

Legal Literacy (Revised 14.3.04)

Course Objectives:

The Proposed course aims to acquaint student with the structure and manner of functioning of the legal system in India

Learning Outcomes:

The student should

- Be aware of the institutions that comprise the legal system – the courts, police, jails and the system of criminal justice administration
- Have a brief knowledge of the Constitution and laws of India, an understanding of the formal and alternate dispute redressal (ADR) mechanisms that exist in India, public interest litigation
- Have some working knowledge of how to affirm one's rights and be aware of one's duties within the legal framework; and the opportunities and challenges posed by the legal system for different sections of persons

This course consists of 100 marks – comprising 25 marks for evaluation of the practical work and a written paper of 75 marks

Course Outline:

Unit I

Outline of the Legal system in India

System of courts/tribunals and their jurisdiction in India – criminal and civil courts, writ jurisdiction, specialized courts such as juvenile courts, Mahila courts and tribunals. Role of the police and executive in criminal law administration. Alternate disputes mechanisms such as lok adalats, non – formal mechanisms.

Unit II

Brief understanding of the laws applicable in India

- Constitution – fundamental rights, fundamental duties, other constitutional rights and their manner of enforcement, with emphasis on public interest litigation and the expansion of certain rights under Article 21 of the Constitution
- Laws relating to criminal jurisdiction – provision relating to filing an FIR, arrest, bail, search and seizure and some understanding of the questions of

evidence and procedure in Cr. P.C. and related laws, important offences under the Indian Penal Code, offences against women, juvenile justice, prevention of atrocities on Scheduled Castes and Scheduled Tribes

- Concepts like Burden of Proof, Presumption of Innocence, Principles of Natural Justice, Fair comment under Contempt laws
- Personal laws in India : Pluralism and Democracy
- Laws relating to contract, property; tenancy laws, labour laws, and environmental laws.
- Laws relating to dowry, sexual harassment and violence against women
- Laws relating to consumer rights
- Labour laws in the context of globalisation
- Laws relating to cyber crimes
- Anti-terrorist laws: implications for security and human rights

***Practical application:** Visit to either a (I) court or (ii) a legal aid centre set up by the Legal Services Authority in Delhi or an NGO or (iii) a Lok Adalat, and to interview a litigant or person being counselled. Preparation of a case history.*

Unit III.

Access to courts and enforcement of rights

- Critical Understanding of the Functioning of the Legal System
- Legal Services Authorities Act and right to legal aid, ADR systems
- What to do if you are arrested ; if you are a consumer with a grievance; if you are a victim of sexual harassment; domestic violence, child abuse, caste, ethnic and religious discrimination; filing a public interest litigation. How can you challenge administrative orders that violate rights, judicial and administrative remedies
- Human Rights - emerging trends; Role of legal aid agencies, Human Rights Commissions, NGOs and civil liberties groups.

***Practical application** – Using a hypothetical case of (for example) child abuse or sexual harassment or any other violation of a right, preparation of an FIR or writing a complaint addressed to the appropriate authority.*

Reading list for course on Legal Literacy

Multiple Action Research Group, *Our Laws* Vols 1-10, Delhi. Available in Hindi also.

Indian Social Institute, New Delhi, Legal Literacy Series Booklets. Available in Hindi also.

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Sagade, Jaga, *Law of Maintenance: An Empirical Study*, ILS Law College, Pune 1996.

B.L. Wadhera, *Public Interest Litigation – A Handbook*, Universal, Delhi, 2003.

Nomita Aggarwal, *Women and Law in India*, New Century, Delhi, 2002.

P.C. Rao and William Sheffiled *Alternate Dispute Resolution: What it is and How it works*, , Universal Law Books and Publishers, Delhi, 2002

V.N. Shukla's *Constitution of India* by Mahendra P. Singh, Eastern Book Co. 10th edition 2001.

Parmanand Singh, 'Access to Justice and the Indian Supreme Court', 10 & 11 *Delhi Law Review* 156 , 1981-82.

Unit II
Brief Understanding of the laws applicable in India
Personal Law : Democracy and Pluralism
Chetna Sharma*

Introduction:

Principles of equal respect for persons, equality before law and equal civil and political rights of citizens are central to liberalism and in different degree part of all liberal democratic States. But the existence of cultural and religious diversity in contemporary societies raise problems of how these principles are to be interpreted and applied. Almost every modern society includes groups whose way of life are different from other and wish to preserve this, but some group norms clash with basic features of liberal democracy. The State is confronted with questions of how to accommodate different groups without losing its social cohesion, how to reconcile the demands of equality and recognition of cultural and religious difference. These important questions were faced by India when the nation started its journey after independence. The most important question for Indian democracy was how to define the rights of citizens. The conflicting pulls between the rights of minorities to cultural and religious identity and the concern for an integrated nation were to become major debating issues regarding individual and group rights. Various communities having different traditions and cultural values would like to preserve them and thus the personal laws of each community are direct extension of these cultural and traditional values. But liberal democracy has a responsibility towards all their citizens to uphold their fundamental rights. Some of the family and property laws are not in line with liberal democracy norms of sexual equality. Should they be systematically overridden, why should personal law system continue in the secular democratic republic that India is.

Objective and Structure:

The purpose of this chapter is to make the students aware of the existence of different personal laws for Hindus, Muslims, Christians and Parsis in the realm of marriage, divorce, adoption, maintenance and succession. After going through this chapter you should be able to:

- 1.1 Define the term personal law
- 1.2 Its evolution in India.
- 1.3 Personal law in Independent India
- 1.4 Hindu Personal Law
- 1.5 Muslim Personal Law
- 1.6 Parsi Personal Law
- 1.7 Christian Personal Law
- 1.8 Customary Tribal Laws
- 1.9 Debate on Universal Civil Code
- 1.10 Democratic Norms and Vision the future.

1.1 What is Personal Law:

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When a person is governed by a particular law not because he or she is a resident or national of a particular country, but because he or she belongs to a particular religion, race, caste, sect or tribe he or she is set to be governed by his or her personal law.¹ Personal law deal with matters relating to marriage, divorce, inheritance, succession, adoption, maintenance, guardianship and custody of children.

1.2 Evolution of Personal Law in India:

The whole exercise of separate personal law in India was influenced by past events, present circumstances and future considerations. In India primarily local and non-state legal fora applying the norms of customary law enforced civil law. Religious communities in India have never been homogeneous categories with fix clear-cut boundaries. “There was no single or uniform body of canon law Hindu pope to legitimise a uniform code for all the diverse communities of India’.¹ During Mughal rule the Islamic law recognised the traditional community based institutions for resolving disputes. However with the advent of colonialism and the establishment of British rule an unprecedented break from the past appears. After the East India Company established its rule various charters of the British Parliament bestowed upon the company, the jurisdictional authority. When the company officers stepped in to arbitrate in civil and criminal disputes, they relied upon Hindu Pundits and Muslim Qazis to ascertain their respective laws. The plurality of customs often led to the pundits expressing contradictory opinions. In their desire to be independent of the local clergy, the British took upon themselves the task of translating the ancient texts.

Warren Hastings’ famous judicial plan of 1772, provided for administration through different traditional laws for Hindus and Muslims respectively, that played a major role in the development of personal law. In 1776 a code of Gentoo laws or ordinations of the pundits was published. The process of codifying the Hindu and Mohammedan laws was initiated by Hastings in 18th Century and was facilitated by Jones, Halhead, Colebrooke and Mcnaghten.² The translated texts drastically changed the nature and character of

¹ Indira Jaising, “The Politics of Personal Law” in Indira Jaising ed. Justice for Women Personal Laws, Women’s right and law reform (The Other India Press, Goa, 1996) p1.

¹Madhu Kishwar “Codified Hindu Law Myth and Reality” “Economic and Political Weekly August 12, 1994. p. 2145

² Flavia Agnes, Law and Gender Inequality The Politics of Women’s Rights in India (Oxford University Press, Delhi, 1999) p. 43

customary laws. Through codification of law, the British wanted to bring under their purview aspects of diverse communities social and political life.

With the shift of administrative structure from the company to British crown and assurance of non-interference in religious beliefs the system of non-interference in the family laws emerged, but a new system of adjudication as case laws or judicial interpretation continued. During this period certain uniform and secular statutes were enacted. The Indian Succession Act of 1865 (re-enacted in 1925), the Special Marriage Act of 1872 (re-enacted in 1954) and the Guardians & Wards Act of 1890. But this could not lead towards the uniform code. The division of Bengal, communal riots and separate electorate widened the gap between Hindus and Muslims, and thus collapsed the space for enactment of uniform laws.

With the participation of women leaders in the National Movement demand for comprehensive code was raised by Kamladevi Chattopadhyay, Sarojini Naidu, Muthu Laxmi Reddy, Begum Shah Nawaj and other prominent members of the All India Women's Conference (AIWC). Indian National Congress also ratified the demand but could not initiate it effectively. The division of personal law once established could not be revoked.

1.3 Personal laws in Independent India:

In the Independent India the issue of personal law was debated in the Constituent Assembly in the context of maintaining balance between rights of individual and demands of recognition of various communities. It became necessary in plural society that India is to assure the minorities of their right to cultural identity and the continuance of the personal law was a marker of this assurance. However this was opposed by liberals like M.R.Masani, Hansa Mehta, Raj Kumari Amrit Kaur, K.M. Munshi, Alladi Krishnaswami Ayyer etc. The Constitution recognizes the right of different religious communities to have their personal law as flowing from the freedom of religion.

1.4 Hindu Personal Law:

The Hindu Personal Law was codified to some extent in the colonial period. After Independence some reforms were introduced that were passed in the form of four separate Acts. The 1955 Act provides the most extensive definition of the term Hindu. It means any person domiciled in the territories to which the Act extends who is not a Muslim, Christian, Parsi or Jew by religion.

Marriage: The Hindu Marriage Act was passed in 1955. Its major provision related to the abolition of the requirement that husband and wife be of the same caste as a necessary precondition for a valid marriage, the enforcement of monogamy and uniform provision for the dissolution of marriage for all the castes. In order to stop the practice of bigamy amongst Hindus the supreme court ruled in *Sarla Mudgal* Case of 1995 and the *Lily Thomas* case of 2000 that second marriage of convert Muslim (originally Hindu) men solemnized under Muslim law would be counted as a second marriage for the purpose of the offence of bigamy and such men will be liable to be punished for bigamy.

Divorce & Maintenance : According to the 1955 Act either spouse can obtain divorce on similar grounds (voluntary intercourse with a person other than the spouse, cruelty, desertion, conversion to other religion, mental unsoundness, renunciation, missing for 7 years, non-cohabitation after court order for restitution of conjugal rights under section 9). The wife is given four additional grounds (rape, sodomy and bestiality, another wife living before the commencement of the Act, marriage before the age of 15 years) on which she can ask for divorce. The provision for divorce by mutual consent was also incorporated under the Act in 1976.

The Hindu Marriage Act makes both spouses liable to pay maintenance. The order of maintenance can be rescinded if the party obtaining maintenance remarries or has sexual intercourse with another person. A woman can normally claim a maximum of one third of the joint income of her husband and herself. However all claims of maintenance are lost upon conversion to a non “Hindu” religion.

Adoption and Guardianship: The Hindu Adoption and Maintenance Act 1956 recognises only *datta homan* or *dattaka* type of adoption. Single Hindu women can adopt under the Act but a married Hindu woman is not entitled to adopt on her own unless her husband is barred from adopting. A married Hindu man adopting requires the consent of his wife. It also restricts the number of adoption possible by one person to a maximum of two, one boy and one girl.¹ The *dattaka* form of adoption requires a ceremony of giving by the natural parents or legal guardians of the child and taking by the adoptive parents. This means that an orphan or foundling could not be adopted unless he or she has a legal guardian.² According to the Hindu Minority and Guardianship Act 1956 a parent ceases to be a natural guardian if he or she converts to another religion. The father is the natural guardian; the mother is given custody of the child on the basis of what is termed as “tender age theory”. But if the child is illegitimate the mother is the guardian.³ But a married Hindu should not need the consent of his spouse to either adopt or give in adoption of common child if the spouse has ceased to be a Hindu.

Succession: The Hindu Succession Act 1956 treated only retained Hindu males as members of the Coparcenaries or joint family property holding. This concept deprived women of the right of inheritance in ancestral property. Their right to equal inheritance was limited only to self-acquired property of a Hindu male. The Hindu Succession (Amendment) Act 2005, treats daughters also as coparceners and brings all agricultural land on par with other property and makes Hindu daughters inheritance rights in land legally equal to men. It includes daughters as coparceners in the Mitaksara joint family property, with the same

¹ Opcit. Madhu Kishwar p 2153

² ibid Madhu Kishwar p.2153

³ Sadiq Ahamed Jilani Syed, Women in India : Legal and Human Rights (CPDHE & WSDC, University of Delhi, 2004) p 57.

birthright as sons to share, to claim partition and (by presumption) to become Karta (Manager) while also sharing the liabilities⁴. It also gives all daughters the same rights as sons to reside in or seek partition of the family dwelling house. The Act now makes the heirs of predeceased sons and daughters more equal and also grants widows of predeceased sons the right of inheritance in the deceased's property even if they had remarried.

Laws relating to Hindus of Goa, Daman & Diu : Prior to 1962 these areas were Portuguese colonies and the Portuguese civil code was promulgated. In these areas polygamy is permissible in certain specific cases.

1.5 Muslim Personal Law

The *Shariat* law popularly known as Muslim Personal Law in India is an Islamic term, which designates the rules and regulations governing the lives of Muslims derived mainly from *Quran* and *Hadith*.

Marriage : According to Muslim Personal Law marriage is a civil and dissoluble contract. Stipulation of *Mehr* at the time of marriage is an important aspect of Muslim marriage. Under the *Shariat* the women has a charge over her husband's property for the payment of her mehr even after his death. The *Shariat* allows pre marriage agreements (*kabeinama*). These relate mainly to two aspects (1) regulation of matrimonial life, (2) Stipulation regarding dissolution of marriage. The women through this can demand that if husband enter into a second marriage, he should provide her with a separate residence. Monogamy is rule for women but men are permitted limited polygamy i.e. under certain conditions men can have four wives.

Divorce and Maintenance: According to Muslim personal law a Muslim husband has an absolute right to repudiate the marriage at his will by pronouncing 'Talaq' thrice or pronouncing it during three 'Tuhrs' (period) on his wife. While Hanafi law recognises divorce even if pronounced in the absence of witness or while intoxicated in anger or jest, Shia law requires divorce to be pronounced in front of two witnesses. Muslim women have also got statutory right to divorce within their religious boundaries called *Khula*. Law also recognises divorce by mutual consent called *mubaaarat*. Muslim law allows maintenance to wife after divorce for a period of Iddat i.e. for 3 months following divorce. However as a result of the Shah Bano judgment (The case of Muslim woman seeking maintenance after iddat and the court judgement of giving maintenance to her under Section 125 of the Code of Criminal Procedure 1925 and comment on personal law which led to a lot of controversy), the Parliament enacted the Muslim Women (Protection of Rights on Divorce) Act, 1986. After 1986 the provision of the Code of Criminal Procedure are not applicable to Muslims unless the parties to a marriage expressly agree to be governed by them. The Code of

⁴ Bina Agarwal, "Landmark Step to Gender Equality" The Hindu 25/9/2005, www.thehindu.com/thehindu/mag/2005/09/25/stories/20050925000050100.htm

Criminal Procedure specifies the amount of maintenance to be paid to divorced wife and other persons (children and parents) mentioned under Sec 123. The Supreme Court has tried to clarify lot of ambiguities in the 1986 Act. In *Noor Saba Khatoon v. Mohd. Qasim* AIR 1997 SC 3280, the court held that Sec 125 of Cr P.C. is equally applicable to children of divorced Muslim women.¹ In the *Danial Latifi* case (2001) the court held that a Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife.

Inheritance: The inheritance right of women under the Islamic Law are: the daughter inherits half the share inherited by the son. The wife or if there is more than one wife, then all of them jointly inherit one eighth of the husband's property. A husband on his wife's death takes a quarter or half of his wife's property.

Adoption: Adoption is another important issue amongst Muslims since the Quran forbids adoption.

Custody and Guardianship: The father is the sole guardian of child. However the mother has the prime right to custody of minor children. A Hanafi mother is entitled to custody of male child upto the age of 7 years and upto puberty in case of female. A Shia mother is entitled to custody of children upto the age of 2 years in case of a male child and 7 when child is female.²

1. opcit Sadiq Ahamed Jilani Syed p. 79
2. ibid. p. 58

1.6 Parsi Personal Law:

The Parsis are a small and well knit community. It is through their close interaction with British, that the community evolved as an important economic and political force and thus could negotiate for themselves separate set of personal laws. The Parsis wanted to be protected from some of the principles of English laws. In 1864 the Parsi Law Commission was appointed and based on its report, the two bills were enacted i.e. Parsi Intestate Succession Act 1865 and the Parsi Marriage and Divorce Act of 1865. They secured legal recognition for their customary arbitration forum of panchayat. In an important case decided in 1908 the courts ruled that there is no conversion among the Parsis because while Zoroastrianism is a religion, Parsis are a race and there cannot be conversion to a race.

Marriage: Monogamy is enjoined for both men and women.

Divorce and Maintenance: Husband and wife have similar grounds for divorce (if other party has not been heard of as being alive for a period of 7 years, wilful refusal to consummate the marriage within one year, unsound mind at the time of marriage provided plaintiff ignorant of that fact at the time of marriage, pregnant before marriage by another male, sentence of seven years or more, entering into another religion). However wife has additional ground if her husband forces her into prostitution. By the Parsi Marriage & Divorce (Amendment) Act 1988 divorce by mutual consent was introduced.

The wife has a right to maintenance but the amount cannot exceed one fifth of husband's income. The order of maintenance can be rescinded if the woman remarries or is unchaste. The community has maintained its hold over the matrimonial matters by retaining the jury system introduced in 1865. In the Bombay High Court, the Parsi Matrimonial Court is constituted twice a year and functions for about 9 weeks during each term. The Act empowers the court to settle wife's property for the benefit of children in case a ground of adultery is proved against her in a petition filed by her husband.

Inheritance: There are separate rules for devolution of the property of Parsi men and women. On the death of a Parsi intestate male his widow and son take double the share of the daughter. His father takes the equivalent of the half of the share of the son and the mother takes the equivalent of half the share of daughter. The property of a Parsi intestate women devolves equally on her husband, son and daughter.¹ In 1991 by amending the succession laws, the discrimination between female and male descendents was abolished.

Adoption and Guardianship: Adoption is not permitted. The Guardians and Wards Act, 1890 regulates guardianship. It lays down that father's right to guardianship is primary. But the Act gives discretion to the court and provides that court must bear in mind the welfare of the child.

1.7 Christian Personal Law:

The Christian community is marked by its diversity, (1) The orthodox churches of West Asian traditions i.e. Syro Malabar, Syro malankara, the Mar Thoma Church etc. (2) The Roman Catholic Church of Latin rites. (3) Various reformist churches of Protestant traditions now considered into the churches of South India (CSI) and the Church of North India (CNI). There also exists a large population of Christians among various tribes particularly in northeast region. These tribes are not governed by the Christian personal law.

Marriage : Monogamy is enjoined for both men and women.

Divorce and Maintenance : Under the provisions of the Indian Divorce Act 1869, the husband could obtain divorce if his wife has committed adultery but wife has to prove two offences on the part of

¹ Archana Parashar, Women and Family Law Reform in India UCC and Gender Equality (Sage Pub. Ltd., New Delhi, 1992) p. 290

husband (i.e. incestuous, bigamy, marriage with another women, cruelty, desertion, conversion from Christianity and rape , sodomy or bestiality with adultery) however after considerable demand by the community and the women's movement the law has been amended. Indian Divorce (Amendment) Act 2001 grants equal right to women. The Act incorporates adultery, conversion to another religion, unsound mind for a continuous period of not less than two years, suffering from incurable form of leprosy or any communicable disease, not heard of being alive for 7 years, marriage not being consummated, deserted the petitioner for at least 2 years immediately proceeding the presentation of the petition treated with cruelty as grounds of divorce. Rape, sodomy or bestiality are additional grounds of divorce given to wife. The Act also provides for dissolution of marriage by mutual consent.

The court cannot grant maintenance worth more than one fifth of the husband's property if the divorce was obtained by the husband on the ground of his wife's adultery and wife is entitled to some property then the court has discretion to settle that property for the benefit of children or husband.

Inheritance : For Inheritance Christians are regulated by the Indian Succession Act 1925.

Adoption and Guardianship: Adoption is not permitted. Guardianship is regulated like Parsis by the Guardians and Wards Act. The Juvenile Justice (Care and Protection) Act, 2000 now provides for adoption of orphaned, abandoned, abused or neglected children irrespective of their religion.

1.8 Customary Laws of Tribals

There is no codified family and inheritance law for tribals. They are governed by customary laws, which varies from region to region and tribe to tribe. Some features are given below; however it may be noted that there is great variation amongst different tribal communities.

Marriage : Amongst tribals, marriage may be by exchange between families of boy and girl, by competency of service to the bride, by capture due to resistance, by purchase or by elopement.¹ Payment of bride price is a common practice, child marriage is not known amongst tribes.

Divorce and Maintenance: Adultery is one of the main grounds of divorce by the husband. Bride price needs to be returned to the boy's family if the women comes back to her parents but if she runs away due to ill treatment, it is not repaid. However in case of a remarriage after husband's death it needs to be paid back.

¹ G.S. Narwani, Tribal Law in India (Rawat Pub. Ltd., Jaipur, 2004). p.44

Inheritance: Property is generally inherited by the male on the death of the father. All sons inherit equally but in some clans the custom of primogeniture is prevalent as among the *Apatanis* and *noctes*. Daughters and widows do not inherit any landed property.²

1.9 Debate on Universal Civil Code (UCC) : Legal Uniformity or Legal Pluralism:

The diverse sources of Personal Laws, the uneven development within different communities, politicisation of women's rights during colonial rule and the aggressive majoritarianism of recent times provide the backdrop for the debate on UCC

UCC means that there should be common law in the country to regulate the issues like marriage, divorce, maintenance, adoption, inheritance, will and endowment of all the citizens in India irrespective of their religion. It is a matter of debate whether a UCC will ensure national integration and communal harmony. One of the judges of the Supreme Court Justice Kuldip Singh, noted in a case that UCC would strengthen national integration and that the minorities should give up their commitment to the two nation theory and agree to a UCC.¹ Women's organisations had been advocating a compulsory UCC till 1985 but the Shah Bano Judgment seems to be the turning point. There has been a gradual shift within the women's movement to an optional code of reform within personal laws. The reform made by the state in the Hindu Personal Law after independence and the hesitancy on its part to interfere with the personal laws of minority communities invited accusation of charge of pseudo secularism from the Hindu right, and the demand for the implementation of the UCC was raised. The nature of the whole issue changed from questions of gender justice and secular law to imposition of universal code which was perceived by minority as threat to community's identity.

A debate is going on between legal pluralism and legal uniformity. Claimants of legal uniformity offer a model which aims to take the best from the different personal laws and create a uniform civil code that can be gradually instituted with the consent of the minority community. Proponents of legal pluralism on the other hand talk of reforms of personal laws from within the community or a reform of personal laws from above i.e. by the state.

The Delhi based working group on Women's Rights (WGWR) has suggested that an entirely new set of national, secular civil laws be drawn up. The Bombay based Forum Against Oppression of Women (FAOW) has proposed specific gender just legislation in several areas. Among Human rights group, the

² *ibid.* p 44

¹ . See SP Sathe, "Uniform Civil Code Implications of Supreme Court Intervention" EPW Sep 2, 1995, p.2165

Human Rights Law Network (HRLN) has been actively collaborating with other groups in promoting the idea of drafting common legislation.

The All India Democratic Women's Association (AIDWA) which had initially supported the call for UCC retracted on this position. Majlis a women's legal aid group in Bombay has opposed the drafting of UCC and has instead emphasized the importance of initiative to change within religious communities.

The existence of different sets of personal laws are generally perceived as an anomaly within the Indian Legal System. The judiciary has also denounced the existence of different laws for different religious communities. The constitution visualizes the emergence of UCC. But why this could not be implemented? Is it morally just to impose UCC from the above? Does it mean a single law for all? Can we not have different laws for different communities provided they are based on uniform principles of gender and social justice? Having distinct identity and desire to preserve it is not against national integration. Parsis and Christians introduced some reforms in the personal law and reform in Hindu personal laws were initiated by the State. But no significant change has been made in the personal laws of the Muslims. It is being presented as irrevocable. It is being defended as if there exist a clear equation between religious law and community identity.

In 1963 the government appointed a committee comprising Muslim leaders like Humayun Kabir, Hafiz Mohammad Ibrahim, Muzzaffar Hussain and Mohammad Mujib. Tahir Mahmood, formerly of the Faculty of Law, University of Delhi, carried out a survey on the state of Muslim Personal Law in 20 countries and found that Shariat was not applied uniformly in all these countries. Turkey, Cyprus, Tunisia, Algeria, Iraq, Iran do not give Muslim husbands right to divorce his wife unilaterally. A Muslim husband seeking divorce from his wife must apply to the court of law. (For further details see Muslim Politics & National Integration – H.A. Gani 1978 p 115).

This shows that flexibility is possible. But the long history of antagonism between communities, basically communal riots, the Babri Masjid demolition and Gujarat riots, Bombay riots and the attitude and relation of the state towards Muslims has generated fear and reform of the kind that has been possible in Islamic countries has not been possible in India.

1.10 Democratic Norms and Vision for Future:

In a democracy the state is required to promote fair and equal treatment for all. The State should give equal respect and right to all individuals. But it should also respect the various cultural worlds that individuals have created for themselves and which give meaning to their life. No society can tolerate all forms of diversity. As historical beings, we are constituted by our pre judgments, we cannot simply set aside our history. In a liberal democracy the rights mentioned in the constitution are used to draw the boundaries of "permissible diversity" (Parekh 1994: 215-217). It suggests that principle of equal treatment needs to be balanced with the cultural rights and right to religion. By using this logic certain practices are to be disallowed in view of concern for equal treatment. In matters of personal laws the reform must be initiated keeping in mind the respective areas in which religious influence is strong. They need to be demarcated with sympathy, understanding and vision. The Special Marriage Act 1954 provides special form of marriage which can be taken advantage of by any person in India irrespective of the faith which they profess. Under this Act the ground on which a petition for divorce may be presented to the district court either by husband or wife are the same.

Questions thrown up by the UCC are political but related to the concept of citizenship, secularism, community identity, women's movement, democracy and pluralism. In a society where religion influences individual lives deeply and where secularism of society and religion has not occurred to any significant degree, religion is likely to influence actions of the people.

The real question is just how do we organize ourselves so that the many voices can be heard, so that no single dominant culture imposes itself. Equal treatment of different religious groups require sensitive balancing of the different claims taking into account structural inequalities between majority religion and minority ones.

Summary

Personal Law of Different Communities in India

Religion	Marriage	Divorce	Maintenance	Adoption	Inheritance
Hindu	Monogamy for both men and women	Mutual Divorce allowed. Same grounds for Men and women	Maintenance provision exists.	Allowed	After 2005 rights extended to both son and daughter even on agricultural land
Muslims	Polygamy for Men (can have 4 wives), Monogamy for women	Husband triple Talaq, wife Khula	Maintenance for iddat i.e. 3 months after divorce only.	Not Allowed	Different provisions for boy and girl.
Parsi	Monogamy for both men and women	Mutual divorce allowed. Laws same for both men and women.	Maintenance provision exists.	Not Allowed	Indian Succession Act
Christian	Monogamy for both men and women	Divorce law amended after 2001. Mutual divorce allowed.	Maintenance provision exists.	Not Allowed	Indian Succession Act

Self Assessment Questions:

1. Critically examine the provisions of Personal Law system in India.
2. In Indian Democracy how personal law helps to accommodate interests of different communities.
3. Do you think personal law of different community are gender just. What methods you would suggest to make them gender just?

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Unit II
Brief Understanding of the laws applicable in India

Consumer and the Law: An Interdisciplinary Perspective

*Biswajit Mohanty**

This article deals with

- The concept of a consumer: who is a consumer? How do we conceive a consumer in relation to human rights?
- List of rights of a consumer.
- The legal avenues that are provided by the Consumer Protection Act 1986, as enacted by Parliament, to protect consumer rights.
- The powers and jurisdictions of the Consumer Councils and Commissions and Forums in India.
- The procedures that help consumers to file complaints if consumer rights have been violated.
- Avenues of relief available to consumers

Introduction

The twenty first century has globalised the consumer. New avenues have been opened all over the world, which can be used by capable consumers to consume products and utilize services of global actors. Thus globalisation has provided a new dimension to the 'good life'. A good life is associated with a plenitude of choices available to any consumer in the market. Consumers have become 'heroes of autonomy'. They have autonomy to choose from a large number of options available in the market. Entrepreneurs now abound who can make products according to the preferences of the consumers, flooding them with choices. The entrepreneurs herself now become 'consumer of opportunities'². Entrepreneurs either form companies or companies hire their services. In this way consumer, entrepreneur and company form the base of the market economy and provide services and goods to society. A market society, it is argued, is the best option available for a consumer to lead a good life where she is free to choose as an individual. Critics point out that in a market society it is impossible to form associations and establish specific relation with others³. A consumer cannot be treated as an isolated being. She is related to the legal, economic and political system in several ways.

1. Defining the Consumer

In common parlance, the terms customer, buyer and consumer are used synonymously. But conceptually they are different.

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² Michael Walzer, 'The Idea of Civil Society: A path to social reconstruction', in Carolyn M Elliot (ed) **Civil Society and Democracy**, New Delhi, Oxford University Press, 2003, P.69.

³ Ibid

- *A Customer is an individual who is a potential buyer and a consumer. That is why Mahatma Gandhi as early as 1934 had urged, “A customer is the most important visitor in our premises. He is not dependent on us. We are dependent on him. He is not an interruption in our work. He is the purpose of it. He is not an outsider on our business. He is a part of it. We are not doing a favour by serving him. He is doing us a favour by giving us an opportunity to do so”⁴.*
- *A Buyer is a person who shows traditional purchasing behaviour, that is, she purchases articles without understanding what is good for her. She is not at all concerned about the product, the services that are available to her, the quality of the product and the potential effect it would have on the health of individuals and society as a whole. She is dependent on the shopkeeper’s wisdom and mercy for returning defective goods.*
- *A Consumer is a person who shows rational purchasing behaviour. She is completely aware of and informed about the products and the services that are available in the market. She is also aware of the bad and good effect they have on the individual consumer as well as society as a whole. She also knows what her rights are. It is these rights that define a consumer and relate her to other individual consumers, and to the law, economy and politics.*

In the following section, taking the idea of ‘right’ as a category I shall attempt to conceptualise the consumer.

2. Conceptualising the Consumer

2.1. The Consumer as a Contractive or Private Person

- *The Contract theory argues that the consumer is a rational person capable of making informed choices. It is the activity of choice that makes them autonomous⁵. Once choices are made and a formal contract is entered into she is entitled to a right.*
- *In legal parlance this is called ‘claim-right’. The consumer is entitled to exercise, her rights against the seller/company or any other institution that provides services with a proper contract or agreement. Since the consumer is the holder of a right it becomes a duty on the part of the other contracted party to respect the right of the individual. This right makes a consumer sovereign. Claim-rights give people freedom from the need to ask for favours or concessions.*
- *The claim theory of rights treats every consumer as equal in terms of their capacity to make rational choices and sign an agreement.*
- *This definition of consumer as a contractive person is embodied in the Consumer Protection Act (in section (2) (1)(d)) legislated by the Parliament in 1986). The Act defines a consumer as any person who buys any goods for a consideration which has been paid or promised and includes any user of such goods when such use is made with the approved of such person but does not include a person who obtains goods for resale or for any commercial purposes⁶.*

The theory is criticized on the following grounds

⁴ Quoted in Justice Lokeshwar Prasad , Consumer Protection in Santosh Khana Ed. **The Consumer Protection Law and Rights of Consumers**, Delhi, Vidhi Bharati Parishad, 2002, P1.

⁵ Michael Walzer, op.cit. P.69

5. **‘Consideration’** means the price paid or agreed to be paid for purchase of goods.

- *The rights that the consumer enjoys are the product of the contract. The consumer has no rights or claims before entering into a contract. Could she have a right to protest against a restaurant, which is serving bad food without availing the service of that restaurant?*
- *Contractive theory of the consumer overlooks the inequality among the consumers who enters the market. People enter the market with several disadvantages, e.g. physical disability, inequality of resources, income disparity and cultural set ups. In these circumstances what would these unequal consumers do?*

2.2. The Consumer as a Public or Associative Individual

The second definition of the consumer takes into account the relation of a consumer to other consumers and society as a whole.

- In this view the consumer is a public person. The term public is used here to mean ‘what is of common concern’ or what concerns the ‘interests of society’. A consumer is a public person in the sense that she becomes a part of the system by freely engaging herself in different associations and public institutions. She is committed to working with fellow citizens and ‘collectively determining the common destiny’, not for the sake any personal benefits but for the sake of the common good of the society.
- In this public incarnation, the consumer consumes public services. Public services include the provisions and descriptions, which is made available to potential users or to any common person. They are banking, financing, insurance, transport, entertainment, amusement or the purveying of news or other information, education, medical facilities etc.
- The consumer is part of the consumer association that raises public issues. Consumers’ associations should be concerned about the question of efficiency, effectiveness, impartiality, accountability and the participatory dimension of public servants. The consumer associations should take into account the loss and injury suffered by the consumer due to the negligence and try to remove deficiencies in the services of both public and private officials.

In this theory consumer derives rights from *interest*.

- An individual is said to have rights whenever an interest of hers is regarded as sufficiently important in itself to justify holding others to be under a duty to promote that interest in some way. On this account rights and duties are not simply correlative⁷; rather the former are thought of as generating the latter.

The theory is criticized on the following grounds.

- The main problem of this theory is that, it is difficult to separate private interests from public interests. For example, does encroachment on public land and subsequent construction on that piece of land generates individual right over that piece of land? In case this generates a right is it in the interest of the public, whichever way we define it?
- Second, if only interests generate rights then it would follow that person who does not have any interest could not enjoy any right. For example, a person has no interest in drinking a soft drink, does she forgo the right to fight against it when it poses a health hazard?

2.3. The Consumer as an Idea Consuming Person

We are living in a globalised world. The process of globalisation is integrating the world today.

- *In the present day context the globalisation theory argues that hindrances should be reduced so that the process could offer a number of opportunities to entrepreneurs and trans-national*

⁷ Jeremy Waldron, Rights, in **The Blackwell Encyclopaedia of Political Thought**, (ed) David Miller, Oxford, Blackwell, 1991, P444.

- and national companies to play an important role by providing choices to individuals thereby making life comfortable for them.*
- *The definition of globalisation is not restricted only to the question of labour or capital. In another sense, globalisation means transmission of ideas across the boundary of the nation-states. It is possible due to intensification of communication network.*
 - *The consumer thus not only consumes the products or goods or services she also consumes the ideas accompanying these products. Thus we have what is called a consumerist culture. Consumerism has been used in a cultural context that helps to propagate the dominant idea of consumption. In this sense consumerism has been used as a pejorative term, but consumerism as an idea has to be made an enabling concept in the globalised world.*
 - *The role of the consumer as a deliberative individual becomes important in bringing about transformation in the realm of ideas..*

2.4. The Consumer as a Deliberative Person

This theory argues that

- The consumer is an opinion forming individual. Opinion is formed through debates and discussions in public spaces, through newspapers, books, reviews and journals. The opinion that is formed through this process is called the public⁸. In this sense the public is a deliberative body that tries to change or modify 'public reason' through debate and discussions.
- The task of the consumer is to protect public and individual interest by not only forming associations but also through public deliberation.
- The consumers 'must reason beyond their narrow self-interests' and consider 'what can be justified to people who reasonably disagree with them'. They debate not about bargaining but about the designing of deliberative procedure through which a 'public spirited perspective' emerges to achieve the common good of society⁹.
- Every 'public-spirited' consumer should follow the principles of reciprocity, publicity and accountability. The principle of reciprocity means 'the capacity to seek fair terms of cooperation for its own sake'¹⁰. In the deliberative process reciprocity is accompanied by the two other principles of publicity and accountability. This means that 'the reason that officials and citizens give to justify political actions, and the information necessary to access those reasons, should be public'. Reasons for keeping something secret and private should themselves be publicly announced¹¹.

As a deliberative person the consumer derives her right as a human being. This is called the theory of *Human Rights*.

- The consumer is entitled to rights as a human being. The case for human rights rests on the premises that there is a commitment to fundamental values such as freedom, autonomy and equality of the human beings. Human rights are moral entitlements that can be asserted against private individuals and private associations as well as political institutions.
- These rights ensure minimum entitlements and the government and the legal system must protect and secure these rights.
- Every consumer thus enjoys human rights, which include interests and claims.

⁸ Juergen Habermas, **The Structural Transformation of the Public Sphere: an Inquiry into a Category of Bourgeois Society**, trans by Thomas Berger and Fredreich Lawrence, Cambridge, MIT Press, 1989.

⁹ Amy Gutman and Denis Thomson, **Democracy and Disagreement**, quoted in Stephen Macedo (ed), **Deliberative Democracy**, Oxford, Oxford University Press, 1999, P7-9.

¹⁰ Ibid.

¹¹ Ibid.

3. The Rights of the Consumers in India

To protect the human rights of the consumers in India the Parliament passed the Consumer Protection Act in 1986. Subsequently three amendments were enacted in 1991, 1993 and 2002.

The following rights have been enshrined in the Act to protect the consumers from any kind of harassment¹²

- The right to be protected against the marketing of goods and services which are hazardous to life and property;
- The right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be, so as to protect consumer against unfair trade practices;
- The right to be assured, wherever possible, access to a variety of goods and services at competitive prices;
- The right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums;
- The right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and
- The right of consumer education.

The last right is the basic premises through which the other rights could be protected. The right to consumer education would help consumers to be aware about the channels available for the protection of rights, ways to approach the right institutions to file complaint, the content of the complaint, the relief that an aggrieved consumer can have, the powers of the commissions and the forums and the ways that aggrieved consumers can be compensated through these institutions and the role of judiciary apart from these forums in protecting the rights of consumer.

4. Channels for Registering Complaints

The channels can be divided into two categories:

- *The first category is called the legislative category¹³ and the second is the adjudicatory category.*

4.1. Legislative Channels

The legislative channels are National Consumer Protection Council, State Consumer Protection Councils and District Consumer Protection Council. The National Council operates from New Delhi. The other two operate at the State and district level respectively.

4.2. Members of National, State and District Councils

- National Council has a chairperson, who is the Minister-in-charge of the consumer affairs in the Central Government.

¹² Ved Prakash Kalra, 'Consumer Protection Act, 1986: An Excellent Social Benefit-oriented Legislation' in Santosh Khanna (ed) **The Consumer Protection Law and Rights of Consumer**, Delhi, Vidhi Bharti Parishad, 2002, P5.

¹³ *The first category takes into account the difficulties that arise out of the implementation of the Act and subsequently suggests for amendment of the 1986 Act. The second category pronounces judgment if someone files a case for compensation or any other consumer related problem.*

- The Central Consumer Protection Council consists of 150 members. These members represent various consumer organizations and interests, such as, farming, trade and industry, women etc under the chairmanship of the Minister of Department of Civil Supplies. It has to meet once in a year.
- The State Commission has a chairperson who is the Minister-in-charge of consumer affairs in the State Government. The official and non-official members are to be recruited by the state government as per the need. The members have to meet at least twice a year.
- The Collector of the district will head the District protection council with such number of official and non-official members representing different interests as the State Government may prescribe¹⁴.

The councils meet to discuss the difficulties that arise during the implementation of the provisions of the Act or to find out any lacunae in the Act. Subsequently attempts are made to amend the Act suitably.

4.3. Powers

- According to the Act the Commissions have the power to award imprisonment and fine.
- They can punish the offender by imprisoning “which shall not be less than one month but which may extended to three years or with fine which shall not be less than rupees two thousand but which may extend to ten thousand”¹⁵.

4.4. Adjudicatory Channels

The adjudication channel is three-tiered body. These bodies operate at the national, state as well as at the district level. They adjudicate the disputes between consumer and the company or any other public and private institutions that offer services to the consumer for a price.

4.4.1. National Consumer Dispute Commission

This has been created for the speedy and inexpensive adjudication of consumer disputes. The consumer can approach the commission for hearing original complaints, appeals and revisions.

4.4.2. Members

- A President, who is or has been a judge in the Supreme Court, heads the National Commission. The appointment should be made in consultation with the Chief Justice of the Supreme Court.
- It has four members from different fields such as economics, law, commerce, accountancy, industry, public affairs and administration¹⁶. Out of these members one has to be a women member.

4.4.3. Powers of the Commission

The National Commission has

- The power for pecuniary jurisdiction. The limit of admitting the case is above rupees five crores.
- It can hear cases of original, revision as well as appellate jurisdiction.
- It has the power to review and to recall an *ex parte* order.
- It has the power to pass an interim order.

¹⁴ According to the 2001 Amendment Act.

¹⁵ Section 27.

¹⁶ The head quarter of the National Commission is in Delhi. The first chairperson of the Commission was Hon’ble Justice V Balakrishna Eradi.

- Following the amendment carried out in 2002 (wef 15.3.2003) under section 22C, the National Commission would be able to hold Circuit Benches in the interest of the consumers.
- It has administrative control over the State Commissions and the District forums.

4.4.4. Procedure for Selection of the Members

A selection committee would select the judicial as well as non-judicial members. The non-judicial members should have the following qualifications:

- They must be less than thirty five years of age
- Must possess bachelors degree from any recognized university
- Must be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs and administration.

4.4.5. Tenure

- *The term of the members of the National Consumer Forum is five years or till they attain the age of 65, whichever is earlier.*
- *To utilize the experience of the member, a member who is holding office and seeks second term of appointment should appear before the Selection Committee again.*
- *The Central Government has the power to remove the President or any other members of the Commission.*

4.4.6. Benches and Circuits

The Amended Act of 2002 has provision to provide additional benches in the State as well as at the National level if the forums are over-burdened.

- The Bench will consist of the President and one or more members as the President would deem fit. In the Bench “ not more than fifty percent of the members” shall be from amongst persons having judicial background¹⁷.
- In case the members of the Bench differ in opinion on any point, the issue would be decided by a majority decision.
- In case members are equally divided, the point would be referred to the President. She shall either hear the argument himself or refer the case for hearing by one or more members. The decision would be taken again by majority opinion of the members who have heard the case including those who first heard it.

4.4.7. Powers of Benches and Circuits

- Benches have the power to transfer cases from one District Forum to another and from one State Commission to another State Commission.

5. State Consumer Dispute Commission

The State Commission is established by the State Government by a notification and operates at the state level.

¹⁷ Sections 16 and 20.

5.1 Procedure for Selection and Tenure of Members

- A President who is or has been a judge in the High Court heads the Commission. Before appointing the President the state government has to consult the High Court. Secretary of the Law Department and Secretary in charge of Department dealing with consumer affairs of the state are two members of the forum. Of these two members one has to be a woman.
- Every member shall hold the office for a term of five years or up to the age of sixty-seven whichever is earlier and shall not be eligible for reappointment.
- The selection procedure and qualifications of members of the State Commission are same as that of the National Commission.

5.2. Powers

- The pecuniary jurisdiction of the State Commission is rupees one crore. It has the power to imprison or fine.
- It has the power to form additional Benches if the Commission is over-burdened with cases.
- The State Commission according to Section 22C has the power to transfer cases from one District Forum to another District Forum. The State Commission has no power to review and recall an *ex parte* order.

6. District Consumer Dispute Forum

The State Government has the power to establish Forums in every districts of the State with a prior notification.

6.1. Members and Procedure for Selection

- *A former district judge, who is designated as the President, heads the Forum. There would be two additional members to accompany the President- one of the two members must be a female member.*
- *The State Government appoints the members of the forum. The qualifications and procedure for selection of the members is same as that of the members of State and the National Commission.*

6.2. Powers

- The District Forum has the power to admit cases up to twenty lakhs¹⁸.
- It has the power to imprison or fine.
- Offences under the Act can be tried by the District Forum, State Commission or National Commission summarily.

7. Procedure to file Complaint

The Consumer Protection Act 1986 under section 11(2) states that

¹⁸ The amount was earlier five lakhs. But the Amended Act 2002 has enhanced the amount.

- *The consumer has a right to file a complaint “where consumer resides” or where “the cause of the action, wholly or partly, arise”¹⁹.*
- *Under 24-A of the Consumer Protection Amended Act 1993, the District Forum, State and National Commission shall admit a complaint within the two years of the happening of the case.*
- *There is a provision for condoning delay by moving the court.*
- *The complaint has to be written in a narrative form on a full size paper.*
- *No court fees, stamp duty or any other charges are payable for filing the complaint in the Commission or the Forum. A laboratory fee has to be paid by the complainant if the court feels that the sample has to be tested in a laboratory.*
- *The consumer if wins the case, gets compensation in the form of cash that includes the expenses incurred during the trial period.*

7.1. What the Complaint should contain

- The name, description and address of the complainant
- The name, description and address of the opposite party or parties, as the case may be, so far as it can be ascertained
- The facts relating to the complaint and where and when these arose
- The documents in support of the allegations contained in the complaint
- The relief that the complaint claim.

7.2. Where to file Complaint

- The complaint can be presented in person before the National, State Commission and District Forum.
- The complaint can be presented also in the court through a duly authorized agent or can be sent by post. The complainant can keep the original document and provide either self-attested copies or attested copies to the court. On the date of hearing the original documents could be produced before the court.

7.3. When should one file a Complaint?

The complaint should be filed when any of the following incidents have occurred

- An unfair trade practice or a restrictive trade practice has been adopted by any trader or company

Explanation: *Restrictive trade practices* means when a trader or a company for the purpose of sale, or for the purpose of promoting the sale, uses or supplies any goods or for the provision of any service, adopts any unfair practices²⁰. The unfair practices could be, *first*, the practice of making any statement, whether orally or in writing or by visible representation; *second*, the publication of any advertisement in any newspaper, or in any printed form, for the sale or supply at a bargain price, of goods or services that are not intended or be offered for sale or supply at the bargain price; *third*, the offering of gifts, prizes, or other items with the intention of not

¹⁹ In **Union of India v. KK Bhatt 1991 (2) CPR 578** case it has been clearly stated that usually a *cause of action* arises where the services are hired or goods are purchased or where the services are rendered or the goods are supplied or delivered. In this case a train ticket was purchased in New Delhi to travel from Mumbai to Delhi. It was held by the Court that the cause of action arose in New Delhi. In another case, **Consumer Protection Council of Kerala Vs. Hindustan Ciba Celgy Limited**, it was held that the place of purchase of goods or places of services rendered is sufficient for the cause of action and place of manufacture is not considered necessary for this purpose. Cited in Kailash Rai, **Public Interest Lawyering Legal Aid and Para-Legal Services**, Allahabad, Central Law Publications, 2001. P 351.

²⁰ The Amended Act of 1993 defines *unfair trade practice* as that practice which requires a consumer to buy, hire or avail any goods or services as a condition precedent for buying, hiring or availing of other goods or services. For example, a gas agency that forces a customer to buy cooking unit as a pre-condition for providing gas cylinder.

providing them as offered or creating impression that something is offered or offered free of charge while its cost is fully or partly covered by the amount charged in the transaction as a whole; *fourth*, conducting any contest or games of chance or skill for the purpose of promoting the product; *fifth*, the sale or supply of goods intended to be used or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by any competent authority, like the court or any technical institutions, relating to the performance, composition, contents, design, construction or packaging²¹ of the product.

- The goods bought by the consumer or agreed to be bought by the consumer suffer from one or more defects

Explanation: The Act states that ‘goods’ means ‘every kind of movable property that includes stock and shares, growing crops, grass and other things attached to or forming part of land, which are agreed to be severed before sale or under the contract of the sale’²². Defect means ‘any fault, imperfection, or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods’²³.

- The ‘services’ hired or availed of or agreed to be hired or availed by the consumer suffer from any deficiency in any manner.

Explanation: According to the Act ‘Service’ means service of any description, which has been made available to the potential users. The consumer should have paid or have promised to pay the amount for the service that would be availed by the consumer. It also includes ‘any’ beneficiary of such services. If a person avails of the services free of any charge, she would not be considered as a consumer. The Lucknow High Court in the *Lucknow Development Authority* case has pointed out that the word ‘any’ has been used in wider sense of the term that extends from ‘one to all’²⁴. Subsequently the Supreme Court has upheld this judgment. This means that all the essential public services that are provided by the government or any private company or institution are included in this definition. It is clarified further in *Indian Medical Association v. V.P. Santha and others case* that the present definition of service covers medical facilities and services. Similarly in *Manisha vs Sambalpur University* case the High Court has ordered that the educational institutions, for example, the universities and the examination system of the universities, are included in the present definition also.

Deficiency means any fault, imperfection, defect or inadequacy in the quality, nature and manner of performance of service by a competent person, required for the maintenance of a product or good sold to the consumer, that is covered by the terms and conditions of a contract²⁵.

- A trader who has charged for the goods mentioned in the complaint a price more than the price fixed by or under any law for the time being in force or displayed on the goods or package containing such goods.
- Goods which will be hazardous to the life and safety when used, are sold or offered for sale to the public in contravention of the provisions of any law for the time being in force ‘requiring traders to display information in regard to the contents, manner and effect of use of such goods’.

²¹ Ved Prakash Kalra, Op Cit p8

²²Section 2 (1)(i) of the Act read together with section 2 (7) of the Sale of Goods Act 1930.

²³Section 2 (1) (f).

²⁴ Quoted in G R Gupta, ‘Consumer Protection in India’ in Santosh Khanna Ed op cit p.25. This means the definition covers all essential services provided by the government or any private company or institution.

²⁵ Ved Kalra. Op.Cit.

7.4. Hearing

- On the receipt of the complaint the commission sends a copy to the opposite party. The opposite party presents her case in writing. The court gives the earliest date on which the complainants have to appear before the court. On the stipulated day of hearing any party is found absent the judgment is given in favour of the opposite party present in the court.
- After hearing the case the redressal agency pronounces the verdict and a copy is provided to the parties free of cost.
- An aggrieved party, if the judgment is of the District Forum, can appeal before the State Commission within thirty days from the date of order. Similarly, an appeal from the judgment of the State Commission can be filed before the National Commission. The Supreme Court can revise orders of the National Commission.

8. Reliefs to the Consumer

The forum and Commissions can direct the opposite parties to do one or more than the following things

- To remove the defects pointed out by the appropriate laboratory from the goods in question
- To replace the goods with new goods of similar description which shall be free from any defect
- To return to the complainant the price, or, as the case may be, the charges paid by the complainant
- To pay such amount as may be awarded by the court as compensation to consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party
- To remove the defects or deficiencies in the service in question
- To discontinue the unfair trade practice or the restrictive trade practice or not to repeat them
- Not to offer hazardous goods for sale
- To withdraw the hazardous goods from being offered for sale
- To provide adequate costs to parties
- To compensate for harassment or mental agony and oppression²⁶.

Conclusion

To protect the rights of the consumer it is not enough that the legal system alone can fight for the cause of the consumer. It has to be a concerted effort of the consumers, consumer associations and other deliberative agents who should come together to fight to protect their interest. The deliberative method is one of the methods to fight against the violation of rights today. Consumer movement should be taken up at the local regional, national and international levels to educate the masses about their rights as consumer. The motor force of societal transformation should be the students who would not only learn in their classes about the rights but should also take it out side the boundaries of the educational institutions to literate the masses legally as well as politically.

It is not an easy task. It requires sacrifices not only from the individuals but also from different consumer organizations. As Bentham visualized, “society is held together by the sacrifice that men can be induced to make for the gratification they demand”²⁷. The greatest task before the legal system and the government in the era of globalisation is to force them to make sacrifices when they might get away with not doing so. But when the consumers are making sacrifices in small or big ways, the noblest task of the government and the legal system would be to respect that endeavour.

²⁶ Ved Prakash Kalra Op Cit. p 12.

²⁷ Jermy Bentham, **Psychology of Economic Man**, quoted in Ian Shapiro, *The Moral Foundations of Politics*, Delhi, Aakar Books for South Asia, 2004, P23.

Key Questions

- Do you agree with the proposition that a consumer is an individual who consumes only goods and services? Critically analyse the concept of the consumer.
- What are the channels that are available to a consumer in India to exercise her rights?
- What are the powers of the National and State Commission and the District Forum in India?
- What is the procedure to file complain by a consumer?

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Unit III
Access to Courts and Enforcement of Rights

Legal Services Authorities Act: Free Legal Aid and ADR systems

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Structure

1. Introduction
2. Free Legal Aid
 - 2.1 History of Legal Aid in India
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 - 3.1 ADR Mechanisms
 - 3.2 ADR in India
4. Conclusion
5. References
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1. Introduction

In India, concern for legal aid to the poor and to the needy is continuously on the rise. Legal assistance and free legal advice is the only way to guarantee equal protection of law to the poor. In a developing state like India where a majority of the population is unable to protect its interest, it is the duty of the State to enable the poor to secure their legal rights. The courts are used by the richer sections to assert their legal rights while the poor remain deprived. Added to this is the fact that our judiciary is over-worked. This aspect is increasingly being a point of concern. Delay in disposal of cases by the judiciary further increases the cost of litigation. Alternate dispute redressal mechanisms are therefore being emphasized upon. The fact of the matter is that mere existence of laws does not guarantee the enjoyment of those rights by the citizens. Free legal aid and ADR (Alternate Disputes Redressal) systems are steps towards enforcement of those rights. The statutory support in this direction was provided by the Legal Services Authorities Act, 1987. It also sought to provide a uniform pattern to these legal services all over India. It came into effect from 9th November 1995.

The Legal Services Authorities Act, 1987, Act 39 of 1987, (**amended in 1994 and 2002**) sought to constitute legal service authorities throughout the country to provide free and competent legal aid to the poor so that justice is not denied to any citizen for economic or other reasons and to organize Lok Adalats as an alternate mechanism to secure equal and speedy justice to all. It is a composite Act concerning both legal aid and Lok Adalats with the intention of promoting just distribution of legal services. The Act is based upon **Article 39A** of the Constitution of India which was incorporated in Part-4 of our Constitution by the 42nd Amendment of 1976. The Directive Principle of State Policy reads as under:-

“The state shall secure that the operation of the legal system promotes justice, on the basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to anyone by reason of economic or other disabilities.”

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The Directive wants to ensure that our legal system provides justice to all whether rich or poor, empowered or marginalized. It directs the State to introduce required legislation to provide legal awareness and legal aid, thereby mitigating discrimination arising out of economic or other disabilities.

2. Free Legal Aid

2.1 History of Legal Aid in India :

The history of legal aid was first known to be found in France as early as 1851. An enactment was introduced for providing legal assistance to the indigent. The British government in 1944 appointed the Rushcliffe Committee to study the existing facilities in England and Wales for providing free legal services to the poor and make recommendations for improvement.²⁸

On March 1949, the Government of Bombay appointed a committee under the Chairmanship of Justice N.H. Bhagwati popularly known as Bombay Committee. It gave several recommendations which were not implemented. The committee made it clear that state intervention in this area was an imperative. Simultaneously with the Bombay Committee in Calcutta, there was a committee constituted by the Government of Bengal under the Chairmanship of Sir Arthur Trevor Harries, retired Chief Justice of Calcutta High Court to examine availability and administration of legal service in the state.²⁹

Government of India has been discussing this issue in various Conferences right from the Fifties. At Law Ministers Conference held in September, 1957 the need for establishing Legal Aid Schemes by states was discussed. In 1958 Law Commission of India, in one of its reports, recommended action to initiate legal aid. In 1960s some guidelines were drawn up for free legal aid. In various States, Legal Aid Societies/ Boards, Law Departments started various legal aid schemes. The Report of the Expert Committee on Legal Aid titled *Processual Justice to the People* and chaired by Justice V R Krishna Iyer submitted in 1973 underscored the need for legal aid.

In 1976 the Constitution of India was amended to incorporate the provision of free legal aid in chapter 4 of the document. A Committee headed by Justice P.N. Bhagwati in its report (*Report on National Judicare Equal Justice – Social Justice* in August, 1977) elaborated on the need for legal aid and advice. *It is considered to be the blueprint for legal aid schemes in India.*³⁰

With the aim of providing free legal aid, the Government of India on 26th September, 1980 appointed a committee known as **Committee for Implementing Legal Aid Schemes (CILAS)**. Justice Bhagwati was the Chairman of this Committee. This Committee monitored and implemented legal aid programmes all over the country on a uniform basis.

In 1987 the Government of India enacted the National Legal Services Authority Act. It came into effect on 9th November 1995, giving legal services to the poor a *statutory recognition*. The National Legal Services Authority was formed as the central nodal body, represented by such bodies at state, district, and taluk level, thereby making it a unique democratic structure for social redress.

It may be said at the end that although the demand for legal aid began as a remedial legal service program which recognized need of defending an accused facing trial for an offence punishable with death sentence, since seventies the demand changed to preventive legal service program aimed at checking litigation and helping the poor, if entangled in legal cases.

2.2 Rationale behind free legal services in India:

²⁸ <http://www.goforthelaw.com/articles/fromlawstu/article20.htm>

²⁹ S. Muralidhar: *Law, Poverty and Legal Aid – Access to Criminal Justice*, New Delhi, Lexis Nexis 2004, pp. 37-39

³⁰ Mathew P.D.: *Free Legal Services To The Poor*, New Delhi, Indian Social Institute, 2003, p.6

- **Lack of legal awareness:** In India, a large number of people are illiterate. They do not understand laws. Ignorance about laws drag them towards legal troubles for many a time they cannot anticipate problems. Added to this is the fact that legal language is so complex that even the educated people cannot understand it easily. No step has been taken by judicial experts to remove this impediment by simplifying legal language. Laws should be such that anyone reading can understand them. So long as this is not done it remains the duty of the government to render free legal service to people.
- **Legal consultation is expensive:** Since common men do not understand laws and legal proceedings they need to consult legal experts. They are not self-reliant in matters of law, so they cannot enjoy rights according to the laws. Ignorance of the poor people enables the lawyers to charge fees as they wish. Under such circumstances the poor, who cannot pay such exorbitant fees, become helpless. For them law ceases to be the protector. Due to economic disabilities they cannot avail of the legal services.
- **Delay in disposal of cases:** Increasing backlog and delay in disposal of cases has become a genuine problem. The more time it takes, more is the cost of litigation. Moreover due to delay under trials languish in jails for years. Delayed justice leads to denial of justice. Yet for the judiciary the challenge is not only to dispose cases speedily but also to dispose them effectively. The problem can be addressed by reducing the burden on courts by promoting alternative dispute redressal mechanisms.

It was in this backdrop that the Legal Services Authorities Act was adopted. *Significant thrust in this direction came in seventies and eighties when civil rights and civil liberties became a matter of major concern in India*. Earlier the demands for justice were not mass based, and could not evoke response. The miseries of people entangled in legal process, deprivation of personal liberties and injustices meted out to the people in jails, lockups made the demand for civil liberties so powerful that it could not be ignored any longer.

Our Constitution is committed to equality and personal freedom. Free legal aid and Lok Adalats seek to fulfil these commitments. In 1979 the Supreme Court in *Hussainara Khatun v. State of Bihar* case (AIR 1979 SC 1360) held that free legal aid is implicit in guarantee of **Article 21** (Right to life and personal liberty) and **Article 14** (Right to equality). In this case Justice P.N. Bhagwati and Justice D.A. Desai found that some of the under-trials have been in jail for a period more than the maximum term they would have been sentenced, if convicted.³¹ It violates the personal liberties of the individuals as well as right to equality of citizens. Since they are poor they cannot avail legal consultation like others and languish in jails for years. In para 9 of the judgment it was recommended that comprehensive free legal service is necessary. *For there is a mandate for equal justice under Article 14 and personal liberty under Article 21 as well as a compulsion of constitutional directive under Article 39A*. The argument is that a person accused has the right to prove his innocence. State must provide that if he is unable to secure it on grounds of indigence. Two years later, in the case of *Khatri v. State of Bihar* (AIR 1981 SC 928), Justice Bhagwati while referring to apex court's mandate in the *Hossainara Khatun* case reiterated that the State cannot deprive its citizens their constitutional rights on grounds of lack of funds or poverty.³² **Article 22** also urges that a person arrested should be allowed to consult and be defended by a lawyer of his choice. To promote social justice among the poor and downtrodden it was obliged to respond to the needs and aspirations of the poor and establish a just social order.

2.3 Provisions regarding free legal aid:

Free legal aid is provided in civil, criminal, revenue and administrative cases. It may be said that in civil cases provisions are made for indigent persons. Indigence is personal economic condition. Free legal service is meant for poor, women, children, a member of SC/ST, a person who is mentally retarded or disabled, an industrial workman, a victim of disaster, flood, earthquake, ethnic violence, etc. Although it is meant only for the needy, it is sometimes misappropriated. In criminal cases legal aid is provided in certain cases as mentioned in Section 304 of Cr.P.C. It was in *Gopalachari v. State of Kerala* case (AIR 1981 SC 674) in 1981 right to legal aid was extended to a criminal proceeding under Section 110 Cr.P.C. In criminal cases if the accused had already engaged lawyers in trial and he is not indigent, he cannot claim legal aid at State expenses.

It can be obtained from any court up to Supreme Court, from any Tribunal, Legal Aid Cells, or even a government department. The accused cannot insist upon services of a particular lawyer. He has to accept the assistance as

³¹ Haryana State Legal Services Authority: *Brief Resume of Legal Services Authorities Act 1987*, <http://hslsa.nic.in/resume.htm>

³² *ibid.*

rendered to him. Aid includes cost of preparing all matters, collecting all relevant documents, all applications connected therewith, providing Advocate for arguing the case, payment of court fee, expense of witness. It also includes preparing appeal paper book, supplying certified copies of orders, notes, judgments, or other documents.

Whether a person is poor is ascertained by his personal income on the basis of an affidavit made by the person. In the case of Supreme court the free legal aid is given to those having annual income less than Rs. 18,000/-. Those belonging to middle income group i.e. annual income more than Rs. 18,000/- but less than Rs.1,20,000/- ,are eligible to get legal aid from Supreme Court Middle Income Group Society on a nominal payment basis.

For obtaining free legal aid, applications may be made to:

(A) In case of Supreme Court: To The Member Secretary, National Legal Services Authority, 12/11, Jamnagar House, Shahjahan Road, ND- 110011.

OR

To the Secretary, Supreme Court Legal Services Committee, 109, Lawyers' chambers, Post Office Wing, Supreme Court Compound, ND-110001.

Those persons whose annual income is less than 1, 20,000/- can apply with a nominal fee

To the Secretary, Supreme Court Middle Income Group, Legal Aid Committee, 109 Lawyers' chambers, Post Office Wing, Supreme Court Compound, ND-110001.

(B) In case of High Court: To the Member Secretary, State Legal Services Authority of the concerned state

OR

To Registrar General-cum- Secretary, High Court Legal Services Committee

(C) In case of District level: To The District-cum-Sessions Judge, District Legal Services Authority of the concerned district

OR

To Chief Judicial Magistrate-cum-Secretary, District Legal Service Authority

(D) At sub-divisional level applications may be sent to Senior Most Civil Judge –cum- Chairman, Sub-Divisional Legal Services Committee.³³

Legal Services Authorities in India: The *National Legal Services Authority* (NALSA) is constituted under *section 3* of The Legal Services Authorities Act, 1987 and *Supreme Court Legal Services Committee* under *section 3A* of the Act. The Central government is authorized to constitute the Central Authority. The Chief Justice of India is its Patron-in-Chief, a serving or a retired judge is its Executive Chairman. It also has some ex-officio members but the total members of the Central Authority cannot exceed twelve. The Supreme Court Legal Services Committee consists of the Attorney General of India, Registrar General of the Supreme Court of India, and some other ex-officio members.

The functions of the central authority are provided by *section 4* of the Act. The NALSA is supposed to monitor and oversee the legal aid programmes throughout the country. It is supposed to utilize funds at its disposal and make appropriate allocation to State Authorities and District Authorities. The Act authorizes it to lay down policies and principles to make legal service available to the people. It empowers the NALSA to organize legal service camps in rural areas, slums, and to make them aware of their rights. It can take steps towards legal literacy and legal awareness of people, support all voluntary social institutions working at grassroots level, particularly among women, unorganized workers, scheduled castes and tribes, encourage settlement of disputes by way of conciliation, negotiation and arbitration.

³³ Haryana State Legal Services Authority: *Modes of Providing Legal Services*, <http://hlsa.nic.in/services.htm>

The Legal Services Authority Act provides for the constitution of *State Legal Services Authority* under **Section 6** of the Act, *High Court Legal Services Committee* under **section 8A** and provides for the functions of the State Authority in **section 7** of the Act. The State Authority is supposed to be constituted by the respective State government. It consists of Chief Justice of High Court as the Patron-in-Chief, a retired or working judge of the High Court as the Executive chairman and other members nominated by the State government.

It is supposed to give effect to the policies and directions of the Central Authority. It gives legal service to those who need and fulfill the criteria as laid down in the Act, conduct Lok Adalats and perform other functions as fixed by regulations. It coordinates with NGO'S voluntary institutions, universities and other bodies in promoting legal awareness.

Sections 9 and 10 of the Act deal with *District Legal Services Authority* and its functions, while **sections 11A and 11B** deal with *Taluk Legal Services Committee* and its functions. They are supposed to make services available to lower levels. The State government in consultation with the Chief Justice of High Court is entitled to constitute the District Authority. The District Judge becomes its Chairman. Other members are nominated by the State government in consultation with Chief Justice of High Court. It is supposed to coordinate the activities of Taluk level committees, organize Lok Adalats within district, perform other functions as State Authority may direct.

The Taluk Authority is also constituted by the State Authority. A Senior Civil Judge operating within the Taluk becomes the ex-officio Chairman of it. Other members are nominated by State government in consultation with Chief Justice of High Court. It organizes Lok Adalats at Taluk level, coordinate activities within Taluk area, and perform functions assigned to it by District Authority.

Section 13 deals with entitlement to legal service, **section 15, 16 and 17** deal with National Legal Aid Fund, State Legal Aid Fund and District Legal Aid Fund respectively. Without availability of adequate fund the above-mentioned bodies cannot work because free legal aid means legal aid to poor at State expenses.

3. Alternative Dispute Redressal (ADR)

Experience of last fifty years shows that our judiciary has failed to fulfil its obligation of delivering justice in time. The two sayings that 'justice delayed is justice denied' and 'justice cannot be hurried to be buried' bring to the fore the idea that cases have to be decided not disposed, so if existing structures are unable to cope up with the huge burden we need to have alternative dispute resolution bodies and mechanisms. Equality and fairness cannot be compromised for expeditious disposal of cases.

Litigation is not the satisfactory mechanism always. Judges might give their verdict but it might not be acceptable to both the parties. Animosity may prevail even after disposal of a case by litigation. Parties to dispute may appeal to higher court thereby increasing the total burden on judiciary instead of reducing it. ADR mechanisms like conciliation, mediation, negotiation may be more helpful. In India, Lok Adalats have been evolved that are a blend of all the above-mentioned mechanisms.

3.1 ADR Mechanisms:³⁴

It is said that ADR originated in USA as an alternative to traditional legal system which is narrow, rigid, costly and unpredictable. In developing countries people opt for litigation leading to excessive overburdening of courts and a large number of pending cases or docket explosion as it is called. This is because negotiation or mediation does not take place before litigation. India, like many other countries, has introduced ADR system as a result.

³⁴ <http://www.loksatta.org./adr.pdf>

Arbitration: It is a legal alternative to litigation. The parties to dispute submit to a neutral third party for resolution of dispute. The third party is the arbitrator or arbitrators. Arbitral decisions are considered final and binding. It is faster and less adversarial compared to litigation. It can be carried out between two individuals, two states, two corporations, between private individual and state, management and labour union etc. Arbitrators are not bound by legal precedents. They are not bound by strict law regarding questioning witnesses, accepting evidence, deciding remedies. It is this flexibility along with low cost that makes arbitration attractive.

Mediation: It is a process of alternative dispute resolution mechanism where a neutral third party who is the mediator intervenes between two or more parties to come to an agreement. This is possible when there is a controversy, difference of opinion, or dispute but parties are willing to come to a positive settlement. Decision remains in the hands of parties; the mediator only helps them come to a decision. Mediators, however, have a high degree of control over the mediating process. Direct involvement of the parties in the mediation process is often the reason for its success.

Conciliation: It is used when parties to a dispute agree to seek the help of a conciliator. A conciliator has no legal standing. He cannot interrogate, call witness, seek evidence. He does not write a decision. Conciliation differs from mediation in the sense that here the main goal is to conciliate, pacify the parties, seek concessions from both sides so that an optimum solution is made possible.

He meets the parties separately and tries to resolve their differences; parties seldom face each other across the table. All other features of conciliation are found in mediation as well.

Negotiation: It is an attempt to come to a settlement through a compromise, a discussion and modifying each other's stand. A skilled negotiator usually serves as an advocate for one party and tries to get as much as he can for his side. Here no one wins or lose. It is a case of mutual gain bargaining where each side tries to get the maximum for his side, expand the pie. It is used in cases like labour or environmental disputes.

However, ADR mechanisms are not without problems. As a result of poor relationship between the parties they may not be able to communicate well when neither party believes the other. Both the parties view the other as the wrongdoer, have their own version of the facts and reconciliation becomes almost next to impossible. Ignorance of laws and corruption are major impediments to reverting back to old community-based problem solving. To combat these problems imparting legal knowledge is a must. It can curb corruption too. Another major impediment is the fact that its decisions are not always binding.

3.2 ADR in India:

The problem of over-burdened judiciary in India was sought to be resolved by creation of Tribunals. In spite of that administration of justice could not become speedy. Hence it was thought that solution lay elsewhere. It lies in shifting from litigation to ADRs. This can reduce the workload of courts considerably. As mentioned earlier, the purpose was to avoid cost, delay, and complexities of court system. In some countries it was introduced to revive the traditional dispute resolution mechanisms. ADR falls in two broad categories: court-annexed options and community-based options, i.e. justice by elders, village level people's courts

In India, quest for justice has been the aspiration of people for generations. It has been incorporated in our Preamble which speaks of all forms of justice- social, economic and political. We are a country of billion people; the problem is how to reach justice to all of them. ADR encompasses means to resolve conflicts, short of formal litigation. In respect of judicial reform it is very significant in India. As such ADR has been a part of our judicial history. *Lok Adalat or Peoples Courts* have a long history in India and is supposed to be an important contribution of India to jurisprudence world over. But these were community-based mechanisms.

Lok Adalats established by the government in recent years are unique, dispute resolution mechanisms in India. They resolve problems within the court structure on a formal basis using method of compromise, negotiation, arbitration and conciliation. They are not considered substitutes of litigation but supplementary to it. The first Lok Adalat was held in Gujarat in 1982. Lok Adalats accept cases pending

in regular courts. They are presided over by a retired or a sitting judicial officer with two other members, usually a lawyer and a social worker. There is no court fee, if the case was already filed in regular court, the paid fee is refunded. The procedure involves resolution through discussion, persuasion, and consent of the parties. The decision of Lok Adalats is binding, appeal to other courts is not allowed because it is assumed that the decision is based upon consent of the parties. The main condition is that both the parties should agree to the settlement. It is very effective in settling matrimonial and property cases where settlement of monetary claim is involved. It provides scope for compromise, through the approach of give and take whereby no one gains or loses fully.

The Legal Services Authorities Act 1987 was further amended in 1994 and once again in 2002 which made Lok Adalats more workable and meaningful. **Section 19** of the Act states that Central, State, District, and Taluk level Legal Services Authority will be responsible for organizing Lok Adalats. **Section 20** of the Act refers to the conditions under which cases can be referred to Lok Adalats. Cases can be referred if one of the parties gives an application, it can be by consent of both the parties, and also if the court thinks that the case is appropriate for Lok Adalats. In such a case if no compromise is arrived at through conciliation the matter shall be returned to the concerned court. **Section 21** of the Act says that if a compromise is possible, award can be passed by conciliators. The consent of the concerned court may not be asked for. Every award of Lok Adalat shall be considered as decree of civil court. No appeal can be made; decision shall be final and binding. **Section 22** says that Lok Adalats shall have authority to summon witnesses, receive evidences, make requisition for public record, discover and produce documents. They will be entitled to follow their own procedure and these will be considered as judicial proceedings under sections 193, 219, and 228 of Indian Penal Code.

In the Amendment of 2002, provision has been made under **Section 22B** to set up Permanent Lok Adalats for compulsory pre-litigative mechanism for conciliation and settlement of cases relating to public utility services. The Permanent Lok Adalats shall have a chairman and two other persons. The chairman shall be of the rank of district judge or additional district judge or has held office higher in rank than that of district judge. It shall exercise jurisdiction in respect of public utility services like water, electricity, telephone, hospitals, etc. The pecuniary jurisdiction is rupees ten lakhs; it may be increased by Central Government from time to time. Any civil dispute with a public utility service, cases where the value of property in dispute is less than rupees ten lakhs or any criminal case which does not involve an offence not compoundable under any law, can be taken up by a Permanent Lok Adalat. Where a settlement is possible the Adalat shall formulate it and submit it to the parties for their observation, and pass an award in terms thereof. In case parties fail to reach an agreement, the Permanent Lok Adalat shall decide the dispute on merit. Every award made by it shall be by a majority of the persons constituting it and be binding on the parties. Enforcement of this involves expenditure from the Consolidated Fund of India. The purpose of this amendment was to make Lok Adalats more effective. Earlier the position was that if cases were irresolvable they would be sent back to regular courts or parties would be asked to seek remedy in a court of law. This caused unnecessary delay. After the amendment Lok Adalats have been given power to decide cases on merit in case parties cannot come to a compromise.

The idea behind Lok Adalats is to discourage litigation. As a matter of fact litigation does not always resolve conflict. It might give rise to a judgement not acceptable to the parties. ADR allows parties to come to a compromise by mutual adjustment and accommodation. Any conflict is dangerous, the sooner it is resolved the better. It grows everyday unless it is resolved early. The state of indecisiveness and uncertainty that prevails leads to monetary loss and psychological trauma. Lok Adalats enable us to come out of these problems by settling cases outside regular courts. The concept of community courts was there in India but they went into oblivion during British rule when a decentralized structure of judiciary was introduced. Experience shows that Indian socio-economic condition is such that we required reviving the ADR system. It was a national imperative. It, however, needs to prove its viability and success. In fact it is a revolutionary step, just like legal aid services which emerged as a fundamental human right. Such revolutionary steps cannot be achieved easily. But it is a challenge before us which we should deal with on a priority basis.

4. Conclusion

It is said that till now the success of Lok Adalats is quite a lot. The quality of legal aid, however, needs improvement. The NALSA is actively working to make people aware of legal aid facilities. Emphasis is being made to establish Counselling and Conciliation centres in all districts of the country, providing legal aid facilities in jail, and improving the quality of legal aid. Apart from the legal services provided by these statutory bodies, there is a need to have dedicated men and women, voluntary bodies, to provide legal help to the needy. Unless and until it evolves as a movement it might decay in course of time if it is limited to statutory structures only. Legal service cells, para-legal workers, legal literacy clubs should come up and they should be fully trained for this purpose. But to make this possible there is a need to introduce legal literacy at a wide scale. The National Legal Literacy Mission launched in 2005 is a major step in this direction.³⁵ Its aim is to bring about legal empowerment of different sections of our people. Democracy can be effective if people are aware of their legal rights and know how to secure them.

There is a need to sensitize judicial officers on various social issues so that true social and legal justice is ensured. We need a highly sensitized legal service to help our poor and ignorant masses. Only time can tell how ADR mechanisms will work in India. There is a need to work together to realize this social vision and for this we need to sensitize lower courts or district courts who deal with petty offences.

Test Your Progress :-

1. Why is free legal aid necessary in a country like India?

2. What do you mean by Alternate Dispute Redressal Mechanisms?

3. What are the legal provisions regarding Lok Adalats in India?

4. Do you think Lok Adalats are a welcome step in India?

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Speeches and Acts

- 1 Prime Minister Manmohan Singh’s speech delivered on the occasion of launching National Legal Literacy Mission 2005-2010 on March 06,2005
- 2 Prime Minister Manmohan Singh’s speech on National Meet on Social Justice and Legal Empowerment in New Delhi on August19,2006

³⁵ Prime Minister Manmohan Singh’s speech at the National Meet on Social Justice and Legal Empowerment, at Vigyan Bhawan, New Delhi, on 19 August 2006

3 Legal Services Authorities Act 1987 (last amended in 2002)

UNIT THREE.
Access to Courts and enforcement of rights

Human Rights

Radhika Kumar

Structure of the Web Lesson:

1. **International Development of Human Rights Norms**
2. **Incorporation of Human Rights in the Indian Legal System**
3. **Organizations and Agencies engaged in furthering Human Rights**
4. **Review of legislation violative of Human Rights**
5. **Role of Legal Aid Agencies, NGOs and Civil Liberties Groups**
6. **Recent Trends**

One of the most important trends that the 20th century has witnessed has been the proliferation of human rights theory and practice. The language of human rights has emerged as the ‘common language of humanity’¹. Paradoxically on the one hand it has been used to justify State aggression while on the other hand being used for the practice of emancipatory politics².

The term ‘human rights’ implies rights available to individuals on account of being ‘human beings’. Further, as we all equally share the feature of being human, these rights are equally available to all irrespective of gender, religion, race, caste, color and so on. Human rights are to be distinguished from legal rights in that they have been called ‘special moral rights’³. They are moral rights in so far as they *should* be made available to all human beings, although at present many of them are not legally recognized. Human rights activists and associations are engaged in this exercise to gain national and international recognition and legal status for human rights. They are special moral rights in that they do not depend on our entering into any contract or promise with any other individual or the State. They are made available to all irrespective of membership of a nation State, community or social group⁴. Human rights can therefore be called *universal*.

1.1 Recognition of Human Rights; UDHR

One of the first and perhaps most significant effort to situate human rights in the universal context has been the ‘Universal Declaration of Human Rights (UDHR)’. The latter was adopted by the United Nations General Assembly on 10th December, 1948. The Declaration listed out various human rights and freedoms. In the preamble it said, ‘.... 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’. However being in the form of a Declaration its provisions were not legally binding on its signatories. To fulfill this requirement, the Commission on Human Rights (which was appointed by the Economic and Social Council of the UN) began to draft a binding treaty to be adopted by individual States. In 1966 the United Nations General Assembly adopted the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Covenants contain more detailed versions of the rights mentioned in the UDHR. These two Covenants, the optional protocols, along with the UDHR formed the International Bill of Human Rights.⁵

1.2 The impact of the International Bill of Rights was three fold:

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¹ Baxi, Upendra (2002), ‘An age of Human Rights?’, from Upendra Baxi, *The*

²Ibid.

³ Barry, N.P (1995), *Introduction to Modern Political Theory*, Macmillan.

⁴Ibid.

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instrument to pursue power politics. The plea of protecting rights of minorities is used to impose sanctions and even intervene in issues, which are otherwise within the domestic jurisdiction of the concerned country.

Thirdly, countries and communities have contested the universality of human rights on the ground that they conflict with cultural rights. Universal human rights are said to reflect a western bias rooted in an individualist perspective to the disregard of group rights and identities. It is argued that to be truly universal, definitions of human rights must incorporate non-western values too.

1.3 Human Rights Covenants and Conventions

Drawing from the UDHR there have been other international conventions affirming human rights. These include the Convention on Elimination of Racial Discrimination (CERD), the Convention on Elimination of Discrimination against Women (CEDAW), Convention against Torture (CAT), Convention on the Rights of the Child (CRC), International Convention on the protection of Rights of all Migrant Workers and Members of their Families. Under each of these Conventions committees have been established. The three aspects of Committee functioning are –the reporting process which involves submission of periodic reports by member States, the issuing of general comments or recommendations regarding standards that governments must adhere to in implementing that right and finally the reviewing of individual complaints. The ICCPR has an *optional protocol* to deal with individual complaints while the ICESCR protocol is yet to be drafted.⁶ Signing of Conventions by States morally obliges them to protect the rights enunciated in the same, while ratification makes the provisions legally binding as also vests the Conventions with domestic political legitimacy.⁷ India has ratified the ICESCR and the ICCPR (though it has not signed the optional protocols), ICERD, the CEDAW and the CRC. India has signed but not ratified the Convention against Torture (CAT) and has neither signed nor ratified the Convention relating to International Migrants. India has also made many reservations to the human rights treaties and conventions.⁸

⁵South Asian Human Rights Documentation Centre (2006), *Introducing Human Rights*, Oxford University Press, New Delhi. Chapter 1, pp

⁶Ibid, Chapter 3, pp 33 and 35.

⁷Ignatieff, Michael from www.tannerlectures.utah.edu, pp 295

⁸South Asian Human Rights Documentation Centre (2006), *Introducing Human Rights*, Oxford University Press, New Delhi. Chapter3, pp37-38.

Human Rights in the Indian Constitution are dealt with in the Preamble, Part III of the Constitution which includes Fundamental Rights, Part IV on Directive Principles of State Policy and Part IVA which is regarding Fundamental Duties. Fundamental Rights contained in Part III of the Constitution are enforceable or justiciable rights. Article 32 protects a citizen's fundamental rights by giving the court the power to issue *writs*. The Directive Principles of State Policy are guidelines for the government to secure welfare of society at large while Fundamental Duties are in the manner of traditional duties such as protection of the environment and the unity and integrity of the country.

2.2 Judicial Review and Interpretation

Apart from these Constitutional provisions, human rights have been extended on account of judicial review and progressive interpretation of Constitutional provisions by the court as also rights enacted by legislative procedure i.e. by the Parliament. The judiciary has at times also given rulings in keeping with international conventions that the State has ratified but not enacted as part of its legal obligations. In the *Vishaka v. State of Rajasthan* (1997) case the judiciary, “upheld the notion of gender equality, in the absence of any enacted law to prevent sexual harassment at the work place”. In doing so the judiciary heavily relied upon the provisions made in the CEDAW Convention. Further taking a complimentary view of Fundamental Rights and the Directive Principles of State Policy, the judiciary in the *Unnikrishnan v. State of Andhra Pradesh* (1993) case held that free primary education for children upto the age of fourteen years is a Fundamental Right under article 21 of the Constitution as it ‘directly flows’ from the right to life⁹

2.3 Parliamentary Legislation

Other legislation such as the Indecent Representation of Women (Prohibition) Act, 1986; Equal Remuneration Act, 1976 and Commission of Sati (Prevention) Act, 1987 have been enacted to give meaning and content to the provisions of the Constitution. The Environment Protection Act, 1986, provides for the protection and improvement of the environment.¹⁰ Amongst recent legislation has been the Right to Information Act (2005) which provides access to records, documents, memos etc and “information relating to any private body which can be accessed by a public authority under any law for the time being but does not include “file noting”. The exemption of file noting from the provisions of the act has been criticized by many human rights organizations. Another recent legislation concerning human rights is the Protection of Women from Domestic Violence Act, 2005. As argued by Flavia Agnes¹¹, “The term ‘domestic violence’ has been widened in meaning and scope from the culture specific restriction of ‘dowry deaths’ and penal provisions to positive civil rights of protection and injunction”. While the law is quite comprehensive, the wide powers awarded to protection officers and their intermediary role vis-à-vis the victim has been criticized.

⁹ Ibid, Chapter 5, pp 68 and 78.

¹⁰ Ibid.

¹¹ Agnes, Flavia (2006), *Domestic Violence Act- A Portal of Hope*, from www.combatlaw.org/information.php

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The National Human Rights Commission (NHRC) was established under the Protection of Human Rights Act 1993. Some of the salient features of the same are:

- The Commission is to consist of five members appointed by the President, with a Chairperson who has been the Chief Justice of India.
- The Commission was conceived as a fact finding body with the power to conduct inquiries into violations of human rights
- It is to be assisted in the same by investigating agencies of the Central and State governments.
- The Commission was also to undertake research in the field of human rights.
- The act also provides for setting up of State Human Rights Commissions.
- It is to recommend measures for effective implementation of human rights safeguards provided in the Constitution.
- It is also to make recommendations for effective implementation of international instruments on human rights.

Inquiries into violations of human rights could be suo-moto or on a petition presented to it by a victim or any person on his behalf in the following cases:

- Violation of human rights or abetment thereof; or
- Negligence in the prevention of such violation by a public servant.

The Commission while hearing complaints and inquiring into the same has all the powers of a civil court trying a suit under the Code of Civil Procedure and in the following matters: Summoning and enforcing the attendance of witnesses and examining them on oath.¹⁰

- Discovery and production of any document.
- Receiving evidence on affidavits

- Requisitioning any public record or copy thereof from any court or office.
- Issuing Commissions for the examination of witnesses or documents.
- Any other matter which may be prescribed.¹²

The Commission also submits annual and special reports to the Central and State governments. The State governments by notification may specify a Court of Session to be a Human Rights Court.¹³ Recently the Human Rights Act, 1993 Amendment Bill was tabled in the Monsoon session of the Parliament, 2006. The positive development with regard to the same is that firstly, the NHRC can now make surprise visits to jails and take stock of the ground reality in the same. However this does not extend to all interrogation centres, particularly those run by

the military and paramilitary forces. The amendment bill has also been criticized, as it does not address the question of the financial independence of the NHRC to

¹²Basu, Palok (2002), *Law relating to protection of Human Rights under the Indian Constitution and Allied Laws*, Modern Law Publications. role remains

¹³ Ibid, pp 919- 929 and 932. 1 inquire into

3.2 Other Commissions furthering the cause of Human Rights:

- National Commission for Minorities established in 1992
- National Commission for Women established in 1990
- National Commission for Backward Classes established in 1993
- National Commission for Scheduled Castes
- National Commission for Scheduled Tribes (It is to be noted that bifurcation of the Scheduled Castes and Scheduled Tribe Commission took place recently in 2003, under the eighty-ninth Constitutional Amendment Act. The combined Commission had been established in 1990 under the sixty-fifth Constitutional Amendment Act.)¹⁵

Backward Classes of citizens means those other than the Scheduled Castes and Scheduled Tribes as may be specified by the Central government in the lists. The Commission essentially hears requests for inclusion of any class of citizen as a backward class in such lists that concern reservation. The National Commission for Safai Karamcharis, established in 1993, is concerned with eradication of the practice of manual scavenging. The Protection of Civil Rights Act 1955 dealt with giving punishment for the practice of untouchability. The S.C. and S.T. (Prevention of Atrocities) Act, 1989 stressed on adopting preventive and precautionary measures with regard to exploitation of these two sections of society as also setting up special protection cells at the local level. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 provided for establishment of a Central Co-ordination Committee to recommend measures regarding education i.e. provision for free education, employment i.e. reserving not less than 3% seats for this category of individuals, non-discrimination, social security and so on.

4. Review of legislation violative of Human Rights

One must note that while there is an increasing trend towards granting legal recognition to human rights, many rights continue to remain unrecognized such as the right to food, right to development and also rights *against* development, particularly in the case of infrastructure development projects such as dams, airports etc. Secondly there are many laws enacted by the State, which restrict and even violate human rights. For instance the former Prevention of Terrorism Act and its various state level ‘avatars’ such as Maharashtra Control of Organised Crime Act (MCOCA) as also the current Armed Forces Special Powers Act (AFSPA). In

¹⁴www.hrdc.net/sahrdc/hrfeatures/HRF145.htm

¹⁵<http://ncsc.nic.in>

particular there have been issues of violations of human rights by security forces in the manner of torture, arbitrary detentions, disappearances, fake encounter killings and so on. Finally there is also lack of information regarding various available rights and meager resources to seek redressal for the same. Further formulation and implementation of laws and rules relating to rights need to be consistently monitored. Human rights groups have also called the increasing use of the death penalty sentence by the courts into question. The following section deals with organizations and agencies that are engaged in dealing with all these concerns.

5. Role of Legal Aid Agencies, NGOs and Civil Liberties Groups

5.1 Legal Aid Agencies

Legal aid, which implies access to justice, has gained universal recognition as a fundamental human right. In the Indian Constitution Article 39 A provides for free legal aid to the poor and weaker sections of society. Free legal aid was recognized as a fundamental right under article 21 and scope of the right was made clear in the Sunil Batra vs. Delhi Administration case, as far as it related to prisoners.

The Legal Services Authorities Act, 1987 (as amended by the Act of 1994 and 2002) which came into force on 9 November 1995, aims at establishing a nation-wide network for providing free and comprehensive legal services to the weaker sections. National Legal Services Authority (NALSA) implements and monitors legal aid programmes in the country. The Supreme Court Legal Services Committee has been constituted under the Act as also Committees at the State and lower level of the judicial structure.¹⁶

There are also many legal aid agencies in the country. Lok Adalats are voluntary agencies and are monitored by the State Legal Aid and Advice Boards.¹⁷ There are many other private legal aid agencies of a non-profit character. One such example is that of the Foundation for Legal Aid, Environment and Social Action (FLESA) FLESA is a non-profit organization comprised of legal experts, students, and human right activists. The organization works mainly for the cause of protection of rights of women, children, prisoners, and persons with disabilities. It reaches to the grass-roots movement through its legal aid and advice programmes.

5.2 Role of Civil Liberties Groups

The initiation of an organized effort to promote human rights in the country can be traced to the formation of the Indian Civil Liberties Union (ICLU) in 1934. The main activities of the movement were to gather information about violations of human rights, in particular conditions of people in detention and of prisoners as also restrictions on the press. In the post-independence period the human rights movement gained momentum essentially in the 1970's in the face of the national emergency imposed by Indira Gandhi in 1975-1977 and excesses of the government related to the same. One way to analyse the movement would be look at it in terms of the nature of rights that it has demanded. Following suspension of civil and political rights during the emergency there was the rise of a number of civil liberties organizations such as the People's Union for Civil Liberties and Democratic Rights (PUCLDR) and the Association for the Protection of Democratic Rights (APDR). The PUCLDR was renamed as the PUCL or People's Union for Civil Liberties in 1980 and it became a membership-based organization. On the other

¹⁶ <http://www.goindia.com/general/lawjust.html>

¹⁷ http://supremecourtindia.nic.in/new_s/juris.htm

hand the Peoples Union for Democratic Rights represented the Delhi forum of the larger organization and was formalized as PUDR in February 1981. The agenda of these groups “included arbitrary detention, custodial violence, prisons and the misuse of the judicial process.”¹⁸ The major activities taken up by these groups included conducting investigations, citizen awareness campaigns and filing public interest litigations.¹⁹ These groups have actively promoted the cause of human rights whether it be the anti-Sikh riots of Delhi in 1984 or the Gujarat riots of 2002 in which the State government was alleged to have actively promoted persecution of members of the minority religious community.

While civil and political rights are seen as individual rights, the demand for group rights gained momentum in the 1970s itself with the rise of the women’s movement. “The 1974 Committee on the Status of Women in India highlighted the marginalization of women in every sphere of life”²⁰ Women’s groups such as the Self Employed Women’s Association (SEWA), Manushi, Joint Women’s Forum, All India Democratic Women’s Association (AIDWA) have highlighted issues of domestic violence, rape, custodial violence, trafficking and unpaid labour of women in the household.²¹ The 73rd and 74th Constitutional Amendment Act, which provides for 33 percent reservation for women in institutions of local self-governance, has gone a long way in political empowerment of women.

From the mid 1980s, human rights groups have increasingly taken up rights of other marginalized groups such as dalits, adivasis and landless laborers. This also marks a shift in the nature of rights being demanded. From political rights the focus is now on social and economic rights. Social action groups increasingly demand human rights based on social justice, affirmative action and participation of people in the development process.²¹ Large scale displacement of people on account of development projects such as construction of dams, mining exercises, forestry and infrastructure initiatives led to the rise of action groups such as the Narmada Bachao Andolan, the Chipko Andolan and others. Not only have such movements highlighted the plight of the displaced and the deprived but have also questioned the development choices made by the State, and thereby stressed on alternative development strategies. Moreover the groups adopted the terminology of ‘people’s rights’ as opposed to human rights essentially to suggest the ‘collective’ character of group rights.

5.3 Role of NGOs

The 1980s also witnessed the establishment of a number of non-governmental organizations (NGOs). An NGO can be defined as “an organization that is not part of the local, state or federal government.”²² Unlike social action groups, NGOs usually have committed external sources of funding, national or international. Being linked to a parent donor organization they are expected to function according to the vision and goals of the given organization. This handicapped the NGOs to the extent that initially their approach to development issues was limited to ‘welfarist measures’. Since the 1990s the development trajectory has shifted to promoting decentralization of decision-making and people’s participation in projects. NGOs have played a very important role in promoting human rights. With regard to electoral reform, they successfully demanded the right to information about the background of candidates standing for election such as their criminal antecedents, financial status etc. They have also helped to diversify the ambit of human rights by focusing on environmental and consumer rights. However the role of NGOs remains an issue of contention particularly with regard to their funding and the activities that they are engaged in. The government on its part has been monitoring foreign funding and assistance to NGOs as also established what are called government organized non-governmental organizations (GONGOs) The GONGOs are said to, “defend acts of human rights violations by the state.”²³ Proliferation of NGOs has definitely led to a decline in credibility, however to extend a blanket denouncement of all would be incorrect. An NGO, which has consistently been engaged in

¹⁸South Asian Human Rights Documentation Centre (2006), *Introducing Human Rights*, Oxford University Press, New Delhi, pp 91

¹⁹Ibid, pp 92

²⁰<http://www.infochangeindia.org>

²¹Ibid.

²²South Asian Human Rights Documentation Centre (2006). *Introducing Human Rights*. Oxford University Press. New Delhi. pp 92.

6. Recent Trends

One way to capture the expanding scope of human rights is to classify the same into three generations of rights. The first generation of human rights is the civil and political rights such as the right to representative government, which led to the demand for the right to vote. Second generation human rights stress on the social and economic dimension of rights such as the right to work and earn one’s living, education, housing and so on. The third generation of

human rights are referred to as *collective rights* which include rights such as those to clean air and water also called environmental rights, right to development, right to be heard etc. However it is important to point out that this categorization is porous for instance second generation rights such as those to education and health are also collective in character as they also apply to communities and societies. Human rights have therefore been interpreted to include both an individual and collective dimension. Moreover while such a typology may contradict the notion of 'indivisibility' of human rights, it also helps us recognize the different dimensions of rights. While the typology in itself is not hierarchical (though it is indicative of the historical expansion of rights), it has been argued that 'survival rights' be given primacy over all others as guaranteeing the same is a precondition for any other right to be realized.²⁵

In India the demand for an accountable and transparent government (which are seen as third generation rights), gained momentum particularly in the mid 1990s. The demand for the right to information was spearheaded by the Mazdoor Kisan Shakti Sangathan (MKSS) in Rajasthan in the form of the 'Jan Sunvai' Andolan. The people's planning process in Kerala promoted by the Kerala Shastra Sahitya Parishad (KSSP) also exemplifies participatory practices with a rights based perspective. The Community Learning Movement (CLM) initiated by the National Centre for advocacy studies, aims to empower grassroots communities through awareness building and exchange of knowledge as also participation in the process of governance. "People centered advocacy seeks to go beyond changing public policies to changing people's attitudes, behavior and unjust power relations."²⁶

6.1 The State, Market and Human Rights

However the Human rights movement is said to have changed character in the era of economic liberalization. From being a movement of dissent, it has increasingly been co-opted by mainstream politics. State appropriation of the

²³Ibid, pp 94

²⁴<http://www.hrdc.net/sahrdc/>

²⁵Ife, Jim (2005), *Human Rights Beyond the Three Generations*, Activating Human Rights and Diversity Conference, Byron Bay, NSW.

need to be understood in a holistic manner and treated as indivisible. Initiatives to promote human rights should be conducted at all levels of social organization. Legal recognition being one of the goals the others should be creating rights awareness and consciousness.

²⁶<http://www.infochangeindia.org/HumanIbp.jsp>

²⁷Mohanty, Manoranjan, 'Human Rights in a Creative Society- Challenges of Appropriation.'

Suggested Readings on 'Human Rights'

- 1) Barry, N.P (1995), *Introduction to Modern Political Theory*, Macmillan.
- 2) Basu, Durga Das (2001) *Introduction to the Constitution of India*, Wadhwa and Company Law Publishers, 19th Edition.
- 3) Basu, Palok (2002), *Law relating to protection of Human Rights under the Indian Constitution and Allied Laws*, Modern Law Publications.
- 4) Baxi, Upendra (2002), *The Future of Human Rights*, Oxford University Press.
- 5) Kothari, Smitu and Sethi, Harsh (1989), *Rethinking Human Rights: Challenges for Theory and Action*, Lokayan, Delhi.
- 6) Ray, Ashwini (2003), 'Human Rights Movement in India: A Historical Perspective', *Economic and Political Weekly*, 9 August 2003
- 7) South Asian Human Rights Documentation Centre (2006), *Introducing Human Rights*, Oxford University Press, New Delhi.

- 8) Steiner, Henry and Alston, Philip (2000), *International Human Rights in Context: Law, Politics, Morals*, Oxford University Press, Oxford.

Suggested Web-sites on ‘Human Rights’

- 1) www.combatlaw.org/information.php
- 2) www.hrdc.net/sahrdc/hrfeatures
- 3) <http://nsc.nic.in>
- 4) <http://www.goindiago.com>
- 5) <http://supremecourtindia.nic.in>
- 6) <http://www.pucl.org>
- 7) <http://www.countercurrents.org>
- 8) <http://www.hinduonnet.com>
- 9) <http://www.judis.nic.in>
- 10) <http://www.infochangeindia.org>
- 11) <http://www.pudr.org>