, polluted food etc. would affect the well being of human beings leading to bad health, genetic damage, loss of livelihood and even death. Therefore environmental degradation endangers and violates the right to life.

The Importance of a Clean Environment

It is imperative to build up a clean and safe environment. *Kenneth Boulding*, an economist, has summarized the importance of a clean and safe environment in the following words: *“People who believe exponential growth can go on forever in a finite world is either a madman or an economist”*.

Several countries all over the world have realized the importance of protecting the environment and are progressing towards recognition of one of the most important third generation collective rights, which is the right to a clean and healthy environment. For instance the right has been recognized by the African Charter in Article 24 as: *“All people shall have the right to a general satisfactory environment favourable to their development.”*

Similarly the Protocol of San Salvador to the American Convention on Human Rights has also recognized the right in Article 11 as:

“Everyone shall have the right to live in a healthy environment and to have access to basic public services. The States Parties shall promote the protection, preservation, and improvement of the environment.”

Article 14 of The Constitution of Ecuador also recognizes the right in the following words: *“the right of the population to live in a clean and ecologically balanced environment”*.

These documents acknowledge the fact that environmental hazards harm the basic requirements of human beings. In other words it can also be said that these documents reiterate that a healthy and clean environment plays a primary role in the realization of human rights.



Fig. 7

To justify the cause, numerous organizations, such as, the Advisory Council of Jurists for the Asia-Pacific Forum on National Human Rights Institutions have explicitly adopted the cause of protection by states of *“a specific right to an environment conducive to the realisation of fundamental human rights”*.

In addition to this the Australian Network of Environmental Defenders Officers has also approved the idea of development of a right to a clean and healthy environment. However this right should be endorsed through a national Human Rights law or a corresponding instrument. This would increase the importance of the right to a healthy environment over other human rights. Besides this it would also draw the attention of the nations of the world towards the development of an international right that would acknowledge the connection between environmental health and the fulfillment of basic human rights.

5.4 Environment and Development

Analysis of environmental issues has indicated that they have mainly resulted due to defective developmental programmes. It further suggests that improvements be made to resolve the environmental issues for the well being of the coming generations. The concept of sustainable development has especially been highlighted as a remedy.

Development actually involves a significant increase in the production of a wide category of goods and services that enhance the quality of human life. For instance machines requiring less effort, quicker means of communication, more fluid and mobile forms of capital, better quality medicines, improved healthcare systems leading to improvement in the quality of life etc. are some examples of development. Development is achieved through several significant changes combined with effective use of natural resources. However, initially developmental progress took place only in some parts of the world only. For instance from sixteenth century onwards large scale development was witnessed in Western Europe and United States. This happened because these areas pursued the policy of colonialism, which helped them to extract additional resources from the colonized nations. This progress of the imperialistic nations served as a source of inspiration for the colonized nations in terms of social, political and economic development. This led to the formulation of 'Eurocentric' or the capitalist concept of development, which meant that the capitalist nations of Europe became the reference points by which the direction of course to be followed by other countries of the world to achieve the same progress.

Subsequently the view of our planet from space for the first time in the 20th century brought about a revolution in the thoughts of human beings, which was even greater than the Copernicus revolution of the 16th century. This view of earth from the space manifested the earth as a small and delicate ball containing oceans, greenery, soils, surrounded by clouds. This beautiful view of planet earth helped the humans to realize that the activities of human beings were bringing about a drastic change in the planetary system of the earth. These changes were not only harming the beauty of our planet earth but were also proving to be life-threatening. The advent of this new reality led to a desirable change in the thought pattern of human beings, as it was now realized that the tactics to eradicate the damage to our beautiful planet must be recognized and implemented all over the world. It was concluded that this was the unpleasant facet of development.

Needless to say that there is a positive side to development too. Development has led to a number of favourable changes, such as development in science and technology, faster communication and information systems which has made human life easier. It has been understood that the well being of the earth depends on the activities of human beings and

reconciliation of human affairs with the laws of nature. It is important that the cultural and spiritual ethos of society embodies restorative harmonics in the ecosystem.

It is the people who themselves can build a future which is more healthy, just, and safe. This aim can only be achieved by eradicating environmental degradation, poverty, pollution, degradation of resources etc. In addition to this economic development must be based on policies of sustainable development and sensitivity towards the environment.

However these steps and the gravity of action towards the same depends entirely on the political action of the governments all over the world, who agree to the need of sustainable management of environmental resources for the well being of earth and for human survival. The promulgation of policies for sustainable management, in order to sustain the resources for the future and for the coming generations should be based on the recent scientific evidences. An elaborate blueprint is not required for this but a track showing the path for the realization of this goal, along with the cooperation of people, is required.

5.5 The International Challenge

Achievements and failures

The world has a large number of achievements to boast about. Decrease in the rate of infant mortality, rise in human life expectancy rate, increase in literacy rate and rise in food production all over the world, are some of the achievements.

However the same developmental proceedings that proved to be extremely profitable on one hand, proved to be very harmful for the well

being of the earth, on the other hand. These can be called the bit falls of development and failures due to mismanagement of the natural resources and the environment. While critically analyzing the results of development, it was realized that development has many maladies such as increasing number of hungry people in the world, increasing number of illiterate people, lack of clean drinking water, lack of other natural resources, increase in the gap between the rich and poor etc. In addition to this the recent trends indicate that there is no scope in the improvement of many of these problems in the near future.

Recent environmental trends also indicate that the ecology, human beings and in fact our entire planet is endangered. Studies reveal that around 6 million hectares of productive dry land is getting converted into wasteland or desert, every year. In the ensuing three decades, this area would increase on a large scale, surmounting to the area roughly as large as Saudi Arabia. Similarly every year deforestation amounts to around 11 million hectares of forests, which in the next three decades, would surmount to around the size of India. In addition to this the much of



Fig. 8

the cultivable land got from these forests is of bad quality and is unable to support the farmers who cultivate it. A large number of forests, lands including soil and water bodies have been destroyed in Europe on account of acid precipitation.

Besides this due to increasing use of fossil fuels, there is increase in the content of carbon dioxide in the atmosphere, which in turn is leading to global warming. The 'greenhouse effect' caused due to this, is increasing the temperatures all over the world. In the near future it will create grave problems as it may lead to shifting of agricultural production areas, raise sea levels which may cause flooding of coastal areas, and rupture economies of nations. In addition to this the harmful gases emitted by the industries are threatening to destroy the protective ozone layer around the earth. The damage of the ozone layer may lead to rise in life threatening diseases such as cancers, disruption of the oceanic food chain etc. Besides this toxic wastes from the industries and agriculture are damaging the water bodies and underground water to the limit of beyond repair and are also disrupting the human food chain.

Recently the various governments and organizations of the world have realized that economic development is not possible without sorting out the environmental issues. A large number of developmental activities have led to environmental degradation. Similarly environmental degradation also undermines economic development. Poverty is one of the main factors that has increased environmental issues. Therefore it is extremely essential to eradicate poverty and social inequality in order to resolve the environmental issues.

The World Commission was established in 1983 by the UN General Assembly, in order to resolve the issues regarding environment and development. The Commission is an independent body and has highlighted the following three aims in its mandate:

1. To inspect all issues regarding environment and development. To devise practical policies for their eradication.
2. To devise policies to encourage international cooperation for the eradication of environmental and developmental issues.

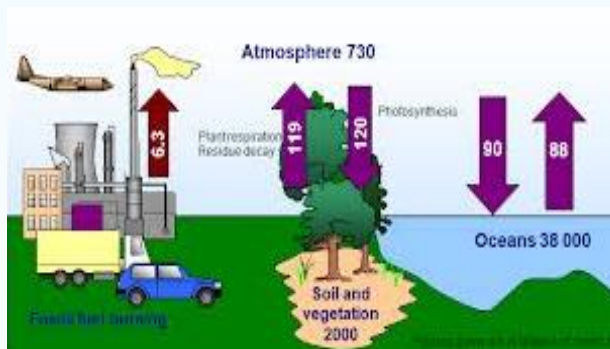


Fig. 9

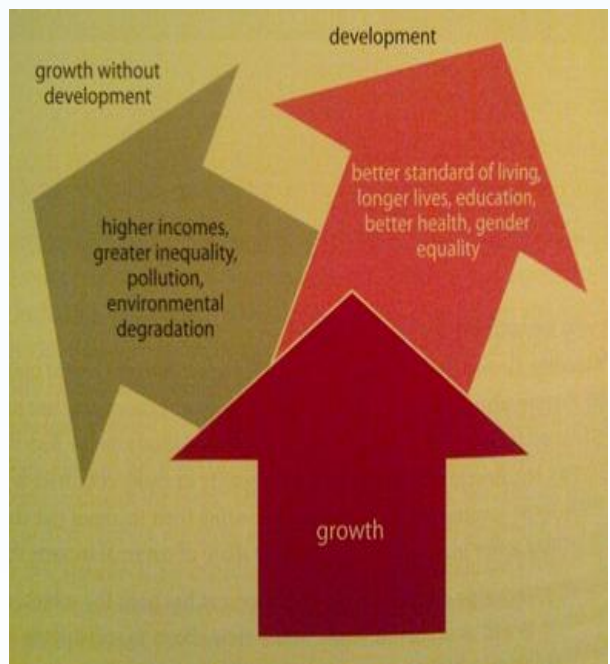


Fig. 10

3. To encourage individuals, voluntary organizations, business organizations and various governments to understand and work towards eradication of environmental and developmental issues.

Recent studies of the commission across the five continents have revealed that the developmental activities have led to environmental degradation and increase in the number of people below the poverty line, all over the world. This clearly indicates that this kind of development will ruin the environment and future generations. This realization has broadened the view of the entire world regarding development. It further led to the conclusion that a new developmental path needs to be planned for sustainable development, for the sustainable progress of humans and for the protection of our planet in the future. Thus 'sustainable development' must essentially become the futuristic objective of all nations (especially the developing nations) over the world.

Read and Reflect

Economic Growth without Development

Economic growth or increase in GDP could happen without development. With this kind of economic growth, the living standards of people will not improve.

Example

1. Economic growth may be beneficial for only a small proportion of population. For instance, increased production of oil in a nation will certainly lead to an increase in GDP. In spite of this the workers may not benefit from this as the oil may be owned by only one firm.
2. Corruption: In spite of Economic growth and increase in GDP, the common people may not benefit due to the corruption of politicians who may just be filling their own bank accounts.
3. Environmental issues. Large scale production of toxic chemicals will certainly increase the GDP, but it will lead to health and environmental degradation. This may further lead to a decline in the living standards of the people.
4. Congestion. Economic growth can cause an increase in congestion. This means people will spend longer time in traffic jams. Thus in spite of increase in GDP, there may be a decline in the standard of living of people, due to increased traffic jams.
5. Non-consumption of production: If there is an increase in the GDP due to increase in the output of a state owned industry, it may not increase the standard of living if no one uses the output.
6. Military Spending. There may be an increase in the GDP of a country due to more expenditure on military goods. However it may lead to the decline in the standard of living of people as it may be hazardous to health care and education.

5.6 The Rights to Rehabilitation of those Displaced

Environment and displacement

There are numerous practical challenges that links climatic changes to displacement. People migrate or are forcefully displaced due to several reasons. However researchers after careful examination have concluded that climatic changes are one of the main reasons responsible for forced displacement.

Climatic changes combined with hazards due to human activities, often lead to natural disasters like floods, droughts etc. The involvement of human activities in the occurrence of natural disasters cannot be denied. We often call them climate-related disasters as climatic changes affect their occurrences, frequency, severity, time, and location. Natural disasters like floods, storms, and droughts can be classified in this category. According to the recent surveys, the number of natural disasters have doubled from around 200 to 400 per year over the last twenty years, among which the majority of them are due to climatic changes. According to the survey of UN Emergency Relief Coordinators, the coming years the frequency and severity of natural disasters. In spite of the prediction of increase in the frequency of voluntary and forced displacement due to natural disasters on account of climatic changes, it is not possible to calculate the scale of displaced people for the first time in 2009, **OCHA (United Nations Office for the Coordination of Humanitarian Affairs)** in association with the Internal Displacement Monitoring Centre of the NRC, tried to estimate the scale of displacement due to natural disasters. They reported that around thirty-six million people were displaced due to natural disasters in 2008, amongst which around twenty million were due to climatic changes. They further reported that slow-onset disasters like droughts and rise in sea-level, are more disastrous as they lead to a continuous voluntary and forced migration. Although all nations of the world are affected due to climatic changes, some are more frequently and directly affected as compared to others.

Issues regarding climatic changes, natural disasters, and displacement have raised several questions regarding the protection of displaced people. However to protect the rights of displaced people, a lot more needs to be done.

In the UN Guiding Principles on

Internally Displacement, that were developed in 1998, the main facts highlighted were the basic requirements of the displaced people, whatever is the reason for displacement may be along with the recognition of protection needs . It was identified that there were many a lacunae in ongoing protection programmes and in current processes. Development of solutions to remedy the lacunae is essential.



Fig. 11: Displacement due to flood

Causes and areas

With time natural disasters are mounting in the degree of severity, thus leading to increase in the number of displaced people. The disasters are also negatively affecting the livelihoods of the people across the world.

The **Intergovernmental Panel on Climate, (IPCC)** has reported three principal reasons, which lead to natural disasters and forced displacement.

1. Hurricanes, torrential rains and floods
2. Drought and desertification
3. Rising sea levels

The increase in the number of displaced people due to environmental changes is the highest in the sub-Saharan African region. However, there are several other regions in the world which are at a high risk, such as, China, Yemen, Louisiana, Kiribati, Tuvalu and Bangladesh. According to recent researches, several other regions would have a high amount of forced displacement due to environmental changes. Some of these are Tunisia, Morocco, Libya, Egypt, Ghana, Turkey, Vietnam, Niger, Ecuador, Mexico, Argentina etc. Several Governments have recognized the challenges faced by the displaced people, especially in the host countries where they seek asylum.



Fig. 12: Density of displacement due to environmental degradation

The UN definition of refugees in the Protocol Relating to the Status of Refugees, in 1967, is someone who:

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

Several other international documents have also defined the meaning of refugees, in various ways with some variation in words.

The UNICEF has defined refugee as, “someone who has been forced to leave their country because they are unable to live in their home or they fear they will be harmed. This can be due to a number of reasons, including fighting or natural disasters, like earthquake and floods”.

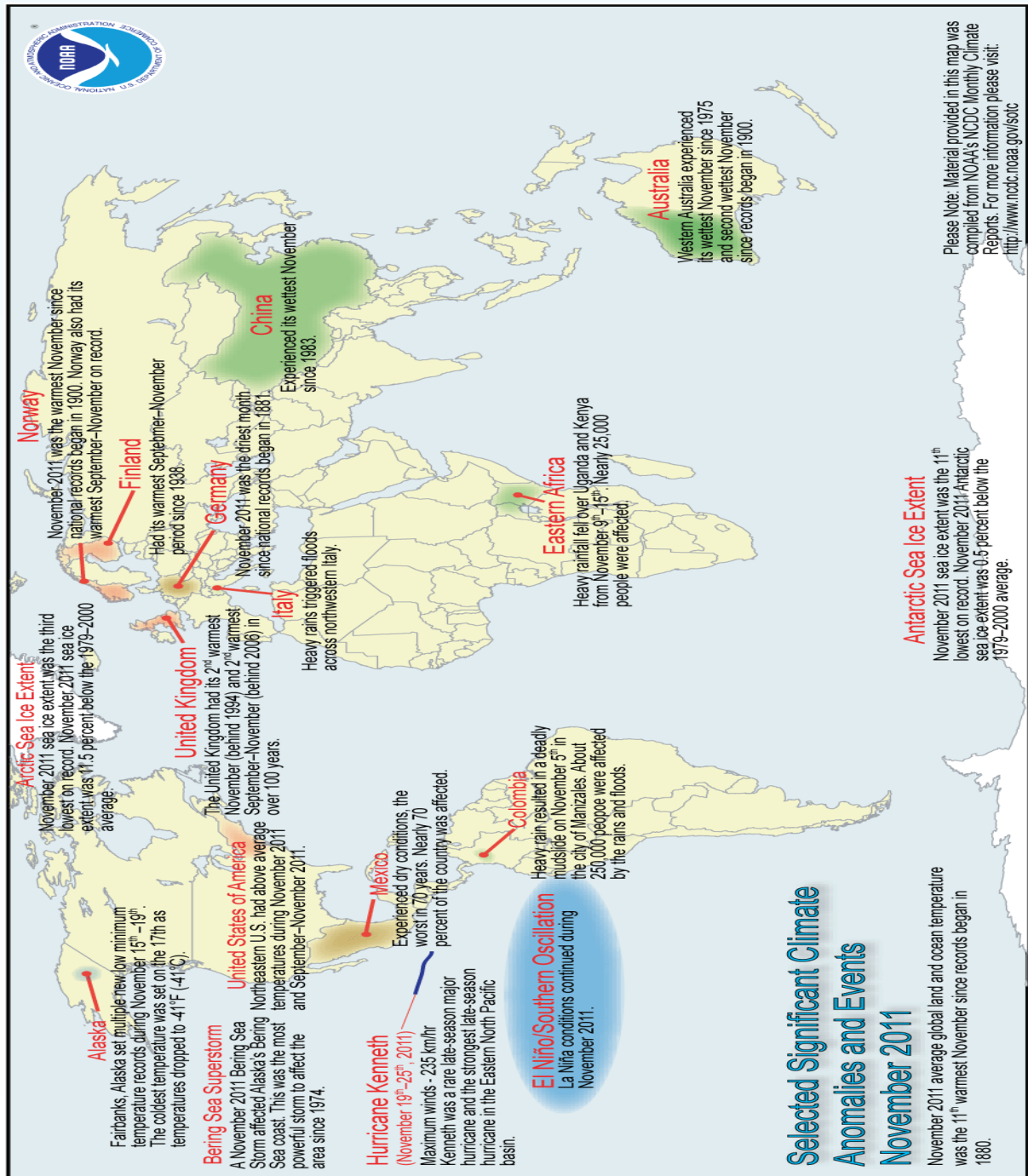


Fig. 13

The people displaced due to environmental reasons, were referred to by various names. The term ‘*ecological refugee*’ was first cited in the 1970s. Slowly several other terms came into being to describe the people who were displaced due to environmental causes. Some of these are ‘*environmental migrants*’, ‘*environmentally displaced persons*’, ‘*climate refugee*’, ‘*climate change refugees*’, ‘*environmental refugees*’, etc. In the United Nations Environmental Programme report, the term ‘*environmental refugee*’ was first iterated by *Essam El-Hinnawi*, in 1985.

The Office of the United Nations High Commissioner for Refugees has used the term ‘*environmentally displaced people*’ in place of the term ‘*refugee*’. They have further described the ‘*environmentally displaced people*’ as those: “*who are displaced from or who feel obliged to leave their usual place of residence, because their lives, livelihoods and welfare have been placed at serious risk as a result of adverse environmental, ecological or climatic processes and events*”.

The International Federation of Red Cross has also described the climatic changes as one of the biggest cause of displacement, which is even greater than the displacement due to war and persecution. This was estimated for the first time in 2001, when people displaced due to environmental causes exceeded those people displaced due to war.

According to an estimate made by the UN High Commissioner for Refugees, around 36 million people were displaced in 2009 due to natural disasters. It further reports that around 20 million people were displaced due to climatic changes. The UN has also predicted the displacement of around 150 million people due to environmental disasters, by the year 2050. The UN Environment Programme has also predicted the displacement of around 50 million people due to environmental disasters, by the year 2060.

In addition to the problems faced directly by the people displaced due to environmental changes, there are many problems that arise as a result of the side effects of displacement. The arrival of environmental migrants in other societies, further drains the natural resources in that particular area. It may also lead to several social problems in that area.

Therefore millions of people have been displaced in the current era due to environmental problems. Scientists have concluded that the global climatic changes have certainly increased the extent of environmental disasters of various kinds.



Fig. 14: Earthquake

Not all natural disasters are the same

Sudden Disasters: Some natural disasters occur suddenly without any warning, and prove to be extremely devastating. Tsunamis, flash floods, hurricanes, volcanic eruptions and earthquake are

a few examples of sudden natural disasters, which render several people homeless. During these kind of disasters people are often forced to vacate their homes very swiftly and inhabit the nearest safe location. People suffering from these disasters can return back to their homes once the disaster subsides.

Slow-Onset Disasters: Slow-onset natural disasters do not occur suddenly but occur slowly after a long time. For instance environmental changes such as deforestation and desertification tend to develop slowly over a long period of time. However they too create a large number of problems for people as they may lose their livelihood, lifestyle, and home. However these disasters may not always cause people to get displaced.



Fig. 15: Deforestation

Problems classifying environmentally, displaced people: The number of people being displaced due to environmental disasters, (both sudden and long-term) are increasing day by day. Therefore it is essential to resolve the problems of people being displaced due to environmental disasters, regarding food, shelter, medical aid etc.

The UN High Council of Refugees

Since several people were displaced due to wars, the United Nations High Council of Refugees (UNHCR) was formulated after the Second World War, to help the displaced Europeans. These displaced people were labeled as refugees. Therefore the war refugees were provided protections as well as given special treatment to a large extent through the help of other nations and UN agencies.



Fig. 16

Subsequently the UNHCR devised the Convention Relating to the Status of Refugees, for the protection of war refugees in Europe, after the Second World War. However no policy has been devised by the UN to address the problems of the people displaced internally or internationally, due to environmental causes. Therefore it is extremely essential to resolve the issue of environmental migrants.

The debate in the international community whether or not to call the environmental migrants as refugees is because by doing so, environmental migrants would be automatically protected by the UNHCR. The question is whether the war refugees have more rights than environmental

migrants. Since the international law and institutions have not recognized the rights of environmental migrants, they are facing major problems.

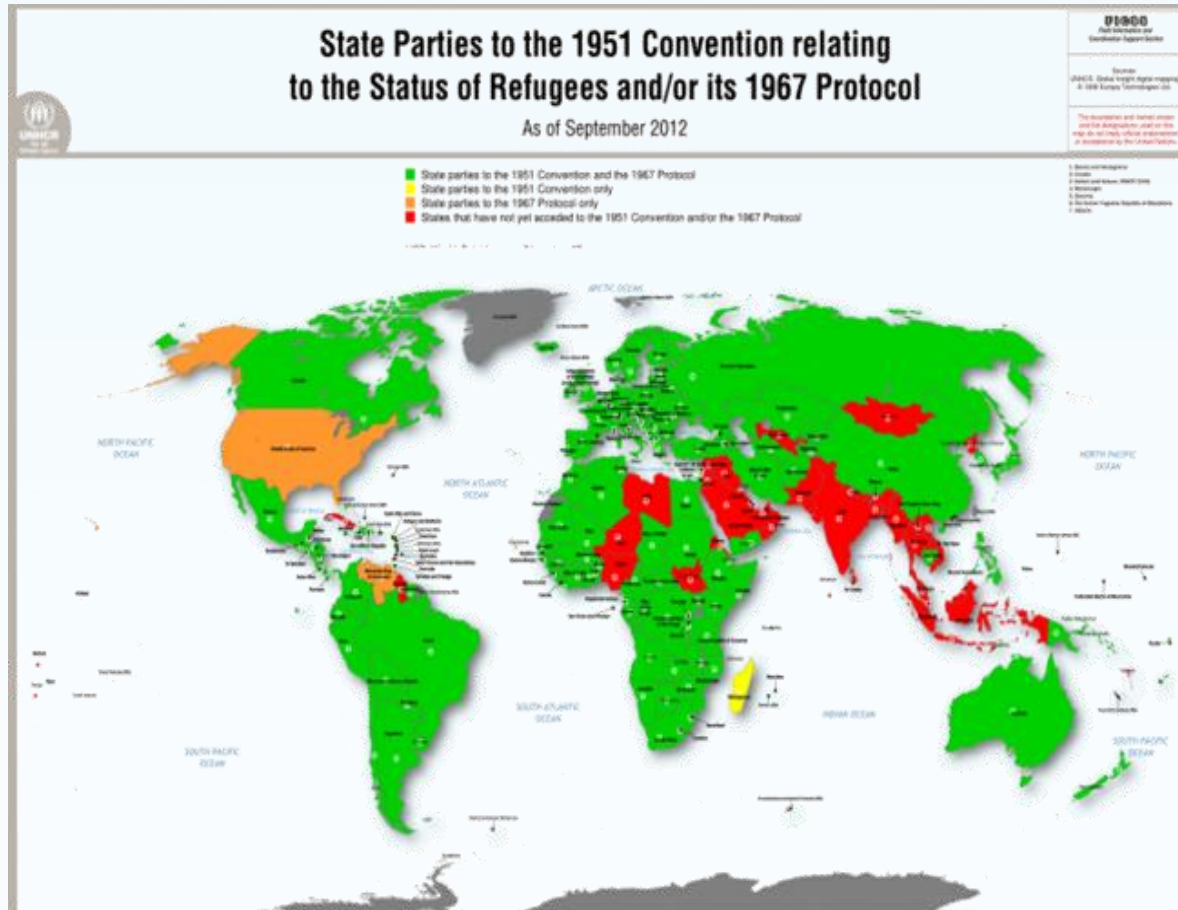


Fig. 17

Categorizing people who are suffering

Very often the various governments and authorities categorize people in their area of influence. This especially happens when the law of a nation provides special treatment to a particular category of people. For the past decades people being displaced due to violence or mistreatment, are only being highlighted as refugees. Therefore the people being displaced due to environmental causes have been ignored by the international community and they are not receiving the same kind of protection from the international organization.

In the contemporary world the displaced people are given several names, according to the reason of their displacement. They then receive the refugee benefits, according to the name that they are categorized in.

In the report of the Environmental Refugee which was presented to the Environmental Programme in 1985, the term 'environmental refugee' was used for the first time. Later the UN Intergovernmental Panel on Climate Change, in its report that was presented in 1990, drew up

the relationship between migration and climatic change. This relationship that was highlighted in the report still continues to be the principle issue of the ensuing international meetings. However no laws have been developed up till now for providing the rights to the environmentally displaced people. The main reason behind this can be the various names by which they are called.

Problems with Numbers and Predictions

The Environmentally Displaced People (EDPs) are increasing on a daily basis. It has been predicted that the number of EDPs may increase to around 150 million, by 2050. However these are not exact numbers, as the data collected is only from the nations, which have been badly affected by climatic changes. Therefore since the entire data is unavailable, it is not possible to measure the levels of migration due to environmental causes. Due to this future predictions can not be made. According to the survey of the Human Impact Report, around 325 million people are displaced every year due to climatic changes. However there is no exact estimate of how many are forced to leave their homes and countries, becoming EDPs. Besides this people are not always displaced due to a single reason. This can be both beneficial or harmful for EDPs, as they may either get the benefit of refugees, whereas others may not be able to receive the benefits.

5.7 Different types of EDP'S

We know that different conditions leads to displacement of people, so EDPs can be classified based on the circumstances of their departure from their home. These classifications may be useful in taking into account the easiest means to care for each type.

Who should care for these people?

The matter of categorization is related to the issue of who should care for EDPs. People and Governments are often reluctant to include the number of people they are obliged to care for. People who become refugees have to find work and a place to live when they reach in a new state. Money and other resources are required in order to support the EDPs. Presently, there is little international regulation allocated to this group of people. It takes serious efforts to convince the governments to provide for these people. At present, there is no system to organize EDPs. They are unrecognized by the UN and member nations and as a result are not eligible for the same help that the UN gives to refugees. Because of these reasons, EDPs, internally or internationally are left with hardly any help or protection.

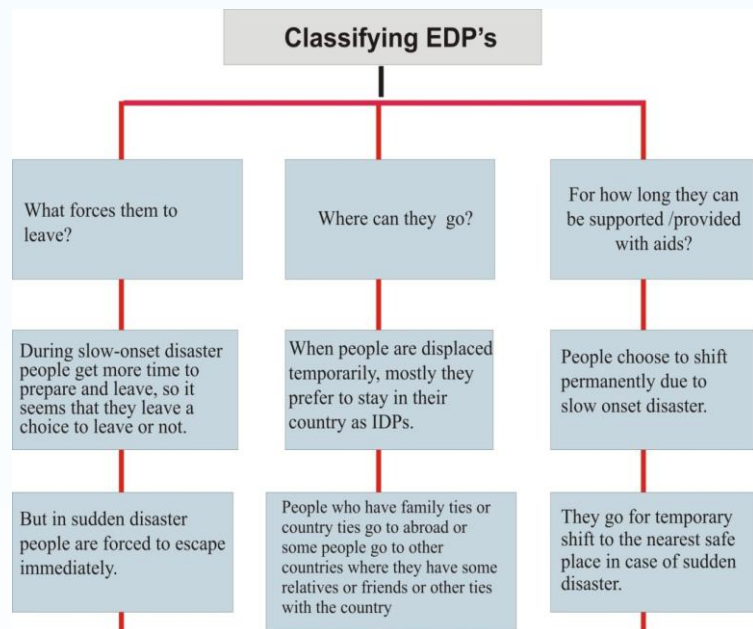


Fig. 18

Enforcing Humanitarian Law

EDPs are not only displaced outside the country but sometimes they are displaced within their native borders. This could categorize them as Internally Displaced People (IDPs). Since sovereignty is the foremost characteristic of the UN, this can pose to a problem. All countries are in agreement to collaborate on international issues if, the United Nations declares it to be compulsory but at the same time, they also have the right and responsibility to take care of their own country.

UN has been facing a problem with IDP's for a long time now. The rights of displaced person need to be safeguarded. In addition, it is important to respect each nation's right to be in charge of what happens within its own borders. Every nation has the liability to protect the human rights of people within their boundaries of their nation. But, the question arises as to whether or not the UN needs to step in when a government cannot or does not help and protect its own people.

At times both IDPs and EDPs may have similar concerns. That can be a huge problem for a nation to tackle. If a country shows that it cannot help and protect its displaced people within its own country. It probably cannot help the EDP's either. Frequently, EDPs are displaced by a serious environmental problem that affects a large part of a nation and need immediate help.

CASE STUDY 1: TUVALU



The island nation of Tuvalu is located in the Pacific Ocean, partway between Hawaii and Australia and has the second smallest populations of all nations in the world. Unfortunately, for its approximate 12,000 residents, rising sea levels are causing the islands to disappear into the ocean.

The people of Tuvalu are an example of extreme climate change refugees, being forced to leave their homes and become stateless. Tuvalu is also already experiencing food shortages from environmental changes including: fishing resources, droughts from salty sea water contaminating fresh water, loss of biodiversity, diseases and, most drastic, loss of landmass. There is great change that all of Tuvalu could disappear under water, and so Tuvalu would lose sovereignty because it would no longer exist as a state. All of Tuvalu's inhabitants will soon be forced to move and settle elsewhere. Tuvaluans will have to struggle with relocation,

protecting their culture, and protecting their rights, especially if they are not citizens of a nation any longer.

Tuvalu may be one of the first countries coming up against such strong odds, but will certainly not be last. All island nations are under threat of losing statehood because of the effects of global climate change. Statelessness may be an extreme outcome for EDPs, but one that cannot be overlooked by future international law.

UNA-GB-2010

Problem on the rise

To find out the root cause of the problem of the environmental refugees and finding a solution is impossible. Human beings try very hard to understand Mother Nature, but are unsuccessful. All the countries need to come together and work really hard to remove or reduce the ill effects of changes to the global climate. To address the problem is more about responding to the effects of the problem. There are millions of people who get displaced by natural disasters all over the world. More than four billion people are at risk and 500 million in severe danger owing to climate change. Within the next 20 years, one in every ten around the world could be directly and seriously affected. We will see further increase in these numbers if things are not taken seriously and at the earliest possible.

Different EDP'S have different needs

There are fast-onset and slow-onset disasters which leads people to be displaced internally or externally. These people will have different needs which require different types of aid. Due to fast-onset disasters, people are forced to leave their home in a scurry; and fail to carry with them their comforts or luxuries. In most cases sudden disaster leave people with no possessions. These people not only need shelter but also all the basic requirements such as food, water, clothing, medicine etc. People have more time to prepare when they escape from a slow-onset disaster. Mostly they are able to take away most of their belongings with them. There is no certainty of these EDPs to return to their homes and hence they require assistance in resettling: finding a new house, a new employment and a new society.

Aid from other Agencies

There is immense concern within the international community as to how the EDP problem must be tackled. Governmental and Non-governmental organizations are getting involved in resettling and helping these groups. Non-governmental organizations (NGOs) have become active in providing all kind of help to EDPs. Many NGOs are lending a hand to set up camps for displaced people, providing shelter, food, water and medicine. NGOs are working in countries and helping these people to resettle and build up new lives.

5.8 Past International Actions

Bureau for crisis prevention & Recovery

The United Nations Development Programme (UNDP), 2001, formed the Bureau for Crisis Prevention and Recovery (BCPR) to “restore the quality of life for (people) who have been

devastated by natural disaster... The BCPR is able to help in relief, development, protection and prevention of EDPs when environmental catastrophes hit. The Bureau, along with several other UNDP partnerships, works to help EDPs. However, the BCPR struggles to address all EDP issues mostly because of the problems with the category of people's identification.

UN Climate Change Conference: Copenhagen

The UN held the Copenhagen Summit on climate change in 2009 where most of the discussion was focused on understanding the science behind climatic change. The Copenhagen Accord, which was the agreement signed at the Summit, recognized the connection between migration and climate change. The agreement states that climate change is one of the major challenges of today's world. Several big nations made commitments to control global warming pollution but the Accord was not adopted by all governments.

Recommendations for Formulating a Resolution

- ▶ There are numerous concerns adding to problems of EDPs. One of them is that the EDPs are not clearly defined within international discussion. It is also not lucid how help and assistance can be given to these people and who should be responsible for providing these whilst planning a declaration, delegates can consider the following points:
- ▶ The official 'status' of people displaced by environmental disaster (e.g. refugee, IDP, other)
- ▶ Who should be accountable for help not rendered to EDPs;
- ▶ What should be the length of time to provide assistance to EDPs and how will this affect their care;
- ▶ What are the problems that different countries can face in future while dealing with these group.

Bloc Positions

Europe and other Western Countries

Because of the wide variety of geographical features among Europe and other Western countries, different types of environmental crises are created. Most of these countries are economically stable and find it precise warnings and respond effectively to such disasters. They also help in resettling many EDPs from other nations and decide how to deal with them and help them in starting a new life.

Latin America and the Caribbean

These nations are vulnerable to ocean storms because of their tropical locations. These countries frequently rely on western countries to provide warnings and then assist in the event of a natural disaster they are also greatly affected by the environmental issues of their neighboring countries.

Africa and the Middle East

Most of countries in this bloc are in constant danger of desertification. The majority of these nations are deprived of basic needs and not able to offer any aid to their citizens when they suffer from environmental disaster. They usually depend on the more developed nations for relief.

Asia and the Pacific

The geographic features in this region are varied. Many people in the world's refugee population come from this region because these countries are only able to take action on some humanitarian crises when environmental disaster hits. These countries often depend on other nations for getting support.

Small Island Nations

These countries are situated around the world and face common and particular environmental risks. They are in danger of becoming extinct due to growing levels of the sea. Most of these nations do not have enough resources and are poor. Hence, they have to seek help from larger and richer nations. They also have to depend on other countries to receive aid for their citizens when the conditions become unfit to live in their nations.

5.9 Role of Women and the Environment

"Women have a vital role in environmental management and development. Their full participation is therefore essential to achieving sustainable development".

-Dr. Mrs. Naresh Yadav

World Bank (1991) stated, "Women play an essential role in the management of natural resources, including soil, water, forests and energy...and often have a profound traditional and contemporary knowledge of the natural world around them".

The role of a woman is interesting to note how it was realized that women play a crucial role in impacting environmental issues. It was in 1975 at the first World Conference on women in Mexico that the issue of women & the environment was elucidated by the Indian Physicist Vandana Shiva. She narrated how the Chipko Movement took shape in the Uttarakhand region and managed to impress upon the public the need to protect one's own environment. Also the book written by Ester Boserup, 'Women's Role in Economic Development' in the early 1970's sparked off a major arousal of interest in the link between women and the environment.

Women particularly those living in rural areas or mountain areas have a special relationship with the environment. They are closer to the nature than men and this very close relationship makes them perfect managers of an eco-system. The life of mountain women is intertwined with the environment and the whole ecosystem revolves around her. For her the forest is her mother's home as she is entirely dependent on the forest to meet her daily needs such as water, fodder, fuels, minor forest product etc.

One cannot imagine sustainable development without placing human beings at the centre. They deserve a healthy and fruitful life in harmony with nature. The United Nations Conference on Environment and Development, the International Conference on Population and Development and Agenda 21 recognizes the role of women indispensable in the sustainable development and natural resource management. Awareness of resource depletion, the degradation of natural systems and the dangers of polluting substances has increased markedly in the past decade. These worsening conditions are destroying fragile ecosystems and displacing communities,

especially women, from productive activities and are an increasing threat to a safe and healthy environment.

The world is different for each one of us; however in general, women's lives differ greatly from those of men because of pattern of socialization related to genders. In terms of environment, women around the world take part in divergent roles. If we explore different cultures and societies, we will find that most of them neglected or ignored not only the role of women but existence of women as well. Environmental degradation is related not only to the biosphere alone, but to the social sphere as well. Now the scenario is changing at a fast pace. There is mounting attention paid to the impact of women on the natural environment and the effect environment puts on the health and well-being of women.

Even though women have been considered passive recipients of resources rather than active participants in development, it cannot be denied that they have a decisive role to play in both, the economic development of their countries and to the future of the environment. Environmental educators and motivators understand very well that to bring the change, women have a key role to play in the sustainable and healthy development of the earth.

Women are seen conventional guardians of the environment. *A world survey on public attitudes on the environment sponsored by the United Nations Environment Program showed that women are more likely than men to choose a lower standard of living with fewer health risks rather than a higher standard of living with more health risks.*

There is growing evidence that women in several countries around the world are taking central roles in the grass-roots environmental movement. And there is increasing belief that development policies that do not involve women and men alike will not, in the long run, be successful.

The environment is the foundation of life. Environment and women are interconnected, based on the roles that they play. Women are often said to be just like the environment which gives life and provides for nourishment. In terms of resource consumption, women are the key users of natural resources. Their societal family role, imposed by the society's patriarchal system eg. providing and preparing food; cleaning the house; washing clothes and dishes; gathering fuel wood; fetching water; and taking care of the children makes women are highly dependent on the environment, and are directly affected by the condition of the environment. As a result, environmental degradation would also lead to women degradation, as this would deprive them of a better quality of life and a healthy environment to the children that they nurture.

Women constitute one half of the world's human capital. They cannot and should not be ignored in the role they play as protectors of the environment. The special relation between women and the environment underline the following concerns: the status of women, the origin of women's victimization within the environmental crises, and empower women.

Throughout the world, there is an increasing understanding of the women's contribution in identifying the environmental problems and for the planning of activities geared at the sustainable development of their communities. Many studies on women and environment have shown that women are major players in managing the natural resources and they are the most important contributors to rehabilitation as well as the conservation of the environment. Women

play the principal role in dealing with several key environmental problems. Women work in the close vicinity of their local environment as they play the role of farmers, water collectors and wood gatherers (for fuel). They are the ones who are affected and often suffer most directly from environmental problems.

Women have always been the principal conservers of bio-diversity. Even today they perform duties such as seed selection, multiplication and conservation. The on-farm conservation traditions of rural and tribal women, with reference to agro-biodiversity are well known. Women have deep- understanding about the environment because of their direct connection with environment. Therefore, women not only works as the nurturer of the family but also have worked as water resources managers, agriculturalists and traditional scientists. Women are not only conversant about the environment but are also caring and considerate. Women, being primarily responsible for domestic and household management, interact more intensively with the natural environment as well as contribute to building the environment much more than their counterparts. They spend more time at home and its immediate vicinity. Thus, they suffer more from a degraded home, neighborhood. They bear more of the burden of living in poor housing and communities with insufficient health infrastructure.

Women have often played the lead role in promoting environmental conditions, consuming less and saving more resources. They have also come forward in reusing and recycling resources to decrease waste and excessive consumption. Women can play a powerful role in influencing decisions for sustainable development. Further, women have made huge contributions in managing environmental issues which incorporates grass-root work and youth campaigns to save the environment from harm. This they are able to perform at the local level, where action on environmental issues is most desirable and decisive. Women, especially indigenous women, have particular knowledge about ecological linkages and fragile ecosystem management. In several regions, women are generally the most constant members of the community, since men often go for work to distant places, leaving women to safeguard the natural environment and ensure adequate and sustainable resource allocation within the household and the community.

The United Nations Conference on Environment and Development as well as the International Conference on Population and Development (reflected in chapter 24 of Agenda 21) has recognized the vital role played by the women in the development of sustainable and ecologically sound consumption, production patterns and approaches to natural resource management.

The Beijing *Platform for Action* notes the importance of a holistic and multidisciplinary approach in dealing with environmental issues. It notes the linkages among poverty, natural disasters, health problems, unsustainable development and gender inequalities. The *Platform for Action* laid down three strategic objectives.

1. Involve women actively in environmental decision-making at all levels.
2. Integrate gender concerns and perspectives in policies and programmes for sustainable development.
3. Strengthen or establish mechanisms at the national, regional or international levels to assess the impact of development and environmental policies on women.

The Beijing *Platform for Action* was built on earlier global commitments, including the Dublin Statement on Water and Sustainable Development, adopted at the International Conference on Water and Environment in Dublin, January 1992; and *Agenda 21* (including the Rio Declaration and the Statement of Principles for the sustainable management of forests), adopted at the United Nations Conference on the Environment and Development in 1992. *Agenda 21*, include a specific chapter on “Global Action for Women towards Sustainable Development” and contain many references to women throughout the text. **The Rio Principle 20 notes “Women have a vital role in environmental management and development. Their full participation is therefore essential in achieving sustainable development.”**

“Women and the environment” results from a partnership between UNEP and the Women’s Environment and Development Organization (WEDO). An international advocacy organization, WEDO works to achieve a healthy and peaceful planet, seeking environmental, social, political and economic justice for all through women’s empowerment as well as equal participation in decision-making, from the local to the global arenas.

“Women and the environment” makes the often hidden links between women and the environment visible, with an explicit focus on the **gender-related aspects of land, water, biodiversity conservation and management**. It aims to inspire the environmental and sustainable development community to better understand the importance of gender as well as to integrate a gender perspective across all of its work. There are many affirmations adopted by UN as well as other organisations at International and national level regarding women, environment and development. Some of them are given table1.

Table 1: International affirmations of women’s rights in environment and development	
1985	<p>The United Nations Third World Conference on Women and associated NGO Forum in Nairobi reviews and appraises the achievements of the United Nations Decade for Women. It produces the Nairobi Forward-looking Strategies, which recognize women’s role in environmental conservation and management.</p> <p>(www.un.org/womenwatch/confer/nfls.htm)</p> <p>At the Third World Conference, UNEP organizes a special event on women and the environment and nominates senior women advisers on sustainable development. The Environment Liaison Centre International (ELCI) holds a series of workshops on women, environment and development at the NGO Forum.</p>
1991	<p>The World WIDE (World Women in Environment and Development) Global Assembly on Women and the Environment: Partners in Life meets in Miami, Florida, United States of America and presents 218 success stories.</p> <p>(www.womenenvironment.org/publ51.asp)</p> <p>Organized by WEDO, the First Women’s World Congress for a Healthy Planet, also in Miami, develops the Women’s Action Agenda 21.</p> <p>(www.wedo.org/sus_dev/section1.htm and www.iisd.org/women/about3.htm)</p>

	<p>In Geneva, the secretariat for the United Nations Conference on Environment and Development holds the symposium Women and Children First: The Impact of Poverty and Environmental Degradation on Women and Children (Steady, 1993).</p>
1992	<p>The United Nations Conference on Environment and Development produces the Rio Declaration and Agenda 21, as well as the Convention on Biological Diversity, the United Nations Framework Convention for Climate Change and the United Nations Convention to Combat Desertification. The meeting recognizes women as a “major group” in sustainable development and makes specific provisions to advance their position. These include chapter 24 of Agenda 21, entitled “Global Action for Women towards Sustainable Development”, along with 145 other references. Rio Principle 20 reads: “Women have a vital role in environmental management and development. Their full participation is therefore essential in achieving sustainable development”.</p> <p>(http://www.un.org/esa/sustdev/documents/UNCED_Docs.htm)</p>
1995	<p>The World Summit for Social Development in Copenhagen calls for the eradication of poverty and the promotion of social justice and women’s rights.</p> <p>(www.un.org/esa/socdev/wssd/index.html)</p> <p>The United Nations Fourth World Conference on Women in Beijing and the affiliated NGO Forum in Huairou provide an opportunity to consolidate decisions already made and bring them forward into the Beijing Platform for Action. It offers a road map for achieving gender equality in 12 key areas: poverty, education and training, health, violence, armed conflict, the economy, decision-making, institutional mechanisms, human rights, the media, the environment and the girl child (United Nations, 1996). Section K, on women and the environment, asserts that “women have an essential role to play in the development of sustainable and ecologically sound consumption and production patterns and approaches to natural resource management”.</p> <p>(paragraph 246;www.un.org/womenwatch/confer/beijing/reports)</p>
2000	<p>Beijing+5: Beijing and Beyond convenes in New York and recognizes several emerging critical issues for women and girls, including work-related rights, gender-based violence, reproductive and sexual rights, education and social security, and access to productive resources.</p> <p>(DAW, 2001; www.un.org/womenwatch/confer/beijing5/)</p> <p>At the Millennium Summit in New York, all 189 United Nations Member States commit themselves to establishing a better, healthier and more just world by 2015. The Millennium Declaration promises “to promote gender equality and the empowerment of women as effective ways to combat poverty, hunger and disease and to stimulate development that is truly sustainable”. The Declaration’s eight Millennium Development Goals include Goal 1, eradicate extreme poverty and hunger; Goal 3, promote gender equality and empower women; and Goal 7, ensure environmental sustainability.</p> <p>(www.un.org/millennium/)</p>

	<p>Security Council resolution 1325 (2000), on women, peace and security, recognizes the impact of war on women and recommends improving women's protection during conflicts as well as women's leadership in peace-building and reconstruction.</p> <p>(http://www.un.org/Docs/scres/2000/sc2000.htm)</p>
2001	<p>The World Summit on Sustainable Development in Johannesburg issues the Johannesburg Declaration and Plan of Action. It confirms the need for gender analysis, gender specific data and gender mainstreaming in all sustainable development efforts, and the recognition of women's land rights. The Declaration states: "We are committed to ensuring that women's empowerment, emancipation and gender equality are integrated in all the activities encompassed within Agenda 21, the Millennium Development Goals and the Plan of Implementation of the Summit".</p> <p>(WEDO, 2002; www.johannesburgsummit.org)</p>
2003	<p>The eleventh session of the United Nations Commission on Sustainable Development decides that "gender equality will be a cross-cutting issue in all forthcoming work up until 2015".</p> <p>(www.un.org/esa/sustdev/csd/csd11/CSD11.htm)</p> <p>Sources: UNIFEM, 2002; UNDP, 2003; Hemmati and Seliger, 2001; Pietilä, 2002; WEDO, 2003</p>

Regardless of large impediments, women have proved the fact that they can be extremely effective means of change, can demand as well as work towards a healthy and safe environment. There are numerous organizations which are organized as well as run by women who have contributed to setting sustainable programmes through their advocacy and lobbying, developing alternatives to unsustainable development. They are also making sure that women's concerns are heard and their perspectives are being taken into account. Women are, at international and national level, making tremendous efforts to save the environment. Some of the example of women in protection and conservation of environment at international level are:

Read and Reflect

Green Belt movement, Kenya

"Trees are alive, so we react to them in very different ways. Often, we get attached to a tree, because it gives us food and fodder and fuel for our fires. When you plant a tree and you see it grown, something happens to you ...You see the relationship between a person and the environment. It is wonderful to see that transformation, and that is what sustains the movement!"

- Wangari Maathai (in: Cuomo, 2001)

One of the biggest in women and environment history is the Green Belt movement. Nobel Prize winner Wangari Maathai founded this movement on the Earth Day in 1977. It was one of the first efforts to integrate the links between gender and natural resources within a grassroots environmental campaign - in this case, by mobilizing women to plant indigenous trees. The starting ceremony was very simple: a few women planted seven trees in Maathai's backyard. By

2005, 30 million trees had been planted by participants in the Green Belt movement on public and private lands. The Green Belt movement aims to bring environmental restoration along with society's economic growth. This movement led by Maathai focused on restoration of Kenya's rapidly diminishing forests as well as empowering the rural women through environmental preservation, with a particular stress on planting indigenous trees.

In recent years, the Movement's work has expanded to include issues of food security and the production of native foods, such as millet and groundnuts, many of which have been abandoned in favour of fast-growing, more ecologically demanding crops for export, such as coffee, tea and flowers. Conceived by the National Council of Women of Kenya, the Movement has always sought to address gender disparities, self-sufficiency and the role and power of women in environmental protection. The trees provide women with shade and windbreaks for crops, improved water resources, food and income (women are paid for seedlings that survive), as well as skills and autonomy.

"Implicit in the act of planting trees is a civic education, a strategy to empower people and to give them a sense of taking their destiny into their own hands, removing their fear ..." says founder Wangari Maathai, now Assistant Minister for Environment, Natural Resources and Wildlife in Kenya's new Government.

The Movement's work has spread to other countries through the Pan-African Green Network, with NGO partners taking up tree planting and women's empowerment activities.

Sources: Maathai, 2003; Cuomo, 2001

Rachel Carson

"Only within the moment of time represented by the present century has one species -- man -- acquired significant power to alter the nature of the world."

— Rachel Carson, *Silent Spring*

Rachel Carson (1907-1964) is one of the outstanding women environmentalists. She was a scientist, writer, and ecologist. Rachel Carson went to the Pennsylvania College for Women, majoring in English, but she was inspired by her biology teacher so she switched her major to biology. She became more interested and focused on the sea while she was working at the Marine Biological Laboratories in Massachusetts. Her eloquent writing style led to the publication of her first book, *Under the Sea-Wind: a Naturalists' Picture of Ocean Life*, in 1941. She became chief editor of the Fish and Wildlife Service (FWS) in 1949. Her second book, *The Sea Around Us*, won the National Book Award and sold more than 200,000 copies. When she retired from FWS, she became a full time writer. After her third and final book about the sea, *The Edge of the Sea*, Carson focused on effects of chemicals and pesticides on the environment. That is when she wrote her book about environment, *Silent Spring*. The book was about what man has done to the nature and eventually to himself, and started a modern environmental movement. Carson believed that human and nature are mutually dependent on each other. She argued that industrial activities such as pesticides use can damage the earth ecosystem and will have far-reaching ecological consequences such as future human health problems. Today, there are many scientific studies which have demonstrated the consequence mentioned by the Carson in her book.

Maria Cherkasova

“The problem of environmental children's health is very urgent in Russia. Environmental situation now is the main factor, which determines young generation's health... the volume of pollutant emissions in atmosphere and water grew and scale of ecological man-caused catastrophes increased. More than half of Russian territories, where 60-70 percent of the of population lives, have unsafe ecological situation.” - Maria Cherkasova Journalist, ecologist, and director of Centre for Independent Ecological Programmers (CIEP)

Maria Cherkasova (1938-) is a journalists, ecologist, and director of Centre for Independent Ecological Programmes (CIEP). She is became famous because of coordinating a 4-year campaign to stop construction of hydro-electric dam on the Katun River. After Cherkasova involvement in the student movement on environmental protection in 1960's, she began to work for the Red Data Book for the Department of Environmental Protection; she began to work for the Red Data Book for the Department of Environmental Protection Institute. She researched and preserved rare species until she became the editor of USSR Red Data Book. She co founded the Socio-Ecological Union, which has become the largest ecological NGO in the former Soviet Union. In 1990, she became director of CIEP, which arrange and drives activities in an extensive range of ecologically related areas on both domestic and international fronts. Cherkasova recently has shifted her focus on children rights of protection to live in a healthy environment and speaks for both inside and outside Russia.

Read and Respond

Find some other significant work initiated by women to protect and conserve the environment at international level. Share it with your classmates and teacher.

5.10 Protection of the Environment: A Tradition in India

Respecting nature and living in harmony with it have long been part of the Indian society. The Indian tradition emphasized on living in accord with nature. The Bishnois, for example, followers of a Rajput saint, Jambheshwar Maharaj, who lived towards the end of the fifteenth century, emphasise vegetarianism, non-violence, protection of trees and respect for all living things. In 1730, 363 Bishnois of Khejadli village, mostly women and old men, laid down their lives in an effort to protect trees being cut on the orders of the King of Jodhpur. Sacred groves are a unique tradition that has been responsible for islands of biodiversity in various parts of the country. Ashoka's pillar proclamation, dating back to 272-232 BC, states protection for plants and animals.

Although, concern for nature and natural resources is not new for India, yet we need to pay more attention towards saving our environment because of the growing industrialization and the ever increasing greed of humans.

The Indian Constitution laid down the responsibility to protect and improve the environment on the government (Constitution of India, Article 48-A) and made it the *“fundamental duty of every*

citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife" (Constitution of India, Article 51-G).

Mrs. Indira Gandhi, the then Prime Minister of India, was the only visiting head of State to attend the Conference on Human Environment at Stockholm, 1972. It is on this occasion that she first brought to fore the connection between environment and poverty. It was following this Conference that a Department of Environment was established by the Government of India in 1980, to act as the nodal agency for planning, promotion and coordination of various environmental programs in the country. Since its inception, the Department has emphasized on the promotion of environmental education at different levels, making it a people's movement. In 1983-84, the Department launched a new scheme on environmental education and awareness under which several activities, like seminars, group discussions, refresher courses, multimedia campaigns, eco-development camps etc. to various target groups, such as decision makers, politicians, administrators, teachers and students and general public were undertaken.

Though the Government of India is working towards an environmentally sound and sustainable quality of life, the problems, challenges and issues are multi-faceted. However, women in India are playing a crucial role in protection and conservation of environment.

5.10.1 Chipko movement

One of the first environmentalist movements inspired by women was the "Chipko" movement. Its name comes from a Hindi word meaning "to stick" (as in glue) or hugging or to cling, reflecting the protesters main technique of throwing their arms around the tree trunks designated to be cut, and refusing to move. It began when Maharaja of Jodhpur wanted to build a new palace in Rajasthan which is India's Himalayan foot hills. While the axe men were cutting the trees, martyr Amrita Devi hugged one of the trees. This is because in Jodhpur each child had a tree that could talk to it. The axe men ignored Devi and after taking her off the tree cut it down.



Fig.19: Women in the Chipko Movement in India discussing deforestation

This story inspired the actions of a group of mostly rural women who in the 1970s launched similar spectacular protest movements in India. For rural women, saving the environment is crucial to their economic survival. As primary food, fuel, and water gatherers, women have strong interest in reversing deforestation, desertification, and water pollution.

The modern Chipko movement started in the early 1970s in the Garhwal Himalayas of Uttarakhand, then in Uttar Pradesh with growing awareness of rapid deforestation. The landmark event in this struggle took place on March 26, 1974, when a group of peasant women in Reni village, Hemwalghati, in Chamoli district, Uttarakhand, India, acted to prevent the cutting of trees and reclaim their traditional forest rights, which were threatened by the contractors

assigned by the state Forest Department. The movement was an act of defiance against the state government's permission given to a corporation for commercial logging. Women of the villages resisted, embracing trees to prevent their felling to safeguard their lifestyles which were dependent on the forests. Deforestation could qualitatively affect the lives of all village residents but it was the women who agitated to save the forests. Organized by a non-governmental organization that Chandi Prasad led, The Chipko movement adopted the slogan "ecology is permanent economy." The women embracing the trees did not tag their action as feminist activism; however, as a movement that demonstrated resistance against oppression, it had all the markings of such."

5.10.2 The Narmada Bachao Andolan Movement (NBA)

The Long Struggle

Whose are the forests and the land?

Ours, they are ours.

Whose the wood, the fuel?

Ours, they are ours.

Whose, the flowers and the grass?

Ours, they are ours.

Whose the cow, the cattle?

Ours, they are ours.

Whose are the bamboo groves?

Ours, they are ours.

- Narmada Bachao Andolan song



Narmada Bachao Andolan was one of the most powerful mass movements, started in 1980s, against the construction of a huge dam on the **Narmada** river. Narmada is the India's largest west flowing river, which supports a large variety of people with distinguished culture and tradition ranging from the indigenous (tribal) people inhabiting in the jungles to the large number of rural population. Because of the proposed Sardar Sarovar Dam and Narmada Sagar more than 250,000 people would be displaced. The big battle was for the resettlement or the rehabilitation of these people.



Fig. 20: Medha Patkar - Leader of Narmada Bachao Andolan

This, a multi-crore project would generate a big revenue for the government. The Narmada Valley Development plan was the most promising and challenging plan in the history of India. People who were in favour of building the dam said that it would produce 1450 MW of electricity

and pure drinking water to 40 million people covering thousand of villages and towns. Some of the dams have been completed such as Tawa and Bargi Dams. But the opponents say that this hydro project will devastate human lives and bio diversity by destroying thousands of acres of forests and agricultural land. It would overall deprive thousands of people of their livelihood. They believe that the water and energy could be provided to the people through alternative technological means that would be ecologically beneficial.

Led by one of the prominent leaders Medha Patkar, it has now been turned into the International protest, gaining support from NGO'S all around the globe. Protestors are agitating the issue through the mass media, hunger strikes, massive marches, rallies and several documentary films. Although they have been protesting peacefully, they have been harassed, arrested and beaten up by the police several times. The Narmada Bachao Andolan has been pressurising the World Bank to withdraw its loan from the project through the media.

The strong protests throughout the country not only made an impact on the local people but has also influenced several famous celebrities, who has made efforts to support the Narmada Bachao Andolan.

*The most popular slogans of the NBA were **Vikas Chahiye, vinashnahin!** ("We want development, not destruction") and **Koi nahi hatega, bandh nahi banega!** ("No one will move, the dam will not be built").*

Mahashweta Devi

Mahashweta Devi, a leading Bengali fiction writer and an eminent social activist, champions the cause of the 25 million tribal people in India, who belong to approximately 150 different tribes. Her writing reflects the ugliness, squalor and misery in the lives of the tribal people and indicts Indian society for the indignity it heaps on its most oppressed constituents.

Mahashweta Devi was recognized for her life-time contributions in both literature and social work, with the Sahitya Akademi award in 1979, the Padmashree award in 1986, the Jnanpith award in 1997, the Magsaysay award (referred to as the Asian Nobel Prize) in 1997 and the Deshikottam award in 1999.



In response to the question, "What would you like to do for the rest of your life?" in a 1998 interview, Mahashweta Devi replied, "Fight for the tribals, downtrodden, underprivileged and write creatively if and when I find the time".

Mahashweta Devi has been spearheading the movement against the industrial policy of the government of West Bengal, the state of her domicile. Specifically, she has stridently criticized confiscation of large tracts of fertile agricultural land from farmers by the government and ceding the land to industrial houses at throwaway prices. She has connected the policy to the commercialization of Shantiniketan of Rabindranath Tagore, where she spent her formative

years. Her lead resulted in a number of intellectuals, artists, writers and theatre workers join in protesting the controversial policy and particularly its implementation in Singur and Nandigram. She is a supporter of Budhan Theatre - the theatre group of Chhara Denotified Tribals of Gujarat.

Guidelines for environmental protection and conservation

Women could serve as a role models and catalysts for sustainable environment. Being mothers, it is their role to educate and give their children awareness about the importance of the environment. Women are the stewards of the environment. Thus, they should be observant about the condition of the environment and should be watchful particularly to those who continuously degrade the environment. Based on their initial experiences, the key informants argued that women could really make a difference in terms of enlightening the minds of the community members on the importance of the environment and also in harnessing the active participation of the community members in environmental conservation as well as management. The women should also actively participate in the decision-making process to be able to integrate their perspectives on the concerns and matters about the environment. The women should likewise mobilize other stakeholders to work together in protecting and conserving the environment. Environmental protection and conservation should be the responsibility of all the citizens, regardless of gender, age, occupation, and socio-economic status.

Women remain largely absent at all levels of policy formulation and decision-making in natural resource and environmental management, conservation, protection and rehabilitation.

There is growing evidence that women in several countries around the world are taking central roles in the grass- roots environmental movement. There is increasing belief that development policies that do not involve women and men alike will not, in the long run, be successful.

As stated by Diane Reed, president of the Cree Society for Communications: *"Now the women are rising up. And when the women rise up from a nation, they are the strongest voice that can be heard and it's a voice that cannot be silenced."*

Read and Respond

What recommendations can you give to enhance the participation of women in environmental management for sustainable development? Discuss in small groups and your class teacher.

Read and Respond

PUNE/ MUMBAI: Torrential rains may have triggered the landslide on Wednesday that buried Pune's Malin village, but experts say short-sighted government policy and shoddy implementation of its schemes are the major underlying factors for the tragedy.

Sahas Manch, an NGO working in the area, has blamed abject carelessness of government officials in measuring and levelling land for the Padkai scheme. Under this tribal employment project implemented under MNREGA, hill slopes are flattened and trees are cut down to develop cultivable plots. The NGO claimed that government officials did not survey the area thoroughly and allotted 25 plots on steep slopes.

Land was levelled by uprooting trees, which in turn loosened the soil, stone bunds were not built to contain erosion and nullahs were not cut into the soil to allow drainage. Such criminal errors caused the landslide, it alleged. On the other hand, massive deforestation for a windmill project along the hillside was equally responsible, said acclaimed ecologist Dr Madhav Gadgil.

(<http://timesofindia.indiatimes.com/>)

1. Collect the information about those government policies which may lead to the environmental degradation in your state.
2. Find out and locate the area in the map of your country which has been deforested due to development process and became a big cause for the natural disaster.

Unit End Reflections

Comprehension Questions

1. Define environment.
2. Describe briefly the different types of environment. What is the importance of social and cultural environment?
3. Discuss the role of natural environment in the existence of human life.
4. Elaborate the relationship between environment and development.
5. What is the necessity to reduce environmental damages? Do you think an alternative model of development would seek a change in people's life style?
6. What do you understand by sustainable development? How can it help us to deal with environmental degradation?
7. How is environmental decline becoming a source of political unrest and international tension in the contemporary world?
8. Write a short note on Environmentally Displaced People (EDPs).
9. "Large number of people are being forced to move or flee from unbearable situations due to natural disasters". Explain with examples.
10. Differentiate between sudden and slow-onset disasters.
11. What steps have been taken by the UN to protect- the rights of EDPs?
12. How can the hazardous environmental activity of a neighbouring nation affect the environmental concerns of country?
13. Describe the role of women in conserving the environment.
14. Write a short note on the Green Belt-Movement.
15. What role has been played by women for the protection of the environment in India?

Case Studies

CASE STUDY 1

Sturgeon poaching in Dagestan In Russia, the sturgeon poaching in the Republic of Dagestan has reached unprecedented proportions, with a significant share of the coastal population engaged in this activity, including through corruption. Poaching is often done by individuals on motor fishing boats. The monthly “income” of local police and fish inspectors in bribes has been estimated around USD 800 per motor boat. The catch is collected by a “master” who controls the coastal sea fishing and fish processing. However the most damaging poaching is the “commercial” one using trawlers. On average, one illegal catch brings around 170,000 roubles (USD 5,000) in profit. This is an extremely high level of earnings in Dagestan, which remains one of the poorest regions in Russia.⁴⁷ In the first half of 2010 in the Republic of Dagestan there have been 300 registered criminal cases under Article 256 of the Criminal Code (illegal harvesting of aquatic biological resources) and Article 175 (purchase or sale of property, knowingly obtained through criminal activity). Only 4 criminal cases were registered by the Fisheries Inspection of Dagestan.⁴⁸

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CASE STUDY 2

India: Great One-Horned Rhinoceros Assam, in India, holds 75% of the world’s remaining great one-horned rhinoceroses in three protected areas, Kaziranga, Orang, and Pabitora. Of the three, Kaziranga’s rhino population is the largest, with over 2,000 animals. These rhinos represent a remarkable conservation success story. At the turn of the nineteenth century, it was thought less than 50 one-horned rhinoceros remained in India. Kaziranga housed just 12. Today the park, a World Heritage Site and Biodiversity Hotspot, also boasts healthy populations of Royal Bengal tiger, elephant, buffalo, and swamp deer. These animals are all under threat from habitat degradation and loss, road and train traffic accidents, human-animal conflicts, and periodic flooding. Poaching associated with armed militant groups began rising in 2007 with the killing of 18 rhinos. Two other parks in the region lost their rhinos as the result of conflict-driven poaching in the 1980s and 1990s. Today a multitude of armed groups including tribal separatists, rebels, and Islamist terrorists poach within Kaziranga and in adjacent areas.⁸⁶ Almost two dozen militant organizations are active in the region, proliferating arms and impacting security, and creating opportunities for the penetration of transnational organized crime.⁸⁷ Harkat-ul-Jihad-al-Islami and Jama’atul Mujahideen Bangladesh, Bangladeshi terror groups affiliated with Al Qaeda, reportedly poach tigers, elephants, and rhino in the park to raise organizational operating funds. The groups have been claimed to be linked with criminal syndicates in Nepal, Thailand, and China.⁸⁸ The Karbi Peoples’ Liberation Tigers (KPLT) sponsor and organize hunts, arming poachers with AK-47s to kill rhinos to extract their horns and to battle forest guards.⁸⁹ After being apprehended in the act, one member of the Kuki National Liberation Front admitted killing six rhinos.⁹⁰ At least 41 rhinos were poached in Kaziranga in 2013, double the number killed the previous year. Most were reportedly killed by AK-47s and .303 rifles used by militant groups.⁹¹ The horns are traded for weapons and cash to fund militant activities. The involvement of armed militias in poaching elevates the risks associated with guarding the park’s animals. Forest guards now openly engage in combat with militant groups, despite their limited

equipment, training, and low pay.⁹² Kaziranga officials try to protect the animals through strong anti-poaching initiatives with over 150 security posts throughout the park, deployment of the elite Assam Forest Protection Force, tight local intelligence networks, and rewards to informants. Scores of poachers are arrested each year, and rangers regularly risk their lives pursuing and fighting the militants. However, limited law enforcement, challenges of coordination between forestry officials and the judiciary, suspected corruption within the department⁹³ as well as poor working conditions, limited training, and lack of equipment for the guards create challenges to anti-poaching efforts.⁹⁴

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CASE STUDY 3

Liberia Forest covers as much as 45% of Liberia's land area, making it one of the last remaining countries in West Africa with extensive forest coverage.⁹⁵ During the country's nearly two decades of conflict, the valuable timber extracted from those forests became known as 'blood timber' or 'conflict timber' by groups such as Global Witness, similar to the term 'blood diamonds'.⁹⁶ The timber is moved from conflict zones to international markets through collusion between militias and transnational criminal networks involved in the timber industry.⁹⁷ Former president of Liberia, Charles Taylor, allegedly utilized funds from the extraction of timber (and other natural resources, most famously diamonds) to take over the country, support the Revolutionary United Front's violent rebellion in Sierra Leone, and support rebels in western Ivory Coast.⁹⁸ During the first civil war from 1989- 1996, timber became the primary source of independent funding for his National Patriotic Front of Liberia (NPFL).⁹⁹ During the second civil war, Taylor worked closely with international timber trading companies to manage his concessions, making deals to trade timber for weapons, helicopters, uniforms, vehicles, and other equipment to continue his rebel movement.¹⁰⁰ In countries at war, logging companies may sometimes side with groups controlling forest territories, including rebels and insurgents. ¹⁰¹ Timber companies may act as middle-men with international arms dealers, including the convicted arms trader Victor Bout, in transporting arms and facilitating payments.¹⁰² These arms deals were in direct violation of the 1992 UN Security Council Resolution 788 and subsequent resolutions, which established an arms embargo on Liberia.¹⁰³ In some cases, timber companies paid the taxes owed to the Liberian government directly to arms dealers on the government's behalf in exchange for weapons. In many cases these companies appear to have worked closely with ex-generals and other members of Taylor's military to run timber concessions, including through recruitments of militias to protect the concessions or support the existing political powers.¹⁰⁴ The timber industry has been estimated to bring in USD 80-100 million dollars per year during much of this period, with less than 10% reaching the tax authorities.¹⁰⁵ These funds allowed for the extension and expansion of the conflict, which resulted in the deaths of over 250,000 people, caused millions to be displaced from their homes, and destroyed the country's economy.

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CASE STUDY 4

Democratic Republic of Congo: Illegal exploitation of natural resources The DRC is rated by CITES as one of the two most problematic countries in Africa for illegal exploitation of natural resources,

from ivory to timber. In some sites in the country, 90% of elephant carcasses discovered had been poached.¹⁰⁶ Ivory is considered to be hunted and traded by militants for weapons, ammunition, food, and other materials required to sustain insurgent movements. The Lord's Resistance Army (LRA), Janjaweed, the Democratic Forces for the Defence of Rwanda (FDLR), Mai-Mai Morgan, and various local armed militias regularly poach elephants and hippos for ivory in the DRC. Many of these same groups are directly implicated in illicit timber, charcoal, gold, and mineral trades and have been connected to serious human rights abuses including mass murder, recruitment of child soldiers, kidnapping, forced labour, sex slavery, mass looting, and displacement. These armed groups hunt elephants by organizing and supplying locals to hunt the animals. Importantly, ivory is a commodity available to lower level fighters who are unable to benefit from more lucrative taxation schemes controlled by militant group leaders. Garamba National Park is located along the northern border with South Sudan. The LRA and Sudanese poaching gangs use it actively, and local poachers who operate with impunity in the insecure environment, also blame the militias. Most of Garamba is too dangerous to patrol. Park rangers can only conduct foot patrols in the southern third of the park, south of the Garamba River.¹⁰⁷ By 2013 the park's population of 22,000 elephants had decreased by 90% to around 2,000 animals. The park was home to the last wild populations of Northern White Rhinoceros in the world before being poached to extinction in the 2000s by Sudanese poaching gangs, possibly Janjaweed.¹⁰⁸ Travelling in gangs of dozens of hunters and porters, the Sudanese poachers, typically armed with AK-47s, poach elephants in and around the park.¹⁰⁹ The LRA, operating on direct orders from their leader Joseph Kony, hunt elephants in order to trade ivory to transnational criminal groups for guns, ammunitions, food, and other supplies. In 2009, the group attacked the park headquarters, killing 17 of the park's staff.¹¹⁰ Ugandan forces linked caches of tusks found in the

Central African Republic CAR to the LRA.¹¹¹

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Chapter 6: Legal and Statutory Remediation and Support

6.1 Need for Legal Remedies

In previous chapters, we have understood the concept of human rights and what human rights are. Now we will be studying the remedies we have, in cases of violation of Human Rights or in order to assert and enforce our rights as well as the rights of our fellow human beings. For every 'right' there is required a mechanism for its enforcement in cases of denial and compensation for the victim of such denial. For example if an innocent person is victimised by wrongly incriminating and detaining him by the Police, there should a system in place for, firstly, to free the person and end the wrong detention of the victim; secondly a mechanism to punish the persons responsible for the said illegal and wrongful detention and thirdly to compensate the victim adequately for the wrong done to him. As the scope of human rights keep on expanding with the times and the growth of civil society so do the legal remedies with the development of the law as required for the growing needs of the society. The concept of Human rights is an ever-growing one and so does the law, through which the human rights are implemented and enforced. It cannot be limited to a particular right or a group of rights but it keeps on expanding with the growth of society to more and more civilized society. As the society becomes more and more civilized and sensitive towards the rights of its people, the scope of human rights also grow in order to include in it more and more rights to elevate the quality of life of its people evermore.



Fig. 1

After the Second World War and the formation of the United Nations, Rights of human beings had taken centerstage. The violation of human rights at such a huge scale drew attention of all the Nations and World leaders and made them realise the necessity to do something for its protection. The Preamble, which is the guiding statement of the reasons, purpose and vision, of the Charter of United Nations (through which the United Nations was created) specifically, reaffirms the faith on the fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.

Charter of United Nations

(signed on 26th June, 1946 in San Fransisco and came into force on 24th October'1945)

Preamble

We the peoples of the united nations determined

- ▶ to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
- ▶ to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
- ▶ to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
- ▶ to promote social progress and better standards of life in larger freedom,

And for these ends

- ▶ to practice tolerance and live together in peace with one another as good neighbours, and
- ▶ to unite our strength to maintain international peace and security, and
- ▶ to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and
- ▶ to employ international machinery for the promotion of the economic and social advancement of all peoples,

Have resolved to combine our efforts to accomplish these aims

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

Source: <http://www.un.org/en/documents/charter/preamble.shtml>

The growth of the concept and scope of Human Rights became organised and constant after the coming into existence of the United Nations. The United Nations, furthering its objective of the protection of Human Rights, adopted the Universal Declaration of Human Rights, which played the key role as a base document not only for the further development of Human Rights law in the form of Covenants Conventions, treaties and other declarations but also inspired the inclusion of fundamental rights in many Constitutions across the globe. Universal Declaration of Human Rights

is also the base document of The International Bill of Rights. One of the most important purpose of development of human rights regime is to provide an effective enforcement and remedial mechanism to ensure the free and full enjoyment of one's human rights by every human being. Without a strong and effective remedial and redressal mechanism, human rights would become practically nonexistent and obsolete theoretical fantasy.

International Bill of Human Rights is constituted by three human rights documents together:

1. Universal Declaration of Human Rights, 1948;
2. International Covenant of Civil and Political Rights, 1966 with its two optional protocols;
3. International Covenant of Economic, Social and Cultural Rights, 1966;

Read and Respond

Human Right was one of the driving forces for the constitution of the United Nations Organisations as well as in charting of its objectives. Explain the perspectives as to how Human Right was such a driving force. (Answer in about 250 words)

6.2 Remedies and Support

Legal remedies is a mechanism provided for by the Government to which the victim takes resort for prevention of the violation of his human rights and his indemnification for the injuries caused by the said violation of human right. Injuries, as stated here, can be physical or any other covering all forms of losses caused to the victim by the act of such violation. It is the duty of the Government to provide for a support as well as remedial mechanism to every human being in order to ensure free and unfettered enjoyment of the human rights. There is a slight difference between 'Remedial Mechanism' and 'Support System' for the enforcement of Human Rights. 'Support system' is a mechanism put in place by any government to ensure the enjoyment of human rights by every human being within its territory. It has nothing to do with the violation e.g. building hospitals, schools etc. to help its people enjoy the right to proper medical aid and education. Similarly to enact laws in order to provide for the rights e.g. Part III of the Constitution of India which provides for the Fundamental Rights to its 'subjects', Food Security Act, Minimum Wages Act, etc. We have used the word 'subjects' here while talking about the fundamental rights enshrined in Part III of the Constitution because there are certain rights which are absolute and guaranteed to the Citizens of India only i.e. under Article 19, whereas the others are guaranteed to every human being irrespective of citizenship i.e. Right to equality and right to life provided for under Articles 14 and 21. Remedial mechanism comes into play after a violation takes place. In Latin, there is a maxim "*Ubi jus ibi remedium*" which means where there is right there is a remedy. Wherever there is a right, there has to be a remedy in case of its violation that should be available for the victim of such violation for its redressal.

The objectives of the legal and statutory remediation and support system, which the State i.e. the government is to provide for, can be enunciated as follows:

1. To ensure that human rights of every human being are respected and protected by the State / Government;

2. To pre-check the committal of violation of human rights by way of creating immediate response mechanism in order to stop the ongoing violation and restore the rights e.g. Police, Ambulance, Fire Brigade, Women Helpline, Child helpline etc.;
3. To book the guilty of violation of human rights and subject him to trial and punish in accordance with law;
4. To compensate the victim for his suffering caused by the said violation.

Definition of 'State'

Article 12, Constitution of India

"In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."

Read and Respond

Which one of the following comes under the definition of 'State'?

Office of The Collector, Office of the Superintendent of Police, Reliance Fresh, Municipal Corporation of your area, Ward-Member of your area

6.2.1 Classification

Remedies can be classified in two ways, first on the basis of the nature of rights i.e. there are certain rights which are fundamental rights and are absolute in nature guaranteed by the Constitutions of the respective countries whose violation attracts remedies provided for in the Constitution itself. Secondly there are certain rights which are statutory rights provided by any statute or other form of enactment and the remedy is provided for in the statute itself. Thirdly some rights are based upon the international human rights instruments.



Fig. 2

On the basis of nature of relief, the remedies available can be classified as:

- (i) **Penal Remedies:** Penal Remedies are remedies through which the violator of the right is punished either by imprisonment or with fine or both. Penalty under penal law is usually for the violative acts of criminal nature. The victim of the violation lodges complaint with either the police or any other competent authority authorised to take action or cognizance for the violation.

Under Laws, along with the punishment awarded to the violator the victim can also be compensated monetarily.

Illustration:

- (i) Denial of right to life to a girl child i.e. female foeticide attracts imprisonment.
 - (ii) Any kind of assault on the human body is a criminal offence which is punishable.
- (ii) **Compensatory Remedies:** Compensatory reliefs are majorly for the civil wrongs i.e. acts which do not attract criminal provisions of law being not of criminal nature.

Illustration:

- (i) A wrongful invasion by a person or the government into the privacy of a person violating the right to privacy, which is part of right to life meaning thereby right to dignified life, is a civil wrong for which the victim can claim compensation from the violator or the government.
- (ii) Any act of the Government denying him the right to equality i.e discriminating on any forbidden grounds of discrimination e.g. grounds of religion, race, caste, creed, sex etc.



Fig. 3

On the basis of nature of right, the remedies can be classified as follows:

- (i) Constitutional Remedies (for fundamental and constitutional rights)
 - (ii) Statutory remedies (for rights and remedies provided for by the statutes and other enactments)
 - (iii) Remedies under International Human Rights Instruments (remedies provided by conventions)
- I) **Constitutional Remedies:** Constitution, of any country, is the main governing law for any nation, which acts as a founding stone for all the enactments. Constitutional remedies are remedies which are provided by the Constitution itself. Constitutional remedies are remedies against the 'State' i.e. against any legislative, executive and sometimes judicial actions as the Constitution is the mothering force for all these pillars of democracy and therefore to protect the rights of the people from any undue and unconstitutional action by the Government, Constitution provides for certain absolute and unfettered rights to its subjects, which any government has to respect. Therefore the main purpose of providing for the Fundamental Rights and Constitutional remedies is to safeguard people against the atrocious act of the State or the Government. These rights are called Fundamental Rights. In order to protect these rights, Constitution also provides for the remedies available to the person whose rights have been violated and so does the Constitution of India. Part III of the Indian Constitution enunciates and guarantees certain rights to its subjects, which are the Fundamental Rights.

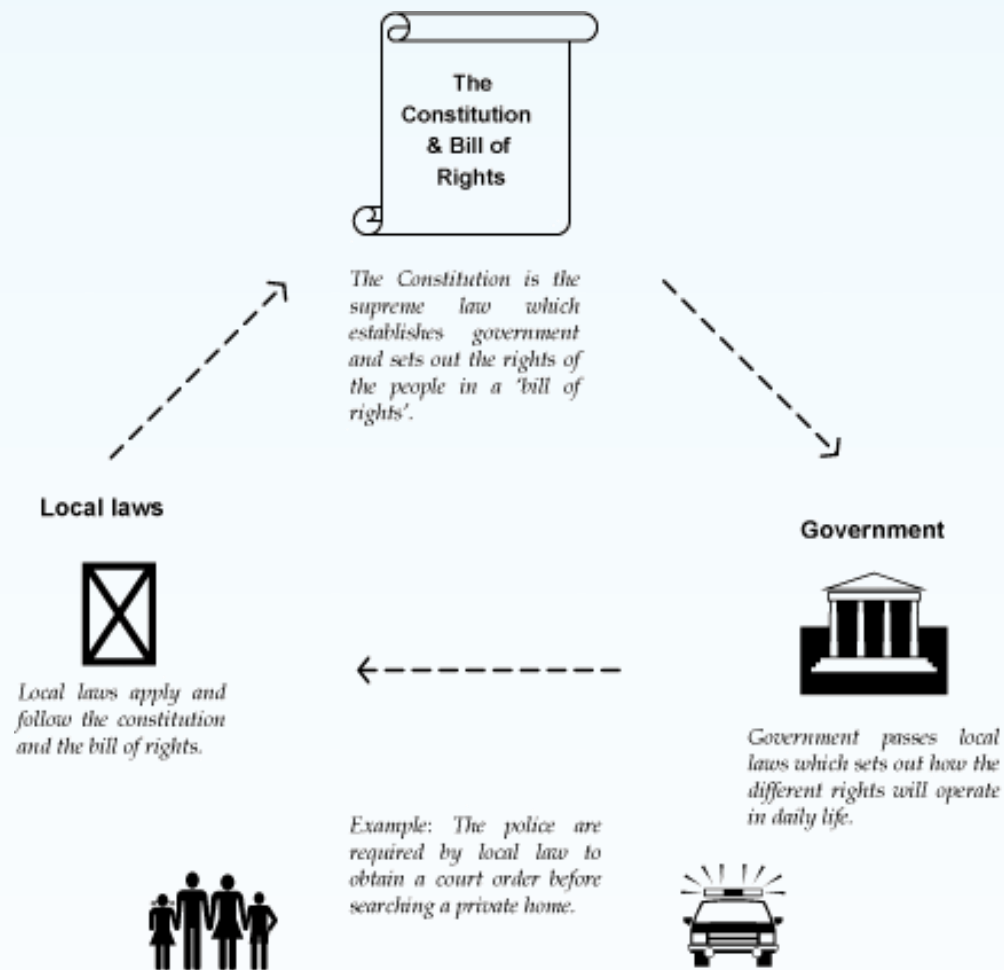


Fig. 4

Fundamental Rights

Part III (Articles 14 to 35), Constitution of India

- ▶ Right to Equality and non discrimination (Article 14 to 18)
- ▶ Fundamental Freedoms (Article 19 and 20)
- ▶ Right to Life and liberty (Article 21 and 22)
- ▶ Right to Education (Article 21A)
- ▶ Right against Exploitation (Article 23 and 24)
- ▶ Religious freedoms and Minority Rights (Article 25 to 30)
- ▶ Right to approach Supreme Court of India for the protection and enforcement of rights guaranteed by Part III of the Constitution of India.

Remedies under Constitution of India

Article 32:

- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
- (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warrantors* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.
- (3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).
- (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

Article 226:

- (1) Notwithstanding anything in article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.
- (2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.
- (3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—
 - (a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and
 - (b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.]

- (4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32

Article 227:

- (1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.]
- (2) Without prejudice to the generality of the foregoing provision, the High Court may—
- (a) call for returns from such courts;
 - (b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and
 - (c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.
- (3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:
- Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.
- (4) Nothing in this article shall be deemed to confer on High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

The remedy under the Constitution of India is provided in Article 32 and Article 226, which is also called the Writ jurisdiction of the Supreme Court of India and the High Court respectively. Writ Jurisdiction is the exclusive jurisdiction of the Supreme Court and High Courts which no other Courts enjoy and therefore they are also called 'Writ Courts'. The High Court and the Supreme Court alone has the jurisdiction over the matters arising from the Constitution and are also called the 'Constitutional Courts'.

Understanding Writ

Meaning: Writ is a Common Law remedy. In old times, the Royal Courts in UK used to issue writs i.e. written commands directing any person or authority to do or to refrain from doing something.

Definition: "A form of written command in the name of a court or other legal authority to act, or abstain from acting, in a particular way"

Types: Traditionally there were five types of writs, which, along with their meaning in English, are as follows:

- i. **Habeas Corpus** [meaning "that you have the body] is an order issued by the Court directing to produce any person before the court. This writ is used for the purpose of freeing any person from illegal detention.
- ii. **Mandamus** [meaning: - "We Command] is issued to a public office directing it to perform its legal or statutory duty.

- iii. **Certiorary** [meaning: “To be made certain in regard to”] is issued as a review of the order passed or decision taken by any public office. Through the Writ of certiorari any order passed by any public office (Government Office) can be reviewed and corrected.
- iv. **Prohibitory**: [meaning: “To stop”] is opposite of writ of mandamus and is issued to stop any public office from doing anything.
- v. **Quo warranto**: [meaning: “By what warrant” or “by what authority”] is issued to ascertain the authority of any public office to do any act.

This is not exhaustive list of types of writs. Writs can be of any type or nature depending upon the need as in the nature of violation and the nature of the order required to redress the violation.

Under Article 32, any person can directly approach Supreme Court in case of any violation of any right which is guaranteed by Part III of the Constitution i.e. for any violation of Fundamental Rights. Interestingly the right to approach Supreme Court for the protection of one’s Fundamental Right is itself a fundamental right. Supreme Court can issue directions or orders or writs of any nature whichever may be appropriate, for the enforcement of any of the rights conferred by Part III of the Constitution.

Similarly Article 226 of the Constitution of India empowers the High Courts to issue Writs or orders against any person or authority for enforcement of rights conferred by Part III or any other right. The last words of this Article “or any other right” increases its scope beyond the rights guaranteed by Part III of the Constitution. The scope of the power of the High Court under Article 226 is wider than that of the Supreme Court under Article 32. The High Court under Article 226 can therefore look into any matter which affects the rights of people, whether they be fundamental or otherwise. The rationale behind giving High Court wider power than Supreme Court under Article 226 is to save and disburden Supreme Court from excessive burden of litigation and to give another check for the writ orders as Supreme Court presides over the High Courts and the orders passed by the High Court are appealable in Supreme Court. Under Article 226 the High Court can review legislative as well as Executive actions. By legislative action, we mean to include any law “Act” passed by any Legislature can be reviewed by the High Court or the Supreme Court to test its validity on Constitutional parameters. This power of the High Court and the Supreme Court is called power of “*Judicial Review*”. Further Article 227 gives High Court the Superintendence over the lower courts and tribunals within its territory, which also give High Court the administrative Control over the Lower Judiciary. In certain matters, writs can be issued even against judicial orders.

Judicial Review

Legal Meaning in:

- ▶ **United Kingdom (UK)**: a procedure by which a court can review an administrative action by a public body.
- ▶ **United States of America (USA)**: review by the Supreme Court of the constitutional validity of a legislative act.
- ▶ **India**: the power of testing the validity of legislative as well as other governmental actions.

Read and Respond

Find out an example when legislation has been struck down by the Supreme Court or the High Court and make short notes of the case under following heads. Brief facts, Which rights were violated and the remedies.

II) Statutory Remedies and Support: Statutory Remedies are the remedies for the rights provided by the statutes i.e. rights which are provided by the Parliamentary or other legislative enactments. These enactments are called 'Acts' i.e. Protection of Human Rights Act, 1993, which was enacted by the parliament in the year 1993. Statutory remedies are usually against persons or private offenders i.e. non State actors and this is the basic difference between Constitutional remedies and Statutory Remedies. Constitutional rights provide protection from the State actions i.e. actions of the Government which has to be in accordance with the Constitution and Statutory rights usually provide protection from the acts of persons or private parties, though it can be against the government actions also. For the purpose of rights and their remedies, statutes can be further classified in two kinds:

- (i) General Laws
- (ii) Special Laws

(i) **Remedies and Support under General Laws:** General Laws are laws enacted for all citizens i.e. without aiming to benefit any special group or class of beneficiaries and whose applicability is the widest i.e. over all the citizens of India for example Indian Penal Code, Protection of Human Rights Act etc. These are the statutes which are applicable to everybody. Most of the rights which are recognised globally as well as in India, have been tried to be protected by various enactments in India, however still there are many rights which are still unprotected by laws and are in process to be addressed by the enactments. The important general enactments and their salient features are as under:

A. Protection of Human Rights Act, 1993

- ▶ Enacted by the Parliament of India in year 1993 recognizes life, liberty, equality and dignity of an individual as human rights.

Right to Life and Liberty and Right to Equality are the two most important rights guaranteed by the Constitution and have been given very wide interpretation to cover many rights which contribute to a better life of people including therein the Right to Dignity.

Right to Life Includes, mainly, right to: <ul style="list-style-type: none">▶ Live with human dignity;▶ Healthy environment;	Right to Equality Includes, mainly, right to: <ul style="list-style-type: none">▶ Equality before Law▶ Equal protection of law
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<ul style="list-style-type: none"> ▶ Livelihood or work; ▶ Speedy justice; ▶ Pollution free water and Air; ▶ Privacy; ▶ Free Legal Aid ▶ Emergency Medical Aid <p>(This list is not exhaustive and mentions prominent rights only. The right is a progressive concept and its scope is ever-increasing)</p>	<ul style="list-style-type: none"> ▶ Non discrimination ▶ Equal Opportunities ▶ Equal pay for equal work
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- ▶ Establishes National Human Rights Commission, State Human Rights Commissions in all states and Human Right Courts at every district level as protective and redressal institutions for the rights recognised by the Act

Read and Respond

Visit the website of National Human Rights Commission and find out what functions have been assigned to the National Human Rights Commission. Elaborate them.

- B. **Indian Penal Code:** Indian Penal Code defines all the criminal offences and provides for their punishment which are to be given by the criminal courts to the offender i.e. violator of human rights. This is a penal law which punished the violator corporeally. In order to aid the criminal justice system and to maintain law and order so that no one commits crime and the rights of anyone are not violated, Police Stations have been established. Any persons whose rights are violated by any criminal action can go and lodge his complaint in the Police Station and so set the criminal justice system in motion.
- C. **Civil Procedural Law;** Under civil procedural law, any person who has suffered any violation of his human rights can ask for the compensation for such violation from either the State or from the violator or from both.
- D. **Right to Information Act, 2000:** This is an enabling enactment by the parliament of India giving the right to information to every citizen. Every citizen is governed by the Government of India and respective State governments who works for the welfare of its citizen. For the facilities provided by the government, we pay taxes. The government uses those taxes to provide us civic amenities i.e. Roads, Trains, Water supplies, security from foreign attacks, schools, hospitals, water and air transport, municipal services and so on which make our life better. We choose our government to serve us with these amenities and therefore it is our right to know that how the government is using our tax-money and what policies the government is making for our welfare. In order to provide the citizens access to all such information through the Right to Information Act. Anyone can file an application under this act to the concerned department and ask for any information.

Also Article 19 (1) (g) provides for Right to Speech and Expression which cannot be exercised fully until the person is equipped with adequate information.

- E. **Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA):** MNREGA guarantees every person in a village minimum 100 days of employment in a year. Employment or livelihood is an essential factor for the enjoyment of right to life.
- ii) **Remedies and Support under Special laws:** Special laws are enactments for certain specific classes of citizens. The classes can be those, created by nature i.e. Children, Women, Senior Citizens or the ones created by the society i.e. Disabled or differently-abled persons, Labour, Consumer, etc.
- A. **Children:** United Nations Organisation promulgated Convention on the Rights of Child reiterating the absolute and indispensable rights of children and making it mandatory for all the member nations. The Convention on the Rights of Child defines child as a person below 18 years of age. India being a signatory to the Convention enacted various laws and provisions for children, The main acts and provisions are summarised as follows:
- ▶ **The Commission for the Protection of Child Rights Act, 2005:** The Act establishes National Commission for the Protection of Child Rights (NCPCR) mandated to ensure that all Laws, Policies, Programmes, and Administrative Mechanisms are in consonance with the child rights perspective as enshrined in the Constitution of India and also the UN Convention on the Rights of the Child.
 - ▶ **Right of children to Free and Compulsory Education Act, 2009:** The Act provides for free and compulsory education to every child from the age of 6 to 14 years.
 - ▶ **The Juvenile Justice (Care and Protection of children) Act, 2000:** The juvenile Justice Act provides for the criminal justice system for juveniles i.e. children below 18 years of age. The juveniles are not to be tried in regular courts nor are they to be kept in jails. Special Observation Homes are to be established where juveniles be provided with adequate reformatory and conducive environment.
 - ▶ There are many other provisions which save children from child labour, child marriage etc.

Major Rights Under Convention on The Rights of Child

- ▶ For all actions, the best interest of the child shall be the prime consideration;
- ▶ Right to Life;
- ▶ State shall ensure proper care and protection necessary for the well being of the child;
- ▶ State shall ensure to the maximum extent the survival and development of the child;
- ▶ Right to name, nationality, information and care from parents;
- ▶ Right to freedom of expression, thought , conscience and religion, association and peaceful assembly;

- ▶ Right to Protection from all forms of mental and physical violence;
- ▶ Right of Disabled child to special care and protection;
- ▶ Right to highest attainable standards of health and nutrition;
- ▶ right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development;
- ▶ Right to education;
- ▶ Development of full potential in terms of personality, talents and mental and physical abilities;
- ▶ Right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development;
- ▶ Right to protection from all forms of sexual exploitation;

B. Women: In order to take affirmative action and protect women from being discriminated against, United Nation Organisation promulgated “Convention to Eliminate All Forms of Discrimination Against Women (CEDAW)” India has ratified CEDAW and therefore, Government of India is to ensure the full protection and the enjoyment of rights by women , which are provided by the CEDAW. The Constitution also protects women by providing them right to equality and affirmative action for their development by the State. The equality clause of the Constitution paved the way for many other rights to women which were traditionally not available or we can say which were generally not practices, for example right to education, right to work, right to equal pay to their male counterparts, right to inheritance and property etc. All the general remedies available to any other citizen in India are available to them equally and many other laws have also been enacted the protection of women which provides support for the full enjoyment of their rights as well as remedy providing protection from their violation. The main amongst them are enumerated as under:

- ▶ **National Commission for Women Act, 1990** provides for establishment of a National Commission of Women to take up issues and matters concerning women.
- ▶ **Pre Natal Diagnostic Technique (Regulation and Prevention of misuse Act) 1998** was passed by the Parliament keeping in view the threat to girl child. People used to diagnose the foetus and abort the girl child for their unfounded preference for the male child. In order to protect female foeticide this Act was passed.
- ▶ **Protection of Women from Domestic Violence Act, 2005** protects women from all sorts of violence i.e. physical, emotional or mental in a domestic relationship;
- ▶ **The Indecent Representation of Women (Prohibition) Act, 1998** and **The Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal Act) 2013** protects women from any objectionable and indecent representation and also from any kind of sexual harassment at their work place.

- ▶ There are many other laws which ensures maternity benefits i.e. leave and emoluments in their jobs;no compulsory night working hours; no arrest or interrogation during night; reservation in services etc.

Main Rights guaranteed by CEDAW

- ▶ Right to Equality and Non discrimination;
- ▶ Right to her own nationality even after marriage;
- ▶ Right to Education;
- ▶ Right to work and employment;
- ▶ Right to proper health care;
- ▶ Right to Economic and Social benefits;
- ▶ The state shall identify and ensure the rights of Rural Women

- C. **Senior Citizen:** Senior Citizen are persons of 60 years and above. Care and protection of elderly person in their old age is an integral part of their Right to life. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 was enacted to secure livelihood and decent living of elderly persons.
- D. **Differently-Abled persons:** Earlier these persons were termed as Disabled persons. Later on the nomenclature was changed at the initiation of the United Nations, however in India, the nomenclature is yet to change officially. The persons who are physically or mentally handicapped fall in this category. In India, Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, was enacted to provide such persons education, employment and social security. Following are the salient features of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995:
- ▶ The Act establishes Central Coordination Committee at national level and State Coordination Committees at state level in every state;
 - ▶ For education of differently-abled persons the Act provides for the establishment of special institutions to provide them free education, to device programs for non-formal and vocational education, to design and develop new assistive devices and teaching aids;
 - ▶ For employment the Act provides for reservation of posts and Special employment exchange;
 - ▶ To provide social security, the Act directs the governments to provide for rehabilitation of such persons, Insurance schemes and unemployment allowance;
- E. **Labourers:** Labourer has been generally defined as a person doing unskilled manual work for wages. The law protecting such workers from being exploited and giving them rights are collectively called the Labour Laws. United Nations Organisation created International labour Organisation (ILO), a specialized organisation for the welfare of labours worldwide, of which India is also a member and therefore is obliged to follow the declarations and guidelines passed and set by the ILO.

In India, Labour Laws protect the labourer in following aspects:

▶ **Wages:**

- **The Payment of Wages Act 1936** requires that employees receive wages, on time, and without any unauthorised deductions. The currency for the wages shall be money and it shall not be in kind;
- **The Minimum Wages Act 1948**, sets the minimum wage for the labourers. The labourers cannot be paid less than their respective minimum wages;
- **The Payment of Gratuity Act 1972** mandated for the gratuity to be paid to the employees/labourers. Gratuity is payable to the employee when he or she resigns or retires from service;
- **The Payment of Bonus Act 1965**, requires bonuses to be paid out of profits based on productivity;

▶ **Safety and Compensation: The Workmen's Compensation Act, 1923** requires for the compensation to be paid to the workmen if the worker is injured in the course of employment. **The Factories Act, 1948** provides for the safety norms to be followed in factories.

▶ **Pension and Insurance: The Employees Provident Fund and Miscellaneous Provisions Act, 1952** provides for pension fund for old age security, insurance and other benefits to the workers or employees. The Act establishes **Employment Provident Fund Organisation of India** which maintains and regulates the Provident Fund Accounts of the employees to which the employees and the employer contribute.

The Employees State Insurance Act, 1948 provides health and social security insurance to the employees.

The Unorganised Workers' Social Security Act, 2008 was passed to extend the coverage of life and disability benefits, health and maternity benefits, and old age protection for unorganised workers. "Unorganised" is defined as home-based workers, self-employed workers or daily-wage workers.

The Maternity Benefit Act 1961, creates rights to payments of maternity benefits for any woman employee who worked in any establishment for a prescribed period of at least 80 days during the 12 months immediately preceding the date of her expected delivery.

▶ **Right to form Association and Unions:** This right, guaranteed by the Constitution, has been facilitated to labours through **Trade Unions Act 1926**, amended by the Parliament in year 2001. Through this Act, the labours in factories can form trade unions of themselves.

▶ **Right to participate in Management: The Industrial Disputes Act 1947** created a right of participation in joint work councils to "provide measures for securing amity and good relations between the employer and workmen and, to that end to comment upon matters

of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters". The Act also regulates how employers may address industrial disputes such as lockouts, layoffs, retrenchment etc. It controls the lawful processes for reconciliation, adjudication of labour disputes.

- F. **Consumers:** Consumers are people who buy goods and services for their personal use. The need was felt to protect consumers from the mal-practices that prevailed in market i.e. fake guarantees, substandard services, duplicacy, unfair prices, lack of service etc. In order to safeguard consumers from such malpractices, **The Consumer Protection Act, 1981** was passed which established special consumer courts at district, state and national level for the speedy and effective disposal of consumer complaints.

- III. **Remedies under International Law:** Since the ratification of the Universal Declaration of Human Rights, several United Nations mechanisms for enforcing and protecting economic, social, and cultural rights have emerged. One of the most important international mechanisms for defending and promoting Economic, Social and Cultural Rights is the Committee on Economic, Social, and Cultural Rights (CESCR) whose mandate is to specifically monitor whether the state parties are fulfilling their obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR). Articles 16 and 17 of the ICESCR require states to prepare reports every five years on the situation of Economic, Social and Cultural Rights in their country, which are reviewed by the CESCR. The CESCR examines the extent to which ESCR are being achieved by state parties, serves as a base for formulating policies that promote Economic, Social and Cultural Rights via General Comments, and allows the public to learn about the work of their government concerning the achievement of Economic, Social and Cultural Rights. The CESCR overviews five or six reports every year. If a country fails to report, the CESCR may review the situation in that country using alternative sources. After examining a country's report and other sources, the CESCR then releases concluding observations which highlight the progress made in fulfilling Economic, Social and Cultural Rights, difficulties in achieving these rights, areas of concern, and recommendations. CESCR also accepts reports by members of the civil society on the situation of Economic, Social and Cultural Rights in their countries as part of the review process. The CESCR is an organ of the United Nations Economic and Social Council (ECOSOC). From the members of the civil societies we also mean individuals who can make their individual complaints or representations to the CESCR / ECOSOC subject to their respective member State ratifying the clause enabling its citizens to take forward their individual complaints with the United Nations.

Read and Respond

Right to Education is now a fundamental right as well as a statutory right. Chalk out the ways and suggest:

Whether any amendment or change in the law is required? If yes then elaborate.

Suggest measures to be taken on the part of State as well as Civil Society for the full, complete and effective delivery and enjoyment of the right to education.

Human Rights are inalienable rights of every human being bestowed upon him by virtue of him being a human being and it is the duty of every civil society to respect the human rights of each other. In this set up of civil society, which are governed by the Rule of 'Law' through the respective Government formed according to the law and recognised by law, it becomes the duty of the Government i.e. 'State' to provide these rights to its subjects and to protect them by providing them strong and efficient enforcement infrastructure as well as redressal mechanism. Redressal Mechanism consists of a strong penal law to ensure the protection of one's rights and for the punishment of the violators as well as compensatory mechanism to compensate the victims of the human rights violation. In India, Police and Judiciary are major protectors and facilitators of the enjoyment of human rights of all the citizens of India. In addition to which we have other specialised institutions for other classes of citizens who can be vulnerable at times and may need special care and protection i.e. Children, Women, Senior Citizens, Persons with disabilities, etc. Such list can be endless and become longer and longer with the evolution of civil societies and the needs and amenities in the life of human beings and so Human Rights is an ever progressive concept to include more and newer rights along with the growth of civilization, societies and lives of human beings and so will the enforcement, support and redressal mechanisms.

Unit End Reflections

Comprehension Questions

1. What is the relationship between growth of human civilization and the scope and concept of human rights?
2. With what goals was UN created?
3. What are the constituents of the International Bill of Human Rights?
4. Differentiate between Remedial Mechanism and Support System?
5. Differentiate between penal remedies and compensatory remedies?
6. What are the fundamental rights under the Constitution of India and the remedies against their violation?
7. Define Writ. How many types of writs were there in Common Law?
8. What remedy you have when a legislation passed by the Legislative Assembly of your State violates a fundamental right of a citizen as provided by the Constitution of India?
9. Differentiate between the remedies provided under Article 32 of the Constitution of India and Article 226 of the Constitution of India.
10. Elaborate Right to Life and Right to Equality?
11. Right short notes on:
 - i. Right to Information Act, 2000
 - ii. Juvenile Justice Act, 2000
 - iii. Consumer Protection Act, 1981
 - iv. The Maintenance and Welfare of Parents and Welfare Act, 2007

12. What are the major rights under the Convention on the Rights of Child?
13. What are the main rights of women as guaranteed by CEDAW?

Activity

A. Short Play Presentations

1. Personify the all seven Fundamental Rights and let each defining itself giving the remedy against violation.
2. Do the same with writs.

B. Project Work

1. Hold an opinion survey to conclude what additional rights should be added to the already existing child rights.
2. Do the same for women rights.
3. What amendments are desirable in the Juvenile Justice Act to prevent heinous crimes against women by juveniles?