THE ORIGIN AND DEVELOPMENT OF THE HUMAN RIGHTS PHILOSOPHY AND THE CONSTITUTION OF INDIA

It is a great honour to be invited to deliver the Tenth Dr. Sarvepalli Radhakrishnan Memorial Lecture. Dr. Radhakrishnan was a remarkable personality of the twentieth century. He may be described as one of the great modern sages of India. As an educationist he will always be remembered for the high standards of scholarship and intellectual discipline he set in the Banaras Hindu University during his years there. The publications of which he was author will ever remind posterity of the richness of India's ancient wisdom and the traditions of its culture and his own profound understanding of them. As India's Ambassador to the USSR and thereafter as Vice President of India and Chairman of the Rajya Sabha the statesman in him found full expression. When he entered upon the august office of President of India, both philosophy and statesmanship merged into the perfection of the Platonic vision. Today on 'Teachers' Day it is a privilege to dedicate this lecture to his memory.

Dr. Radhakrishnan was a firm believer in human dignity and in the elevated status of human destiny. The ethical dimensions of human development, the free expression of the human spirit and the universality of human aspirations were keystones in his conception of the human future. I believe he would have approved of the subject of this lecture.

PARTI: THE ORIGIN AND DEVELOPMENT OF THE HUMAN RIGHTS PHILOSOPHY

In the long history of human civilization, the centuries have recorded, from time to time, changes so radical that their momentum and consequences have given a decisive turn to the future course of human events. Some of those changes have been swift in the making. The recent discoveries of science and technology have burst upon the world with dramatic suddenness, and their impact has taken the human race through a quantum leap far beyond its most sanguine expectations. Other changes have been slow in conceptualizing, but they have matured steadily with a sureness and inevitability that has made their ultimate realization merely a matter of time. Among these has been the human rights movement.

The human rights movement has reached a stage where the world can justifiably feel a measure of confidence in its achievements. What started out as the vague principles of an uncertain philosophy has evolved into a definitive ethos of universally accepted standards, providing the moral foundation as well as an ethical infrastructure for a new world. For long years, the movement travelled through a continuum, gathering support from the intellectuals of successive generations and gradually translating philosophical theory into legal, political, and economic reality. During the last forty-five years it has so completely dominated the imagination of the world community and so effectively altered political attitudes, social perspectives, and economic programmes, and so impressive has been the momentum of change in some of international law's most fundamental concepts that we can truly say that we are in the midst of a Human Rights revolution.

The search for a nobler condition of life began with the aspirations of ancient Greece, embodied in the philosophical teachings of Plato and Aristotle for attaining the 'Good Life', in which man was free to shape his own character, in the observations of the historian Herodotus on 'isonomia' (equality before law), 'isogonia' (equal freedom of speech) and 'isotimia' (equal respect for all), as well as in the exposition on equality of opportunity by the great prince, Pericles. The glimmerings of the doctrine of natural law marked the shadowy outline in the western world of the new ethos. And when Sophocles spoke through a heroic Antigone of the laws of nature being higher than the decrees of a

tyrannical king, and justified her decision to accord burial rites to her brother in defiance of the royal decree of Creon, the famed dramatist was referring to the superior position natural law was believed to hold over man-made law.

By the end of the fifth century B.C. Greek intellectuals had begun to speak openly against slavery and of equal rights for all. The first awareness of the doctrine of universal equality can be discerned in what Antiphon, the Sophist, said when he wrote:

'... we are all by nature born the same in every respect, both barbarians and Greek. And it is open to all men to observe the laws of nature, which are necessary similarly, all of these things can be acquired by all, and in none of these things is any of us distinguished as barbarian or Greek..'

The doctrine of human equality began taking firm root in Greek society with the conquests of Alexander the Great. Alexander found in Persia and ancient India classical cultures of a vastly catholic content and he treated the vanquished Persian nobility and the defeated Indian King Porus with the respect accorded the Greek elite. In this, as Plutarch was to observe subsequently, to the dream of a philosophically ideal constitution propounded by the great Zeno, founder of the Stoic school, 'Alexander provided the fact to go with the theory'. (Plutarch, De Alexandri Forstune I, ed. and transl. Babbitt, F.O. Himemam, London, 1936.).

The equality of man as a transcendental principle became identified with a universal and immutable law positioned above the laws of the State. The concept passed into Roman philosophy, and Cicero laid emphasis on the universal possession of reason as the basis of the equal brotherhood of man.

Later during the Middle Ages in Europe, Saint Thomas Aquinas defined 'natural law' as 'the participation in the eternal law of the mind of a rational creature'. With the writings of jurists, political philosophers and theologians that followed, and Fortescue's comment that the institutions of the natural law, 'the mother and mistress of all laws', would supersede 'the rules of political law, and the sanctions of customs and constitutions' When these departed from them, it can be said that by the end of the Middle Ages in Europe a sufficiently well-defined concept of the natural rights of man had been established.

The high pedestal on which natural law was placed owes its justification to two principles, first that natural law issues from the reason of man, and as all mankind possesses that faculty natural law is a universal law, a manifestation of the universal dominion of reason, and second that in its superiority over the ordinary laws of the State, it provides standards by which those laws can be judged and corrected. It is these twin facets of *ius naturale*, that give it relevance in relation to the concept of human rights. For, as Lauterpacht observes:

'There is, in fact, an intimate connection between the idea of the law of nature as the true source of legal justice and the notion of all humanity as a community of citizens equal in the eye of nature. It is only within the structure of a wider system, in which the State has ceased to be an absolute law and purpose unto itself, that the inviolate character of inherent human rights can receive adequate legal expression and the sanctity of the individual human being as the ultimate subject of all law assets itself in full vigour'.
(I Chapter 29, cited in H. Lauterpacht, International Law and Human Rights (1950), p.94).

This survey of the doctrine of natural law does not seek to identify it with the concept of human rights, for we must remember that the theory of natural law emerged from the

Graeco-Roman world, where the legitimacy of slavery was recognized, and that institution was also recognized by Saint Thomas Aquinas. In his essay on the 'Historical Foundations of Human Rights', the Hungarian Prof. Imre Szabo points out that 'the mediaeval philosophy of law, did not seek to place the human personality at the centre of the concerns of law and social life.' (Imre Szabo, 'Historical Foundations of Human Rights and Subsequent Developments' in 'The International Dimensions of Human Rights' Ch.2, p. 11-12). The basic condition of the human rights doctrine, viz. freedom and equality was absent from those earlier social systems. Professor Iredell Jenkins ('From Natural to Legal to Human Rights' in: Human Rights,, Amintaphil I, p.203) observes that the doctrine of natural law was concerned with the grounds of right rather than their content and that it aimed at establishing that rights belong to the individual in his naked condition, prior to any form of social or political organization. The doctrine also acted as a limitation on individual rights, because it confined itself to Man as an active and self-directing agent, living in an environment that offered him ample resources to satisfy his needs. The comprehensive scope allowed to the doctrine of human rights in our times could not be conceived of by the natural rights philosopher.

Nevertheless, the doctrine of natural rights stimulated the struggle of men against the absolutism of royal power. The Great Charter, the Magna Carta, was extracted from King John in 1215 on the meadow of Runnimede. Then in June 1628, a Petition of Rights was presented by Parliament to Charles I, Paragraph II of which recalled the assurance in the Magna Carta that no man would be deprived of life or liberty or outlawed or exiled except by the lawful judgment of his peers or by the law of the land, and paragraph IV which reminded the Throne of the statute of Edward III' reign that no man would be dispossessed of his property nor be imprisoned, nor put to death, except by 'due process of law', a phrase which we see goes as far back as the fourteenth century. The Habeas Corpus Act, 1679, provided statutory protection against reiterated commitment for the same offence, and secured punctual obedience to writs of habeas corpus, thus creating another bulwark in the protection of the liberty and freedom of the subject against illegal arrest and detention. In 1689, the Bill of Rights was enacted providing against the suspension of statutes by royal decree without the consent of Parliament, against taxation by royal prerogative, for free elections to Parliament and for freedom of speech in Parliament.

As I trace these developments in the constitutional history of England, it will be apparent how some important basic rights of the individual had already begun to take shape in the form of repeated affirmation of the supremacy of the law, of the 'undoubted rights and liberties' of the subject, including the vital guarantee of equality before the law. It is true that these guarantees of freedom were confined to the benefit of the English people, but they pointed the way to the recognition of a more universally applicable code of human rights.

It will also be evident that the movement had passed from the vague and uncertain philosophy of the natural law to the more concrete legal doctrine of specific fundamental rights and liberties. The stage was being set for positive law to take over from abstract philosophy.
Meanwhile, the progression of ideas continued with the writings of Grotius, Vattel and Locke. It is of note that John Locke, by his Treatises in the 17th century, laid the foundation for the doctrine of the Social Contract.

A little digression here will show that in the prevailing political and social climate of the times, the installation of natural law values in the higher echelons of constitutional theory was not without its problems. The doctrine of natural law had its roots in theological belief, and the secularist currents of the eighteenth century did much to counter the

growing influence of that doctrine. David Hume, for that reason, was among the sceptics who declined to accept natural law as a concept. Edmund Burks expressed the fear that established institutions were in danger from citerion which was vague, abstract and too general. Jeremy Bentham and his Utilitarian school saw in the natural law philosophy an uncertain refuge in abstract metaphysical argument, ill-fitted to secure the greatest happiness of the greatest number. Sensing anarchic implications against existing institutions, Bentham attempted to publish his views under the title Pestilential Nonsense Unmasked, and when its printing was not allowed, he succeeded in publishing Anarchical Fallacies in an attempt to uncover, as he saws it, the menacing proportions of the natural law doctrine.

The natural law school pressed on undaunted, and very soon Western Europe found itself fascinated by Rousseau's thesis developing the concept of the Social Contract. The undisguised admiration of European intellectuals for this work signaled a decisive breakthrough, and the barriers of contemporary scepticism fell before the acknowledgement of its undoubted significance. From there on, it was only a matter of time, for the ideals directing the American Revolution and the French Revolution pushed the Western world into a new era in which individual human rights, in theory at least, if not invariably in practice, began increasingly to occupy the centre stage of international concern.

The ideology was incorporated in the American Declaration of Independence of 4 July 1776, in the classic statement that all men were created equal and that they possessed certain inalienable rights, which included life, liberty and the pursuit of happiness. The doctrine was stated more elaborately in the French Declaration of the Rights of Man and the Citizen in 1789. It is now the general consensus that the French Declaration marks the starting point of the human rights movement. In 1971, Tom Paine published his 'Rights of Man' in which not only did he carry Locke's philosophy beyond its existing moorings, but ventured into an area where the mould assumed the outlines of a welfare state. Gradually, the original confines of the Human Rights doctrine began to broaden and acquire a higher degree of comprehensiveness. It foreshadowed the expanding role of the Human Rights philosophy of our times.

Developments on the international scene after the First World War had begun to inspire several thinkers to suggest an international Bill of Human Rights. In 1924, Del Vecchio, a jurist based in Rome, published a scheme framed by him; and in 1929, the Institute of International Law met in New York and outlined an International Declaration of the Rights of Man. In 1936, amidst the suppression of civil liberties in Nazi-Germany, a German jurist, Heinrich Rommen published a document to the same effect. The decisive phase of the human rights movement was not far distant. Outraged by the deplorable crimes visited against humanity by the Nazi regime in Europe in the thirties and early forties of this century, the world community, led by Franklin Roosevelt's Declaration of the Four Freedoms in January 1941, moved with revolutionary purpose to the founding of a new international order. The Charter of the United Nations, signed in 1945, affirmed faith in 'fundamental human rights' and 'in the dignity and worth of the human person' On 10 December 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights. This historic document contains an elaborate list of human rights intended as 'a common standard of achievement for all people and all nations' with a view to securing 'their universal and effective recognition and observance' among the peoples of member States and of territories under their jurisdiction. The two International Covenants which followed in 1966, that on Economic, Social, and Cultural Rights, and the other on Civil and Political Rights were subsequently opened for signature. The Universal Declaration and these two International Covenants constitute the International Bill of Rights. Since then, a widening network of international conventions and treaties

has been developing which seeks to cover the several facets of human living.

THE CONCEPTUAL NATURE OF HUMAN RIGHTS

It is appropriate at this stage to refer very briefly to the conceptual nature of human rights. Prof. Iredell Jenkins (From Natural to Legal to Human Rights in Human Rights, Amintaphil I. P.203) observes that 'this universe of discourse is a good deal richer and more complex than is commonly recognized, that most talk about rights neglects some of its regions, and that this neglect leads to confusion in both our theory and our practice regarding rights' He warns that 'our thinking about rights has become localized in certain aspects of them, leading us to overlook other aspects that are equally important. As a result, our catalogues of rights have become distorted, and our efforts to secure rights are impeded'. The criticism appears justified because some of our present day thinking on human rights is influenced more by emotionalism than by the verities of jurisprudence.

There are several conceptual characteristics which distinguish human rights from other categories of rights. Professor Abraham Edel outlines some of them (Some Reflections on the Concept of Human Rights, Amintaphil I, p. l). He describes them as the properties of human rights, their special status and the special office or role or function of human rights which sets them apart from other categories of rights. Among the properties are first: greater generality; second: importance (it will be remembered that human rights are also referred to as fundamental rights); third; they are essential and eternal, not simply historical or transient, and fourth: they are an individual's inalienable rights. In regard to the status of human rights, Prof. Edel refers to the claim that they are 'grounded in reality and not existing only by convention' As to the office or role or function aspect, he suggests, we look to the way human rights function, or the way they function also in relation to the broader field of values, human interests, purposes and aspirations. These are not fully adequate criteria, but they do, when considered cumulatively, point to the essential difference between human rights and other rights.

Human rights are general rights, not particular rights. They are generic, not specific. They pertain to all human beings as such, and are global in scope rather than local. They cannot be identified as European human rights or Asian human rights. While the understanding of human rights may vary from region to region or from culture to culture, the concept of human rights remains universal. And although, we may speak of the rights of women and children, we refer to women and children in their totality as human beings. It is, therefore, safe to conclude that one of the dominating characteristics of human rights is the generality of the rights. It may be admitted at once that the test of generality is not by itself a sufficient criterion for distinguishing human rights from other rights. The test acquires significance with the next defining characteristics of human rights, that is to say, their importance when compared to other categories of rights.

Human rights are more basic or more fundamental than other rights. They are more basic and fundamental in that all other rights of the individual are derived, or flow, from the possession of human rights. They are also more basic or fundamental because in the scale of values, human rights assume a transcendental position over other rights. If the 'good life' of the Greeks constitutes the ultimate objective of man, human rights provide the basis structural principles for achieving that objective. From them follow what has been described by jurists as 'multitudes of opportunities'.

On the third characteristic of human rights, whether they are eternal and essential and. therefore, unvarying in identity, or change with the context of time and circumstance, there is much to be said. One view is that the lists of human rights remains constant; and it is merely the manner in which they are expressed and worked out which varies from

time to time and place to place. If this view enjoys true validity, it is in the sense that among the several lists of human rights there will be some items which hold a pre-eminent position in comparison with others. The right to life, the right to equality and the right to freedom of expression are among the human rights which are of primary significance to human personality and, therefore, hold a central place in the human rights movement. They continue to maintain their sacred niche in the catalogue of human rights, no matter what the chronology of time or the geography of place. They represent the immutability of human values and the essential spirit of human civilization. This central niche is not replete, but must continue to accommodate fresh members. As the quality and condition of human society in its evolutionary progress moves on to occupy new fields of experience, the rising challenges facing the human spirit will call for accretionary powers of expression, and values which were considered insignificant or peripheral will demand their inclusion in the centre of human rights. So imperative are these that the contemporary observer will find it difficult to believe that they could ever have been omitted. To cite an example, the indispensable rights invoked by Locke did not mention the right to vote, which today finds expression as universal suffrage in Article 21 of the Universal Declaration. Well before Locke's treatise, during the regime of Oliver Cromwell, a sect called by the meaningful name of Levellers had raised the cry for the right to vote, but their demand was rejected as in the England of that age suffrage to the disinherited was regarded as a menace to property interests. Another example. The institution of slavery was an accepted, and indeed favoured, component of ancient Greek and Roman life, and up to the eighteenth century, it constituted the strength of Southern economy in the United States. It was not until the middle of the nineteenth century that the movement for its abolition gathered strength under Wilberforce, and carried a momentum so powerful as to test the strength of American unity in the Civil War of 1864, and thereafter lead to the incorporation of the Thirteenth Amendment in the United States Constitution. Today, no constitutional system of national life will tolerate slavery, and many have mandatorily banned it. In international law, the prohibition against slavery has assumed the status of juscogens, and Article 4 of the Universal Declaration specifically rules it out. -

Professor Edel (Op. Cit. P.7) gives us a third instance. In the French Declaration of the Rights of Man and of the Citizen, the freedom of association was deliberately omitted, because association connoted the older guilds which stood in the way of economic freedom, and this trade unionism, for so it was, could be construed as a conspiracy in restraint of trade. But today, it is recognized as another imperative in the code of human rights.

Within this central core of human rights, the values incorporated are not static, and finally expressed. As the levels of human liberty and freedom keep on ascending, the dimensions of these central values keep on expanding. Changes of perspective induced by a more enlightened awareness are responsible for opening up new vistas of social, economic and cultural outlook, inevitably producing fundamental alterations in the orientation of human society. It is hardly necessary for me to cite illustrations. Who does not know, for instance, that the 'separate but equal' interpretation of the doctrine of equality, which satisfied the United States Supreme Court in Plessey v. Ferguson (163 U.S. 537) in the concluding decade of the nineteenth century, was found wholly inadequate in the middle of the next century by the Warren Court in Brown v. Board of Education (347 U.S. 483) where the new criterion of 'equality in all material respects' was adopted. In an earlier historical age, the doctrine of the Divine Right of Kings, a belief held firmly for centuries, was found no defence against the execution of Charles I of England. And the aristocratic prerogatives of birth have yielded to the modem faith in a comprehensive doctrine of equality.

Moving from the core to the general body of human rights, we witness the same

phenomena of the emergence of completely new human rights, and variations in the meaning and significance of existing human rights. The far-reaching changes in individual life occasioned by recent scientific discoveries and technological achievements, and an increasing sensitivity to human values affecting individual perspectives, have led to the need for a series of new human rights. There is the insistent claim to a universal right to education, the right of private decision in matters relating to sex and the family, the right to abortion against the right of the unborn child, and of major importance is the right to a clean natural environment. The growing emphasis on environmental protection and the preservation of the natural ecology throughout the world illustrates how a human right may emerge as the manifestation of a primary human right, in this case the right to life. The courts in India have already developed a respectable volume of jurisprudence identifying this relationship in the context of Article 21 of the Constitution of India, to which I shall refer later.

New human rights will keep on appearing. The UNESCO Committee (Human Rights Comments and Interpretations - A Symposium, edited by UNESCO, New York, Columbia University Press, 1949, pp.286f.) has suggested 'the right to share in progress' a significant development in the context of a society where private ownership of technical material and cultural assets is sought to be replaced by the social claim of a wider class, including the poor and under-privileged sections of the people. In the dimensions of international law, the doctrine of intergenerational equity has carried the right to a clean environment and to a preserved ecology beyond our immediate temporal limitations. According to the theory of intergenerational equity:

'All members of each generation of human beings, as a species, inherit a natural and cultural patrimony from past generations, both as beneficiaries, and as custodians, under the duty to pass on this heritage to future generations. As a central point of this theory the right of each generation to benefit from, and develop, this natural and cultural heritage is inseparably coupled with the obligation to use this heritage in such a manner that it can be passed on to future generations in no worse condition than it was received from past generations. This requires conservation and, as appropriate, enhancement of the quality and of the diversity of this heritage.'

These principles, which are taken from the Goa Guidelines (In Fairness to Future Generations, Transnational Publishers, Lac. Dobbs Ferry, New York, p. 293) a statement adopted by an international group of experts on a UNU Project, 'International Law, Common Patrimony and Intergenerational Equity', summarize the extension of the human rights doctrine from the spatial dimension into the inter-temporal dimension. It represents an innovation in international law, breaking new ground as it pushes back the known frontiers of the law. This is an instance of how the concept of human rights is sought to be enlarged to include, as claimants, future generations in regard to the resources of the planet. The rights of future generations are thus related to the obligations of the present generation. In the same direction lies the present investigation into the causes and consequences of global warming and the structuring of a legal jurisprudence, both national and international, in relation to the resulting global change.

The developments to which I have adverted represent, what seems to me to be of primary significance, a continuing search for new values, and of new guises for present values, in the attempt to respond to the evolving needs of man. As the process of evolution can be conceived to be never-ending, so will the continuing search for corresponding values. The lists of human rights can be considered as growing with the evolving essence of man. On the other hand, some of the rights may become obsolete as they cease to be relevant with changing conditions in the quality of human life. Still others, like the right to property, may yield to the social conflicts of our times. The perspective applied to human rights may differ contemporaneously. That two different views are possible even within

the same organization is evident from the fact that while the Universal Declaration of Human Rights (by Article 17) provides that everyone has the right to own property, alone as well as in association with others, and that no one shall be arbitrarily deprived of his property, the UNESCO Committee declared:

'Every man has the right to private property in so far as it is necessary for his personal use and the use of his family; no other form of property is in itself a fundamental right.'[1] (Op. Cit. Pp.286f).

Economic rights may be viewed differently by societies at different stages of socioeconomic development. While the right to property continues to retain in the United States, the central position it has always held there, In India it has been regarded as the weakest of the fundamental rights. That was declared clearly by the Supreme Court of India in Keshavanand v. State of Kerala (AIR 1973 SC 1461) and this enabled Parliament to enact the Constitution (44th Amendment) Act, 1978) whereby Article 19(l)(f) and Article 31 of the Constitution were repealed and Article 300A was enacted as Chapter IV of Part XII of the Constitution. The right to property was thus deleted from the lists of fundamental rights and converted into a right subject to the ordinary law without the constitutional protection conferred by the relevant provisions of Article 19 and 31.

It has been pointed out that one of the dominating characteristics of human rights lies in their inalienability. It is difficult to lay down in a precise list what may be classified as inalienable human rights. The American Declaration of Independence includes life, liberty and the pursuit of happiness as inalienable rights. They constitute the core of human rights essential to the nature of human personality. Whether a particular human right is inalienable will turn on the current condition of human society. There will always be, however, a minimum of human rights which cannot be alienated if the human personality is to retain its essential character.

In Basheshar Nath v. Commissioner of Income Tax (AIR 1959 SC 149) two judges of the Supreme Court of India took the view that as a fundamental right is in the nature of a prohibition addressed to the State, none of the fundamental rights in the Indian Constitution can be waived by an individual. That view was confirmed by the Court in Olga v. Bombay Corporation (AIR 1986 SC 180).

PART-II: HUMAN RIGHTS IN THE CONSTITUTION OF INDIA

To understand the place of human rights in the Indian Constitution, it is necessary to understand the nature of the Constitution and the historical reasons for its contents.

The Constitution of India possesses a particular significance for scholars of comparative law, political science and history. It is also seen as a document of economic and social philosophy. It represents the commitment of an ancient land to achieve, through contemporary social, economic and political concepts and institutions, the transformation of a feudal society into a modern, liberal and progressive State. As has been observed by jurists and political scientists that, the task was formidable, for India is the home of what would seem a bewildering array of perhaps unparalleled diversity, of several religions, languages and cultures, a vast net work of ethnic communities inter woven by history of castes and classes and customs travelling through thousands of years in almost unbroken continuity. The task of unifying that diversity into a coherent society was founded in a confidence born of its imperative compulsions.

Since 1931, the Indian National Congress had placed emphasis on the inclusion of a Bill of Rights in the constitutional system through which the British Imperial Power ruled

India. It had remained an article of faith with the Congress Party throughout its struggle against the British regime.

In July 1946, on the establishment of the Constituent Assembly, Sir B.N. Rau, an eminent jurist recognized for his expertise in Constitutional Law, became Constitutional Advisor to that body. A few months after the declaration of Independence on 15 August 1947, Sir B.N. Rau left for the U.K., Canada, the U.S.A., and some other foreign countries for discussions with leading constitutional authorities. He examined the Bill of Rights provisions in the US Constitution, the USSR Constitution, the Irish Constitution, the Swiss Constitution and the Weimar German Constitution of 1919. For the consideration of the Constituent Assembly in India he put forward a draft in which Part A dealt with 'fundamental principles of State Policy' and Part-B dealt with fundamental rights strictly so called (India's 'Constitution in the Making', B.N. Rau, pp. 249-50)

As we have seen, a considerable measure of international activity was in progress at the time.. The United Nations Charter of 1945 had emphasized the need for the incorporation *of* human rights in the international system, and this was followed by the adoption in 1948 of the U.N. Declaration of Human Rights. These movements were being carefully studied in India and in other countries recently emerged from colonial rule. It was, therefore, not fortuitous that the Constituent Assembly should proceed to consider the incorporation of a Chapter on Fundamental Rights, a description which fortified the importance and status of these provisions in the constitutional scheme. They define the essential difference between the Government of India Act, 1935 and the Constitution of India which was to be adopted in November 1949. I think most constitutional experts are agreed that while the legislative and executive machineries provided in the Constitution are drawn from the model set out in the Government of India Act, 1935, the constitutional value system has been drawn from other sources and incorporated with appropriate modifications in the new constitutional framework. As we will see, the Fundamental Rights provisions and the Directive Principles of State Policy constitute the heart of the Constitution and, indeed, control the proper functioning of the Constitutional machinery and institutions.

The Preamble of the Constitution is the all-important indicator defining the goals of the Constitution. It specifically speaks of Justice, social, economic, and political; Liberty of thought, expression, belief, and worship; Equality of status and of opportunity, and to promote them all; Fraternity assuring the dignity of the individual and the unity and integrity of the Nation. For the purpose of realizing the goals set out in the Preamble, two Parts of the Constitution need to be considered, Part-III (Fundamental Rights) and Part-IV (Directive Principles of State Policy). The Fundamental Rights are regarded as the constitutional assertion of the positive rights of the individual and of religious and minority groups, and reflect the corresponding negative obligations of the State. So basic are the Fundamental Rights provision that their violation by State legislation will result in the invalidity of such law. The Directive Principles of State Policy declare the positive obligations of the State in the governance of the national polity, but they are not enforceable in any Court. The relation between the Fundamental Rights provisions and the Directive Principles of State Policy will be considered later.

I shall consider at this point some of the significant Fundamental Rights mentioned in our Constitution.

ARTICLE 14

Article 14 declares that 'the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India'. It will be noted that the

Article relates to every person, and is not confined to citizens only. Conceivably, it may be said to extend to non-citizens also, e.g. to corporations, foreigners and the like who are not considered as citizens. The first part of Article 14, a person's entitlement to equality before the law, and the second part of the Article, that is, a person's entitlement to equal protection of the laws, have been regarded as two different aspects of Article 14. In Sri Sri Nivasa Theatre v. Government of Tamil Nadu, AIR 1992 SC 999, the Supreme Court observed that the word 'law' in the former expression is used in a generic sense - a philosophical sense - whereas the word 'the laws' in the latter expression denotes specific laws.

While speaking of the doctrine of equality, it is undeniable that two persons situate in different circumstances or, as is commonly said, belonging to two different categories or classes, cannot be regarded in terms of equality between them. When a law creates two different classes and treats them differently, the test whether the classification is permissible within the terms of Article 14, two conditions must be satisfied: (1) that the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (2) the differentia must have a rational relation to the object sought to be achieved by the legislation. This view was taken by the Supreme Court from the beginning and repeatedly affirmed. The first clear statement was pronounced by the Supreme Court in West Bengal v. Anwar Ali Sarkar (AIR 1952 SC 75).

However, subsequently certain members of a Bench of that Court, in E.P. Rovappa v. Tamil Nadu (AIR 1974 SC 555) appear to have discovered 'a new dimension' of Article 14, and that claim was repeated in Meneka Gandhi v. Union (AIR 1978 SC 597), R.D. Shetty v. Airport Authority (AIR 1979 SC 1628) and Ajay Hasia v. Khalid Mujid (AIR 1981 SC 487) where it was observed that the content and reach of Article 14 must not be confused with the doctrine of classification, and that Article 14, seen in its new dimension, indicated that it was of a highly activist magnitude and it embodied a guarantee against arbitrariness. That new dimension has been the subject of severe criticism by H.M. Seervai: Constitutional Law of India, 4th Edn. Vol. I, pp. 436 et seq.) who opines that the earlier view of Article 14 should be accepted as the correct view. According to that renowned Jurist, the new doctrine was untenable because it was propounded without reference to the terms in which the equality right to 'the equal protection of the laws' is confirmed, because it failed to distinguish between the violation of equality by law and its violation by executive action, and because it failed to analyse certain concepts on which the new doctrine was founded.

It seems to me that a third view is possible and that the conflict between the 'twin test' approach relating to classification and the single test approach turning on the element of arbitrariness are reconcilable. Every instance of in-equality leads to arbitrariness. Therefore, it has to be determined first whether there is in-equality. The application of the twin criteria is pertinent for that purpose. If in-equality is established, the conclusion must be that the consequence is arbitrariness.

DISCRIMINATORY LAW AGAINST INDIVIDUALS:

This analysis appears to commend itself when we recall that the doctrine of equality can be invoked even in the case of legislation relating to a single person, as was observed by the Supreme Court in Chiranjit Lal Chowdhury vs. Union of India (AIR 1951 SC 41) or in the case of specified individuals as was noticed in Ameerunnisa Begum vs. Mehboob Begum (AIR 1953 SC 91) and Ram Prashad v. State of Bihar (AIR 1953 SC 315). It may be noted that the singling out of individuals has never been favoured where it is motivated by hostile discrimination. In the case of a law touching a single person, the

general view would be that the legislation which singles out that one individual for depriving him of his rights would be invidious unless he clearly constitutes a class by himself.

SPECIAL COURTS:

The application of the doctrine of equality has been of singular relevance in regard to legislation creating special courts, and applying unequal procedures when compared to the procedure followed by the usual courts. The case of Anwar Ali Sarkar, which has been referred to already, is a case where the legislation was declared invalid.

ADMINISTRATIVE DESCRETION:

A case of unjust discrimination may also arise in the application of administrative discretion. If the exercise of administrative discretion is not controlled by any principle or policy securing against discriminatory classification, the legislative provision enabling the exercise of administrative discretion is liable to be struck down. However, a mere possibility of discriminatory treatment will not necessarily invalidate the law. For the legislation to be invalid, the features of the legislative scheme should be such that hostile discrimination will be the necessary result.

ARTICLES 15 TO 17:

The doctrine of equality enunciated in Article 14 finds expression in relation to specified situations or context in relation to citizens. And that is how Articles 15 and 16 of the Constitution came to be inserted:

Article 15 reads as under:
Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth:
(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

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

(3) Nothing in this article shall prevent the State from making any special provision for women and children,
(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.
Article 16 reads as under:
Equality of opportunity in matters of public employment:
(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State;
(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office (under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory) prior to such employment or appointment.
(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the

opinion of the State, is not adequately represented in the services under the State.
(4-A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion (with consequential seniority) to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.
(4-B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year.
(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.
Article 15 prohibits discrimination generally by the State on grounds of religion, race, caste, sex or place of birth. Article 16 guarantees equality of opportunity in matters of public employment.

It will be noticed that while clauses (1) and (2) of Article 15 prohibit the State from discriminating against any citizen on the ground only of religion, race, caste, sex, place of birth or any of them, Clauses (1) and (2) of Article 16 prohibit the State from discriminating against any citizen on those grounds or also of descent or residence. Provision is made by succeeding clauses in each of the two Articles enabling the State to make special provision, in the first case (Article 15) for women and children and for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Caste and Scheduled Tribes, and in the other case (Article 16) for making any provision for making reservation of appointment on posts in favour of any backward class of citizens which is not adequately represented in the services under the State.

So far as Scheduled Castes and Scheduled Tribes are concerned, their identification has been made possible by Article 341 and Article 342 which empower the President to specify, by public notification, the castes, races or tribes or parts of or groups within them which, for the purposes of the Constitution, are to be deemed to be Scheduled Castes or Scheduled Tribes.

A controversy arose in regard to the definition of ‘backward classes’. It was thought at first that the two expressions are not identical in scope, and there was much judicial consideration applied to the resolution of the controversy. By this time, a host of questions had arisen in regard to the application of the quota system in the sphere of employment under the State. Conflicting decisions had been rendered by the Court with respect to different aspects of it. Many of the questions pertaining to such special provisions have been sought to be resolved by the Supreme Court in Indra Sawhney v. Union of India (AIR 1993 SC 477). In that case the Bench consisted of 9 Judges and in view of the questions raised the hearing proceeded for several days. By reason of limited space and time, I shall make reference to the view of the majority on some of the points only. The majority held:

1. Clause (4) of Article 16 is not an exception to clause (1) of Article 16. It is an instance of classification implicit in and permitted by clause (1) of Article 16. Clause (4) is a provision which must be read along with and in harmony with clause (1). Even without clause (4) it would have been permissible for the State to have evolved such a classification and made a provision for reservation. What clause (4) does is to put the matter beyond any doubt in specific terms.
2. Clause (4) of Article 16 is not exhaustive of the concept of reservation. It is exhaustive of reservation in favour of backward classes alone. Reservation can be provided under clause (1) of Article 16 but it is in very exceptional situations, and not for all and sundry reasons, that any

further reservation, of whatever kind, should be provided under clause (1).
3. The word 'class' in the expression 'backward classes' is not antithetical to caste, or that a caste cannot be a class, or that a caste as such can never been taken as a backward class of citizens. The word 'class' is used in the sense of 'social class'.
4. The caste is nothing but a social class, a socially homogeneous class, with this difference that its membership is hereditary. Endogamy is its main characteristic. Its social status and standing depend upon the nature of the occupation followed by it.
5. Although caste is mentioned separately in clause (2) of Article 16, it may be included while identifying the 'backward class of citizens' for the purpose of clause (4) of Article 16. Once the caste satisfies the criteria of backwardness, it becomes a backward class for the purposes of clause (4) of Article 16.
6. Backwardness contemplated by Article 16(4) is mainly social backwardness and not social and educational backwardness. The backward class contemplated by Article 16(4) is wider than the one contemplated under Article 15(4).
7. In a backward class under Article 16(4) if the connecting link is the social backwardness it should broadly be the same in a given class. If some of the members are far too advanced socially (economically and educationally) the connecting thread between them and the remaining class snaps ('Creamy layer').
8. A reservation in favour of a backward class may be on occupation-cum-income basis without reference to caste.
9. Under Article 16(4) in relation to services under the State the reservation should not exceed 50%, except in an extraordinary situation. The limit of 50% is fair and reasonable. The limit should be kept at 50% even though the population of backward classes may be more than 50%. Article 16(4) speaks of adequate representation and not proportionate representation.
10. In applying the principle of reservations under Article 16(4) a Scheduled Caste member selected in open competition on the basis of his merit should not be counted against the quota reserved for the Scheduled Castes. (Comment: Adequate representation would include both, the Scheduled Caste member selected in open competition on the basis of merit and a Scheduled Caste member selected against the quota reserved for Scheduled Castes).
11. In working out the limit of 50% reservation in favour of backward classes, inter-locking reservations have to be excluded.
12. The rule of 50% limit is to be applied on the basis of an annual intake, and not with reference to the entire strength of the cadre or services. An unfilled reserved vacancy may be carried forward but that should not result in a breach of the 50% rule,
13. The reservation for backward classes is not permissible in promotions. (Comment: However, the Constitution (77th Amendment) Act, 1995 published on 17 June 1995 empowered the State to provide for reservation in matters of promotion to posts in the services under the State in favour of Scheduled Castes and Scheduled Tribes. Thereafter, the Constitution (85th Amendment) Act, 2001 was enacted and brought into force on 17 June 1995, and thereupon Article 16(4-A) empowered the State to make provision for reservation in matters of promotion with consequential seniority).
14. It is permissible for the State to extend concessions and relaxations to members of reserved categories in the matter of promotion without compromising the efficiency of the administration, but it would not be permissible to prescribe lower qualifying marks or a lesser level of evaluation for members of reserved categories since that would compromise the efficiency of administration.
15. There are certain services and posts where, either on account of the nature of duties attached to them or the level in the hierarchy to which they belong, merit alone counts. In such situation it may not be advisable to provide for reservations.

The provision for reservation within the doctrine of equality demonstrates how its sweep and depth can extend to a multitude of refinements in its application to even a single aspect of equality in action.

Two other provisions of Part III of the Constitution may be noticed, that is, Articles 19 and 21.

ARTICLE 19:
Article 19 guarantees the right to freedom of speech and expression, freedom of assembly,

freedom of association, freedom of movement, freedom of residence and settlement, and freedom of profession, occupation, trade or business. They are fundamental rights of every citizen.

At this point it may be observed that the word ‘citizen’ has been understood to mean a natural person. It has been urged by some jurists that the word ‘citizen’ should include a corporate entity, specially in the case of those corporations in which a substantial majority consists of Indian citizens and where the seat of control lies within India. So far, however, that position has not been conceded by the courts in clear terms, and the rights detailed in Article 19 are considered as rights of the human individual.

The other point to note is that the exercise of each of the freedoms mentioned in Article 19(1) is limited by such reasonable restrictions imposed by law as may be necessary or expedient for the promotion of the general welfare. In A.K. Gopalan v. State of Madras (AIR 1950 SC 27), Das J. observed that ‘social interest in individual liberty may well have to be subordinated to other greater social interests’. The Court in Hari Khemu Gawali v. Dy. Commissioner of Police (AIR 1956 SC 559) pointed to the need for reaching a balance between individual rights guaranteed under Article 19(1) and the exigencies of the State which is the custodian of the interests of the general public, public order, decency or morality and of other public interests which may compendiously be described as social interest is conveyed by the qualifying words ‘reasonable’ in the expression ‘reasonable restrictions’. If the law arbitrarily or excessively invades any of the freedoms mentioned in Article 19(3), it cannot amount to a reasonable restriction on those freedoms.

The reasonableness of the restriction covers not only the substantive content of the restriction but extends to the procedure prescribed by the law for enforcing the restriction on the exercise of the individual rights. It may be noted also that what is reasonable is to be tested objectively and cannot be left to the subjective judgment of the State.

A controversy arose in the earlier years of our constitutional jurisprudence whether reasonableness could include total prohibition. It is now settled that prohibition may be justified if the exercise of the individual right relates to matters which cannot be permitted on the grounds of public morality, state security, and the like. For example, there can be no right to indulge in criminal activity or an activity which undoubtedly endangers the security of the State.

Shortly after the Constitution came into force, cases arose in the Courts where counsel relied heavily on the decisions of the US Supreme Court arising out of similar constitutional issues. Quite often the concept of ‘due process’, native to the US Constitution and barking back to the 14th century. Statute of Edward III (P. 4) was made the basis of counsel’s submissions. The Courts in India found themselves compelled to remind the parties that whereas the expression ‘due process’, although specifically mentioned in the American Constitution, had not been defined by it and its content had evolved from case to case, in the case of the Indian Constitution, which has not used that expression, the limitations on the exercise of the fundamental right had been spelt out in terms of the constitutional provision itself.

At this point it may be mentioned that Article 19(1) contains clause (f) which declares a citizen’s right ‘to acquire, hold and dispose of property’. This clause led to considerable difficulty in the acceptance of the constitutional validity of agrarian legislation and other laws affecting the compulsory acquisition of property. As we have seen, the Supreme Court, while analysing the relative significance of the individual rights mentioned in Article 19(1), came to the view that the right to property was the weakest of the fundamental rights and could be deleted by constitutional amendment.

ARTICLE 21:

A very important and far-reaching provision in Part III is Article 21 which declares that ‘no person shall be deprived of his life or personal liberty except according to procedure established by law’. When Article 21 was invoked in A.K. Gopalan v. State of Madras, the Supreme Court took the view that Article 21 was attracted only in a case of deprivation of personal liberty, and deprivation meant a total loss of liberty. Later, however, in Menaka Gandhi v. Union of India (AIR 1978 SC 597) the Court modified that view, and enlarged the scope of ‘deprivation of personal liberty’ to include imposition of restrictions on personal liberty.

As the Court adopted a more liberal approach, it also gave an expanded meaning to the words ‘deprivation of life’, holding that the ‘right to life’ in Article 21 includes all those aspects of life which combine to make human life meaningful, complete and worth living, The right to life, the Court said, encompassed a right to all those components which together make up life, such as tradition, culture and heritage. In Menaka Gandhi’s case the Court established a relationship between Articles 14, 19 and 21. In Shanti Star Builders v. Naravan Khimalal Totame (AIR 1990 SC 630), and again in Subhash Kumar v. State of Bihar (1991) SCC 598: AIR 1991 SC 420) the Court treated the right to a decent environment as an essential prerequisite of the right to life guaranteed by Article 21. The quality of life is determined by the various attributes of life which preserve and promote human life and human living, such as the natural and cultural environs, the multifarious dimensions of man’s social relationships and all that he represents as a member of an evolving progressive society. By this construction of Article 21 the Supreme Court has become the judicial arbiter of the entire corpus of rights which determines the quality of human living. It is an enormous responsibility, but one which the Court considers essential to the promotion of a modern welfare society. For example, in R.P. Ltd. v. Proprietors. Indian Express Newspapers (AIR 1989 SC 190) the Supreme Court traced the right to know to the provisions of Article 21 on the footing that it is a necessary ingredient of participatory democracy. Some other rights traced to Article 21 are the rights of prisoners, the rights of inmates of protected homes, the right to free legal aid at the cost of the State to an accused handicapped by poverty and/or indigence, and the right to the release and rehabilitation of bonded labour. I propose to deal with these instances and still others later.

Part-Ill mentions other fundamental rights such as protection against arrest and detention in certain cases (Article 22), prohibition of traffic in human beings and forced labour (Article 23), prohibition of employment of children in factories or mines or other hazardous employment (Article 24), the right to freedom of religion (Articles 25 to 28), cultural and educational rights (Articles 29 and 30), and the right to constitutional remedies (Article 32). The treatment of the Fundamental Rights under these other provisions must perforce by reason of the time required to discuss them be left to another occasion.

THE RELATION BETWEEN FUNDAMENTAL RIGHTS OF PART III AND THE DIRECTIVE PRINCIPLES OF STATE POLICY IN PART IV.

The Directive Principles of State Policy have been declared by Article 37 of the Constitution to be fundamental in the governance of the country and the State is enjoined to apply those principles in making laws. The Directive Principles are not enforceable by any Court. Originally it was thought that the Directive Principles of State Policy had to conform to and run subsidiary to the Chapter on Fundamental Rights because the latter are enforceable in the court while the former are not. That was the view taken by the Supreme Court in the State of Madras v. Champakam Dorairajan (AIR 1951 SC 226). On

further consideration, however, the Supreme Court took the view that the Fundamental Rights and the Directive Principles are complementary and supplementary to each other: S.B. Boarding and Lodging v. State of Mysore (AIR 1970 SC 2042). The Court observed in Minerva Mills Ltd. v. Union of India (AIR 1980 SC 1789) that 'an harmony and balance between Fundamental Rights and Directive Principles are an essential feature of the basic structure of the Constitution'. The conditions enabling a flowering of an imperfect State obligation into the perfection of a human right.

THE ENFORCEMENT OF FUNDAMENTAL RIGHTS

The high status accorded to Fundamental Rights in the Constitution demands, as a corollary, a remedy for their enforcement which lies beyond the reach of the legislative power of the State. Since the validity of State legislation itself is tested against the operation of the Fundamental Rights, the Constitution makers considered it appropriate that the enforcement of those Rights should, in addition to recourse to the usual remedies, have access to a constitutional remedy. Moreover, it was desirable to provide a remedy which was directly available in the highest Court so that the enforcement should be speedy and expeditious. This was achieved by enacting Article 32 in the Constitution and further by making it a Fundamental Right itself.

In order that the poorest of India's citizens should be able to have access to Article 32, the Supreme Court devised the strategy of Public Interest Litigation. That enabled the petitioner to send a mere letter to the Supreme Court or the High Court for judicial redress. It also enabled groups of persons or NGOs to voice their concern about matters of public interest which required the attention of the Courts for the purpose of judicial redress. The 'raison d'etre' of Public Interest Litigation in many cases is the inability of Parliament and the Executive to respond to a popular demand for the establishment of conditions ensuring an improved quality of life envisaged as a Fundamental Right under Article 21.

A catalogue of the instances in which the Supreme Court and the High Courts have granted relief covers an extensive canvas. They include:

Conditions prevailing in the prisons including the rights of prisoners (Sunil Batra v. Delhi Administration, 1980 3 SCC 488), powers of the State administration in relation to the using of handcuffs and bar fetters on the person of those in public custody (Prem Shankar Shukla v. Delhi Administration, 1980 3 SCC 526), torture by the police and other forms of custodial violence (Rakesh Kaushik v. Superintendent Central Jail, New Delhi, AIR 1981, 1761), the element of harmony is fundamental to all principles of apparently conflicting legislation, and in the constitutional context it is of profound significance inasmuch as the Constitution is an organic document providing for an organic and integrated structure of governance in which the different institutions of governance hold a balance between them. Therefore, it is logical for the courts to take the view that in determining the balance between the Fundamental Rights set out in Part III, the value of Directive Principles should be regarded as falling within the scope of the reasonable restrictions on the exercise of Fundamental Rights. In State of Bombay v. F.N. Balsara (AIR 1951 SC 318) while interpreting the scope of the expression 'reasonable restrictions' in Article 19. the Court observed that the Directive Principles may be kept in mind for the purpose of interpreting the content of that expression. A relevant Directive Principle may serve to define the extent of the reasonable restriction, and in that sense function as a harmonizing element in the exercise of the Fundamental Right.

But the more important function to which a Directive Principle may be put is its relationship in determining the scope of the corresponding Fundamental Right itself. And

so, we find that the philosophy embodied in Article 48A, which contains the Directive Principle that the 'State shall endeavour to protect and improve the environment...' has been brought into the State's obligations under Article 21, which speaks of the Fundamental Right of a person to life and which has been interpreted by the Supreme Court as extending to the Fundamental Right of an individual to a proper environment.

Attention may also be drawn to the State's obligation under Article 45 of the Directive Principles, to endevour to provide free and compulsory education for all children until they complete the age of fourteen years. Article 21-A of the Fundamental Rights speaks of the obligation of the State to provide such education for all children between six to fourteen years of age. Whereas Article 45 speaks of the State's obligation to endeavour to provide such education, Article 21-A speaks of the State's obligation to actually provide such education. In other words, the obligation has matured from 'an obligation to endeavour to provide' to 'an obligation to provide'. This is an instance demonstrating how an objective set out as a Directive Principle is raised from the status of a non-enforceable obligation to the status of an enforceable Fundamental Right. It is the consequence of a maturing of social and economic treatment of inmates of mental hospitals and the conditions and facilities provided by such hospitals (B.R. Kapoor v. Union of India, AIR 1990 SC 752), and the treatment of inmates in State-run institutions for women and children (Sheela Barse v. Secretary, Children's Legal Aid Society, 1987 3 SCC 50), violence and discrimination against women (State v. Laxman Kumar, AIR 1986 SC 250, and Mary Roy v. State of Kerala, 1986 I SCALE 36), the obligations of the State in relation to children detained in prison (Munna v. State of U.P., 1982 1 SCC 545), child labour (Rajangam, Secretary. District Bidi Workers Union v. State of Tamil Nadu, 1992 I SCC 221), the condition of the girl child (Praful Kumar Sinha v. State of Orissa, AIR 1989 SC 1783), the state of public reformatory institutions (Gurdev Singh v. State of Himachal Pradesh, AIR 1992 SC 72), bonded labour (Bandhua Mukti Morcha v. Union of India (1984 4 SCC 161), and gender discrimination in employment (Air India v. Nargesh Mirza, AIR 1981 SC 1829).

The right to a quality of life free from the evil consequences of a degraded environment led to a large number of petitions pleading for the protection and preservation of the natural environment. In several of those cases, the Supreme Court and the High Courts undertook the task of issuing directions and monitoring their implementation until a degree of success was assured. Such cases included the requirement of anti-pollution measures initiated by the Court for implementation by the State as well as by private parties (M.C. Mehta v. Union of India, AIR 1988 SC 1115), the maintenance of emission standards in motor vehicles (Murali Purushottaman v. Union of India, 1993 1 KLT 595), the use of lead free petrol (M.C. Mehta v. Union of India, 1996 2 SCALE 92), the phasing out of vehicles over 15 years old (M.C. Mehta v. Union of India, 1998 8 SCC 206), the imposition of Euro-I and Euro-II emission norms in newly registered vehicles (M.C. Mehta v. Union of India, 1999, 6 SCC 14), the closing down of industries situated along the banks of India's major rivers where such industries have been responsible for the discharge of industrial effluents into water (M.C. Mehta v. Union of India, 1992 1 SCALE 42), the removal of industries near and around the Taj Mahal in Agra (M.C. Mehta v. Union of India, 1995, 7 SCALE 1), the re-siting of industries formally within the national capital district (M.C. Mehta v. Union of India, 1996 4 SCC 750), the protection and conservation of forests (Environmental and Ecological Protection Samiti v. Executive Engineer, 1991, 2 KLT 493), the reduction and control of noise pollution (R. Mukerjee v. State of Bengal, AIR 1985 CAL 222). the protection of the nation's cultural heritage (B.V. Narayana Reddy v. State of Karnataka, AIR 1985 Karnataka 99), the monitoring of environmental and economic fall outs of the construction of large dams (Consumers' Education & Research Centre v. State of Gujarat. 1981 22 GLR 712), and of quarrying operations in mountain valleys (Rural Litigation and Entitlement Kendra,

Dehradun v. State of U.P., AIR 1985 SC 652).

Public interest litigation has extended to matters touching educational institutions under statutory control, for example, appointment of teachers (Biswajit Sinha v. Dibrugarh University, 1990 2 GLR 374), admission policies (Jitendra Nath Banerji v. West Bengal Board of Examination, AIR 1983 Calcutta 275), and the conduct of examinations (Shivaji Rao Nilangekar Patil v. Dr. M.M. Gosavi, 1987 1 SCC 227), matters affecting public administration in relation to public health (Legal Aid Committee, Jamshedpur v. Mahatma Gandhi Memorial Medical College Hospital, 1987 1 SCALE 327), Besides, there were petitions complaining of the conditions of law and order (In re: Complaint Received from Delhi Judicial Service Association, Tis Hazari, Delhi, 1989 2 SCALE 140), State policy with regard to affirmative action programmes for the scheduled castes and scheduled tribes (Madhu Kishwar v. State of Bihar, 1991 2 SCALE 148), and the pension rights of retired government employees (Common Cause v. Union of India, AIR 1987 SC 210). It is evident that public interest litigation covers a wide field almost as extensive as the entire interface between individual rights and State action.

Interestingly, in most cases public interest litigation arises where the public cause or public need sought to be satisfied is a matter to which the State should ordinarily address itself. It is a matter which would fall within the domain of State obligations. Viewed in that context it would be inappropriate to treat it as attracting the adverserial procedures regulating private litigation. These are matters where the parties, including the State, find themselves working in cooperation with each other in the task of finding, through the intervention of the Court, a solution to the problem. In such cases, the Court, in its activist role, adopts and pursues an investigative procedure.

DOES PUBLIC INTEREST LITIGATION INTRODUCE A POLITICAL ELEMENT IN THE JUDICIAL PROCESS?

It is undeniable that an activist court may formulate measures which appear to bear the imprint of a legislative scheme. The distinction between judicial action and the legislative function tends to blur, and the elements of a political role become discernible in the judicial action. Public Interest Litigation has the potential of involving political choices and imparting a political flavour to the judicial process. That seems to be particularly the case when the judicial verdict flows out of a constitutional provision, and the wisdom of de Tocqueville is called to mind. I have said on another occasion that while the Supreme Court is now recognized as the ultimate conscience keeper of the Constitution, and its supremacy over all other departments of State as the final arbiter of constitutional disputes stands firmly-established, the close resemblance between the judicial function and a legislative function in certain circumstances raises the troubling thought that such a congruency runs directly counter to the intent and scheme expressed in the Constitution. There is a distinction between a legislative product and the judgment of a Court. Whereas a Court judgment represents the opinion of intellectuals removed from contact with the grass roots of public opinion by virtue of the nature of their functions and the weight of tradition, in the case of legislation the inputs proceed from levels closer to the ground, from the experience of legislators who draw their information from direct contact with the people intimately involved with, and affected by, a problem. Therefore while it may be true to say that, by their nature and consequence, some matters may legitimately permit judicial action to assume the contours and content of legislation, there will be other cases in which the task is better performed by the legislature itself. Where a court, compelled by considerations of urgency and the imminence of great social injury may find it necessary to institute measures of redress, it seems to me that any such measure should be designed to last for only a short while, leaving a more permanent remedy to be fashioned by the legislature. I have said before that functioning thus, the Court acts as a

catalytic agent that calls the attention of the legislature to the urgent necessity of taking durable long term measure in respect of matters of considerable social importance.

THE PROTECTION OF FUNDAMENTAL RIGHTS AGAINST CONSTITUTIONAL AMENDMENT:

A written Constitution is a fundamental organic document. It creates the State, proclaims the character of its polity, declares its national aspirations, appoints its permanent institutions and instrumentalities, and provides generally the constitutional principles and incidence for guiding them in the governance of the country. The Constitution sets the nation on a definite course, defining the ethos for the development of the national community. To provide for orderly change necessitated by future events, or to remedy defects disclosed in the working of the Constitution or by judicial decisions, or by circumstances which were foreseen but not guarded against, and to ensure that the Constitution remains a document of continued authority, a power to amend is usually incorporated.

The amendment of a Constitution is, in many senses, a very different thing from the original framing of the Constitution. In framing the original Constitution, the power exercised is a constituent power. It is a primary and plenary power. An amendment of a Constitution involves the exercise of a derivative constituent power, derived from the Constitution.

An amendment of a Constitution can be a matter of profound significance. If it exceeds the constitutional limitation, it can lead the constitutional system of the country astray, taking it in a direction entirely opposed to the intention of the original constitution makers, and through channels alien to the constitutional ethos.

In the beginning, the Supreme Court, in Sankari Prasad v. Union (AIR 1951 SC 458) and in Sajjan Singh v. Rajasthan (Decided in 1965) took the view that a constitutional amendment infringing fundamental rights was not barred by Article 13(2) of the Constitution. Then in Golaknath v. Punjab the Supreme Court by a majority of six to five held that Parliament had no power to amend the fundamental rights and in order to preserve the validity of legislation enacted earlier, judicial ingenuity laid down the principle of ‘prospective over-ruling’.

Thereafter, Article 368, which provides for the amending power of Parliament, was amended to include a provision which declared the power of Parliament, in the exercise of its constituent function, to add, vary or repeal any provision of the Constitution. This was effected by the Constitution (24^{th} Amendment) Act. In effect, Golaknath was nullified and Sankari Prasad and Sajjan Singh restored. The Fundamental Rights provisions now seemed completely vulnerable to repeal or variation by constitutional amendment. It seemed that all approaches had been sealed and constitutional amendments infringing or repealing fundamental rights could not be questioned.

But the sanctity of Fundamental Rights in the constitutional polity continued to hold a strong emotional appeal, and constitutional lawyers were not satisfied that the final word had been said in the matter. In Keshevananda Bharati v. Kerala (AIR 1973 SC 1461). the point was raised again and arguments were heard by a Bench of thirteen judges from October 1972 to 23 March 1973. Eleven judgments were handed down. The decision in that case has been regarded as one of the great turning points in the history of Indian Constitutional Law. A majority of seven out of thirteen judges held that Article 368 did not enable Parliament to alter, by constitutional amendment, the basic structure or framework of the Constitution. This statement of law by the highest court of the land is of

epochal significance. It marked the end of Parliamentary supremacy over the Constitution. Parliament no longer controlled the Constitution, the Constitution controlled Parliament. The Parliamentary power of amendment had to mould itself to the basic structure of the Constitution. Although no exhaustive statement as to what were the basic features of the Constitution could be enumerated, the majority declared in Keshvananda's case that the doctrine would be worked out as it was invoked from case to case. However, the majority was unanimous that the Fundamental Rights constituted a basic feature of the Constitution, and except for the fundamental rights relating to property, considered to be the weakest among those rights, the fundamental rights were not amendable.

An attempt was made by Parliament to assert its authority again when it enacted the Constitution (42nd Amendment) Act during the Emergency which added provisions declaring that an amendment of the Constitution, including the provisions of Part III, - the Fundamental Rights, could not be called in question in any Court on any ground and that there would be no limitation on the constituent power of Parliament to amend any provision of the Constitution. In Minerva Mills Ltd. v. Union (AIR 1980 SC 1789), the Supreme Court held that the newly added provisions were void. The Court took the view that judicial review was a basic feature of the Constitution, and that the Fundamental Rights were part of the basic structure of the Constitution. The Court observed: 'To destroy the guarantees given by Part-Ill is plainly to subvert the Constitution by destroying its basic structure'. In an another case Waman Rao v. Union of India (AIR 1981 SC 271), heard at the same time by the same Bench of Judges, the Court considered whether the operation of the Fundamental Rights could be excluded by a constitutional amendment giving preference to the Directive Principles of State Policy. The Court nullified the constitutional amendment holding that both Parts of the Constitution were incorporated to hold the constitutional ethos in balance and 'anything that destroys the balance ------ will ipso facto destroy an essential element of the basic structure of the Constitution'. In other words, the exclusion or subordination of the Fundamental Rights by preference given to some other Parts of the Constitution cannot be accepted.

There can be no competition between the Fundamental Rights and any other part of the Constitution. None can be conceived. For example, State action for realizing the goals and objectives of State Policy must pass through the discipline required by the Fundamental Rights provisions. The Fundamental Rights embody basic freedoms for individuals and special groups defined by religion, culture and the like. Each of the freedoms is subject to reasonable restrictions, by law, in the public interest. They are not absolute freedoms, but are held in constant balance against social interest. An eminent jurist has observed that the framers of the Indian Constitution have succeeded in solving a major problem of human society, namely, 'to combine that degree of liberty without which law is tyranny with that degree of law without which liberty becomes licence'. The position after Minerval Mills and Waman Rao is that the Fundamental Rights are regarded as part of the basic structure of the Constitution, and cannot be abrogated or repealed. The only exception is the right to property. However, in regard to the right to property, it is the opinion of some jurists that when it is considered as an adjunct of some other fundamental right, it is protected by the security enjoyed by that principal fundamental right. It possesses a character different from that possessed by a right to property simpliciter. For example, the right to religious freedom includes the right to own property for religious purposes. The right of cultural minorities to preserve their culture could envisage ownership in property for cultural purposes. A similar approach may be conceivable when a property right is viewed as an adjunct of Fundamental Rights pertaining to the human personality. In all such cases, a property right is subsumed into the principal fundamental rights, and is entitled to protection accordingly.

When India awoke to freedom, the world had moved into a different band of the time spectrum. It was a time of international social movements and great social unrest; a time of powerful conflicting political and economic ideologies, a post-war world which spoke both of human rights and of economic development. It was a world where countries were on the eve of emerging from colonial bondage into independence and freedom, and saw the promise of moving from poverty to relative prosperity through industry and trade and the free utilization of national resources. To transform a feudal India into a modern State with those aspirations, it was inevitable that the new values would have to cope with the old, and amidst the contemporary need for accelerated change, would produce pressures which would put the constitutional system to considerable strain, even to the point of threatening its basic structure. It is in a time such as this that the fundamental institutions of a society are required to perform their constitutional role with more than usual vigilance. While responding to the dynamic forces operating within, they must, at the same time, take care to preserve the Constitution.

For the most part since independence, India has been ruled by powerful governments. From the very beginning the judiciary has found itself having to monitor, by reason of its curial functions, the impact of State intervention with individual rights. The implementation of political, social and economic programmes, halted or slowed down in consequence of judicial pronouncements, led to a series of constitutional amendments. And when these began to put in question the security of the more vital features of the constitutional polity, the Courts found it necessary to act. Thus was necessitated the formal enunciation of the ‘basic structure’ doctrine.

As always, under a written Constitution, it will be for the judges to determine whether the constitutional system is in balance or in jeopardy. That is a function which belongs to them by virtue of their office. The ‘basic structure’ of a Constitution, like some other concepts, can be understood but never exhaustively defined. What are the several features of the ‘basic structure’ will fall to be determined by the judges from case to case. It seems, as of today, that the judges will have the last word - unless, that is, some other acceptable constitutional device is conceived. For the time being, the judges of India will represent, in the collective voice of their judicial consciences, the verdict of the people.

CONCLUSION:

The Human Rights movement continues to move with steady progress through various levels and areas of Indian society. However, there still remain some areas which have to be brought into the central focus of the Human Rights movement. For example, gender justice, to give only one instance, needs greater attention. It is heartening that there is a National Human Rights Commission and that it is gradually moving into the full potential of its entrusted functions. But much work remains to be done.

R.S. PATHAK

THE NEW INTERNATIONAL LAW OF HUMAN RIGHTS

The modern doctrine of human rights embodied in the U.N. Charter, the Universal Declaration and the two International Covenants has produced a revolution in the status of the individual, traditional international law governed relations between States, and the code of rights and obligations was a code regulating the behaviour of one State to another. Individuals had no standing in this area of the law. They were regarded as the objects of the law. If an alien within the jurisdiction of a State was sought to be protected by measures taken by his own State, it was because his State conceived it in the national interest to do so. Now whatever be the position in regard to alien citizens, no State permitted interference in its dealings with its own citizens. It was regarded as a matter

falling exclusively within its domestic jurisdiction, an expression of its sovereignty. The new law of human rights changed all that. The individual has now become the subject of international law in the matter of human rights. To that degree, the new law penetrates national frontiers and pierces the veil of sovereignty. The individual has acquired a position in international life directly, no longer through his State, and has become entitled to rights independently of his State. When his claim on the basis of human rights is pressed, it is to protect his interest and not that of his nation. The purpose of the new law is to improve the lot of individuals, an object wholly new to the domain of international law. It is a revolutionary change brought on by the modern concept of human rights. If pressure is brought upon a State by other States to honour the human rights of its own citizens, it is in recognition of that new concept in international law. Although human rights are universal, they are universal in the sense that individuals all over the world are entitled to the benefit of human rights, but it must be understood that those rights are intended to be claimed against their own States.

The normative provisions relating to human rights in the U.N. Charter are general in terms and simply expressed. Acts. 55 and 56 oblige Member States to take joint and separate action in cooperation with the United Nations to achieve respect for human rights. To provide an agreed code of specific and particular human rights, the Member States of the United Nations adopted the Universal Declaration of Human Rights in 1948. It set forth both civil and political rights and economic, social and cultural rights. The Declaration declares the rights to life, liberty, and security of person, to fair criminal process, to freedom of conscience, thought, expression, association and privacy; the right to seek and enjoy asylum, to leave one's country and to return to it, rights to marriage and family, and rights of property. It provides for universal suffrage and bonafide elections. It mentions the right to work and leisure, health care and education. The Universal Declaration was not conceived as law; it merely embodied 'a common standard of achievement' for member States. This was necessary because of the widely differing conditions among different countries and peoples. It also made it easier for the States to accept it. This declaration is commonly accepted as an authoritative specification of the content of the human rights provisions of the U.N. Charter. It may be observed that according to some jurists the human rights provisions of the U.N. Charter and the Universal Declaration have, because of the repeated resolutions of international organizations and the practice of States, together created as customary international law of human rights, which is binding on all States. That view was expressed by Judge Ammon of the International Court of Justice in The Namibia case (1971) ICJ 67, 76, by Humphrey (The International Bill of Rights) and Waldock (The European Convention on Human Rights p. 15), and is now generally accepted as correct. The Universal Declaration has not only influenced a proliferation of human rights conventions, on the making of national constitutions, statutes and decisions, it has augmented the great historic communication - that the protection of human rights is of the highest priority.

The framing of the Convention which followed took a long time, almost eighteen years. There were sharp differences between the Western democracies and the East European Socialist States, and every attempt had to be made to reconcile those differences. Finally in deference to the wishes of the Western World, it was decided to have two Covenants, one on Civil and Political Rights and the other on Economic, Social, and Cultural Rights. Each of the Covenants carries different legal obligations. A State party to the Covenant on Civil and Political rights undertakes 'to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant….. .' The Covenant deals with individual rights, and envisages an immediate obligation to comply with its provisions. The right under the Covenant are in reality in the nature of immunities. They are not claims on, but assurances against, the Government. On the other hand, the Covenant on Economic, Social, and Cultural Rights 'undertakes to take

steps individually, and through international assistance and cooperation, specially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenants by all appropriate means, including particularly the adoption of legislative measures. The obligations under this Covenant call for the application of the power and resources of the State to implement them.' They are obligations of a legal character, but having regard to the nature and the widely differing resources of individual States immediate implementation cannot be contemplated. It may be mentioned at this point that on the insistence of the newly emerged States and against the opposition of Western States, both Covenants include specific provision declaring the rights of all peoples to self-declaration, economic self-declaration and to sovereignty over their resources.

It is evident that as human rights are rights which an individual can pursue only against his own State, it is necessary that for obtaining redress he should have recourse under the laws, and to the institutions, of his State. In those cases only, where access may be had to a regional court such as the European Court of Human Rights, may an individual seek relief outside his national Courts also. It may be noted that some instruments, for example the Optional Protocol to the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination, and the European and the American Conventions on Human Rights permit an individual to pursue his international legal rights by international legal remedies.

Both the Covenants, that on Economic, Social, and Cultural Rights and the other, on Civil and Political Rights, have been in force since 1976. The Covenant on Economic, Social, and Cultural Rights has understandably not been a subject of international controversy or of individual complaints of violation. The Covenant on Civil and Political Rights gives rise to cases of the violation of individual rights, and States parties to the Covenant are required to submit reports on their compliance with its provisions.

In 1977, the U.N. General Assembly adopted resolution 32/130, a resolution of considerable importance in the formulation of future human rights activities. The eight-fold conceptual approach embodied in the resolution stresses the indivisibility and interdependence of all human rights and fundamental freedoms, and consequently the implementation, promotion and protection of both civil and political rights as well as economic, social and cultural rights. It recognizes that the full and enduring realization of civil and political rights is not possible without the enjoyment of economic, social, and cultural rights. It pronounces that all human rights and fundamental freedoms of the human person are inalienable - an imperative of considerable significance in the operation of national constitutional systems. It requires the consideration of human rights problems on a global basis, taking into account the pluralistic nature of the world community. It reiterates the need for the international community to accord priority within the United Nations system to the search for solutions to some of the fundamental violations of human rights, such as those resulting from apartheid, colonialism, economic imperialism, and racial discrimination. It declares that priority should be accorded to the realisation of the New International Economic Order. It encourages Member States to accede to or ratify the international instruments relating to the promotion of human rights. Finally, it considers desirable that the organs of the United Nations System should, in their work related to human rights and fundamental freedoms, take into account the experience and contribution of both developed and developing countries.

THE UNIVERSABILITY OF HUMAN RIGHTS IN A PURALISTIC INTERNTIONAL SOCIETY.

Although the allegiance to the human rights philosophy is to be found expressed in

substantially similar terms in the constitutional documents of different nations, the understanding of their content and significance varies from State to State, influenced by its particular historical, political, ideological, social, economic, cultural, and religious perspectives. These factors determine the definitive comprehension in which each society perceives its concept of individual human rights. In the result, the code of human rights has often found expression in different societies with startlingly varying or selective application.

The Universal Declaration of Human Rights is the product of a period when the United Nations was dominated by the West, and not unnaturally the Declaration presented a western conception of human rights. It was believed by the framers of the Declaration that the western concept provided the most appropriate framework for a universal code. Since the emergence of a large number of new States thereafter, the validity of that assumption has come under serious challenge, and contention favours more than one value system, giving rise to an unsettling scepticism on whether a universal consensus on the concept of human rights exists at all.

To a cultural relativist, sceptical of the universal validity of the Declaration of Human Rights, any attempt to establish a congruency in different national systems appears bound to fail, because any such attempt would be incapable of eroding the irreducible core of cultural singularity in the various social components of the world.

However the fears expressed by cultural relativists are not well founded. It must be remembered that on broad principle the concept of human rights has found favour with most civilized societies, and there will be few who are prepared to concede that there is no place or respect of the human rights philosophy within their constitutional programmes. Third World countries have found the human rights movement a useful weapon against colonial and racial policies, and much of the argument in favour of a New International Economic Order is founded in the inspiration provided by that movement. An extreme relativistic view is denied validity by the inescapable admission of basic common elements to be found in moral value codes of large sections of humanity. In a world community composed of the diversity that we know, it has been found possible to enter into international conventions reaffirming the principles of the Universal Declaration.

One must start by asking whether there is in fact a core of basic rights that is common to all cultures despite their apparently divergent perspectives. The concept of human rights is nothing but a reformulation of justice for the individual against unwarranted invasion by the power and authority of society, and for a just system of the fulfillment of his needs. Defined thus, the ideal will be acceptable in all societies. Since the world is pluralistic, composed of societies which are culturally, ideologically and economically different, there can be no single or specific way of going about realizing that ideal. The ideal, nonetheless, remains universal. What is of importance is to remember that while talking of cultural variability, what is culturally variable is not the concept that the human being needs protection from the excesses of the State and just conditions be created for the fulfillment of his needs; what is culturally variable is the specification as to how the ideal can be achieved in different cultures. When we conceive of men as an ideologically relative being, we see him in the context of those beliefs and ideals which commit him to action. The human rights philosophy must account for ideological relativity, and must proceed upon the model that these rights have to be realized within an ideological pluralism.

Any rigid, global approach to the human rights jurisprudence which completely ignores regional, cultural, economic, developmental, and other similar disparities and variations

in the structure and organization of different societies is bound to fail. Those who believe and assert the universality of human rights do so on the assumption that there exists in the contemporary world a single cosmopolitan culture which is spread across all indigenous cultures and which carries to each of them what are global human rights. They call this the ‘common culture of modernity’. States, regions, cities, families, patterns of life are all, according to them, ‘shaped by this culture’. It seems beyond dispute that the increasing awareness of interdependence between the nations of the world cannot but promote a universal faith in human right values. The scientific and technological achievements of our times have demonstrated through a process of world-wide communication that the basic problems of most nations and peoples have common characteristics and that they can be surmounted through the mediation of a common value system. Ancient cultures are finding, through the language of modern values, how life can be lived from day to day. It is this reality which appears to be the surest guarantee of the universalizing of human rights in a pluralistic world.

As history has demonstrated, the human rights jurisprudence is open to regional expression and implementation. So long as the world continues as it does, regional systems of enforcement will find comparatively easy acceptability. A State is likely to have greater confidence, and lend its support more easily, if the international machinery has been set up by a group of like-minded countries which are partners in a regional organization. It will be willing to give greater powers to a regional organ of restricted membership, than to a worldwide organ in which it plays a proportionally small part. Nonetheless, it is imperative to remember that the actual working balance between regionalism and universalism works on the basis that regional agencies are concomitant supplements to the universal organization. According to this conception, regional institutions may function as subordinate pieces of international machinery, sharing the load, diverting some of the tensions of international relations from the central world organization, and serving as agents of the larger community in handling problems which pertain primarily to their own regional localities.

CONCLUSION

The problem which the world faces today, an almost uncontrollable global population explosion, disparity in the distribution of available materials, mismanagement of ecological resources, and other similar factors will tend to delay the global realization of human rights values. There is on the other hand, a growing awareness, fostered by the same human rights values, of the need for open societies, for the free expression of democratic institutions, and for increasing the avenues of access to justice. The winds of change are blowing all over the world, and regions removed by continental distances are awakening to the dawn of a new destiny. The credit for these global changes must be given to the human rights revolution which, through the communication and transport media of an advanced technological age, has responded to human wisdom, human faith, and an undeniable human brotherhood.