

# **INFLUENCE OF UNIVERSAL DECLARATION ON THE JUDICIAL INTERPRETATION OF FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES IN THE CONSTITUTION OF INDIA.**

## **I. INTRODUCTION**

The term Human beings in itself refers to a bundle of rights, woven in perpetuity to the human life. In other words, they are moral claims, inalienable and inherent in all human individuals by virtue of their humanity alone. These claims are articulated and formulated to achieve certain standards, which are much higher than the animal living and have been translated into legal rights, having been established according to the law-creating processes of societies, both national and international. The basis of these legal rights is the consent of the governed, that is the consent of the subjects of the rights and are available to all individuals on a preconceived notion that all are born equal in dignity and rights

The principle of equality in rights, recognized in natural law, was long accepted in many societies. Yet discrimination continued to exist owing to the ignorance, prejudice and certain fallacious doctrines, which tried to justify inequality. Such doctrines were used to defend slavery and discrimination on the grounds of sex, race, colour, descent, national or ethnic origin or religious belief, or on the basis of class or caste systems, throughout history and even in, unfortunately, the modern times.

The ideas of elaboration and protection of rights of human beings developed and gradually transformed into written norms. Many important landmarks formed the channelising factors, such as, the Magna Carta (1215), the Petition of Right (1628) and the Bill of Rights (1689) in England. Particularly during the eighteenth century, the early ideas of natural law developed into an acceptance of natural rights as legal rights, and these rights for the first time were written into national constitutions, thus reflecting an almost contractual relationship between the State and the individual which emphasized that the power of the State derived from the assent of the free individual. The French Declaration of the Rights of Man and of the Citizen of 1789 and the American Bill of Rights of 1791 were based on this premises. During the nineteenth century this principle was adopted by a number of independent States and social and economic rights also began to be recognized.

This conviction was reflected in and reinforced by the Charter of the United Nations signed on 26 June 1945. The Charter stated the fundamental objective of the universal organization, namely: 'to save succeeding generations from the scourge of war' and 'to reaffirm faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women'. Article I of the Charter categorically stated that one of the aims of the United Nations was to achieve international co-operation in 'promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion', thus enshrining the principle of non-discrimination.

A major step in drafting the International Bill of Human Rights was realized on 10 December 1948, when the General Assembly adopted the Universal Declaration of Human Rights' as a common standard of achievement for all peoples and nations'. However, at same time when the Universal Declaration was being made, the Constitution of India was also in making. Part III and Part IV of the Constitution were specifically created, with an interest of providing for the Human Rights in the Constitution itself and on a further comparison of the two documents, it is found that the two are conspicuously similar and tend to give effect to promote the standard of the Human being as such and also to secure him the natural rights, which formed a part of his right to live a peaceful and amicable right.

However, despite the high correlation of the two documents, the Court of India had varying stands on the scope of Universal declaration. This paper work is an attempt to analyse the judicial interpretation of the provisions of the Universal Declaration of Human Rights, and its reading in the Constitution of India, so as to secure for the Indian people the same standards, which are available to the people otherwise. The topic gains all the more prominence owing to the increasing accountability on the International commitments and obligations, which India has to honour and to maintain the standards that will lead to the creation of a harmonious and creation of an organised freedom loving society.

## **II. UNIVERSAL DECLARATION: NATURE AND INFLUENCE ON HUMAN RIGHTS.**

The Universal Declaration of Human Rights is binding upon India, since it is a signatory to the said declaration. The very basis of this declaration is that the interest of one part of the world is bound up with the interests of human beings as a whole in every other part of the world. As Dr. Martin Luther King says, injustice anywhere is bound to lead injustice everywhere. Pains and

troubles of one part of the human family may be religious or otherwise, cause the pain and trouble to the rest of the human family. This is fundamental concept underlying making of binding declarations and conventions in which the nations of the world have joined.<sup>1</sup>

Therefore, the primary question, which arises, is 'What influence did the Universal Declaration of Human Rights have on the Indian Constitution?' In an attempt to find the answer and going to the history of making of the Indian Constitution, it is found that the Universal Declaration of Human Rights, which the United Nation Organisation, adopted on 10th December 1948, enumerates various Civil & Political Rights and Economic and Social Rights. This Declaration had a great impact on the philosophy and ideology of the Constitution framers, while the Constitution of India was in the making at that time. Many similar rights were incorporated in our Constitution under the headings Fundamental Rights and Directive Principles of the State Policy in Chapter III & IV respectively and these rights have a great significance for the Indian people as they have enabled every citizen of India to live freely and honourably. A human being gets full freedom to develop himself mentally and physically.

At the time of Declaration of the Human Rights, the General Assembly proclaimed that the Universal Declaration was to be a common standard of achievement for all the people and all the nations, to the end that every individual and every organ of the society, keeping the declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the people of Member states themselves and among themselves and among the people of territories under their jurisdiction.

The Universal Declaration of Human Rights promulgated by the United Nations, to which India was a party, proclaimed basic human rights, although it did not provide for any machinery for its enforcement.<sup>2</sup> Thus viewed from the Indian standpoint, Human Rights have been synthesized, as it were, not as an integrated fabric by the preambular promises and various constitutional clauses of the Universal Declaration of Human Rights. To illustrate the said proposition, one fine example is of the Fundamental Rights as enacted in our Constitution not

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<sup>1</sup> *Human Rights Must Prevail Over Religious Rights* (Visited on December 3, 2002)  
<<http://www.dawoodibohras.com/chronicle/feb00/comment.htm>>

<sup>2</sup> Seervai, H.M., *Constitutional Law of India*, 155, (New Delhi: Universal Book Traders, I, 4<sup>th</sup> ed., 1999)

only recognize the dignity of the individual to which the Preamble refers, but also recognize their necessity for the full development of the individual and for preserving the unity of India.

The historical struggle for political freedom in India had made a declaration of Fundamental Rights inevitable. In fact, the Indian Declaration at the Round Table Conference had pressed for the enactment of Fundamental Rights in the Constitution which, it was expected the British Parliament would pass. Also, World War II saw human behaviour at its worst and what were considered as Natural Rights of people came to be fine tuned into Human Rights. United Nations took upon itself the role of the crusader for Human Rights. As the preamble of United Nations Charter declared it was determined "to reaffirm faith in fundamental Human Rights, in the dignity and worth of human person, in equal rights of man and women and of the Nations large and small". Universal Declaration of Human Rights was adopted in 1948 followed by Covenants on Political and Civil Rights and Social, Economic and Cultural Rights in 1966. India, adopted its Republican Constitution in 1950 and included a special part on Fundamental Rights. The Universal Declaration of Human Rights adopted and proclaimed by the General Assembly of the United Nations on the 10<sup>th</sup> of December 1948 is indeed one of the precious events in the ongoing march of mankind in the direction of refining civilization.<sup>3</sup>

A standard code of Human Rights for the entire homo sapiens race was made applicable to the whole globe and it was what mankind had been striving over for centuries. Now what is understood is that 'the premises for the Universal Declaration is that the entire mankind is treated as one member of one human family; the rights are inalienable and are considered on the foundation of freedom, justice and peace.'<sup>4</sup>

Dignity of the human person is acclaimed and men and women with equal rights are indeed to march ahead for the promotion of social progress and for the better standards of life and environment of such freedom.<sup>5</sup>

The topic of human rights is of universal concern and it cuts across all ideological, political and cultural boundaries. Respect for human rights is one of the cardinal principles for an effective operation of Constitution, Law and the Government of any country. Article 1 of the Universal Declaration of Human Rights is based on two assumptions namely,

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<sup>3</sup> Misra, Ranganath, J. in, Jaiswal, Paramjit, S. & Jaiswal, Nishtha, *Human Rights and the Law*, v, (New Delhi: APH Publishing Co., 1996)

<sup>4</sup> *Ibid.*

<sup>5</sup> Misra, Ranganath, J. in, Jaiswal, Paramjit, S. & Jaiswal, Nishtha, *Human Rights and the Law*, v, (New Delhi: APH Publishing Co., 1996)

- (i) The right to liberty and equality is man's birth right and cannot be alienated,
- (ii) Because man is rational and a moral being, he is different from other creations on earth and, therefore, is entitled to certain rights and freedoms which other creators do not enjoy.<sup>6</sup>

Here it is contentatious to note the words of Prof. Upendra Baxi, who holds that 'I take it as axiomatic that the historic mission of the contemporary human rights is to give voice to human suffering to make it visible and to ameliorate it.'<sup>7</sup> Laying down the very basis of the Human Rights, the commendable author goes on to continue that 'the ethics of human rights emerges as a tradition of critical morality by which the positive morality of human rights practices themselves may be judged. Respect towards the other as a co-equal human is a groundwork of an ethic of human rights, furnishing universal valid norms for human conduct and the basic structure of a society.'<sup>8</sup> Every societal culture encapsulates beliefs, sentiments, symbols that impart sense to the notion of being human, no matter in how many different registers of inclusivity. These societal human rights cultures relate to global cultures of human rights. They are shaped by the golden cultures and in turn shape them.<sup>9</sup>

Also, though they were added later by way of amendment, the fundamental duties enshrined in the Constitution of India, contained in Part IV A, are in consonance with Article 29 (1) of the Universal Declaration of Human Rights, which says, "everyone has duties to the community in which alone the free and full development of his personality is possible". 'We must reaffirm faith in recognition of the inherent dignity and inalienable rights of all citizens as the foundation of freedom, justice and peace in the world, which implies obligations and responsibilities.' Human rights, thus, go hand in hand with responsibilities. It is very necessary that all citizens should be made aware of the potential of Article 51A relating to fundamental duties as a means to ensure the protection of human rights.<sup>10</sup>

Thus is an effortless task to establish that the Universal Declaration is a pioneer documentation of Human Rights of the mankind at large, as contemplated, adopted and

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<sup>6</sup> UN Action in the Field of Human Rights, 10, (1983) cited by Jaiswal, Paramjit, S. & Jaiswal, Nishtha, *Human Rights and the Law*, 34-35, (New Delhi: APH Publishing Co., 1996)

<sup>7</sup> Baxi, Upendra, *The Future of Human Rights*, 4, (New Delhi: Oxford University Press, 2002)

<sup>8</sup> Id. at 6

<sup>9</sup> Id. at 8

<sup>10</sup> Views of workshop on "*Human Rights and Fundamental Duties with Particular Emphasis on Marginalised and Tribal Communities– The Role OF NGOs and National Human Rights Commission in Promoting a Human Rights Culture For a Just And Equitable Society*" <<http://education.vsnl.com/rlek/news.html>> (Visited on December 5, 2002)

accepted by the International Community. Hereby, the demand for effective protection of Human Rights has also gained prominence by this Declaration.

### **III. HUMAN RIGHTS: UNIVERSAL DECLARATION vs. CONSTITUTION OF INDIA**

“Freedom is enjoyed as a way of life, it is a state of mind rooted in a highly sophisticated and complex, yet humble rooted worldview. All cultures have desired justice and freedom.”<sup>11</sup>

The aspirations of the people have found expression in the Indian Constitution, which enacted a nearly complete catalogue of Human Rights around the time when the international scene was witnessing the framing of Universal Declaration of Human Rights. The Fundamental Rights, Directive Principles along with the promises made under the Preamble and other provisions of the constitution, lay the emphasis on making the Indian Constitution a viable instrument of the Indian people’s salvation and to secure the basic minimum human rights, as contemplated as the founding stones of good governance.

Thus in the backdrop of the Gandhian Humanism and Nehru’s scientific temper the Constitution enacted and adopted in 1950 contributed in ushering a new legal and constitutional philosophy embodying ideals of liberty, equality and human dignity. The Fundamental Rights in the Constitution constitute the *Magna Carta* of individual liberty and human rights.

The rights guaranteed and provided in the Constitution are required to be in conformity with the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights in the view of the fact that India has become a party to these covenants by ratifying them and as these Covenants are a direct consequence and follow-up of the Universal Declaration of Human Rights, it is this aspect of the Declaration which has been the guiding force and the mentor of Human Rights incorporation in the Constitution of India.

The declaration of Fundamental Rights in the Constitution serves as a reminder to the Government in power that certain liberties and freedoms essential for all the people and assured to them by the Fundamental Law of the land are to be respected. The emphasis on the

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<sup>11</sup> Mangalwadi, Vishal, *India: The Grand Experiment*, 27, (Surrey: Pippa Rann Books, 1997)

entire scheme of the Constitution under the heading of the Preamble, the Fundamental Rights and the Directive Principles is on the building of an Egalitarian Society and on the concept of Socio-Economic Justice. The fundamental Rights and the Directive Principles together constitute the heart and soul of the Indian Constitution.

The supposed distinction between the political and economic rights resulted in the splitting of Human Rights into two categories by the adoption of two separate International Covenants. The Rights conceived by the Universal Declaration as an integrated whole, were thus split into two classes. But however, the differences in the two categories of Rights are not fundamental in nature and the so constructed dichotomy is false and hypothetical. The Indian Constitution acts upon this synthesis and Philosophy and describes in Part III and Part IV, both classes of Human rights as “fundamental.”

The Constitution of India, which is the largest and lengthiest constitution of the World, has often been accused of being a combination or rather a mixture of the provisions of other Constitution of the world. It is seen as a incorporation which is based upon the foundations, tested and verified, of other nations for providing the Indians with a Constitution, which would cover each and every aspect of life, every problem of the hour, as at the time of the commencement of the Constitution and to provide a base or a platform for the generations to come and grow on. The framers of the Constitution, covered a variety of aspects, incorporated a variety of aspects and gave shape to various powers and duties, along with the mandated functions of the three organs of Governance, namely the Legislature, Executive and the Judiciary.

In ancient India, Vedas and Scriptures provided the basis for Hindu jurisprudence and criminal justice administration. Village assemblies and the king with the assistance of select villagers and townfolk administered justice. People directly participated in adjudicating guilt and awarding punishment. The emphasis was on the good of the society, and the impact of punishment on the individual was of no relevance. During the Muslim Rule, Islamic Law formed the basis for jurisprudence and criminal justice administration. The offender was viewed as a sinner against the society, who deserved to be socially deprived. Punishment was severe and cruel and was meant to serve as a warning to others. 'Eye for an Eye' and a 'Tooth for a Tooth' became the governing credo of criminal justice system. British Rule in India, for the first time, introduced egalitarian principles of Anglo-Saxon jurisprudence and the criminal justice system assumed the modern day role of reformist character.

Along with the list of Fundamental rights, the Directive Principle of State Policy are the conscience of the Constitution. The goals of the human rights can be read from the Preamble as a Political, social, economic and Cultural Revolution that the people of India have committed themselves to.<sup>12</sup>

The Fundamental Rights that are guaranteed under the Constitution have a close similarity with those in the UN Declaration of Human Rights in form and content in Articles 14,15,16,19,20,21,23,25,29,31and 32.<sup>13</sup> For example, the Universal Declaration addressed the question of affordability in Article 22 when it mentioned the resources of each state in the implementation of Economic, Social and Cultural Rights.

The Economic, Social and Cultural Rights enshrined in the Universal Declaration of Human Rights and also in the Covenant on Economic, Social and Cultural Rights are included in Part IV of the Indian Constitution and are known as the Directive Principle of State Policy. The Constitution therein directs the State to provide adequate means of livelihood, equitable distribution of material resources, equal pay for equal work, a living wage for all workers, just and human conditions of work, unemployment cover for all people in old age and sickness, and free and compulsory education for children.

Indian Constitution, in tune with international endeavors also provides four basic principles to govern the criminal justice system.

The Prevention of Ex-post Facto Operation of Criminal Law, as a principle, enshrined as the nature of that no person shall be accused and convicted of an offence for an act, which was not an offence under the law in force on the date when it was committed, is guaranteed under Article 20(1) of the Constitution of India, as a Fundamental Right along with Article 11(2) of the Universal Declaration of Human Rights.

Article 19 of the Universal Declaration of Human Rights (1948), "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 regardless of frontiers". The freedom of opinion and expression is an internationally protected human right.<sup>14</sup>

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<sup>12</sup> Chiranjivi, Nirmal J., *Human Rights in India*, 43, (New Delhi: Oxford University Press, 2<sup>nd</sup> ed., 2000)

<sup>13</sup> Id. at 44

<sup>14</sup> <<http://www.digbib.uio.no/publ/banik/71/72.html>> (Visited on December 3, 2002)

"Everyone has the right to education...directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms".<sup>15</sup> It is in reference to this provision that with the President giving his assent to the Constitution (83rd Amendment) Bill, the right to education has been incorporated in the Constitution of India as a fundamental right. The Bill seeks to make the right to free and compulsory education for children from 6-14 years of age- a fundamental right. At the same time it also makes it a fundamental duty of the parents to provide opportunities for education to children belonging to this age group. Thus this Amendment supersedes Article 45, which provided for compulsory and free education of children up to 14 years of age as a Directive Principle of State Policy. It has now become obligatory to provide free and compulsory education to children in the age group of 6-14. The amended Act requires governments in the states and union territories to enact laws for the enforcement of this right within one year from the commencement of the Act. Freedom of religion is also guaranteed by article 18 of the Universal Declaration of Human Rights

For another example, the inclusion of Fundamental Duties brought our Constitution in line with article 29 (1) of the Universal Declaration of Human Rights and with provisions in several modern Constitutions of other countries.<sup>16</sup> The Commonwealth Human Rights Initiative submits<sup>17</sup> that Right to Information is also part of the Universal Declaration of Human Rights to which India is a signatory.<sup>18</sup>

The Indian Supreme Court in the case of *Maneka Gandhi v. Union of India*<sup>19</sup> has held that "Universal Declaration of Human Rights was adopted by the United Nations General Assembly on December 10, 1948 while debates in the Indian Constitution were going on. Hence, it must be assumed that the makers of the Indian Constitution, in framing Part III of the Constitution on the Fundamental Rights were influenced by the provisions of the Universal Declaration. It is therefore legitimate for the Court to refer to eth comparable provisions of the Universal

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<sup>15</sup> Art. 26, Universal Declaration of Human Rights, 1948

<sup>16</sup> <<http://lawmin.nic.in/ncrwc/finalreport/v2b1-7.htm>> (Visited on December 3, 2002)

<sup>17</sup> <<http://www.humanrightsinitiative.org/Programmes/rti/rtichri/Publications/mpsubmissions.htm>> (Visited on December 3, 2002)

<sup>18</sup> Where Art. 19 of the Declaration reads as, "Everyone has a 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".

<sup>19</sup> (AIR 1978 SC 597)

Declaration in construing the intent and scope of the relevant text of Part III of the Constitution.”<sup>20</sup>

In view of Article 1 to 4 of the Universal Declaration, the expression “traffic in human being” has been interpreted to include a contract for the sale of a woman to a man for marriage or concubinage.<sup>21</sup>

Most of the Articles of the Universal Declaration of Human Rights, 1948 and the International covenants are the building blocks of our constitutional framework.

The Universal Declaration of Human Rights indicates two sets of Rights- traditional Civil and Political rights (Art.2-21) and the two new Economic and Social Rights (Art. 22-28). The Constitution of India incorporates the first two sets of rights under Fundamental Rights (Art. 12-35 of the Constitution) and the second set under Directive Principle of State Policy (Art. 36-51). It was in this light that the fundamental rights incorporated in Part III of the Constitution had been described by Dr. S. Radhakrishnan as a pledge to our people and a pact with the civilized world.<sup>22</sup> It must therefore be held that Part III and IV essentially form a basic element of the Constitution, without which its identity will completely change and it is on this account that a number of provisions in part III and part IV are fashioned on the Universal Declaration of Human Rights.<sup>23</sup>

Articles 19 and 20 of the Universal Declaration of Human Rights which provide that everyone has the right to freedom of opinion and expression and the right to freedom of peaceful assembly and association. These rights are reflected in Article 19 of the Constitution of India.

#### **IV. INFLUENCE OF UNIVERSAL DECLARATION IN THE MAKING OF CONSTITUTION OF INDIA**

The Indian Constitution is a remarkably progressive document embodying the Human Rights Jurisprudence. It generally preserves the values set down in the Universal Declaration of Human Rights as mere declaration of rights is worth little without the will or the means to enforce them.

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<sup>20</sup> Id. at 637

<sup>21</sup> Nikhal Singh Case (AIR 1997 MP 126)

<sup>22</sup> Sen, Shanker, *Human Rights in a Developing Society*, 26, (New Delhi: APH Publishing Corporation, 1998)

<sup>23</sup> Kulshreshtha, V.D., *Landmarks in Indian Legal and Constitutional History*, 350, (Lucknow: Eastern Book Company, 7<sup>th</sup> edition, 1997)

Relying on the Constitutional Assembly Debates, which is perhaps the only literary medium to know as to what went into being of the Indian Constitution, it is found that majority or in fact almost all the Fundamental rights and the Directive Principles had already been discussed and adopted prior to December 10, 1948, the date on which the Universal Declaration was made. Except for the final adoption of Art. 21, other provisions were adopted before hand. Therefore, the constructive and strict interpretation lays that the Universal Declaration had virtually no impact on influence on the Drafting or Constituent Committee, while the Fundamental rights and the Directive Principles were being framed. Also, since the Universal Declaration covers only the aspects of Human Rights, it needs no explanation as to why it had no relevance on the other provisions of the Constitution of India.

Also, the effect of the Universal Declaration is negated by the fact that while India was a signatory to Universal declaration, the representatives who signed the Declaration for India were not the members of the above-mentioned two Committees that were responsible for the framing of the constitution. Therefore, it can be said with certainty that the belief that the Indian Constitution was influenced by the Universal declaration or that it borrowed the provisions as now under the Directive Principles and Fundamental rights from the Universal Declaration of Human Rights is a sheer myth.

However, it has so happened, as it can be seen now, that the articles in the Constitution from 12 to 51 i.e. what we call as the Human Rights section of Indian Constitution, are analogous to a large extent to what is laid in the Universal Declaration. Interpreting as such these provisions, the Judiciary has also contributed to this fact by constantly referring to the Universal Declaration for extending eth scope of Fundamental Rights, which has emphasized its relevance while we interpret the provisions of Part III and Part IV of the Constitution.

Also, the primary reason for enforcement of certain Directive Principles, having read them into the Fundamental Rights, for example the proviso of 'Equal Pay for Equal work', 'Free and Compulsory Education up to 14 years of age', etc., by the Legislature and the Judiciary i.e. the Parliament and Supreme Court (the Custodian of Constitution of India) is because of the fact that India is a signatory to the two International Covenants, namely the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and

Cultural Rights (ICESCR), which have a binding effect on the parties to it. Therefore the significance of the Declaration is also mitigated to a large extent.

The comparison of facts, therefore signify that holding that Universal Declaration had an influence on the making of the Indian Constitution would be inappropriate and incorrect. However, it would be wrong to totally discard the effect of the Universal Declaration in such a manner. The reason for the same lies in the fact the India was one of the parties, which played an important part in such a declaration being made. India was one of the active participant to the making of the Declaration and thus it can also be interpreted that the Drafting Committee, in order to bring a congeniality between the Constitution being so drafted and the Universal Declaration, laid similar wording for the purposes of the Constitution of India.

## **V. JUDICIAL INTERPRETATION OF UNIVERSAL DECLARATION**

The peculiarity of the Constitution of India, as in comparison to other Constitutions, lies in the fact that despite being a wholesale combination of different documents, it has never limited itself to one aspect or one document. It has been a Living Constitution, a breathing Patriarch, whose foundation is not like a rock, as being static, but is dynamic, flexible and accumulative to the various provisions that may be required to face the changing need of the hour. The mechanism for this change is well based, *inter alia*, upon the stipulation of Judicial Activism, which is also one of the responsibility of the Judiciary, to interpret the Constitution in the interest and well being of those people of the Nation (who gave themselves the Constitution).

The forerunner to this cause has been the Supreme Court, which has often and consistently read the provisions of the Universal Declaration, so as to include and provide the basic and primary rights to the people of India. The Hon'ble Court, while interpreting the provisions of the constitution, has not limited the scope of the various articles to what was laid and understood by the constitutional framers (as reflected in the Constitutional Assembly Debates) and for the betterment and well being of the Country as a whole, the Court has read the Directive Principles of State Policy in the Fundamental rights. In this process of deciding case after case on the aspect of human rights of the citizens, the Court has consistently read the scope of Human Rights as in consonance with the provisions of the Universal declaration, along with the other International Covenants, to which India is a party. Thus the Universal Declaration has remained a mere paraphrase said to be the guiding force for protection of Fundamental Rights

but the Supreme Court, by such reading and amalgamating the provisions of this *UN Magna Carta* broadened the outlook of our Organised freedom loving society, or what is known as the Indian democracy.

In the case of *Satwant Singh Sawhney v. Asst. Passport Officer, Government of India*<sup>24</sup>, the Supreme Court held that in the light of the Universal Declaration stating "Everyone has the right to leave any country including his own", the Right was available only to normal citizens i.e. it was not available and not applicable to criminals avoiding penalties or political agitators etc., likely to create International tension or to persons who may disgrace our country abroad. The case, which was concerned with the issue of right to movement, the Hon'ble Supreme Court held that as under the Universal declaration of human rights, "Everyone has the right to leave any country including his own" and it being applicable to normal persons did does not apply to criminals avoiding penalties or political agitators, etc. likely to create international tensions or persons who may disgrace our country abroad.

Thus Right to movement, as a part of Fundamental Right, was interpreted by the Court in the light of the subsequent provision in the Universal Declaration and laid the scope of the right, as guaranteed under the Constitution. The Court also took into account the freedom the Right to life, under Art. 21 gave to the citizens. However, it was not much of an emphasis that was laid on it rather it was a mere reference by the Court stating that the Right to movement was also a right recognised by the world community, but declining to solely rely on it, the Court struck to the provisions of the Constitution of India and relied on the same for the disposal of the case.

In the celebrated case of *I.C. Golak Nath v. State of Punjab*<sup>25</sup>, The Hon'ble Supreme Court<sup>26</sup>, while discussing the constitutional validity of a provision, observed that 'the importance of Fundamental Rights in the world of today cannot be lost sight of.' The Court, considering the various aspects of Human Rights that the Constitution contemplated, also observed that 'the Declaration represented the civil, political and religious liberties for which men have struggled through the centuries and those new social and economic rights of the Individual which the Nations were increasingly recognising in their Constitutions. Some of these were proclaimed during the French Revolution and are included in the declarations of Nations taking pride in the

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<sup>24</sup> (AIR 1967 SC 1836)

<sup>25</sup> (AIR 1967 SC 1643)

<sup>26</sup> Para 177

dignity and liberty of the Individual. They are epitomized in the Preamble, and more fully expressed in Parts III and IV of our Constitution.' The Court also laid that the Declaration was intended to give a key to social progress by envisaging rights to work, to education and to social insurance.

The Court specifically laid that on a comparison of the Universal Declaration with Parts III and IV of our Constitution remarkable similarity in the two documents was to be found. Both were manifestos of man's inviolable and fundamental freedoms and thereby, were to be construed as being the forerunners for the enforcements and protection of human right.

In the case of *Nawabkhan Abbaskhan v. State of Gujara*<sup>27</sup>, an observation of the Court was that in Indian constitutional law, natural justice does not exist as an absolute jural value but is humanistically read by Courts into those great rights enshrined in Part III as the quintessence of reasonableness. This proved a deviation from the established principles but the Court was quick to reconcile and held that it was not unmindful that from Seneca's Medea, the Magna Carta and Lord Coke to the constitutional norms of modern nations and the Universal Declaration of Human Rights it is a deeply rooted principle that "the body of no free man shall be taken, nor imprisoned, nor disseised, nor outlawed, nor banished nor destroyed in any way" without opportunity for defence.

The landmark case of *Kesavananda Bharati Sripadagalvaru v. State of Kerala*<sup>28</sup>, with the text of the judgement running in hundreds, an important aspect of human rights was involved. The Court took into consideration, that while our fundamental rights and directive principles were being fashioned and approved of by the Constituent Assembly, on December 10, 1948, the General Assembly of the United Nations adopted a Universal Declaration of Human Rights and though the Declaration was not be a legally binding instrument but it an authority to showed how India understood the nature of Human Rights.

When the particular issue came up before the Court that whether rights remain inalienable if they can be amended out of existence?<sup>29</sup> One of the judges held that as the Preamble and the

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<sup>27</sup> (AIR 1974 SC 1471)

<sup>28</sup> (AIR 1973 SC 1461)

<sup>29</sup> It was also on a part of the discussion on the basic structure on the Constitution.

Articles of the United Nations Charter provided the basis for the elaboration in the Universal Declaration of Human Rights, it seemed an definite analogy, in view of Article 51 of the directive principles that the Court must interpret language of the Constitution in the light of the United Nations Charter and solemn declaration subscribed to by India.

The Court also considered the argument of Mr. Palkhivala, who contended that apart from Article 13(2) fundamental rights were based on Universal Declaration of Human Rights and being natural rights, were outside the scope of amendment. On this basis and on comparison of the position of the Fundamental Rights in the Indian Constitution, the Court propounded the theory of basic structure and came to hold that the Fundamental rights were also a part of the basic structure and being as such was thus were inviolable and could not be curtailed by any amendment what so ever.

In the case of *Additional District Magistrate, Jabalpur v. Shivakant Shukla*<sup>30</sup>, it was submitted before the Court by the Counsel fro the Respondent that the Court should keep in mind the Universal Declaration of Human Rights in interpreting the Constitution, the basis for which was Art. 51 of the Constitution, which laid for respect of International Law, the principle of British courts that International Law is part of the law of the land and that the Universal Declaration was a part of Indian Law by the operation of Art. 372 of the Constitution, seeming to imply that the Court should read the Universal Declaration of Human Rights into the Constitution as India was one of the signatories to it. However, the Court held that the submissions appeared as nothing more than appeals to weave certain ethical rules and principles into the fabric of our Constitution which is the paramount law of this country and provides the final test of validity and enforceability of rules and rights through courts.

The Hon'ble Court went up to the extent of laying that to advance such arguments is to forget that our Constitution itself embodies those rules and rights. It also governs the conditions of their operation and suspension and nothing, which conflicts with the provisions of the Constitution, could be enforced under any disguise.

Thus the approach of the Judiciary towards the Universal Declaration was very rigid and at one point of time the Court seemed to discard at its very base the very existence and authority of the Declaration, declaring thereby that there was to be a strict interpretation of the Constitution,

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<sup>30</sup> (AIR 1976 SC 1207)

in the light of the principle laid at its commencement and nothing else or external could guide its advancement.

In the case of *Prem Shankar Shukla v. Delhi Administration*,<sup>31</sup> a telegram was sent to the Court protesting against the humiliation and torture of being held in irons in public, back and forth, when, as under trials kept in custody in the Tihar Jail, i.e. being kept in handcuffs was contended by the petitioner. The practice had persisted despite the courts direction not to use irons on him. The Court held that the blurred area of 'detention jurisprudence' where considerations of prevention of escape and a personhood of prisoner come into conflict, the Court laid that even after discussing the relevant statutory provisions and constitutional requirements, Court was to remember Article 5<sup>32</sup> of the Universal Declaration of Human Rights, 1948, all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

J. Krishna Iyer categorically stated that in interpreting the constitutional and statutory provisions the Court must not forget the core principle found in Article 5 of the Universal Declaration of Human Rights, 1948. The court held that the ambit of personal liberty protected by Article 21 is wide and comprehensive. It embraces both substantive rights to personal liberty and the procedure provided for their deprivation and the handcuffing was a violation of right to live with dignity, unless restricted in the interest and security of the state.

In the case of *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*,<sup>33</sup> the question before the Court was whether the right to life was limited only to protection of limb or faculty or it went further and embraced something more. The Court specifically laid that "the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings." For the broad interpretation of the right, the Court referred to the right to protection against torture or cruel, inhuman or degrading treatment, enunciated in Article 5 of the Universal Declaration of Human Rights. The right extended to prisoners where as part of the right to live with human dignity, they would be entitled to have

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<sup>31</sup> (AIR 1980 SC 1535)

<sup>32</sup> Art. 5 --No one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.

<sup>33</sup> (AIR 1981 SC 746)

interviews with the members of his family and friends and no prison regulation or procedure laid down by prison regulation regulating the right to have interviews with the members of the family and friends can be upheld as constitutionally valid under Articles 14 and 21, unless it is reasonable, fair and just.

In this case, the reasoning adopted by the Court can be held as to hold the provisions of Universal Declaration as a supportive clause, for the protection, preservation and enhancement of Human Rights. Hereby, it also needs to be signified that the Court gave emphasis on the aspects of human rights, only when it found the Fundamental Rights not expressly stating the extent of liberty and freedom granted to individuals of state, namely the citizens of India. The reasoning also needs to be understood as that the Constitution itself recognising the human rights, the Universal Declaration plays the role of the lighthouse, in whose light the concept of human rights need to be understood.

Further in the case, Justice Bahgwati, while deciding on the aspect of the Right of a detenu held that the Right to protection against torture or cruel, inhuman or degrading treatment (in prison), laid under Article 5 of the Universal Declaration of Human Rights is implicit under Article 21 of the Constitution of India, under Right to live.

Thus we find that the Judiciary has made continuously read and interpreted the provisions of the Universal Declaration of Human Rights under the Fundamental Rights and the Directive Principle of State Policy, so as to include and extend the guaranteed freedoms under the Constitution, which fall within the broad category of Human Rights. An attempt has been made there, in order to render the Constitution a living one, to include more and more freedoms to individuals, on the verge of setting a new social order where all human beings are equal and their rights and freedoms are protected at the expense of the State.

In the case of *Prithi Pal Singh Bedi v. Union of India*<sup>34</sup>, the Court held that the absence of even one appeal with power to review evidence, legal formulation, conclusion and adequacy or otherwise of punishment in army tribunals was a glaring lacuna in a country where a counterpart civilian convict could prefer appeal after appeal of hierarchy of courts. Thus with the expanding horizons of fair play in action even in administrative decision, the universal declaration of human rights and retributive justice being relegated to the uncivilized days, the

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<sup>34</sup> (AIR 1982 SC 1413)

time had ripened when a step was required to be taken for at least one review in such cases as tried by the Army marshal. The core question in the case was whether at least there should be one appeal to a body composed of non-military personnel and who would enjoy the right of judicial review both on law and facts as also determine the adequacy of punishment being commensurate with the gravity of the offence charged.

While considering the case of *S.P. Mittal v. Union of India*<sup>35</sup>, when the Court tried to understand the basis of Fundamental Rights, it referred to the Universal Declaration. The Court was precise in laying that Articles 14 and 19 of the Constitution of India do not confer any fanciful rights. They conferred rights, which were elementary for the proper and effective functioning of a democracy and were universally so regarded, as being evident from the Universal Declaration of Human Rights. The Court laid that many countries in the civilised world had parted with their sovereignty in the hope and belief that their citizens will enjoy human freedoms and they preferred to be bound by the decisions and decrees of foreign tribunals on matters concerning human freedoms.

Therefore, the Court assertively laid that had Articles 14 and 19 been put out of operation in regard to the bulk of laws which the legislatures are empowered to pass, Article 32 would be drained of its life-blood. Also that it was not possible to fit fundamental rights and directive principles in two distinct and strictly defined categories, but it was to be stated broadly that fundamental rights represent civil and political rights while directive principles embody social and economic rights, representing the broad spectrum of human rights, as contemplated in the Universal Declaration of Human Rights which contained not only rights protecting individual freedom (Articles 1 to 21) but also social and economic rights intended to ensure socio-economic justice to everyone (Articles 22 to 29).

Therefore it can be found that the Court tried to advance and present the model of Human Rights, as laid under Fundamental Rights and the Directive Principles in the Indian Constitution, on the basis of the model of Human Rights as laid in the Universal Declaration in two parts, as laid by the Court above. Therefore there was a paradigm shift from the strictest interpretation of the Constitution to the understanding of the Fundamental Rights and Directive Principles on the basis of the Human Rights model.

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<sup>35</sup> (AIR 1982 SC 149)

While considering the petition in the matter of *People's Union for Democratic Rights v. Union of India*<sup>36</sup>, the question being as to what was the true scope and meaning of the expression "traffic in human being and begar and other similar forms of forced labour" in Article 23, the Supreme Court came to a conclusion that when the Constitution-makers enacted Article 23 they had before them Article 4 of the Universal Declaration of Human Rights but they deliberately departed from its language and employed words which would make the reach and content of Article much wider than that of Article 4 of the Universal Declaration of Human Rights. They banned 'traffic in human beings' which was an expression of much larger amplitude than 'slave trade' and they also interdicted "begar and other similar forms of forced labour".

Thus the Court departed to what was laid in the Universal Declaration, holding it as inadequate and further extended the scope of protection available under the said proviso in the Constitution to bring within its ambit other forms of obnoxious acts, which violated the human rights.

The Court went even before the Universal Declaration came into being and holding that the practice of forced labour was condemned in almost every international instrument dealing with human rights accepted that as far back as 1930, International Labour Organisation adopted a Convention laying down that every member of the International Labour Organisation which ratifies this convention shall "suppress the use of forced or compulsory labour in all its forms" and this prohibition adopted by the International Labour Organisation in 1957. The Court did not stop here but examined the provisions in other documents as well such as European Convention of Human Rights, International Covenant on Civil and Political Rights etc. The Court thereby came to a stand that Article 23 enacts a prohibition against forced labour in whatever form it may be found. The Court, declining the constitution referred to its earlier decision in *Maneka Gandhi v. Union of India*<sup>37</sup> where it was laid that while interpreting the provisions of the Constitution conferring fundamental rights, the attempt of the court should be to expand the reach and ambit of the fundamental rights rather than to attenuate their meaning and content.

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<sup>36</sup> (AIR 1982 SC 1473)

<sup>37</sup> (AIR 1978 SC 597)

While considering the case of *Indian Express Newspapers (Bombay) P. Ltd. v. Union of India*<sup>38</sup>, the Court read the Art.19 of the Universal Declaration of Human Rights declaring that "Every one 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" and thus relooked at the position of the freedom of the press, being one of the items around which the greatest and the bitterest of constitutional struggles waged in all countries where liberal Constitutions prevailed.

The contentions of the petitioners was that the imposition of the import duty had a direct effect of crippling the freedom of speech and expression guaranteed by the Constitution as it has led to the increase in the price of newspapers and the inevitable consequence of reduction of their circulation and the Court accepting this stand allowed the fundamental rights to prevail at the expense of the State machinery in wake of the protected and granted right under the Universal Declaration.

In the case of *Charan Lal Sahu v. Union of India*,<sup>39</sup> the Court, while deliberating on the issue of the production or carrying on trade in dangerous chemicals by multinational industries on the soil of Third World countries held that it called for the strictest enforcement of constitutional guarantees for enjoying human rights in free India. For this issue, the Supreme Court drew its attention towards the Charter of Universal Declaration of Human Rights. The Court considered Article 1, 3, 6, 7 and 8 of the Declaration which held for all human beings being free and equal in dignity and rights, everyone having the right to life, liberty and security of his person, everyone having the right to recognition everywhere as a person before the law, all being equal before the law and being entitled without any discrimination to equal protection of the law and everyone having the right to an effective remedy by competent National Tribunal for acts violating fundamental rights guaranteed to him by the Constitution or by the law. The Court, considering the importance of these provisions reiterated that the Indian citizens had a right to live, which could not be taken away by the Union or the State, except by a procedure which is just, fair and reasonable and if in any event, these rights are violated, the Court would come to their protection and it would be the duty of the judiciary to apply all relevant principle of national all well as International law so as the protect the citizens from such infringement.

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<sup>38</sup> (AIR 1986 SC 515)

<sup>39</sup> (AIR 1990 SC 1480) Para 28

In the case of *Bubic Kariusz v. Union of India*, while considering the aspect of Preventive detention law, the court observed that detention of a foreign national involves an element of international law and human rights and the appropriate authorities ought not to be seen to have been oblivious of its international obligations in this regard. The Universal Declaration of Human Rights include the right to life, liberty and security of person, freedom from arbitrary arrest and detention; the right to fair trial by an independent and impartial tribunal; and the right to presume to be an innocent man until proved guilty. Thus when an act of preventive detention involves a foreign national, though from the national point of view the municipal law alone counts in its application and interpretation, it is generally a recognised principle in national legal system that in the event of doubt the national rule is to be interpreted in accordance with the State's international obligations. The Court for this purpose referred its earlier judgment as in the case of *Jolly George Verghese v. Bank of Cochin*<sup>40</sup>, where J. Krishna Iyer held that there was a need for harmonisation, whenever possible, bearing in mind the spirit of the covenants and in this context it was to be borne in mind that the fundamental rights guaranteed under our Constitution were in conforming line with those in the Universal Declaration and the other Covenants ratified and signed by India.

Thus the Court laid that for all purposes of interpreting the scope of Fundamental Rights and other municipal law principles applicable as well, International documents need to be referred, specially when India is a party to it.

In the case of *Mohini Jain v. State of Karnataka*<sup>41</sup>, the Supreme Court looked into the Provisions of the Universal Declaration to interpret the Right to Education as a concomitant to Fundamental Rights enshrined under Part III of the constitution. The words in the declaration that "Education shall be directed to the full development of Human personality..." were held to be inclusive under Article 21 of the Indian Constitution, which was thus to be guaranteed and enforced by the Judicial activism.

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<sup>40</sup> (AIR 1980 SC 470)

<sup>41</sup> (AIR 1992 SC 1858)

In the case of *Life Insurance Corporation of India v. Manubhai D. Shah*<sup>42</sup> the Supreme Court observed that the "Speech is God's gift to mankind through which a human being conveys his thoughts, sentiments and feelings to others." "Freedom of speech and expression is thus a natural right which a human being acquires on birth" and is, "therefore, a basic human right." "Everyone has the right to freedom of opinion and expression where the right includes freedom to hold opinions without interference and to seek and receive and impart information and ideas through any media and regardless of frontiers," proclaims the Universal Declaration of Human Rights (1948)<sup>43</sup> and as the people of India declared in the Preamble of the Constitution to secure to all citizens liberty of thought and expression as also reflected in Article 19(1)(a), the Right needs to be protected in the interests of humanity and mankind at large.

Further, in the case of *State of Arunachal Pradesh v. Khidiram Chakma*<sup>44</sup>, the Supreme Court accepted the view of two authors namely Blackburn and Taylor, that Art. 14 of the Universal declaration of Human Rights, which speaks of the right to enjoy asylum, has to be interpreted in the light of the instrument (i.e. the Universal Declaration itself) as a whole; and must be taken to mean something, which is much more than a documentary compilation of International Human Rights Standards, but a human right code for the effective development of the citizens.

While considering the case of *Consumer Education and Research Centre v. Union of India*<sup>45</sup>, the Hon'ble Supreme Court of India laid that Art. 1 of the Universal Declaration<sup>46</sup> asserts human sensitivity and moral responsibility of every state.<sup>47</sup> The Court laid that the constitutional concern of social justice as an elastic continuous process is to accord justice to all sections of the society by providing facilities and opportunities to remove the handicaps and disabilities with which poor etc. are languishing and secure dignity of person. Thus the human rights, as contemplated in the Universal Declaration included right to live with dignity.

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<sup>42</sup> (AIR 1993 SC 171)

<sup>43</sup> Art. 19 of the Universal Declaration of Human Rights, 1948

<sup>44</sup> (AIR 1994 SC 1461)

<sup>45</sup> (AIR 1995 SC 922)

<sup>46</sup> Art. 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.

<sup>47</sup> *Id.* at 938

One judgment of the Supreme Court, which has slipped the watchful eyes of Human right activists is *Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde*,<sup>48</sup> where the Hon'ble Supreme Court held that *right to economic empowerment* to the Scheduled Tribes as enshrined under Art. 46 of the Constitution, is a fundamental human right under Arts. 1,3,17,22 and 25 of the Universal Declaration of Human Rights, 1948 of the protected tribes while the Court reiterated the fact that the State is enjoined under Declaration on the Right to Development, to provide facilities and opportunities consistent with Art. 38 of the Constitution. Thus when it is said that *Samatha*<sup>49</sup> was the first case on the incorporation of Right to development is a misnomer.

On the aspect of right of Schedule Tribes in the Universal declaration, Art. 22<sup>50</sup> of the Declaration gains prominence as it allows the State to make special effort for those, who have been denied the parlance of equality, for generations and have continuously been at a lower hand, whenever the distribution of national resources, for the economic and social growth, has been an issue for consideration before the state. This aspect has to highlighted, thus, that for the promotion of an egalitarian society, the Supreme Court allowed and for this purpose even read the Universal Declaration for the special protection of chosen groups/ classes while the declaration, in strict terms nowhere mentions of special protected groups.

While considering the merits of the case in the matter of *Chameli Singh v. State of U.P.*<sup>51</sup>, in context of providing just and basic human conditions of life and a peaceful living, the Supreme Court observed that 'in any organised society, right to life as a human being is nor ensured by meeting only the animal need of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live, as guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society' and for the purpose of extending such rights, the Court further observed that 'all civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India

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<sup>48</sup> 1995 Supp (2) SCC 549

<sup>49</sup> (AIR 1997 SC 3297)

<sup>50</sup> Art. 22- Everyone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international co-operation and in accordance with the organisation and resources of the each state, of economic, social and cultural rights indispensable for his dignity and free development of his personality.

<sup>51</sup> (1996) 2 SCC 549

cannot be exercised without these basic human rights.’ Thus the scope of the basic, primary and guaranteed rights was, as according to the Court, to extend and include all those rights, which were considered by the World community, as in 1948, as being vital and necessary for the growth of human mind.

The Court also held that the right to shelter is a Fundamental right available to every citizen and encompassing within its ambit, was read into Art. 21 of the Constitution of India as the **Right to shelter**, *to make the life meaningful*, was also recognized in Art. 25(1) of the Universal declaration, which declares for everyone the right to standard of living, adequate for the health and the well being of himself and his family and includes food, clothing, housing, medical care and necessary food services.

The Supreme Court, in the case of *Bandhua Mukti Morcha v. Union of India*<sup>52</sup>, while deliberating the issue of employment of Children laid that Article 26(1) of Universal Declaration of Human Rights assured that everyone has the right to education, which shall be free, at least at the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made available and higher education shall equally be accessible to all on the basis of merit. Education enables development of human rights and fundamental freedoms. It promotes understanding tolerance and friendship among people. It is, therefore, the duty of the State of provide facilities and opportunities to the children driven to child labour to develop their personality as responsible citizens.

Thus the Court extended the assured right of development of the child and thus nation as a whole, by directing the Government to make adequate provisions for those who had been deprived the means to grow and to vitalize the cause of nation.

In the case of *D.K. Basu v. State of West Bengal*<sup>53</sup>, the Supreme Court revisited one of the aspects of the Universal Declaration and laid that the Universal declaration of Human Rights, 1948, which marked the emergence of a world wide trend of protection and guarantee of certain basic Human Rights, stipulates in Art. 5 that “No one shall be subjected to torture or to cruel, inhuman and degrading treatment or punishment” and therefore, showing its concern while considering this Writ Petition on an issue of Custodial Death the Court considered that ‘despite the pious declaration the crime continues unabated, though every civilized nation

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<sup>52</sup> (AIR 1997 SC 2218)

<sup>53</sup> (1997) 1 SCC 416

shows its concern and takes steps for its eradication.<sup>54</sup> The Court thus awarded compensation under Public law, adjustable against the damages awarded in a civil suit. The Court, in consideration of other issues also, issued various requirements, namely the *ELEVEN requirements* to be followed by the Police in all cases of arrest or detention as preventive measures.

On the serious issue of plight of the 'flesh workers', in a writ petition in the matter of *Gaurav Jain v. Union of India*<sup>55</sup>, the Supreme Court accepted that the fallen/trapped victims of flesh trade are subjected to cruel, inhuman and degrading treatment which are obnoxious, abominable and an affront to Art. 5 of the Universal Declaration, besides being against the spirit of the Indian Constitution.<sup>56</sup> The Court further went on to say that that *Human Rights are derived from the dignity* and worth inherent in the human person, and these Human Rights and Fundamental Freedoms have been reiterated by the Universal Declaration. So, for all practicable purposes of recognising the scope of Human Rights, the Universal Declaration has to be paid heed to. Thus the Supreme Court opened the path for reading the provisions of the Universal Declaration while constructing the extent of applicability of the Fundamental Rights and the Directive Principles.<sup>57</sup>

Again, in considering the subject matter of *Samatha v. State of A.P.*<sup>58</sup>, the Court held that the right to health, education, pollution-free atmosphere, potable water, shelter, etc were, along with all the basic human rights declared under the Universal Declaration of Human Rights and thus are an integral part of right to life under Article 21 and other fundamental rights provided in Part III of the Constitution.

This reasoning adopted by the Court well establishes the faith the Court has in the insistence of the Human Rights in the Universal Declaration and for this purpose, as laid, all the human rights are thus inclusive and condignly form the basis of right to life, which is also the most important right of the Indian Constitution.

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<sup>54</sup> *Id.* at 425

<sup>55</sup> (AIR 1997 SC 3021)

<sup>56</sup> *Id.* at 3028

<sup>57</sup> *Id.* at 3031

<sup>58</sup> (AIR 1997 SC 3297)

In the case of *People's Union of Civil Liberties (PUCL) v. Union of India*<sup>59</sup>, the issue was the legitimacy of Telephone tapping done by CBI, as an infringement of the Right to privacy and to freedom of Expression. The exact judgment of the Court was that "when a person is talking on telephone, he is exercising his right to freedom of Speech and Expression." Therefore, "telephone tapping, unless it comes within the grounds of reasonable restrictions under Art. 19(2) would infract Art. 19(1)(a) of the Constitution." The Court, while laying stress on International law, viewed through Universal Declaration of Human Rights, 1948 and the International Covenants on Civil and Political Rights, 1966, accepted that the present International law is not confined to regulating relations between the states but it is more than ever, now, aimed at individuals and *matters of Social Concern such as health, education and economics, apart from other human rights, fall within the ambit of Fundamental Regulations* and through the 'Law of Incorporation', adopted rules of customary international law (namely the Human Rights in the Universal declaration in this case) which were not contrary to the provisions of municipal law, in the domestic law. Another aspect of this case is that the Supreme Court read Art. 12<sup>60</sup> of the Universal Declaration into the Indian Constitution and re-laid the Right to privacy, which was earlier read under Article 21 as also under Article 19(1)(a), when the issue of privacy in matters of exercisal of right of freedom of Speech was concerned.

In the case of *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*<sup>61</sup>, the Supreme Court of India, while highlighting the importance of the Universal Declaration laid that 'the Universal Declaration of Human Rights, 1948 set in motion the universal thinking that human rights are supreme and ought to be preserved at all costs. This has been followed in a series of Conventions and India being a signatory has to respect them.'<sup>62</sup> Thus the Court took up the responsibility or rather restated its responsibility that it would undertake to bring the provisions of Universal Declaration in force and would continue to act as the custodian and guardian of Human Rights in the country, and if the situation demanded the application of Universal Declaration, it would not hesitate to do so, being in the interest of the high minded society, the Constitution seeks to achieve.

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<sup>59</sup> (AIR 1997 SC 568)

<sup>60</sup> Art. 12 – No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection or the law against such interference or attacks.

<sup>61</sup> (AIR 2000 SC 1274)

<sup>62</sup> Id. at 1282

As recently, as in the year 2000, in the case of *Chairman, Railway Board v. Chandrima Das*<sup>63</sup>, where a Bangladeshi women was gang raped by the Indian Railway employees in a Railway building, the Court allowed compensation to the victim while laying for future reference, that relief could be granted to her under Public Law as there was a violation of Fundamental Rights firstly and secondly on the grounds of Domestic jurisprudence based on Constitutional Principles and also on grounds of **Human Rights Jurisprudence** based on Universal Declaration of Human Rights, 1948, which has the international recognition as the '**Moral Code of Conduct**', having been adopted by the General Assembly of the United Nations. The Court specifically laid that the applicability of Universal Declaration of Human Rights and principles thereof may have to be read, if need be, into the domestic jurisprudence.

Thus the Court laid a completely laid a new branch of law, namely the Human Right jurisprudence, which was totally based on the Universal Declaration of Human Rights and thus giving reference to the Human Rights under the Constitution of India, the Court went to the extent of protecting the Human Rights at the expense of the state, by allowing the victim a Public Law remedy, when private law remedy was available to her.

The Court, also, reiterating the importance of the Universal declaration laid that 'since the term "life" is also recognized as a basic Human Right in the Universal declaration, it has to have the same meaning and interpretation as has been placed on that word by the Supreme Court in its earlier decisions relating to Art. 21 of the Constitution.'<sup>64</sup> The Supreme Court went on to say that "*our Constitution guarantees all the basic and fundamental Human Rights set out in the Universal Declaration of Human Rights, 1948, to its citizens and other persons.*"<sup>65</sup>

## VI. CONCLUSION

Also, in reference to the emphasis laid on the provisions of the Universal Declaration, while earlier the Supreme Court made a mere reference to the provisions and the essence of the Universal Declaration, meaning thereby that it only stated that similar provisions were also present in the Universal Declaration and other International Covenants, but no emphasis was

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<sup>63</sup> (AIR 2000 SC 988)

<sup>64</sup> Id. at 998

<sup>65</sup> Id. at 997 Para 28

laid on making an attempt to read them in the subsequent Articles in the Constitution of India. In other words, the Court only paid a lip service to the Universal Declaration of Human Rights. In the case of ADM Jabalpur, however, the Supreme Court proceeded in a deviating path and negated the application of Universal Declaration. However, with the passage of time and particularly in the '90s, the Court came to interpret that relevance must be placed on the International Human Right Instruments and particularly the Universal Declaration of Human Rights, 1948, which was the predecessor in this regard. It was in continuation with trend this trend, that the case of *Chairman, Railway Board v. Chandrima Das*<sup>66</sup> was decided, entirely on the basis of the provisions of Universal Declaration.

Thereby it is found that there has be a substantial shift in the Judicial Interpretation in regard to the mandate laid in the Universal Declaration and the Court has substantiated the fact that "Law in an instrument of Social Change." It is also to be highlighted that with this shift, International Human Right Standards have been made available to the Indian Citizens as well. Thus on a comparative and chronological assessment of the trend of Judiciary has followed, it is found that the Universal Declaration had varied over periods of time. The Court, to begin with, was inclined towards a strict interpretation of the scope of Human Rights i.e. only in the case of violation of Fundamental Rights, it came to rescue to restore the original state of affairs. Therefore there was no such reference at all to the Universal Declaration while the judgments were delivered or the ambit of Human Rights of the citizens was construed.

However, the rigid and pragmatic approach of the '50s was washed away with the attempt to interpret the Human Rights in the Constitutional Provisions i.e. the Fundamental Rights and the Directive Principles, with the aid of International Human Right Instruments, to which India was a party or to which India had signed to and it was thus obligatory on the part of the State to enforce them. Thus the essence of the Human Rights, as laid in the Universal Declaration was understood partially, about some twenty years later, as reflected by the Judicial Interpretation at that moment of time. But even at that moment of time, it was only a mere hypocrisal arrangement. The Court still relied on the specific provisions of Municipal Law for the construction and extension of Human Right domain for India and the presence of the Human Right standards in the International arena were merely acknowledged, but the mandate laid therein was never implemented.

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<sup>66</sup> The case came by way of Public Interest Litigation against the Railway Board for a rape of Bangladeshi National, on the contention of Gross Violation of Human Rights.

The shift from the set norm of the 70's, i.e. our present day scenario, was much awaited for, and a code was needed, which would avail the citizens as well as the non-citizens the set rights laid and contemplated by the International Societies and the community and the essence and relevance of the basic and just rights of the people permeated beyond the Constitution, however, this was done only by the reading them in specific provision in the Indian Constitution and holding that these rights could be availed in their proper and true sense only when the concomitants of their were included and this these extensions was what the Court referred to as the International provisions, contemplated as vital, essential and mandatory for raising the basic, living and sustenance level of the people.

The active and positive response to the increasing incidents of Human Right violations was a result of the number of writ petitions being filed, the series of PILs directed by M.C.Mehta, for the enforcement of various aspects of the basic human rights and the gross and acute violation of Human Rights in the Bhopal Gas Leak case and all these led to the change in the Judicial reasoning. Though they had no specific relations or linkages to the Universal Declaration, or for such purpose, to any of the International Instruments, but these were some of the basic factors or causes, which prompted the judiciary to change its stand from a mere interpreter to enforcer.

More and more emphasis was being given on the International Standards, so as to secure the citizens the same rights and freedoms that were available to their foreign counterparts in their respective countries. Thus began the trend of making a constant reverence to the provisions of Universal Declaration, as and when a case involving violation of rights guaranteed under Part III and Part IV was brought before the Court. The Hon'ble Supreme Court looked into the serious issues arising from the proliferation of economy and the increasing production pollution (as a result of industrial and other ancillary activities) and dealt with them by reading the various documents, along with the Universal Declaration and extending the scope and purview of the constitutionally granted freedoms.

The Bangalore Principle also, on the aspect of inclusion of International law principles to Municipal law, was one of the causes for the change. Thus the true nature and applicability of the Universal Declaration came to be enforced in the recent years, in its real sense. The latest case of *Chandrima Das* is a milestone, thus, in Indian Human Right Jurisprudence as it is the first case where the Hon'ble Supreme Court decided relying entirely on the provisions of the Universal Declaration.

Thus it can be said that the epoch making decisions are not far sighted but their soothing breath can be felt therewith, at this particular moment of Indian, but for all such practical purposes, Judiciary will have to keep on riding the horse on the same pillion, raising the standards of the people of India and achieving far better measures of the protection and enforcement of the Rights, essential for an organised civilized society.

## BIBLIOGRAPHY

- Baxi, Upendra, *The Future of Human Rights*, (New Delhi: Oxford University Press, 2002)
- Begum, Mehartaj S., *Human Rights in India*, (New Delhi: APH Publishing Co., 2000)
- *Blackstone's International Human Rights Documents*, (P.R. Gandhi Ed., New Delhi: Universal Law Publishing Co., 1999)
- Chiranjivi, Nirmal J., *Human Rights in India*, (New Delhi: Oxford University Press, 2<sup>nd</sup> ed., 2000)
- Jaswal, Paramjit & Nishita, *Human Rights and the Law*, (New Delhi: APH Publishing Co., 1996)
- Mangalwadi, Vishal, *India: The Grand Experiment*, (Surrey: Pippa Rann Books, 1997)
- Mehta, P.L. & Verma, Neena, *Human Rights under Indian Constitution*, (New Delhi: Deep & Deep Publication Pvt. Ltd., 2000)
- Seervai, H.M., *Constitutional Law of India*, 155, (New Delhi: Universal Book Traders, I, 4<sup>th</sup> ed., 1999)
- Sen, Shanker, *Human Rights in a Developing Society*, (New Delhi: APH Publishing Corporation, 1998)